Administrative Personnel

PARTS 1 TO 699
Revised as of January 1, 1999

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To cite the regulations in this volume use title, part and section number. Thus, 5 CFR 1.1 refers to title 5, part 1, section 1.
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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

- Title 1 through Title 16 ............................................................ as of January 1
- Title 17 through Title 27 .......................................................... as of April 1
- Title 28 through Title 41 ........................................................... as of July 1
- Title 42 through Title 50 ........................................................... as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table II). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of “Title 3—The President” is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the “Contents” entries in the daily Federal Register.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

January 1, 1999.
Title 5—ADMINISTRATIVE PERSONNEL is composed of three volumes. The parts in these volumes are arranged in the following order: parts 1-699, 700-1199 and part 1200-end. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1999.

Redesignation tables appear in the Finding Aids section of the volumes containing parts 700-1199 and part 1200-End.

For this volume, Ruth Reedy Green was Chief Editor. The Code of Federal Regulations is published under the direction of Frances D. McDonald, assisted by Alomha S. Morris.
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Title 5—Administrative Personnel

(This book contains parts 1 to 699)

NOTE: Title 5 of the United States Code was revised and enacted into positive law by Public Law 89-554, Sept. 6, 1966. New citations for obsolete references to sections of 5 U.S.C. appearing in this volume may be found in a redesignation table under title 5, Government Organization and Employees, United States Code.

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**EDITORIAL NOTE:** Chapter I—Office of Personnel Management is continued in the volume containing 5 CFR parts 700 to 1199.
PART 1—COVERAGE AND DEFINITIONS (RULE I)

Sec. 1.1 Positions and employees affected by the rules in this subchapter.

1.2 Extent of the competitive service.

1.3 Definitions.

1.4 Extent of the excepted service.


SOURCE: 28 FR 10022, Sept. 14, 1963, unless otherwise noted.

§ 1.1 Positions and employees affected by the rules in this subchapter.

The rules in this subchapter shall apply to all positions in the competitive service and to all incumbents of such positions. Except as expressly provided in the rule concerned, the rules in this subchapter shall not apply to positions and employees in the excepted service.

§ 1.2 Extent of the competitive service.

The competitive service shall include: (a) All civilian positions in the executive branch of the Government unless specifically excepted therefrom by or pursuant to statute or by the Office of Personnel Management (hereafter referred to in this subchapter as OPM) under §6.1 of this subchapter; and (b) all positions in the legislative and judicial branches of the Federal Government and in the Government of the District of Columbia which are specifically made subject to the civil service laws by statute. OPM is authorized and directed to determine finally whether a position is in the competitive service.

§ 1.3 Definitions.

As used in the rules in this subchapter:

(a) Competitive service shall have the same meaning as the words “classified service”, or “classified (competitive) service”, or “classified civil service” as defined in existing statutes and executive orders.

(b) Competitive position shall mean a position in the competitive service.

(c) Competitive status shall mean basic eligibility to be noncompetitively selected to fill a vacancy in a competitive position. A competitive status shall be acquired by career-conditioned or career appointment through open competitive examination upon satisfactory completion of a probationary period, or may be granted by statute, executive order, or the Civil Service Rules without competitive examination. A person with competitive status may be promoted, transferred, reassigned, reinstated, or demoted without taking an open competitive examination, subject to the conditions prescribed by the Civil Service Rules and Regulations.

(d) An employee shall be considered as being in the competitive service when he has a competitive status and occupies a competitive position unless he is serving under a temporary appointment: Provided, that an employee who is in the competitive service at the time his position is first listed under Schedule A, B, or C shall be considered as continuing in the competitive service as long as he continues to occupy such position.

(e) Tenure shall mean the period of time an employee may reasonably expect to serve under his current appointment. Tenure shall be granted and governed by the type of appointment under which an employee is currently serving without regard to whether he has a competitive status or whether his appointment is to a competitive position or an excepted position.

§ 1.4 Extent of the excepted service.

(a) The excepted service shall include all civilian positions in the executive branch of the Government which are specifically excepted from the requirements of the Civil Service Act or from the competitive service by or pursuant to statute or by OPM under §6.1 of this subchapter.

(b) Excepted service shall have the same meaning as the words “unclassified service”, or “unclassified civil service”, or “positions outside the competitive civil service” as used in existing statutes and executive orders.
(c) Excepted position shall have the same meaning as “unclassified position”, or “position excepted by law”, or “position excepted by executive order”, or “position excepted by Civil Service Rule”, or “position outside the competitive service” as used in existing statutes and Executive orders.

PART 2—APPOINTMENT THROUGH THE COMPETITIVE SYSTEM (RULE II)

§ 2.1 Competitive examinations and eligible registers.

(a) OPM shall be responsible for open competitive examinations for admission to the competitive service which will fairly test the relative capacity and fitness of the persons examined for the position to be filled. OPM is authorized to establish standards with respect to citizenship, age, education, training and experience, suitability, and physical and mental fitness, and for residence or other requirements which applicants must meet to be admitted to or rated in examinations.

(b) In addition to the names of persons who qualify in competitive examinations, the names of persons who have lost eligibility on a career or career-conditional register because of service in the armed forces, and the names of persons who lost opportunity for certification or who have served under career or career-conditional appointment when OPM determines that they should be given certification, may also be entered at such places on appropriate registers and under such conditions as OPM may prescribe.

(c) Whenever the Office of Personnel Management (1) is unable to certify a sufficient number of names to permit the appointing officer to consider three eligibles for appointment to a fourth-class postmaster position in accordance with the regular procedure, or (2) finds that a particular rate of compensation for fourth-class postmaster positions is too low to warrant regular competitive examinations for such positions, it may authorize appointment to any such position or positions in accordance with such procedure as may be prescribed by OPM. Persons appointed under this paragraph may acquire competitive status subject to satisfactory completion of a probationary period prescribed by OPM.

§ 2.2 Appointments.

(a) OPM shall establish and administer a career-conditional appointment system for positions subject to competitive examinations which will permit adjustment of the career service to necessary fluctuations in Federal employment, and provide an equitable and orderly system for stabilizing the Federal work force. A competitive status shall be acquired by a career-conditional appointee upon satisfactory completion of a probationary period, but the appointee shall have career-conditional tenure for a period of service to be prescribed by regulation of OPM. When an employee has completed the required period of service his appointment shall be converted to a career appointment without time limitation: Provided, That his career-conditional appointment shall not be converted to a career appointment if the limitation on the number of permanent employees in the Federal civil service established under paragraph (b) of this section would be exceeded thereby.

(b) Persons selected from competitive civil service registers for other than temporary appointment shall be given career-conditional appointments:

(1) Persons whose appointments are required by statute to be made on a permanent basis;

(2) Employees serving under career appointments at the time of selection from such registers;

(3) Former employees who have eligibility for career appointments upon reinstatement; and

(4) To the extent permitted by law, persons appointed to positions in the field service of the U.S. Postal Service for which salary rates are fixed by the
Office of Personnel Management

§ 3.1 Classes of persons who may noncompetitively acquire status.

(a) Upon recommendation by the agency concerned, and subject to such noncompetitive examination, time limits, or other requirements as OPM may prescribe the following classes of persons may acquire a competitive status without competitive examination:

(1) A person holding a permanent position when it is placed in the competitive service by statute or executive order or is otherwise made subject to competitive examination.

(2) A disabled veteran who, in a manner satisfactory to OPM, has completed a course of training in the executive branch of the Government prescribed by the Administrator of Veterans' Affairs in accordance with the act of March 24, 1943 (57 Stat. 43).

(3) An employee who has served at least two years in the immediate office of the President or on the White House Staff and who is transferred to a competitive position at the request of an agency.

(4) An employee who was serving when his name was reached for certification on a civil service register appropriate for the position in which he was serving: Provided, That the recommendation for competitive status is made prior to expiration of the register on which his name appears or is made during a period of continuous service since his name was reached: Provided further, That the register was being used for appointments conferring competitive status at the time his name was reached.

(b) Upon recommendation by the employing agency, and subject to such requirements as the Office of Personnel Management may prescribe, the following classes of handicapped employees may acquire competitive status without competitive examination:

(1) A severely physically handicapped employee who completes at least two years of satisfactory service in a position excepted from the competitive service.

(2) A mentally retarded employee who completes at least two years of
§ 3.2 Appointments without competitive examination in rare cases.

Subject to receipt of satisfactory evidence of the qualifications of the person to be appointed, OPM may authorize an appointment in the competitive service without competitive examination whenever it finds that the duties or compensation of the position are such, or that qualified persons are so rare, that, in the interest of good civil-service administration, the position cannot be filled through open competitive examination. Any person heretofore or hereafter appointed under this section shall acquire a competitive status upon completion of at least one year of satisfactory service and compliance with such requirements as OPM may prescribe. Detailed statements of the reasons for the noncompetitive appointments made under this section shall be published in OPM’s annual reports.

§ 3.3 Conversion of appointments.

Any person who acquires a competitive status under this part shall have his appointment converted to career-conditional appointment unless he meets the service requirement for career appointment prescribed under §2.2(a) of this subchapter.

PART 4—PROHIBITED PRACTICES (RULE IV)

Sec.
4.1 Prohibition against political activity.
4.2 Prohibition against racial, political or religious discrimination.
4.3 Prohibition against securing withdrawal from competition.


§ 4.1 Prohibition against political activity.

No person employed in the executive branch of the Federal Government, or any agency or department thereof, shall use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No person occupying a position in the competitive service shall take any active part in political management or in political campaigns, except as may be provided by or pursuant to statute. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates.

§ 4.2 Prohibition against racial, political or religious discrimination.

No person employed in the executive branch of the Federal Government who has authority to take or recommend any personnel action with respect to any person who is an employee in the competitive service or any eligible or applicant for a position in the competitive service shall make any inquiry concerning the race, political affiliation, or religious beliefs of any such employee, eligible, or applicant. All disclosures concerning such matters shall be ignored, except as to such membership in political parties or organizations as constitutes by law a disqualification for Government employment. No discrimination shall be exercised, threatened, or promised by any person in the executive branch of the Federal Government against or in favor of any employee in the competitive service, or any eligible or applicant for a position in the competitive service because of his race, political affiliation, or religious beliefs, except as may be authorized or required by law.

§ 4.3 Prohibition against securing withdrawal from competition.

No person shall influence another person to withdraw from competition for any position in the competitive service for the purpose of either improving or injuring the prospects of any applicant for appointment.

PART 5—REGULATIONS, INVESTIGATION, AND ENFORCEMENT (RULE V)

Sec.
5.1 Civil Service regulations.
5.2 Investigation and evaluations.
Office of Personnel Management

§ 5.3 Enforcement.

5.4 Information and testimony.

Authority: 5 U.S.C. 3301, 3302; E.O. 12107.

Source: 45 FR 4337, Jan. 22, 1980, unless otherwise noted.

§ 5.1 Civil Service regulations.

The Director, Office of Personnel Management, shall promulgate and enforce regulations necessary to carry out the provisions of the Civil Service Act and the Veterans’ Preference Act, as reenacted in title 5, United States Code, the Civil Service Rules, and all other statutes and Executive orders imposing responsibilities on the Office. The Director is authorized, whenever there are practical difficulties and unnecessary hardships in complying with the strict letter of the regulation, to grant a variation from the strict letter of the regulation if such a variation is within the spirit of the regulations, and the efficiency of the Government and the integrity of the competitive service are protected and promoted. Whenever a variation is granted the Director shall note the official record to show:

(a) The particular practical difficulty or hardship involved, (b) what is permitted in place of what is required by regulations, (c) the circumstances which protect or promote the efficiency of the Government and the integrity of the competitive service, and (d) a statement limiting the application of the variation to the continuation of the conditions which gave rise to it. Like variations shall be granted whenever like conditions exist. All such decisions and information concerning variations noted in the official record shall be published promptly in a Federal Personnel Manual Letter or Bulletin and in the Director’s next annual report.

§ 5.2 Investigation and evaluations.

The Director may secure effective implementation of the civil service laws, rules, and regulations, and all applicable Executive orders imposing responsibilities on the Office by:

(a) Investigating the qualifications and suitability of applicants for positions in the competitive service. The Director may require appointments to be made subject to investigation to enable the Director to determine, after appointment, that the requirements of law or the civil service rules and regulations have been met.

(b) Evaluating the effectiveness of:

(1) Personnel policies, programs, and operations of Executive and other Federal agencies subject to the jurisdiction of the Office, including their effectiveness with regard to merit selection and employee development; (2) agency compliance with and enforcement of applicable laws, rules, regulations and office directives; and (3) agency personnel management evaluation systems.

(c) Investigating, or directing an agency to investigate and report on, apparent violations of applicable laws, rules, regulations, or directives requiring corrective action, found in the course of an evaluation.

(d) Requiring agencies to report, in a manner and at times as the Director may prescribe, personnel information the Director requests relating to civilian employees in the Executive branch of the Government, as defined by section 311 of the Civil Service Reform Act of 1978, including positions and officers and employees in the competitive, excepted and Senior Executive services, whether permanent, career-conditional, temporary or emergency.

§ 5.3 Enforcement.

(a) The Director is authorized to ensure enforcement of the civil service laws, rules, and regulations, and all applicable Executive orders, by:

(1) Instructing an agency to separate or take other action against an employee serving an appointment subject to investigation when the Director finds that the employee is disqualified for Federal employment. Where the employee or the agency appeals the Director’s finding that a separation or other action is necessary, the Director may instruct the agency as to whether or not the employee should remain on duty and continue to receive pay pending adjudication of the appeal: Provided, That when an agency separates or takes other action against an employee pursuant to the Director’s instructions, and the Director, on the basis of new evidence, subsequently reverses the initial decision as to the employee’s qualifications and suitability,
§ 5.4 Information and testimony.

When required by the Office, the Merit Systems Protection Board, or the Special Counsel of the Merit Systems Protection Board, or by authorized representatives of these bodies, agencies shall make available to them, or to their authorized representatives, employees to testify in regard to matters inquired of under the civil service laws, rules, and regulations, and records pertinent to these matters. All such employees, and all applicants or eligibles for positions covered by these rules, shall give to the Office, the Merit Systems Protection Board, the Special Counsel, or to their authorized representatives, all information, testimony, documents, and material in regard to the above matters, the disclosure of which is not otherwise prohibited by law or regulation. These employees, applicants, and eligibles shall sign testimony given under oath or affirmation before an officer authorized by law to administer oaths. Employees are performing official duty when testifying or providing evidence pursuant to this section.

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE (RULE VI)

Sec.
6.1 Authority to except positions from the competitive service.
6.2 Schedules of excepted positions.
6.3 Method of filling excepted positions and status of incumbents.
6.4 Removal of incumbents of excepted positions.
6.5 Assignment of excepted employees.
6.6 Revocation of exceptions.
6.7 Movement of persons between the civil service system and other merit systems.
6.8 Specified exceptions.

Authority: 5 U.S.C. 3301, 3302.
Source: 28 FR 10025, Sept. 14, 1963, unless otherwise noted.

§ 6.1 Authority to except positions from the competitive service.

(a) OPM may except positions from the competitive service when it determines that appointments thereto through competitive examination are not practicable. These positions shall be listed in OPM’s annual report for the fiscal year in which the exceptions are made.

(b) OPM shall decide whether the duties of any particular position are such that it may be filled as an excepted position under the appropriate schedule.

(c) Notice of OPM’s decision granting authority to make appointments to an
excepted position under the appropriate schedule shall be published in the FEDERAL REGISTER.


§ 6.2 Schedules of excepted positions.

OPM shall list positions that it excepts from the competitive service in Schedules A, B, and C, which schedules shall constitute parts of this rule, as follows:

Schedule A. Positions other than those of a confidential or policy-determining character for which it is not practicable to examine shall be listed in Schedule A.

Schedule B. Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination shall be listed in Schedule B. Appointments to these positions shall be subject to such noncompetitive examination as may be prescribed by OPM.

Schedule C. Positions of a confidential or policy-determining character shall be listed in Schedule C.

§ 6.3 Method of filling excepted positions and status of incumbents.

(a) The head of an agency may fill excepted positions by the appointment of persons without civil service eligibility or competitive status and such persons shall not acquire competitive status by reason of such appointment: Provided, That OPM, in its discretion, may by regulation prescribe conditions under which excepted positions may be filled in the same manner as competitive positions are filled and conditions under which persons so appointed may acquire a competitive status in accordance with the Civil Service Rules and Regulations.

(b) To the extent permitted by law and the provisions of this part, appointments and position changes in the excepted service shall be made in accordance with such regulations and practices as the head of the agency concerned finds necessary.

§ 6.4 Removal of incumbents of excepted positions.

Except as may be required by statute, the Civil Service Rules and Regulations shall not apply to removals from positions listed in Schedules A and C or from positions excepted from the competitive service by statute. The Civil Service Rules and Regulations shall apply to removals from positions listed in Schedule B of persons who have competitive status.

§ 6.5 Assignment of excepted employees.

No person who is serving under an excepted appointment shall be assigned to the work of a position in the competitive service without prior approval of OPM.

§ 6.6 Revocation of exceptions.

OPM may remove any position from or may revoke in whole or in part any provision of Schedule A, B, or C. Notice of OPM’s decision making these changes shall be published in the FEDERAL REGISTER.


§ 6.7 Movement of persons between the civil service system and other merit systems.

Whenever OPM and any Federal agency having an established merit system determine it to be in the interest of good administration and consistent with the intent of the civil service laws and any other applicable laws, they may enter into an agreement prescribing conditions under which persons may be moved from one system to the other and defining the status and tenure that the persons affected shall acquire upon such movement.

§ 6.8 Specified exceptions.

(a) Positions in the Department of the Interior and in the Department of Commerce whose incumbents serve as the principal representative of the Secretary in their respective regions shall be listed in Schedule C for grades not exceeding grade GS-15 of the General Schedule, and shall be designated Non-career Executive Assignments for positions graded higher than GS-15. Incumbents of these positions who are, on February 15, 1975, in the competitive service shall not be affected by the foregoing provisions of this section.

(b) Positions in the Community Services Administration and ACTION
whose incumbents serve as regional director or regional administrator shall be listed in Schedule C for grades not exceeding GS-15 of the General Schedule and shall be designated Noncareer Executive Assignments for positions graded higher than GS-15. Incumbents of these positions who are, on November 29, 1977, in the competitive service shall not be affected by the foregoing provisions of this subsection.

(c) Within the Department of Agriculture, positions in the Agriculture Stabilization and Conservation Service the incumbents of which serve as State Executive Directors and positions in the Farmers Home Administration the incumbents of which serve as State Directors or State Directors-at-Large shall be listed in Schedule C for all grades of the General Schedule.

5 CFR Ch. I (1-1-99 Edition)

PART 7—GENERAL PROVISIONS
(RULE VII)

Sec.
7.1 Discretion in filling vacancies.
7.2 Personnel reports.
7.3 Reemployment rights.
7.4 Citizenship.

SOURCE: 28 FR 10025, Sept. 14, 1963, unless otherwise noted.

§ 7.1 Discretion in filling vacancies.
In his discretion, an appointing officer may fill any position in the competitive service either by competitive appointment from a civil service register or by noncompetitive selection of a present or former Federal employee, in accordance with the Civil Service Regulations. He shall exercise his discretion in all personnel actions solely on the basis of merit and fitness and without regard to political or religious affiliations, marital status, or race.

§ 7.2 Personnel reports.
Each agency shall report to OPM, in such manner and at such times as OPM may prescribe, such personnel information as it may request relating to positions and officers and employees in the competitive service and in the excepted service, whether permanent or career, career-conditional, indefinite, temporary, emergency, or subject to contract.

§ 7.3 Reemployment rights.
OPM, whenever it determines it to be necessary, shall prescribe regulations governing the release of employees (both within the competitive service and the excepted service) by any agency in the executive branch of the Government for employment in any other agency, and governing the establishment, granting, and exercise of rights to reemployment in the agencies from which employees are released.

§ 7.4 Citizenship.
(a) No person shall be admitted to competitive examination unless such person is a citizen or national of the United States.
(b) No person shall be given any appointment in the competitive service unless such person is a citizen or national of the United States.
(c) OPM may, as an exception to this rule and to the extent permitted by law, authorize the appointment of aliens to positions in the competitive service when necessary to promote the efficiency of the service in specific cases or for temporary appointments.

5 CFR Ch. I (1-1-99 Edition)

PART 8—APPOINTMENTS TO OVERSEAS POSITIONS
(RULE VIII)

Sec.
8.1 Additional authority of OPM.
8.2 Appointment of United States citizens.
8.3 Appointment of persons not citizens of the United States.
8.4 Positions excepted from the application of this part.

SOURCE: 28 FR 10025, Sept. 14, 1963, unless otherwise noted.

§ 8.1 Additional authority of OPM.
In addition to authorizing the recruitment and appointment of persons to overseas positions under regulations issued under the preceding Rules, OPM may, by the regulations prescribed by
Office of Personnel Management

§ 8.4 Positions excepted from the application of this part.

This part shall not apply to positions in Hawaii, Puerto Rico, the Virgin Islands, and Alaska, and on the Isthmus of Panama.

PART 9 [RESERVED]
SUBCHAPTER B—CIVIL SERVICE REGULATIONS

PART 110—OPM REGULATIONS AND INFORMATION COLLECTION REQUIREMENTS

Subpart A—Posting Notices of New Regulations

Sec. 110.101 OPM responsibilities.
110.102 Agency responsibilities.

Subpart B—Information Collection Requirements

110.201 OMB control numbers.

AUTHORITY: 5 U.S.C. 1103; Section 110.201 is also issued under 5 U.S.C. 1104, 5 CFR part 5.2(c) and (d); 44 U.S.C. 3507(f); 5 CFR part 1320.

Subpart A—Posting Notices of New Regulations

§ 110.101 OPM responsibilities.

OPM will issue special bulletins to provide notice of its new regulations. Each special bulletin will transmit:
(a) A reprint of the notice of rulemaking which appears in the FEDERAL REGISTER.
(b) A posting notice which briefly explains the nature of the change, and provides a place for the receiving office to indicate where the full text of the FEDERAL REGISTER notice will be available for review locally.

[44 FR 67626, Nov. 27, 1979, as amended at 59 FR 2945, Jan. 20, 1994]

§ 110.102 Agency responsibilities.

(a) Making regulations available for review. Offices receiving the reprints of notices of rulemaking described in §110.101(a) will make them available for review upon request. Each office will complete the posting notice described in §110.101(b) to indicate where and how requests to review these materials should be made.
(b) Posting locations and supplemental announcements. Once completed, posting notices will be displayed in a prominent place. Agencies should choose the posting location which best fits their physical layout. Agencies may, at their discretion, supplement these postings with announcements of new regulations in employee newsletters and use other communication methods to provide notice of regulatory changes. The basic requirement to post the notice continues, however, even if supplemental announcement methods are used.
(c) Posting after the Federal Register comment date passes. The public comment period on proposed regulations begins when a notice of proposed rulemaking is published in the FEDERAL REGISTER, not with the posting of the notice described in §110.101(b). The purpose of the §110.101(b) notice is solely to inform managers and employees of changes. Agencies are required to post the §110.101(b) notice even if the formal deadline for comments shown in the preamble of the FEDERAL REGISTER notice of rulemaking has passed. Agencies should make every reasonable effort to minimize delays in distributing the special bulletins described in §110.101 to their field offices.
(d) No fixed posting period. There are no minimum or maximum time limits on displaying the notice described in §110.101(b) of this section. Each office receiving a notice for posting should choose the posting period which provides the best opportunity to inform managers and employees of regulatory changes based upon office layout, geographic dispersion of employees and other local factors.

[44 FR 67626, Nov. 27, 1979, as amended at 59 FR 2945, Jan. 20, 1994]

Subpart B—Information Collection Requirements

§ 110.201 OMB control numbers.

(a) Under section 3507(f) of the Paperwork Reduction Act of 1980 (Pub. L. 96-551), control numbers assigned by the Office of Management and Budget must be displayed with agency information collection requirements.
(b) This paragraph displays OMB-assigned control numbers for information collection requirements contained within chapter 1 of this title.
§ 151.111 Permissible activities.

(a) All State or local officers or employees are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and this part. A State or local officer or employee may participate in all political activity not specifically restricted by law and this part, including

(b) State or local agency means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof.

(c) Federal agency means an executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System;

(d) State or local officer or employee means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency but does not include—

1. An individual who exercises no functions in connection with that activity.
2. An individual employed by an educational or research institution, establishment, agency, or system, which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.
3. Political party means a National political party, a State political party, and an affiliated organization.

(f) Election includes a primary, special, and general election.

(g) Nonpartisan election means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector receives votes in the last preceding election at which Presidential electors were selected.

(h) Partisan when used as an adjective refers to a political party.

[i]Elective office means any office which is voted upon at an election as defined at §151.101(f), above, but does not include political party office.

[40 FR 42733, Sept. 16, 1975]

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[40 FR 42733, Sept. 16, 1975]
§ 151.121 Use of official authority; coercion; candidacy; prohibitions.

A State or local officer or employee may not—

(a) Use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office; or

(b) Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a political party, committee, organization, agency, or person for a political purpose.

(c) Be a candidate for elective public office in a partisan election.

§ 151.122 Candidacy; exceptions.

Section 151.121(c) does not apply to—

(a) The Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;

(b) The Mayor of a city;

(c) A duly elected head of an executive department of a State or municipality who is not classified under a State or municipal merit or civil service system;

(d) An individual holding elective office;

(e) Activity in connection with a nonpartisan election; or

(f) Candidacy for a position of officer of a political party, delegate to a political party convention, member of a National, State, or local committee of a political party, or any similar position.

§ 175.101 Policy.


§ 175.102 Requests for the declassification of documents.

Any Federal agency, Government employee or member of the public has the right to request a mandatory review of any classified document, held by the Office of Personnel Management, which was classified for national security purposes by the Civil Service Commission. The Office of Personnel Management does not have the authority to classify documents.

(a) Requests for mandatory declassification review should be addressed to the Director, Office of Management, or the designee of the Director, who will act on requests within 60 days. Requests need not be made in any special form but shall, as specified in section 3-501 of the Executive order, reasonably describe the information.

(b) Based upon the review, the document, or any reasonably segregable portion thereof that no longer requires protection under the Executive order, shall be declassified and released unless withholding is otherwise warranted under applicable law.

(c) No OPM official will refuse to confirm the existence or non-existence of any document requested under the Freedom of Information Act or the mandatory review provisions of the Executive order, unless the fact of its existence or non-existence would itself be classifiable under the Executive order. OPM Administrative Manual chapter 22, covering OPM policies and procedures relating to classified information or material is available for inspection by the public in the OPM Library, room SH27, 1900 E. St., NW., Washington, DC, or in one of the 10 OPM regional offices in the following cities: Atlanta, Boston, Chicago, Dallas, Denver, New York, Philadelphia, St. Louis, San Francisco and Seattle.

Authority: E.O. 12065, 43 FR 28949.
PART 177—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

§ 177.101 Scope of regulations.

This part applies only to claims asserted under the Federal Tort Claims Act, as amended, accruing on or after January 18, 1967, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of OPM (referred to in this part as an “employee”) while acting within the scope of his office or employment.

§ 177.102 Administrative claim; when presented; appropriate OPM office.

(a) For the purpose of this part, a claim is deemed to have been presented when OPM receives, at a place designated in paragraph (b) or (c) of this section, an executed “Claim for Damage or Injury”, Standard Form 95, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, for personal injury, or for death alleged to have occurred by reason of the incident. A claim which should have been presented to OPM, but which was mistakenly addressed to or filed with another Federal agency, is deemed to be presented to OPM as of the date that the claim is received by OPM. If a claim is mistakenly addressed to or filed with OPM, OPM shall forthwith transfer it to the appropriate Federal agency, if ascertainable, or return it to the claimant.

(b) Except as provided in paragraph (c)(1) of this section, a claimant shall mail or deliver his claim to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(c) (1) When a claim is for $500 or less and does not involve a personal injury, the claimant shall mail or deliver it to the Director of the OPM’s regional office which employs the individual whose negligence or wrongful act or omission is alleged to have caused the loss or injury complained of. In these cases, the address of the appropriate Regional Director is one of the following:

New England Region, John W. McCormack, Post Office and Courthouse Building, Boston MA 02109 (formerly Boston Region).


Mid-Atlantic Region, William J. Green, Jr., Federal Building, 600 Arch Street, Philadelphia, PA 19106 (formerly Philadelphia Region).

Southeast Region, Richard B. Russell, Federal Building, 75 Spring Street, SW, Atlanta, GA 30303 (formerly Atlanta Region).

Great Lakes Region, John C. Kluczynski, Federal Building, 29th Floor, 230 South Dearborn Street, Chicago, IL 60604 (formerly Chicago Region).

Southwest Region, 100 Commerce Street, Dallas, TX 75242 (formerly Dallas Region).

Mid-Continent Region, 1256 Federal Building, 1520 Market Street, St. Louis, MO 63103 (formerly St. Louis Region).

Rocky Mountain Region, Building 20, Denver Federal Center, Denver, CO 80225 (formerly Denver Region).

Western Region, 525 Market Street, 23rd Floor, San Francisco, CA 94105 (formerly San Francisco Region).

Northwest Region, Federal Building, 26th Floor, 915 Second Avenue, Seattle, WA 98174 (formerly Seattle Region).

(2) If the OPM employee’s office of employment is the Central Office of OPM or is not known and not reasonably ascertainable, the claimant shall mail or deliver his claim to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

[33 FR 12405, Sept. 4, 1968, as amended at 44 FR 65025, Nov. 9, 1979]
§ 177.103 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property interest which is the subject of the claim, his authorized agent, or his legal representative.

(b) A claim for personal injury may be presented by the injured person, his authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent’s estate or by any other person legally entitled to assert such a claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. When an insurer presents a claim asserting the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 177.104 Investigations.

OPM may investigate, or may request any other Federal agency to investigate, a claim filed under this part.

§ 177.105 Administrative claim; evidence and information to be submitted.

(a) Death. In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent’s employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent’s survivors, including identification of those survivors who were dependent for support on the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent on him for support at the time of his death.

(5) Decedent’s general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering before death are claimed, a physician’s detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent’s physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the amount of damages claimed.

(b) Personal injury. In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity.

In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by OPM or another Federal agency. OPM shall make available to the claimant a copy of the report of the examining physician on written request by the claimant, if he has, on request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to OPM any other physician’s reports previously or thereafter made of the physical or mental condition...
which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full- or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) Property damage. In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership of the property interest which is the subject of the claim.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 177.106 Authority to adjust, determine, compromise, and settle.

(a) The General Counsel of OPM, or his designee, is delegated authority to consider, ascertain, adjust, determine, compromise, and settle claims under the provisions of section 2672 of title 28, United States Code, and this part.

(b) Notwithstanding the delegation of authority in paragraph (a) of this section, a Regional Director is delegated authority, to be exercised in his discretion, to consider, ascertain, adjust, determine, compromise, and settle under the provisions of section 2672 of title 28, United States Code, and this part any claim for $500 or less which is based on the alleged negligence or wrongful act or omission of an employee of his Region, except when:

(1) There are personal injuries to either Government personnel or individuals not employed by the Government; or

(2) All damage to Government property or to property being used for OPM, or both, is more than $500, or all damage to non-Government property being used by individuals not employed by the Government is more than $500.

(Pub. L. 95-454; Reorganization Plan No. 2 of 1978)


§ 177.107 Limitations on authority.

(a) An award, compromise, or settlement of a claim under this part in excess of $25,000 may be effected only with the advance written approval of the Attorney General or his designee. For the purpose of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled under this part only after consultation with the Department of Justice when, in the opinion of the General Counsel of OPM, or his designee:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and OPM is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised, or
settled under this part only after consultation with the Department of Justice when OPM is informed or is otherwise aware that the United States or an employee, agent, or cost-type contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 177.108 Referral to Department of Justice.

When Department of Justice approval or consultation is required under §177.107, the referral or request shall be transmitted to the Department of Justice by the General Counsel of OPM or his designee.

§ 177.109 Final denial of claim.

Final denial of an administrative claim under this part shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with OPM action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

§ 177.110 Action on approved claim.

(a) Payment of a claim approved under this part is contingent on claimant’s execution of (1) a “Claim for Damage or Injury”, Standard Form 95, (2) a claims settlement agreement, and (3) a “Voucher for Payment”, Standard Form 1145, as appropriate. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees, and the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) Acceptance by the claimant, his agent, or legal representative, of an award, compromise, or settlement made under section 2672 or 2677 of title 28, United States Code, is final and conclusive on the claimant, his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and constitutes a complete release of any claim against the United States and any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

PART 178—PROCEDURES FOR SETTLING CLAIMS

Subpart A—Administrative Claims—Compensation and Leave, Deceased Employees’ Accounts and Proceeds of Canceled Checks for Veterans’ Benefits Payable to Deceased Beneficiaries

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§ 178.102 Procedures for submitting claims.

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§ 178.206 Return of unnegotiated Government checks.

§ 178.207 Claims settlement jurisdiction.

§ 178.208 Applicability of general procedures.

Source: 62 FR 68139, Dec. 31, 1997, unless otherwise noted.
proceeds of canceled checks for veterans’ benefits payable to deceased beneficiaries.

(b) Claims not covered. This subpart does not apply to claims that are under the exclusive jurisdiction of administrative agencies pursuant to specific statutory authority or claims concerning matters that are subject to negotiated grievance procedures under collective bargaining agreements entered into pursuant to 5 U.S.C. 7121(a). Also, these procedures do not apply to claims under the Fair Labor Standards Act (FLSA). Procedures for FLSA claims are set out in part 551 of this chapter.

§ 178.102 Procedures for submitting claims.

(a) Content of claims. Except as provided in paragraph (b) of this section, a claim shall be submitted by the claimant in writing and must be signed by the claimant or by the claimant’s representative. While no specific form is required, the request should describe the basis for the claim and state the amount sought. The claim should also include:

(1) The name, address, telephone number and facsimile machine number, if available, of the claimant;
(2) The name, address, telephone number and facsimile machine number, if available, of the agency employee who denied the claim;
(3) A copy of the denial of the claim; and,
(4) Any other information which the claimant believes OPM should consider.

(b) Agency submissions of claims. At the discretion of the agency, the agency may forward the claim to OPM on the claimant’s behalf. The claimant is responsible for ensuring that OPM receives all the information requested in paragraph (a) of this section.

(c) Administrative report. At OPM’s discretion, OPM may request the agency to provide an administrative report. This report should include:

(1) The agency’s factual findings;
(2) The agency’s conclusions of law with relevant citations;
(3) The agency’s recommendation for disposition of the claim;
(4) A complete copy of any regulation, instruction, memorandum, or policy relied upon by the agency in making its determination;
(5) A statement that the claimant is or is not a member of a collective bargaining unit, and if so, a statement that the claim is or is not covered by a negotiated grievance procedure that specifically excludes the claim from coverage; and
(6) Any other information that the agency believes OPM should consider.

(d) Canceled checks for veterans’ benefits. Claims for the proceeds of canceled checks for veterans’ benefits payable to deceased beneficiaries must be accompanied by evidence that the claimant is the duly appointed representative of the decedent’s estate and that the estate will not escheat.

(e) Where to submit claims. (1) All claims under this section should be sent to the Claims Adjudication Unit, Room 7535, Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415. Telephone inquiries regarding these claims may be made to (202) 606-2233.

(2) FLSA claims should be sent to the appropriate OPM Oversight Division as provided in part 551 of this chapter.

§ 178.103 Claim filed by a claimant’s representative.

A claim filed by a claimant’s representative must be supported by a duly executed power of attorney or other documentary evidence of the representative’s right to act for the claimant.

§ 178.104 Statutory limitations on claims.

(a) Statutory limitations relating to claims generally. Except as provided in paragraphs (b) and (c) of this section or as otherwise provided by law, all claims against the United States Government are subject to the 6-year statute of limitations contained in 31 U.S.C. 3702(b). To satisfy the statutory limitation, a claim must be received by the Office of Personnel Management, or by the department or agency out of whose activities the claim arose, within 6 years from the date the claim accrued. The claimant is responsible for proving that the claim was filed within the applicable statute of limitations.
§ 178.105 Basis of claim settlements.

The burden is upon the claimant to establish the timeliness of the claim, the liability of the United States, and the claimant's right to payment. The settlement of claims is based upon the written record only, which will include the submissions by the claimant and the agency. OPM will accept the facts asserted by the agency, absent clear and convincing evidence to the contrary.

§ 178.106 Form of claim settlements.

OPM will send a settlement to the claimant advising whether the claim may be allowed in whole or in part. If OPM requested an agency report or if the agency forwarded the claim on behalf of the claimant, OPM also will send the agency a copy of the settlement.

§ 178.107 Finality of claim settlements.

(a) The OPM settlement is final; no further administrative review is available within OPM.

(b) Nothing in this subpart limits the right of a claimant to bring an action in an appropriate United States court.

Subpart B—Settlement of Accounts for Deceased Civilian Officers and Employees

Authority: 5 U.S.C. 5581, 5582, 5583.

§ 178.201 Scope of subpart.

(a) Accounts covered. This subpart prescribes forms and procedures for the prompt settlement of accounts of deceased civilian officers and employees of the Federal Government and of the government of the District of Columbia (including wholly owned and mixed-ownership Government corporations), as stated in 5 U.S.C. 5581, 5582, 5583.

(b) Accounts not covered. This subpart does not apply to accounts of deceased officers and employees of the Federal land banks, Federal intermediate credit banks, or regional banks for cooperatives (see 5 U.S.C. 5581(1)). Also, these procedures do not apply to payment of unpaid balance of salary or other sums due deceased Senators or Members of the House of Representatives or their officers or employees (see 2 U.S.C. 36a, 38a).
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§ 178.203 Designation of beneficiary.  
(a) Agency notification. The employing agency shall notify each employee of his or her right to designate a beneficiary or beneficiaries to receive money due, and of the disposition of money due if a beneficiary is not designated. An employee may change or revoke a designation at any time under regulations promulgated by the Director of the Office of Personnel Management or his or her designee.

(b) Designation Form. Standard Form 1152, Designation of Beneficiary, Unpaid Compensation of Deceased Civilian Employee, is prescribed for use by employees in designating a beneficiary and in changing or revoking a previous designation; each agency will furnish the employee a Standard Form 1152 upon request. In the absence of the prescribed form, however, any designation, change, or cancellation of beneficiary witnessed and filed in accordance with the general requirements of this part will be acceptable.

(c) Who may be designated. An employee may designate any person or persons as beneficiary. The term person or persons as used in this part includes a legal entity or the estate of the deceased employee.

(d) Executing and filing a designation of beneficiary form. The Standard Form 1152 must be executed in duplicate by the employee and filed with the employing agency where the proper officer will sign it and insert the date of receipt in the space provided on each part, file the original, and return the duplicate to the employee. When a designation of beneficiary is changed or revoked, the employing agency should return the earlier designation to the employee, keeping a copy of only the current designation on file.

(e) Effective period of a designation. A properly executed and filed designation of beneficiary will be effective as long as employment by the same agency continues. If the employee resigns and is reemployed, or is transferred to another agency, the employee must execute another designation of beneficiary form in accordance with paragraph (d) of this section. A new designation of beneficiary is not required, however, when an employee’s agency or site, function, records, equipment, and personnel are absorbed by another agency.

§ 178.204 Order of payment precedence.  
To facilitate the settlement of the accounts of the deceased employees, money due an employee at the time of the employee’s death shall be paid to the person or persons surviving at the date of death, in the following order of precedence, and the payment bars recovery by another person of amounts so paid:

(a) First, to the beneficiary or beneficiaries designated by the employee in a writing received in the employing agency prior to the employee’s death;

(b) Second, if there is no designated beneficiary, to the surviving spouse of the employee;

(c) Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation;

(d) Fourth, if none of the above, to the parents of the deceased employee or the survivor of them;

(e) Fifth, if none of the above, to the duly appointed legal representative of the estate of the deceased employee;

(f) Sixth, if none of the above, to the person or persons entitled under the laws of the domicile of the employee at the time of his or her death.

§ 178.205 Procedures upon death of employee.  
(a) Claim form. As soon as practicable after the death of an employee, the agency in which the employee was last employed will request, in the order of precedence outlined in §178.204, the appropriate person or persons to execute Standard Form 1153, Claim for Unpaid Compensation of Deceased Civilian Employee.

(b) Claims involving minors or incompetents. If a guardian or committee has been appointed for a minor or incompetent appearing entitled to unpaid compensation, the claim should be
§ 178.206 Return of unnegotiated Government checks.

All unnegotiated United States Government checks drawn to the order of a decedent representing money due as defined in §178.202, and in the possession of the claimant, should be returned to the employing agency concerned. Claimants should be instructed to return any other United States Government checks drawn to the order of a decedent, such as veterans benefits, social security benefits, or Federal tax refunds, to the agency from which the checks were received, with a request for further instructions from that agency.

§ 178.207 Claims settlement jurisdiction.

(a) District of Columbia and Government corporations. Claims for unpaid compensation due deceased employees of the government of the District of Columbia shall be paid by the District of Columbia, and those of Government corporations or mixed ownership Government corporations may be paid by the corporations.

(b) Office of Personnel Management. Each agency shall pay undisputed claims for the compensation due deceased employees of the Federal Government. Exempt as provided in paragraph (a) of this section, disputed claims for money due deceased employees of the Federal Government will be submitted to the Claims Adjudication Unit, Office of General Counsel, in accordance with §178.102 of subpart A.

For example:

(1) When doubt exists as to the amount or validity of the claim;
(2) When doubt exists as to the person(s) properly entitled to payment; or
(3) When the claim involves uncurreent checks. Uncurreent checks are unnegotiated and/or undelivered checks for money due the decedent which have not been paid by the end of the fiscal year after the fiscal year in which the checks were issued. The checks, if available, should accompany the claims.
(c) Payment of claim. Claims for money due will be paid by the appropriate agency only after settlement by the Claims Adjudication Unit occurs.

§ 178.208 Applicability of general procedures.

When not in conflict with this subpart, the provisions of subpart A of this part relating to procedures applicable to claims generally are also applicable to the settlement of account of deceased civilian officers and employees.

PART 179—CLAIMS COLLECTION STANDARDS

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Subpart A—General Provisions and Administration

§ 179.101 General collection standards.

The general standards and procedures governing the collection, compromise, termination, and referral to the Department of Justice of claims for money and property that are prescribed in the regulations issued jointly by the General Accounting Office and the Department of Justice pursuant to the Federal Claims Collection Act of 1966 (4 CFR part 101 et seq.), apply to the administrative claim collection activities of OPM.

[33 FR 12406, Sept. 4, 1968]

§ 179.102 Delegation of authority.

(a) The Chief Financial Officer and his or her delegates are designated by the Director and authorized to perform all the duties for which the Director is responsible under the Debt Collection Act of 1982 and Office of Personnel Management regulations on debts caused by payments from the Civil Service Retirement and Disability Fund (subchapter III of chapter 83 or chapter 84), claims under the provisions of the Federal Employees' Life Insurance Fund (chapter 87), the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Employees Health Benefits Fund (chapter 89), the Panama Canal Construction Annuity Act (58 Stat. 257), and the Lighthouse Service Widows' Annuity Act (64 Stat. 465).

[59 FR 35216, July 11, 1994]

Subpart B—Salary Offset

SOURCE: 59 FR 35216, July 11, 1994, unless otherwise noted.

§ 179.201 Purpose.

The purpose of the Debt Collection Act of 1982 (Pub. L. 97-365), is to provide a comprehensive statutory approach to the collection of debts due the Federal Government. These regulations implement section 5 of the Act which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offset, except that no claim may be collected by such means if outstanding for more than 10 years after the agency's right to collect the debt first accrued, unless facts material to the Government's right to collect were not known, and could not reasonably have been known, by the official or officials who were charged with the responsibility for discovery and collection of such debts. These regulations are consistent with the regulations on salary offset published by the Office of Personnel Management (OPM) on July 3, 1984 (49 FR 27470) in 5 CFR part 550, subpart K.

§ 179.202 Scope.

(a) These regulations provide procedures for the collection of monies from
§ 179.203 Definitions.

As used in this subpart the following definitions shall apply:

Agency means:
(1) An Executive Agency as defined by section 105 of title 5, United States Code;
(2) A military department as defined by section 102 of title 5, United States Code;
(3) An agency or court of the judicial branch including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands and the Judicial Panel and Multidistrict Litigation;
(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and
(5) Other independent establishments that are entities of the Federal Government.

Certification means a written debt claim, as prescribed by §179.209, that is received from a creditor agency and which requests the paying agency to offset the salary of an employee.

Claim See debt.

Creditor agency means an agency of the Federal Government to which the debt is owed. For purposes of this part creditor agency includes OPM, unless otherwise noted.

Debt means money owed by an employee of the Federal Government to an agency of the Federal Government, from sources which include loans insured or guaranteed by the United States and all other amounts due the Government from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines and forfeitures (except those arising under the Uniform Code of Military Justice) and all other similar sources.

Delinquent means the failure to pay an obligation or debt by the date specified in the initial notification or applicable contractual agreement, unless other payment arrangements have been agreed to by OPM and the debtor by that date, or if, at any time thereafter, the debtor fails to satisfy the obligations under a payment agreement with the creditor agency.

a Federal employee’s pay by salary offset to satisfy certain debts owed the Government.

These regulations apply to all collections by the Director of OPM (except collections involving debts because of payments made from the Civil Service Retirement and Disability Fund, payments made under the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Panama Canal Construction Annuity Act and the Lighthouse Service Widows’ Annuity Act and payments or premiums relating to the Federal Employees’ Life Insurance Fund or the Federal Employees Health Benefits Fund) from:

(1) Federal employees who owe debts to OPM; and
(2) OPM employees who owe debts to other agencies.

These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 et seq.); the Social Security Act (42 U.S.C. 301 et seq.); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

Section 179.207 does not apply to any adjustment to pay arising from an employee’s election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

Nothing in these regulations excludes the compromise, suspension, or termination of collection actions, where appropriate, under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 et seq., 4 CFR parts 101-105, 38 CFR 1.900 et seq.).

(f) Nothing in these regulations excludes an employee from requesting a waiver of the debt under applicable statute; under the standards and procedures specified by the Federal Claims Collection Standards (FCCS); or waiver of salary overpayment under 5 U.S.C. 5504, 10 U.S.C. 2774, or 32 U.S.C. 716, by submitting a subsequent claim to the General Accounting Office in accordance with procedures established by the General Accounting Office.
Director means the Director of OPM or his or her designee.

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. OPM shall allow the following deductions, and any others required by law to be withheld, in determining disposable pay subject to salary offset;

1. Federal employment taxes;
2. Amounts mandatorily withheld for the U.S. Soldiers' and Airmen's Home;
3. Fines and forfeitures ordered by a court martial or by a commanding officer;
4. Federal, state or local income taxes no greater than would be the case if the employee claimed all dependents to which he or she is entitled and such additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;
5. Amounts withheld from benefits payable under title II of the Social Security Act where the withholding is required by law;
6. Amounts deducted for Medicare;
7. Health insurance premiums;
8. Normal retirement contributions as explained in 5 CFR 581.105(e) (e.g., Civil Service Retirement deductions, Survivor Benefit Plan or Retired Serviceman's Family Protection Plan); and
9. Normal life insurance premiums (e.g., Serviceman's Group Life Insurance and basic Federal Employee's Group Life Insurance premiums) exclusive of optional life insurance premiums.

Employee means a current employee of OPM or other agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

FCCS means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office of 4 CFR 101.1 et seq.

Hearing official means an individual (including an administrative law judge) responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and rendering a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Director of OPM when OPM is the creditor agency.

Notice of intent to offset or notice of intent means a written notice from a creditor agency to an employee that states the creditor agency's determination that the employee owes a debt to the creditor agency and apprises the employee of certain administrative rights.

Notice of salary offset means a written notice from the paying agency to an employee after a certification has been issued by the creditor agency, informing the employee that salary offset will begin at the next officially established pay interval.

Office means the central and regional offices of the Office of Personnel Management.

Paying agency means the agency of the Federal Government which employs the individual who owes a debt to an agency of the Federal Government. In some cases, OPM may be both the creditor agency and the paying agency.

Salary offset means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

Salary Offset Coordinator means an official, designated by the Director of OPM, who is responsible for coordinating debt collection activities for OPM.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to OPM or another agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 179.204 Applicability of regulations.

These regulations are to be followed for all OPM collections (except those
§ 179.205 Waiver requests and claims to the General Accounting Office.

These regulations do not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with the procedures prescribed by the General Accounting Office. These regulations do not preclude an employee from requesting a waiver pursuant to other statutory provisions pertaining to the particular debt being collected.

§ 179.206 Notice requirements before offset.

(a) Deductions under the authority of 5 U.S.C. 5514 shall not be made unless the creditor agency provides the employee with written notice that he/she owes a debt to the Federal government a minimum of 30 calendar days before salary offset is initiated. When OPM is the creditor agency, this notice of intent to offset an employee's salary shall be hand-delivered at work, or sent by registered mail, return receipt requested, to the employee's most current address that is available to the Office and will state:

1. That the creditor agency has reviewed the records relating to the claim and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

2. The creditor agency's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest are paid in full;

3. The amount, frequency, beginning date, and duration of the intended deductions;

4. An explanation of OPM's policy concerning interest, penalties and administrative costs including a statement that such assessments must be made unless excused in accordance with the FCCS, 4 CFR 101.1 et seq. (§179.214);

5. The employee's right to inspect and copy all records of the Office pertaining to the debt claimed, or to request and to receive copies of such records if personal inspection is impractical;

6. If not previously provided, the opportunity to establish a schedule for the voluntary repayment of the debt through offset or to enter into an agreement to establish a schedule for repayment of the debt in lieu of offset (4 CFR 102.2(e)). The agreement must contain terms agreeable to the Office and must be in such form that it is legally enforceable. The agreement must:

   (i) Be in writing;

   (ii) Be signed by both the employee and the creditor agency;

   (iii) Specify all the terms of the arrangement for payment; and

   (iv) Contain a provision accelerating the debt in the event of a default by the debtor, but such an increase may not result in a deduction that exceeds 15 percent of the employee's disposable pay unless the employee has agreed in writing to the deduction of a greater amount (5 CFR 550.1104(i)).

7. The right to a hearing conducted by an impartial hearing official (an administrative law judge, or alternatively, a hearing official not under the supervision or control of the Director) with respect to the existence and amount of the debt claimed, or the repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period), so long as a petition is filed by the employee as prescribed in §179.207;

8. The method and time period for requesting a hearing;

9. The name, address and phone number of an official or employee of
the Office who may be contacted concerning procedures for requesting a hearing;

(10) The name and address of the office to which the petition for a hearing should be sent;

(11) That a timely and properly filed petition for hearing will stay the commencement of collection proceedings (a timely filing must be received in the office specified under paragraph (a)(10) of this section within 15 calendar days after receipt of such notice of intent to offset);

(12) That the Office will initiate certification procedures to implement a salary offset (which may not exceed 15 percent of the employee's disposable pay) not less than 30 days from the date of receipt of the notice of debt, unless the employee files a timely petition for a hearing;

(13) That a final decision on the hearing (if a hearing is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(14) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States code; part 752 of title 5, Code of Federal Regulations; or any other applicable statute or regulations;

(ii) Penalties under the False Claims Act, sections 3729 through 3731 of title 31, United States Code, or any other applicable statutory authority; and

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States code, or any other applicable statutory authority;

(15) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt, which are later waived or found not owed to the United States, will be promptly refunded to the employee; and

(17) That proceedings with respect to such debt are governed by section 5 of the Debt Collection Act of 1982 (5 U.S.C. 5514).

(b) The Office is not required to comply with paragraph (a) of this section for any adjustment to pay arising from:

(1) An employee's selection of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less; or

(2) An employee's consent to make voluntary withholdings from his or her current pay account.

§ 179.207 Hearing.

(a) Request for hearing. Except as provided in paragraph (b) of this section, an employee who desires a hearing concerning the existence or amount of the debt or the proposed offset schedule must send such a request to the office designated in the notice of intent (§179.207(a)(10)). The request (or petition) for hearing must be received by the designated office not later than 15 calendar days following the employee's receipt of the notice. The employee's request (or petition) must:

(1) Be signed by the employee;

(2) Fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, that the employee believes support his or her position; and

(3) Specify whether an oral or paper hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone (4 CFR 102.3(c)).

(b) Failure to timely submit. (1) If the employee files a petition for a hearing after the expiration of the 15 calendar day period provided for in paragraph (a) of this section, the Office may accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or failure to receive actual notice of the filing deadline (unless the employee had actual notice of the filing deadline).

(2) An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with
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the Office offset schedule, if the employee:

(i) Fails to file a timely request for a hearing unless such failure is excused; or

(ii) Fails to appear at an oral hearing of which he or she was notified unless the hearing official determines that failure to appear was due to circumstances beyond the employee’s control.

(c) Representation at the hearing. The creditor agency may be represented by legal counsel. The employee may represent himself or herself or may be represented by an individual of his or her choice and at his or her expense.

(d) Review of Office records related to the debt. (1) An employee who intends to inspect or copy creditor agency records related to the debt, as provided by §179.207(a)(5), must send a letter to the official designated in the notice of intent to offset stating his or her intention. The letter must be received within 15 calendar days after the employee’s receipt of the notice.

(2) In response to a timely request submitted by the debtor, the designated official will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If personal inspection is impractical, arrangements shall be made to end copies of such records to the employee.

(e) Hearing official. The Office may request an administrative law judge to conduct the hearing, or the Office may obtain a hearing official who is not under the supervision or control of the Director of OPM.

(f) Obtaining the services of a hearing official when OPM is the creditor agency. (1) When the debtor is not an OPM employee and the Office cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement, the Office may contact an agent of the paying agency designated in 5 CFR part 581, appendix A, or other individual designated by the paying agency, and request a hearing official.

(2) When the debtor is an OPM employee, the Office may contact any agent of another agency designated in 5 CFR part 581, appendix A, or otherwise designated by that agency, to request a hearing official.

(g) Procedure—(1) General. After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(2) Oral hearing. An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (e.g., when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication and need not take the form of an evidentiary hearing. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings with an interview of the employee; or

(iii) Formal written submissions with an opportunity for oral presentation.

(3) Paper hearing. If the hearing official determines that an oral hearing is not necessary, he or she will make a determination based upon a review of the available written record (4 CFR 102.3(c) (2) and (3)).

(4) Record. The hearing official must maintain a summary record of any hearing provided by this subpart (4 CFR 102.3(c)(1)(ii)). Witnesses who testify in oral hearings will do so under oath or affirmation.

(h) Date of decision. The hearing official shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 days after the date on which the petition was received by the creditor agency, unless the employee requests a delay in the proceedings. In
such case the 60-day decision period shall be extended by the number of days by which the hearing was postponed.

(i) Content of decision. The written decision shall include:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;
(2) The hearing official’s findings, analysis, and conclusions including a determination whether the debtor’s petition for hearing was baseless and resulted from an intent to delay creditor agency collection activity and whether the Office should pursue other actions against the debtor as provided by 5 CFR 550.1104(d)(11); and

(3) The terms of any repayment schedules, if applicable.

(j) Failure to appear. In the absence of good cause shown (e.g., illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. If the representative of the creditor agency fails to appear, the hearing official shall proceed with the hearing as scheduled and make his/her determination based upon the oral testimony presented and the documentary evidence submitted by both parties. With the agreement of both parties, the hearing official shall schedule a new hearing date. Both parties shall be given reasonable notice of the time and place of the new hearing.

§ 179.208 Certification.

(a) OPM salary offset coordinator shall provide a certification to the paying agency in all cases where:

(1) The hearing official determines that a debt exists;
(2) The employee fails to contest the existence and amount of the debt by failing to request a hearing; or

(3) The employee fails to contest the existence of the debt by failing to appear at a hearing.

(b) The certification must be in writing and must state:

(1) That the employee owes the debt;
(2) The amount and basis of the debt;
(3) The date the Government’s right to collect the debt first accrued;

(4) That the Office’s regulations have been approved by OPM pursuant to 5 CFR part 550, subpart K;
(5) The date on which payment(s) is due;
(6) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment or percentage of disposable pay, and the commencement date of the first installment, if a date other than the next officially established pay period is required; and

(7) The date(s) of any action(s) taken under 5 U.S.C. 5514(b).

§ 179.209 Voluntary repayment agreement as alternative to salary offset.

(a)(1) In response to a notice of intent, an employee may propose to repay the debt by making voluntary installment payments as an alternative to salary offset. An employee who wishes to repay a debt without salary offset shall submit in writing a proposed agreement to repay the debt. The proposal shall admit the existence of the debt, and the agreement must be in such form that it is legally enforceable. The agreement must:

(i) Be in writing;
(ii) Be signed by both the employee and the creditor agency;
(iii) Specify all the terms of the arrangement for payment; and
(iv) Contain a provision accelerating the debt in the event of default by the debtor, but such an increase may not result in a deduction that exceeds 15 percent of the employee’s disposable pay unless the employee has agreed in writing to deduction of a greater amount (5 CFR 550.1104(i)).

(2) Any proposal under paragraph (a) of this section must be received by the official designated in the notice of intent within 30 calendar days after receipt of the notice.

(b) The creditor agency will review a timely and properly submitted repayment proposal by the employee debtor and notify the employee whether the proposed written agreement for repayment is acceptable. It is within the creditor agency’s discretion to accept a repayment agreement instead of proceeding by offset.

(c) If the creditor agency decides that the proposed repayment agreement is
§ 179.210 Special review.

(a) An OPM employee subject to salary offset or a voluntary repayment agreement, may, at any time, request a special review by the Office of the amount of the salary offset or voluntary payment, based on materially changed circumstances such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) In determining whether an offset would prevent the employee from meeting essential subsistence expenses (food, housing, clothing, transportation and medical care), the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

1. Income from all sources;
2. Assets;
3. Liabilities;
4. Number of dependents;
5. Expenses for food, housing, clothing and transportation;
6. Medical expenses; and
7. Exceptional expenses, if any.

If an OPM employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents (§179.210(b)), stating why the current salary offset or payments result in an extreme financial hardship to the employee.

(c) The Director shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an extreme financial hardship on the employee. The Director shall notify the employee in writing of such determination, including, if appropriate, a revised offset or repayment schedule.

(d) If the special review results in a revised offset or repayment schedule, the OPM salary offset coordinator shall provide a new certification to the payroll office.

§ 179.211 Notice of salary offset.

(a) Upon receipt of proper certification from a creditor agency, the OPM payroll office will send the OPM employee, identified in the certification as the debtor, a written notice of salary offset. Such notice shall, at a minimum:

1. State that OPM has received a properly certified debt claim from a creditor agency;
2. Contain a copy of the certification received from the creditor agency;
3. Advise the employee that salary offset will be initiated at the next officially established pay interval; and
4. State the amount of the claim and amount of deductions.

(b) The payroll office shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

§ 179.212 Procedures for salary offset.

(a) The Director or his or her designee shall coordinate salary deductions under this subpart.

(b) OPM payroll office shall determine the amount of an employee’s disposable pay and implement the salary offset.

(c) Deductions shall begin effective the pay period following receipt by OPM’s payroll office of proper certification of the debt (§179.210).

(d) Types of collection. (1) Lump-sum payment. A debt will be collected in a lump sum if possible. If an employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments.

2. Installment deductions. Installment deductions will be made over a period not greater than the anticipated period of employment and, except in rare circumstances, not to exceed 3 years. The size and frequency of installment deductions will bear a reasonable relation
to the size of the debt and the employee’s ability to pay. The amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount.

(3) Lump-sum deductions from final check. A lump-sum deduction exceeding the 15 percent disposable pay limitation may be made from any final salary payment pursuant to 31 U.S.C. 3716 in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) Lump-sum deductions from other sources. When an employee subject to salary offset is separated from OPM and the balance of the debt cannot be liquidated by offset of the final salary check, the Office, pursuant to 31 U.S.C. 3716, the FCCS and OPM’s implementing regulations, may offset the balance of the debt against any financial payment due the employee from the U.S. Government.

(e) Multiple debts. In instances where two or more creditor agencies are seeking salary offset, or where two or more debts are owed to a single creditor agency, OPM payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(f) Precedence of debts owed to OPM. For OPM employees, debts owed to the Office generally take precedence over debts owed to other agencies. In the event that a debt to the Office is certified while an employee is subject to a salary offset to repay another agency, the OPM payroll office may decide whether to have that debt repaid in full before collecting its claim or whether changes should be made in the salary deduction being sent to the other agency. If debts owed the Office can be collected in one pay period, the payroll office may suspend the salary offset to the other agency for that pay period in order to liquidate the office debt.

(g) When an employee owes two or more debts, the best interests of the Government shall be the primary consideration in determining the order of debt collection. The OPM payroll office, in making this determination, will be guided primarily by the statute of limitations that affects the collection of the debt(s).

§ 179.213 Coordinating salary offset with other agencies.

(a) Responsibility of OPM as the creditor agency. (1) The Director or his or her designee shall coordinate debt collections with other agencies and shall, as appropriate:

(1) Arrange for a hearing or special review upon proper petitioning by a Federal employee; and

(2) Prescribe, upon consultation with the General Counsel, such additional practices and procedures as may be necessary to carry out the intent of this regulation.

(2) The designated salary offset coordinator will be responsible for:

(i) Ensuring that each notice of intent to offset is consistent with the requirements of §179.206;

(ii) Ensuring that each certification of debt that is sent to a paying agency is consistent with the requirements of §179.208;

(iii) Obtaining hearing officials from other agencies pursuant to §179.207(f); and

(iv) Ensuring that hearings are properly scheduled.

(3) Requesting recovery from current paying agency. Upon completion of the procedures established in these regulations and pursuant to 5 U.S.C. 5514, the Office must:

(i) Certify, in writing, to the paying agency that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government’s right to collect the debt first accrued, and that the Office’s regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management;

(ii) Advise the paying agency of the amount or percentage of disposable pay to be collected in each installment and the number and commencing date of the installments (if a date other than the next officially established pay period is required);

(iii) Advise the paying agency of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) and action(s) was taken (unless the employee has consented to the salary offset in writing or
§ 179.214 Interest, penalties and administrative costs.

The Office shall assess interest, penalties and administrative costs on debts owed pursuant to 31 U.S.C. 3717 and 4 CFR part 101.1 et seq. Penalties are not required to repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. The Office will submit a properly certified claim to the new paying agency and will subsequently review the debt to make sure the collection is resumed by the new paying agency.

(b) Responsibility of the Office as the paying agency—(1) Complete claim. When the Office receives a certified claim from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. Before deductions can begin, the employee must receive written notice from the Office including:

(i) A statement that the Office has received a certified debt claim from the creditor agency;
(ii) The amount of the debt claim;
(iii) The date salary offset deductions will begin, and
(iv) The amount of such deductions.

(2) Incomplete claim. When the Office receives an incomplete certification of debt from a creditor agency, the Office must return the debt claim with notice that procedures under 5 U.S.C. 5514 and 5 CFR 550.1101 et seq. must be followed and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) Review. The Office is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) Employees who transfer from one paying agency to another. If, after the creditor agency has submitted the debt claim to the Office, the employee transfers from OPM to a different paying agency before the debt is collected in full, the Office will certify the total amount collected on the debt. One copy of the certification will be furnished to the employee and one copy to the creditor agency along with notice of the employee's transfer.

§ 179.214 Interest, penalties and administrative costs.

The Office shall assess interest, penalties and administrative costs on debts owed pursuant to 31 U.S.C. 3717 and 4 CFR part 101.1 et seq. Penalties
and administrative costs will be assessed on all delinquent debts.

(a) In cases of default on a previous repayment agreement, the Office reserves the right to set a new interest rate which reflects the current value of funds to the Treasury at the time a new repayment agreement is executed.

(b) The Office, on a case-by-case basis, may waive all interest accrued on debts paid in full within 60 days of the due date if there is no indication of fault or lack of good faith on the part of the debtor.

(c) The Office may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs assessed under this section if the Office determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States.

(d) The Office may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs assessed under this section if the Office determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States.

(e) The Office shall waive the accrual of interest pending consideration of a request for reconsideration, administrative review, or waiver of the underlying debt under provisions of a permissive statute providing for such review related to the debt.

(f) The Office shall waive interest on repayment agreements when the amount of interest accruing equals or exceeds the amount of installments the debtor can reasonably afford and there is no indication of fault or lack of good faith on the part of the debtor.

§ 179.216 Request for the services of a hearing official when the creditor agency is not OPM.

(a) The Office will provide a hearing official upon request of the creditor agency when the debtor is employed by the Office and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(b) The salary offset coordinator will secure qualified personnel to serve as hearing officials.

(c) Services rendered under this section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, as amended, 31 U.S.C. 1935.

§ 179.217 Non-waiver of rights by payments.

An employee’s involuntary payment of all or any portion of a debt collected under this subpart must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

§ 179.218 Additional administrative collection action.

Nothing contained in this subpart is intended to preclude the use of any other administrative remedy which may be appropriate.

Subpart C—Administrative Offset

§ 179.301 Scope of regulations.

These regulations apply to the collection of debts owed to the United States arising from transactions with OPM other than those involving payments made from the Civil Service Retirement and Disability Fund (the Fund), or where a request for an offset from OPM’s administrative accounts—other than the Fund—is received by OPM from another Federal agency. Regulations for other agencies to request OPM’s Retirement and Insurance Group to recover a debt from the Fund are provided at subpart R. of part 831 and subpart D of part 845 of title 5.
§ 179.302 Definitions.

Administrative offset, as defined in 31 U.S.C. 3701(a)(1), means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

Person, includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or of any State or local government, shall be excluded.

§ 179.303 General.

(a) The Director or his or her designee, after attempting to collect a debt from a person under section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset subject to the following:

(1) The debt is certain in amount; and

(2) It is in the best interest of the United States to collect the debt by administrative offset because it is less costly and speeds payment of the debt;

(b) The Director, or his or her designee, may initiate administrative offset with regard to debts owed by a person to another agency of the United States Government, upon receipt of a request from the head of another agency, or his or her designee, and a certification that the debt exists and that the person has been afforded the necessary due process rights.

(c) The Director, or his or her designee, may request another agency that holds funds payable to an OPM debtor to offset the debt against the funds held and will provide certification that:

(1) The debt exists; and

(2) The person has been afforded the necessary due process rights.

(d) If the 6-year period for bringing action on a debt provided in 28 U.S.C. 2415 has expired, then administrative offset may be used to collect the debt only if the costs of bringing such action are likely to be less than the amount of the debt.

(e) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government’s right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting such debt.

(f) These regulations do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute.

(2) Debts owed to OPM by other agencies of the United States or by any State or local government.

§ 179.304 Notification procedures.

Before collecting any debt through administrative offset, a notice of intent to offset shall be sent to the debtor by certified mail, return receipt requested, at the most current address that is available to OPM. The notice shall provide:

(a) A description of the nature and amount of the debt and the intention of OPM to collect the debt through administrative offset;

(b) An opportunity to inspect and copy the records of OPM with respect to the debt;

(c) An opportunity for review within OPM concerning OPM’s determinations with respect to the debt; and

(d) An opportunity to enter into a written agreement for the repayment of the amount of the debt.

§ 179.305 Agency review.

(a) A debtor may dispute the existence of the debt, the amount of the debt, or the terms of repayment. The request to review a disputed debt must be received by the OPM official identified in the notification within 30 calendar days of the debtor’s receipt of the written notice described in §179.304.

(b) If the debtor requests an opportunity to inspect or copy OPM’s records concerning the disputed claim, 10 business days will be granted for the
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review. The time period will be measured from the time the request for inspection is granted or from the time the copy of the records is received by the debtor.

(c) Pending the resolution of a dispute initiated by the debtor, transactions in any of the debtor's account(s) maintained in OPM may be temporarily suspended to the extent of the debt that is owed. Depending on the type of transaction, the suspension could preclude payment, removal, or transfer, as well as prevent the payment of interest or discount due thereon. Should the dispute be resolved in the debtor's favor, the suspension will be lifted immediately.

(d) During the review period, interest, penalties, and administrative costs authorized under the Federal Claims Collection Act of 1966, as amended, will continue to accrue.

§ 179.306 Written agreement for repayment.

A debtor who admits liability but elects not to have the debt collected by administrative offset will be afforded an opportunity to negotiate a written agreement for the repayment of the debt. If the financial condition of the debtor does not support the ability to pay in one lump-sum, reasonable installment payments may be considered. No installment arrangement will be considered unless the debtor submits a financial statement, executed under penalty of perjury, reflecting the debtor's assets, liabilities, income, and expenses. The financial statement must be submitted within 10 business days of OPM's request for the statement. At OPM's option, a confess-judgment note or bond of indemnity with surety may be required for the installment agreement. Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 4 CFR part 103 and 31 U.S.C. 3711.

§ 179.307 Administrative offset.

(a) If the debtor does not exercise the right to request a review within the time specified in §179.305 or, if as a result of the review, it is determined that the debt is due and no written agreement is executed, then administrative offset shall be ordered in accordance with these regulations without further notice.

(b) Request for offset to a Federal agency: The Director or his or her designee may request that funds due and payable to a debtor by a Federal agency be administratively offset in order to collect a debt owed to OPM by that debtor. In requesting administrative offset OPM, as creditor, will certify in writing to the Federal agency holding funds of the debtor:

(1) That the debtor owes the debt;
(2) The amount and basis of the debt; and
(3) That OPM has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations, and the applicable provisions of 4 CFR part 102 with respect to providing the debtor with due process.

(c) Request for offset from a Federal agency: When administrative offset is authorized, any Federal creditor agency may request OPM to make an administrative offset from any OPM funds that are due and payable to a creditor agency's debtor. OPM shall initiate the requested administrative offset only upon:

(1) Receipt of written certification from the creditor agency:
   (i) That the debtor owes the debt;
   (ii) The amount and basis of the debt;
   (iii) That the agency has prescribed regulations for the exercise of administrative offset; and
   (iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 4 CFR part 102, including providing any required hearing or review.

(2) A determination by OPM that collection by offset against funds payable by OPM would not otherwise be contrary to law.

§ 179.308 Accelerated procedures.

OPM may make an administrative offset against a payment to be made to the debtor prior to the completion of the procedures required by §§179.304 and 179.305 if failure to take the offset would substantially jeopardize OPM's ability to collect the debt, and the time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset shall be promptly followed by
§ 179.309 Additional administrative procedures.

Nothing contained in this chapter is intended to preclude the use of any other administrative remedy which may be available.

PART 180—EMPLOYEES’ PERSONAL PROPERTY CLAIMS

Sec.
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SOURCE: 43 FR 47163, Oct. 13, 1978, unless otherwise noted.

§ 180.101 Scope and purpose.

(a) The Military Personnel and Civilian Employees’ Claims Act of 1964, 31 U.S.C. 240 to 243, authorizes the Director, Office of Personnel Management to settle and pay (including replacement in kind) claims of officers and employees of OPM, amounting to not more than $15,000, for damage to or loss of personal property incident to their service. Claims are payable only for such types, quantities, or amounts of tangible personal property (including money) as the approving authority shall determine to be reasonable, useful, or proper under the circumstances existing at the time and place of the loss. In determining what is reasonable, useful, or proper, the approving authority will consider the type and quantity of property involved, circumstances attending acquisition and use of the property, and whether possession or use by the claimant at the time of damage or loss was incident to service.

(b) The Government does not underwrite all personal property losses that a claimant may sustain and it does not underwrite individual tastes. While the Government does not attempt to limit possession of property by an individual, payment for damage or loss is made only to the extent that the possession of the property is determined to be reasonable, useful, or proper. If individuals possess excessive quantities of items, or expensive items, they should have such property privately insured.

§ 180.102 Claimants.

(a) The following are proper claimants:
(1) Officers and employees of OPM;
(2) Former officers and employees of OPM whose claims arose out of incidents which occurred before their separation;
(3) The authorized agent or legal representative of persons in §§ 180.102(a)(1) and 180.102(a)(2);
(4) Survivors of persons in §§ 180.102(a)(1) and 180.102(a)(2) in the following order of precedence:
   (i) Spouse,
   (ii) Children,
   (iii) Father or mother, or both,
   (iv) Brothers or sisters, or both.

(b) A claim may not be presented by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

§ 180.103 Time limitations.

A claim must be presented in writing within 2 years after it accrues, except during war or armed conflict. If war or armed conflict occurs within the 2-year period following accrual, when claimant shows good cause, the claim may be presented within 2 years after the cause ceases to exist but not more than 2 years after termination of the war or armed conflict. A claim accrues when loss or damage is or should have been discovered by claimant even though such loss or damage occurred at a prior time.

§ 180.104 Allowable claims.

(a) A claim may be allowed only if:
   (1) The damage or loss was not caused wholly or partly by the negligent or wrongful act of the claimant, claimant’s agent, a member of claimant’s family, or claimant’s private employee (the standard to be applied is
that of reasonable care under the circumstances;

(2) The possession of the property damaged or lost and the quantity possessed is determined to have been reasonable, useful, or proper under the circumstances; and

(3) The claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this part shall not be disallowed solely because the property was not in the possession of the claimant at the time of the damage or loss or solely because the claimant was not legal owner of the property for which the claim is made. For example, borrowed property may be the subject of a claim.

(c) Subject to the conditions in § 180.104(a) and the other provisions of this part, any claim for damage to or loss of personal property incident to service with OPM may be considered and allowed. The following are examples of the principal types of claims which may be allowed. These examples are not exclusive and other types of claims may be allowed unless excluded by §180.106:

(1) Property damaged or lost in quarters. Claims may be allowed for damage to or loss of property located at:

(i) Quarters within the 50 States and the District of Columbia that were assigned to the claimant or otherwise provided in kind by the United States;

(ii) Quarters outside the 50 States and the District of Columbia that were occupied by the claimant, whether or not they were assigned or otherwise provided in kind by the United States, except when the claimant is a local inhabitant; or

(iii) Any warehouse, office, working area, or other place (except quarters) authorized or apparently authorized for the reception or storage of property.

(2) Transportation or travel losses. Claims may be allowed for damage to or loss of property incident to transportation or storage pursuant to orders, or in connection with travel under orders, including property in custody of a carrier, an agent or agency of the Government, or the claimant.

(3) Motor vehicles. Claims may be allowed for automobiles and other motor vehicles damaged or lost in overseas shipments provided by the Government. “Shipments provided by the Government” means via Government vessels, charter of commercial vessels, or by Government bills of lading on commercial vessels, and includes storage, unloading, and off-loading incident thereto. Other claims for damage to or loss of automobiles and other motor vehicles may be allowed only when use of the vehicle on a non-reimbursable basis was required by the claimant’s supervisor.

(4) Mobile homes. Claims may be allowed for damage to or loss of mobile homes and their contents under the provisions of §180.104(c)(2). Claims for structural damage to mobile homes, other than that caused by collision, and damage to contents of mobile homes resulting from such structural damage must contain conclusive evidence that the damage was not caused by structural deficiency of the mobile home and that it was not overloaded. Claims for damage to or loss of tires mounted on mobile homes may be allowed only in cases of collision, theft, or vandalism.

(5) Money. Claims for money in an amount that is determined to be reasonable for the claimant to possess at the time of the loss are payable:

(i) Where personal funds were accepted by responsible Government personnel with apparent authority to receive them for safekeeping deposit, transmittal, or other authorized disposition, but were neither applied as directed by the owner nor returned;

(ii) When lost incident to a marine or aircraft disaster;

(iii) When lost by fire, flood, hurricane, or other natural disaster;

(iv) When stolen from the quarters of the claimant where it is conclusively shown that the money was in a locked container and that the quarters themselves were locked;

(v) When taken by force from the claimant’s person.

(6) Clothing. Claims may be allowed for clothing and accessories worn on the person which are damaged or lost:

(i) During the performance of official duties in an unusual or extraordinary-risk situation;

(ii) In cases involving emergency action required by natural disaster such
§ 180.105 Claims not allowed.

(a) A claim is not allowable if:

(1) The damage or loss was caused wholly or partly by the negligent or wrongful act of the claimant, claimant’s agent, claimant’s employee, or a member of claimant’s family;

(2) The damage or loss occurred in quarters occupied by the claimant within the 50 States and the District of Columbia that were not assigned to the claimant or otherwise provided in kind by the United States;

(3) Possession of the property lost or damaged was not incident to service or not reasonable or proper under the circumstances.

(b) In addition to claims falling within the categories of §180.105(a), the following are examples of claims which are not payable:

(1) Claims not incident to service. Claims which arose during the conduct of personal business are not payable.

(2) Subrogation claims. Claims based upon payment or other consideration to a proper claimant are not payable.

(3) Assigned claims. Claims based upon assignment of a claim by a proper claimant are not payable.

(4) Conditional vendor claims. Claims asserted by or on behalf of a conditional vendor are not payable.

(5) Claims by improper claimants. Claims by persons not designated in §180.102(a) are not payable.

(6) Small items of substantial value. Claims are not payable for money or small articles of substantial value, such as watches or expensive jewelry, when shipped with household goods or as unaccompanied baggage.

(7) Articles of extraordinary value. Claims are not payable for expensive articles of gold, silver, other precious metals, paintings, antiques other than bulky furnishings, relics, and other articles of extraordinary value when shipped with household goods by ordinary means or as unaccompanied baggage at normal released valuation. Claims for such articles are payable when their loss is incident to shipment by expedited mode in accordance with current joint travel regulations. This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked, provided that reasonable protection or security measures have been taken by the claimant.

(8) Articles acquired for other persons. Claims are not payable for articles intended directly or indirectly for persons other than the claimant or members of the claimant’s immediate household. This prohibition includes articles acquired at the request of others and articles for sale.

(9) Property used for business. Claims are not payable for property normally used for business or profit.
(10) Unserviceable property. Claims are not payable for wornout or unserviceable property.

(11) Violation of law or directive. Claims are not payable for property acquired, possessed, or transported in violation of law, regulation, or other directive. This does not apply to limitations imposed on the weight of shipments of household goods.

(12) Intangible property. Claims are not payable for intangible property such as bank books, checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money order, and traveler’s checks.

(13) Government property. Claims are not payable for property owned by the United States unless the claimant is financially responsible for the property to an agency of the Government other than OPM.

(14) Motor vehicles. Claims for motor vehicles, except as provided for by §180.104(c)(3), will ordinarily not be paid. However, in exceptional cases, meritorious claims for damage to or loss of motor vehicles may be recommended to the Office of the General Counsel for consideration and approval for payment.

(15) Enemy property. Claims are not payable for enemy property, including war trophies.

(16) Losses recoverable from carrier. Claims are not payable for losses, or any portion thereof, which have been recovered or are recoverable from a carrier, except as permitted under §180.106.

(17) Losses recoverable from insurer. Claims are not payable for losses, or any portion thereof, which have been recovered or are recoverable from an insurer, except as permitted under §180.106.

(18) Losses recoverable from contractor. Claims are not payable for losses, or any portion thereof, which have been recovered or are recoverable under contract, except as permitted under §180.106.

(19) Fees for estimates. Claims are not normally payable for fees paid to obtain estimates of repair in conjunction with submitting a claim under this part. However, where, in the opinion of the approving authority, the claimant could not obtain an estimate without paying a fee, such a claim may be considered in an amount reasonable in relation to the value or the cost of repairs of the articles involved, provided that the evidence furnished clearly indicates that the amount of the fee paid will not be deducted from the cost of repairs if the work is accomplished by the estimator.

(20) Items fraudulently claimed. Claims are not payable for items fraudulently claimed. When investigation discloses that a claimant, claimant’s agent, claimant’s employee, or member of claimant’s family has intentionally misrepresented an item claimed as to cost, condition, cost to repair, etc., the item will be disallowed in its entirety even though some actual damage has been sustained. However, if the remainder of the claim is proper it will be paid. This does not preclude appropriate disciplinary action if warranted.

§180.106 Claims involving carriers and insurers.

(a) Claimants must comply with the following before presenting claims involving a carrier or insurer:

(1) Whenever property is damaged or lost while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the carrier according to the terms of its bill of lading or contract before submitting a claim against the Government. The claimant may present a claim to the Government immediately after making demand on the carrier.

(2) Whenever property which is damaged or lost incident to the claimant’s service is insured in whole or in part, the claimant must make a written demand against the insurer for reimbursement under the terms and conditions of the insurance coverage. Such demand should be made within the time limit provided in the policy and prior to the filing of a claim against the Government. The claimant may present a claim to the Government immediately after making demand on the insurer.

(b) If the claimant fails to make the required demand on the carrier or insurer or make reasonable efforts to collect the amount recoverable, the
§ 180.107 Claims procedure.

(a) Filing a claim. Claims not exceeding $500 shall be filed with the appropriate bureau or regional director. Claims in excess of $500 shall be filed with the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415. Claims shall be in writing, using G.C. Form 33 when available, and shall contain as a minimum:

(1) Name, address, and place of employment of the claimant;
(2) Place and date of the damage or loss;
(3) A brief statement of the facts and circumstances surrounding the damage or loss;
(4) Cost, date, and place of acquisition of each piece of property damaged or lost;
(5) Two itemized repair estimates, or value estimates, whichever is applicable;
(6) Copies of police reports, if applicable;

(b) Single claim. A single claim shall be presented for all lost or damaged property resulting from the same incident. If this procedure causes a hardship, the claimant may present an initial claim with notice that it is a partial claim, an explanation of the circumstances causing the hardship, and an estimate of the balance of the claim and the date it will be submitted. Payment may be made on a partial claim if the approving authority determines that a genuine hardship exists.

(c) Claims investigator. When a claim is filed, the appropriate associate or regional director, or the General Counsel, shall appoint a claims investigator to evaluate the claim and make a recommendation as to its disposition. Where the cost to repair damaged property does not exceed $100 per item and the claims investigator has inspected the damaged property, the claimant and the approving authority may agree upon a reasonable amount to be claimed for repair of an individual item in lieu of an independent estimate by a qualified repairman. In such a case, the claims investigator and the approving authority will certify that the property has been examined and that the amount claimed is a reasonable allowance for the cost of the repairs.

(d) Loss in quarters. Claims for property loss in quarters or other authorized places should be accompanied by a statement indicating:

(1) Geographical location;
(2) A statement from the claimant’s supervisor that the loss was incident to service;
(3) A statement that the property was or was not insured;
(4) With respect to claims involving thefts or losses in quarters or other places where the property was reasonably kept, a statement as to what security precautions were taken to protect the property involved;
(5) With respect to claims involving property being used for the benefit of the Government, a statement by the claimant’s supervisor that the claimant was required to provide such property or that the claimant’s providing it was in the interest of the Government; and
(6) Other evidence as may be required.
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(2) Whether the quarters were assigned or provided in kind by the Government;

(3) Whether the quarters are regularly occupied by the claimant;

(4) Name of the authority, if any, who designated the place of storage of the property if other than quarters;

(5) Measures taken to protect the property; and

(6) Whether the claimant is a local inhabitant.

(e) Loss by theft or robbery. Claims for property loss by theft or robbery should be accompanied by a statement indicating:

(1) Geographical location;

(2) Facts and circumstances surrounding the loss, including evidence of the crime such as breaking and entering, capture of the thief or robber, or recovery of part of the stolen goods; and

(3) Evidence that the claimant exercised due care in protecting the property prior to the loss, including information as to the degree of care normally exercised in the locale of the loss due to any unusual risks involved.

(f) Transportation losses. Claims for transportation losses should be accompanied by the following:

(1) Copies of orders authorizing the travel, transportation, or shipment or a certificate explaining the absence of orders and stating their substance;

(2) Statement in cases where property was turned over to a shipping officer, supply officer, or contract packer indicating:

(i) Name (or designation) and address of the shipping officer, supply officer, or contract packer;

(ii) Date the property was turned over;

(iii) Inventoried condition when the property was turned over;

(iv) When and where the property was packed and by whom;

(v) Date of shipment;

(vi) Copies of all bills of lading, inventories, and other applicable shipping documents;

(vii) Date and place of delivery to the claimant;

(viii) Date the property was unpacked by the carrier, claimant, or Government;

(ix) Statements of disinterested witnesses as to the condition of the property when received and delivered, or as to handling or storage;

(x) Whether the negligence of any Government employee acting within the scope of his employment caused the damage or loss;

(xi) Whether the last common carrier or local carrier was given a clear receipt, except for concealed damages;

(xii) Total gross, tare, and net weight of shipment;

(xiii) Insurance certificate or policy if losses are privately insured;

(xiv) Copy of the demand on carrier or insured, or both, when required, and the reply, if any;

(xv) Action taken by the claimant to locate missing baggage or household effects, including related correspondence.

(g) Marine or aircraft disaster. Claims for property losses due to marine or aircraft disaster should be accompanied by a copy of orders or other evidence to establish the claimant’s right to be, or to have property, on board.

(h) Enemy action, public disaster, or public service. Claims for property losses due to enemy action, public disaster, or public service should be accompanied by:

(1) Copies of orders or other evidence establishing the claimant’s required presence in the area involved, and

(2) A detailed statement of facts and circumstances showing an applicable case enumerated in §180.104(c)(8).

(i) Property used for benefit of Government. Claims for property loss when the property was used for the benefit of the Government should be accompanied by:

(1) A statement from the proper authority that the property was supplied by the claimant in the performance of official business at the request of, or with the knowledge and consent of, superior authority or by reason of necessity; and

(2) If the property being used for the benefit of the Government was damaged or lost while not in use, evidence that the loss occurred in an authorized storage area.

(j) Money. Claims for loss of money deposited for safekeeping, transmittal, or other authorized disposition, should be accompanied by:
(1) Name, grade, and address of the person or persons who received the money and any others involved;
(2) Name and designation of the authority who authorized such person or persons to accept personal funds, and the disposition required; and
(3) Receipts and written sworn statements explaining the failure to account for funds or return them to the claimant.

(k) Motor vehicles in transit. Claims for damage to motor vehicles in transit should be accompanied by a copy of orders or other available evidence to establish the claimant’s lawful right to have the property shipped and evidence to establish damage in transit.

§ 180.108 Settlement of claims.

(a) Authority. Associate Directors and Regional Directors are authorized to settle and pay any claim not exceeding $500 and arising under this part. The General Counsel is authorized to settle and pay any claim not exceeding $15,000 and arising under this part. Unless cognizable under § 180.104(c)(3), claims for damage to or loss of motor vehicles may be settled and paid only by the General Counsel.

(b) Redeployment. The approving authorities may establish such procedures and make such redelegations as may be required to fulfill the objectives of this part.

(c) Cost or value. The amount awarded on any item of property will not exceed the cost of the item (either the price paid in cash or property) or the value at the time of acquisition if not acquired by purchase or exchange. The amount payable will be determined by applying the principles of depreciation to the adjusted dollar value or other base price of property lost or damaged beyond economical repair; by allowing the cost of repairs when an item is economically repairable, provided the cost of repairs does not exceed the depreciated value of the item; and by deducting salvage value, if appropriate.

(d) Depreciation. Depreciation in value of an item is determined by considering the type of article involved, its cost, condition when damaged beyond economical repair or lost, and the time elapsed between the date of acquisition and the date of damage or loss.

(e) Appreciation. There will be no allowance for appreciation in the value of the property except that the cost of the item may be adjusted to reflect changes in the purchasing power of the dollar before depreciation is computed. Appreciation will not be allowed solely because the loss occurred or the claimant now resides in an area remote from the place of purchase of the property.

(f) Expensive articles. Allowance for expensive items (including heirlooms and antiques) or for items purchased at unreasonably high prices will be based on the fair and reasonable purchase price for substitute articles of a similar nature.

(g) Acquisition. Allowance for articles acquired by barter will not exceed the cost of the articles tendered in barter. No reimbursement will be made for articles acquired in black market or other prohibited activities.

(h) Replacement. Replacement of damaged or lost property may be made in kind whenever appropriate.

(i) Amount allowable. Subject to the limitations of §§ 180.108(c) through 180.108(h), the amount allowable in settlement of a claim is either:
(1) The depreciated value immediately prior to damage or loss of property damaged beyond economical repair or lost, less any salvage value; or
(2) The reasonable cost of repairs when property is economically repairable, provided that the cost of repairs does not exceed the depreciated value.

(j) Notification. The approving authority shall notify the claimant in writing of the action taken on the claim and, if the claim is disapproved or only partially approved, the reasons therefor.

(k) Carrier or insurer. In the event a claim submitted against a carrier or insurer under § 180.106 had not been settled before settlement of a claim against the Government under this part, the approving authority shall notify such carrier or insurer to pay the proceeds of the claim to OPM to the extent OPM has made payment to the claimant.

(l) Review. The action of the approving authority is final; however, the decision may be reconsidered if the claimant so requests and submits a
written explanation why reconsideration is appropriate.

(m) Attorney's fees. No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating this or any other provision of sections 240 to 243 of title 31, United States Code, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1000.


PART 185—PROGRAM FRAUD CIVIL REMEDIES

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SOURCE: 60 FR 7891, Feb. 10, 1995, unless otherwise noted.

§ 185.101 Purpose.

This subpart implements the Program Fraud Civil Remedies Act of 1986, Public Law 99-509, 6101-6104, 100 Stat. 3874 (October 21, 1986), codified at 31 U.S.C. 3801-3812. Section 3009 requires each authority head to promulgate regulations necessary to implement the provisions of the statute. The subpart establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments. The moneys collected as a result of these procedures are deposited as miscellaneous receipts in the Treasury of the United States.

§ 185.102 Definitions.

For the purposes of this part—

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Office of Personnel Management (OPM).

Authority head means the Director of the Office of Personnel Management or the Director's designee.

Benefit is very broad, and is intended to cover anything of value, including
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but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status or loan guarantee.

Claim means any request, demand, or submission—
(a) Made to the authority for property, services, or money (including money representing benefits, grants, loans or insurance);
(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority;
(1) For property or services if the United States—
(i) Provided such property or services;
(ii) Provided any portion of the funds for the purchase of such property or services; or
(iii) Will reimburse such recipient or party for the purchase of such property or services; or
(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States:
(i) Provided any portion of the money requested or demanded; or
(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or
(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under §185.107.

Defendant means any person alleged in a complaint under §185.107 to be liable for a civil penalty or assessment under §185.103.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by §185.110 or §185.137, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating Official means the Inspector General or the Inspector General’s designee.

Knows or has reason to know means that a person, with respect to a claim or statement:
(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;
(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or
(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, making or made, shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

Representative means an attorney who is in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico or other individual designated in writing by the defendant.

Reviewing Official means the General Counsel of OPM or the General Counsel’s designee. For the purposes of §185.105 of these rules, the General Counsel personally, or members of the General Counsel’s immediate staff, shall perform the functions of the reviewing official provided that such person or persons serve in a position for which the rate of basic pay is not less than the minimum rate payable under section 5376 of title 5 of the United States Code. All other functions of the reviewing official, including administrative prosecution under these rules, shall be performed on behalf of the General Counsel by members of the Office of the General Counsel.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made:
(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or
(b) With respect to (including relating to eligibility for):
(1) A contract with, or a bid or proposal for a contract with; or
(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if
the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 185.103 Basis for civil penalties and assessments.
(a) In addition to any other remedy that may be prescribed by law, any person shall be subject to a civil penalty of not more than $5,000, where the person makes a claim and knows or has reason to know that the claim:
(1) In false, fictitious, or fraudulent;
(2) Includes, or is supported by, any written statement which asserts a material fact which is false, fictitious, or fraudulent;
(3) Includes, or is supported by, any written statement that:
(i) Omits a material fact;
(ii) Is false, fictitious, or fraudulent as a result of such omission; and
(iii) Is a statement in which the person making such statement has a duty to include such material fact;
(4) Is for payment for the provision of property or services which the person has not provided as claimed.
(b) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.
(c) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.
(d) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.
(e) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section may also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.
(f) Any person who makes a written statement that:
(1) The person knows or has reason to know:
(i) Asserts a material fact which is false, fictitious, or fraudulent; or
(ii) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and
(2) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement may be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.
(g) Each written representation, certification, or affirmation constitutes a separate statement.
(h) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.
(i) No proof of specific intent to defraud is required to establish liability under this section.
(j) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 185.104 Investigation.
(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted, he or she may issue a subpoena.
§ 185.105 Review by the reviewing official.

If, based on the report of the investigating official under §185.104(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under §185.103, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official’s intention to have a complaint issued under §185.107. Such notice shall include:

(a) A statement of the reviewing official’s reasons for issuing a complaint;

(b) A statement specifying the evidence that supports the allegations of liability;

(c) A description of the claims or statements upon which the allegations of liability are based;

(d) An estimate of the amount of money, or the value of property, services, or other benefits, requested or demanded in violation of §185.103;

(e) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(f) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 185.106 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under §185.107 only if:

(1) The Department of Justice approves the issuance of a complaint in accordance with section 3803(b)(1) of title 31 of the United States Code, and

(2) In the case of allegations of liability under §185.103(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money, or the value of property or services, demanded or requested in violation of §185.103(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official’s authority to join in a single complaint against a person, claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 185.107 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with section 3803(b)(1) of title 31 of the United
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States Code, the reviewing official may serve a complaint on the defendant, as provided in § 185.108.

(b) The complaint shall state the following:

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer, including a specific statement of the defendant’s right to request a hearing and to be represented by a representative; and

(4) The fact that failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 185.110.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 185.108 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by:

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 185.109 Answer.

(a) The defendant may request a hearing in the answer filed with the reviewing official within 30 days of service of the complaint.

(b) In the answer, the defendant:

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant’s representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 185.110. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file such an answer.

§ 185.110 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 185.109(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on the defendant in the manner prescribed in § 185.108, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 185.103, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.
§ 185.111 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 185.112 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by §185.108. At the same time, the ALJ shall send a copy of such notice to the reviewing official or his or her designee.

(b) Such notice shall include:

(1) The tentative time and place, and the nature of the hearing;
(2) The legal authority and jurisdiction under which the hearing is to be held;
(3) The matters of fact and law to be asserted;
(4) A description of the procedures for the conduct of the hearing;
(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and
(6) Such other matters as the ALJ deems appropriate.

§ 185.113 Location of hearing.

(a) The hearing may be held:

(1) In any judicial district of the United States in which the defendant resides or transacts business;
(2) In any judicial district of the United States in which the claim or statement in issue was made; or
(3) In such other place as may be agreed upon by the parties and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 185.114 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and OPM.
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§ 185.115 Separation of functions.
(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case:

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under section 3806 of title 31, United States Code.

(b) The ALJ shall not be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

§ 185.116 Ex parte contacts.
No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 185.117 Disqualification of reviewing official or ALJ.
(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with this section.

(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 185.118 Rights of parties.
Except as otherwise limited by this part, all parties may:

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery as provided under § 185.122;

(d) Agree to stipulations of fact or law, which shall be made a part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 185.119 Authority of the ALJ.
(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to:
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(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;
(2) Continue or recess the hearing in whole or in part for a reasonable period of time;
(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;
(4) Administer oaths and affirmations;
(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;
(6) Rule on motions and other procedural matters;
(7) Regulate the scope and timing of discovery;
(8) Regulate the course of the hearing and the conduct of representatives and parties;
(9) Examine witnesses;
(10) Receive, rule on, exclude, or limit evidence;
(11) Upon motion of a party, take official notice of facts;
(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;
(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and
(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

§ 185.121 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:
(1) Simplification of the issues;
(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;
(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;
(4) Whether the parties can agree to submission of the case on a stipulated record;
(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;
(6) Limitation of the number of witnesses;
(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;
(8) Discovery;
(9) The time and place for the hearing; and
(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 185.121 Disclosure of documents.

(a) Upon written request to the reviewing official, generally prior to the filing of an answer, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under §185.104(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant, may also obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in §185.105 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed...
with the ALJ following the filing of an answer pursuant to § 185.109.

§ 185.122 Discovery.

(a) The following types of discovery are authorized:
   (1) Requests for production of documents for inspection and copying;
   (2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;
   (3) Written interrogatories; and
   (4) Depositions.

(b) For the purpose of this section and § 185.123, the term documents includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) Motions for discovery are to be handled according to the following procedures:
   (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.
   (2) Within 10 days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 185.125.
   (3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought:
      (i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;
      (ii) Is not unduly costly or burdensome;
      (iii) Will not unduly delay the proceeding; and
      (iv) Does not seek privileged information.
   (4) The burden of showing that discovery should be allowed is on the party seeking discovery.
   (5) The ALJ may grant discovery subject to a protective order under § 185.125.

(e) Depositions are to be handled in the following manner:
   (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.
   (2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 185.108.
   (3) The deponent may file with the ALJ within 10 days of service a motion to quash the subpoena or a motion for a protective order.
   (4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.
   (f) Each party shall bear its own costs of discovery.

§ 185.123 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 185.133(b). At the time the above documents are exchanged, any party that intends to rely on the transcript or deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ may not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.
§ 185.124 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ upon a showing of good cause. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in §185.108. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file a motion to quash the subpoena within 10 days after service or on or before the time specified in the subpoena for compliance if it is less than 10 days after service.

§ 185.125 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be the subject of inquiry, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a sealed deposition be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 185.126 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g. to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to §185.125.
§ 185.127 Fees.
The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 185.128 Form, filing and service of papers.
(a) Form. Documents filed with the ALJ shall include an original and two copies. Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena). Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.
(b) Filing. Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.
(c) Service. A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 185.108 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party’s last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.
(d) Proof of service. A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 185.129 Computation of time.
(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.
(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.
(c) Where a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response.

§ 185.130 Motions.
(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.
(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.
(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.
(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.
(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 185.131 Sanctions.
(a) The ALJ may sanction a person including any party or representative for the following reasons:
(1) Failure to comply with an order, rule, or procedure governing the proceeding;
(2) Failure to prosecute or defend an action; or
(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the proceeding.
§ 185.132 The hearing and burden of proof.

(a) Where requested in accordance with §185.109 the ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under §185.103 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise closed by the ALJ for good cause shown.

§ 185.133 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, double damages and a significant civil penalty ordinarily should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant’s culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government’s actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government’s loss;

(7) The potential or actual impact of the misconduct upon public confidence in the management of Government programs and operations;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;
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(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant’s practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant’s sophistication with respect to it, including the extent of the defendant’s prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly;

(16) The need to deter the defendant and others from engaging in the same or similar misconduct; and

(17) The potential impact of the misconduct on the rights of others.

§ 185.134 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in §185.123(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceedings without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of the following:

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party’s representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 185.135 The record.

(a) The hearing shall be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to §185.125.
§ 185.136 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 185.137 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

1. Whether the claims or statements identified in the complaint, or any portions thereof, violate § 185.103.

2. If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 185.133.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 185.138 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be 5 days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on all parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 185.139.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 185.139.

§ 185.139 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b) If another party files a motion for reconsideration under § 185.138, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

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§ 185.143 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions right of any person determined to be liable for a penalty or assessment to seek judicial review.

(k) Unless a petition for review is filed as provided in section 3805 of title 31, United States Code, after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under §185.103 is final and not subject to judicial review.

[60 FR 7891, Feb. 10, 1995; 60 FR 22249, May 5, 1995]

§ 185.140 Stays ordered by the Department of Justice.

If, at any time, the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General or of the Assistant Attorney General who ordered the stay.

§ 185.141 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 185.142 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties and/or assessments under this part and specifies the procedures for such review.

§ 185.143 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions
§ 185.144 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under §185.142 or §185.143, or any amount agreed upon in a compromise or settlement under §185.146, may be collected by administrative offset under section 3716 of title 31, United States Code, except that an administrative offset may not be made under section 3716 against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 185.145 Deposit in Treasury of the United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in section 3806(g) of title 31, United States Code.

§ 185.146 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any action to recover penalties and assessments under §185.143.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 185.147 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in §185.108 within 6 years after the date on which such a claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under §185.110(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be executed by written agreement of the parties.

PART 210—BASIC CONCEPTS AND DEFINITIONS (GENERAL)

Subpart A—Applicability of Regulations; Definitions

Sec.

210.101 Applicability of various parts of regulations.

210.102 Definitions.


Subpart A—Applicability of Regulations; Definitions

§ 210.101 Applicability of various parts of regulations.

(a) General. In most parts, the applicability of the part is stated specifically in the part or is otherwise apparent from the substance of the part.

(b) Parts 315 through 339. Parts 315 through 339 of this chapter apply to all positions in the competitive service and to all incumbents of those positions; and, except as specified by or in an individual part, these parts do not apply to positions in the excepted service or to incumbents of those positions.

[33 FR 12407, Sept. 4, 1968, as amended at 44 FR 45587, Aug. 3, 1979]

§ 210.102 Definitions.

(a) The definitions in paragraph (b) of this section apply throughout this
chapter, except when a defined term is specifically modified in or specifically defined for the purpose of a particular part.

(b) In this chapter:

(1) Appointing officer means a person having power by law, or by lawfully delegated authority, to make appointments to positions in the service of the Federal Government or the government of the District of Columbia.

(2) OPM means the Office of Personnel Management.

(3) Days, unless otherwise defined or limited, means calendar days and not workdays. In computing a period of time prescribed in this chapter, the day of the action or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday in which event the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday.

(4) Demotion means a change of an employee, while serving continuously within the same agency:

(i) To a lower grade when both the old and the new positions are under the General Schedule or under the same type graded wage schedule; or

(ii) To a position with a lower rate of pay when both the old and the new positions are under the same type ungraded wage schedule, or are in different pay method categories.

(5) Eligible means an applicant who meets the minimum requirements for entrance to an examination and is rated 70 or more in the examination by OPM.

(6) Employee means a civilian officer or employee.


(8) Noncompetitive action means a promotion, demotion, reassignment, transfer, reinstatement, or an appointment based on prior service.

(9) Overseas means outside the continental United States, but does not include Alaska, Guam, Hawaii, the Isthmus of Panama, Puerto Rico, or the Virgin Islands.

(10) Position change means a promotion, demotion, or reassignment.

(11) Promotion means a change of an employee, while serving continuously within the same agency:

(i) To a higher grade when both the old and the new positions are under the General Schedule or under the same type graded wage schedule; or

(ii) To a position with a higher rate of pay when both the old and the new positions are under the same type ungraded wage schedule, or are in different pay method categories.

(12) Reassignment means a change of an employee, while serving continuously within the same agency, from one position to another without promotion or demotion.

(13) Reemployed annuitant means an employee whose annuity under subchapter III of chapter 83 of title 5, United States Code, was continued on reemployment in an appointive position on or after October 1, 1956.

(14) Register means a list of qualified applicants compiled in order of relative standing for certification.

(15) Reinstatement means the non-competitive reemployment for service as a career or career-conditional employee of a person formerly employed in the competitive service who had a competitive status or was serving probation when he was separated from the service.

(16) Status quo employee means an employee who failed to acquire a competitive status when the position in which he was serving was placed in the competitive service by a statute, Executive order, or Civil Service rule, which permitted his retention without the acquisition of status.

(17) Tenure means the period of time an employee may reasonably expect to serve under his current appointment. It is granted and governed by the type of appointment under which an employee is currently serving without regard to whether he has a competitive status or whether his appointment is in a competitive position or in an excepted position.

(18) Transfer means a change of an employee, without a break in service of
Pt. 211—VETERAN PREFERENCE

Sec.
211.101 Purpose.
211.102 Definitions.
211.103 Administration of preference.

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otherwise noted.

§ 211.101 Purpose.
The purpose of this part is to define veterans' preference and the administration of preference in Federal employment. (5 U.S.C. 2108)

§ 211.102 Definitions.
For purposes of preference in Federal employment the following definitions apply:

(a) Veteran means a person who was separated with an honorable discharge or under honorable conditions from active duty in the armed forces performed—
    (1) In a war; or,
    (2) In a campaign or expedition for which a campaign badge has been authorized; or
    (3) During the period beginning April 28, 1952, and ending July 1, 1955; or,
    (4) For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning February 1, 1955, and ending October 14, 1976.

(b) Disabled veteran means a person who was separated under honorable conditions from active duty in the armed forces performed at any time and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pensions because of a public statute administered by the Department of Veterans Affairs or a military department.

(c) Preference eligible means veterans, spouses, widows, or mothers who meet the definition of "preference eligible" in 5 U.S.C. 2108. Preference eligibles are entitled to have 5 or 10 points added to their earned score on a civil service examination (see 5 U.S.C. 3309). They are also accorded a higher retention standing in the event of a reduction in force (see 5 U.S.C. 3502). Preference does not apply, however, to in-service placement actions such as promotions.

(d) Armed forces means the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.

(e) Uniformed services means the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(f) Active duty or active military duty means full-time duty with military pay and allowances in the armed forces, except for training or for determining physical fitness and except for service in the Reserves or National Guard.

(g) Separated under honorable conditions means either an honorable or a general discharge from the armed forces. The Department of Defense is responsible for administering and defining military discharges.

§ 211.103 Administration of preference.
Agencies are responsible for making all preference determinations except for preference based on a common law marriage. Such a claim should be referred to OPM's General Counsel for decision.

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SOURCE: 33 FR 12408, Sept. 4, 1968, unless otherwise noted.

Subpart A—Competitive Service

§ 212.101 Definitions.

In this chapter:

(a) Competitive service has the meaning given that term by section 2102 of title 5, United States Code, and includes:

(1) All civilian positions in the executive branch of the Federal Government not specifically excepted from the civil service laws by or pursuant to statute, by the President, or by the Office of Personnel Management, and not in the Senior Executive Service; and

(2) All positions in the legislative and judicial branches of the Federal Government and in the government of the District of Columbia specifically made subject to the civil service laws by statute.

(b) Competitive position means a position in the competitive service.

(5 U.S.C. 2102)


§ 212.102 Authority to make determinations.

OPM determines finally whether a position is in the competitive service.

Subpart B [Reserved]

Subpart C—Competitive Status

§ 212.301 Competitive status defined.

In this chapter, competitive status means an individual's basic eligibility for noncompetitive assignment to a competitive position. Competitive status is acquired by completion of a probationary period under a career-conditional or career appointment, or under a career executive assignment in the former executive assignment system, following open competitive examination, or by statute, Executive order, or the Civil Service rules, without open competitive examination. An individual with competitive status may be, without open competitive examination, reinstated, transferred, promoted, reassigned, or demoted, subject to conditions prescribed by the Civil Service rules and regulations.


Subpart D—Effect of Competitive Status on Position

§ 212.401 Effect of competitive status on position.

(a) An employee is in the competitive service when he has competitive status and is in a competitive position under a nontemporary appointment.

(b) An employee in the competitive service at the time his position is first listed under Schedule A, B, or C remains in the competitive service while he occupies that position.

PART 213—EXCEPTED SERVICE

Subpart A—General Provisions

Sec.
213.101 Definitions.
213.102 Identification of positions in Schedule A, B, or C.
213.103 Publication of excepted appointing authorities in Schedules A, B, and C.
213.104 Special provisions for temporary, intermittent, or seasonal appointments in Schedule A, B, or C.

Subpart B [Reserved]

Subpart C—Excepted Schedules

SCHEDULE A

213.3101 Positions other than those of a confidential or policy-determining character for which it is impracticable to examine.
213.3102 Entire executive civil service.

SCHEDULE B

213.3201 Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination.
213.3202 Entire executive civil service.

SCHEDULE C

213.3301 Positions of a confidential or policy-determining nature.
213.3302 Temporary transitional Schedule C positions.

§ 213.101
Definitions.
In this chapter:
(a) Excepted service has the meaning given that term by section 2103 of title 5, United States Code, and includes all positions in the executive branch of the Federal Government which are specifically excepted from the competitive service by or pursuant to statute, by the President, or by the Office of Personnel Management, and which are not in the Senior Executive Service.
(b) Excepted position means a position in the excepted service.
(5 U.S.C. 2103)

§ 213.102 Identification of positions in Schedule A, B, or C.
(a) The Office of Personnel Management will decide whether the duties and requirements of any particular position justify exception from the competitive service. Upon favorable determination, OPM will authorize the position to be filled by excepted appointment under Schedule A, B, or C. Unless otherwise specified in a particular appointing authority, an agency may make Schedule A, B, or C appointments on either a permanent or nonpermanent basis, with any appropriate work schedule (i.e., full-time, part-time, seasonal, on-call, or intermittent).
(b) When OPM establishes eligibility requirements (e.g., residence, family income) for appointment under particular Schedule A or B exceptions, an individual’s eligibility for appointment must be determined before appointment and without regard to any conditions that will result from the appointment.
(59 FR 46997, Sept. 13, 1994)

§ 213.103 Publication of excepted appointing authorities in Schedules A, B, and C.
(a) Schedule A, B, and C appointing authorities available for use by all agencies shall be published as regulations in the Federal Register and the Code of Federal Regulations.
(b) Establishment and revocation of Schedule A, B, and C appointing authorities applicable to a single agency shall be published monthly in the Notices section of the Federal Register.
(c) A consolidated listing of all Schedule A, B, and C authorities current as of June 30 of each year, with assigned authority numbers, shall be published annually as a notice in the Federal Register.

§ 213.104 Special provisions for temporary, intermittent, or seasonal appointments in Schedule A, B, or C.
(a) When OPM specifies that appointments under a particular Schedule A, B, or C authority must be temporary, intermittent, or seasonal, or when agencies elect to make temporary, intermittent, or seasonal appointments in Schedule A, B, or C, those terms have the following meanings:
(1) Temporary appointments, unless otherwise specified in a particular Schedule A, B, or C exception, are made for a specified period not to exceed 1 year and are subject to the time limits in paragraph (b) of this section. Time-limited appointments made for more than 1 year are not considered to be temporary appointments, and are not subject to these time limits.
(2) Intermittent positions are positions in which work recurs at sporadic or irregular intervals so that an employee’s tour of duty cannot be scheduled in advance of the administrative workweek.
(3) Seasonal positions involve annually recurring periods of employment lasting less than 12 months each year.
(b) Temporary appointments, as defined in paragraph (a)(1) of this section, are subject to the following limits:
(1) Service limits. Agencies may make temporary appointments for a period not to exceed 1 year, unless the applicable Schedule A, B, or C authority specifies a shorter period. Except as provided in paragraph (b)(3) of this section, agencies may extend temporary appointments for no more than 1 additional year (24 months of total service). Appointment to a successor position...
(i.e., a position that replaces and absorbs the original position) is considered to be an extension of the original appointment. Appointment to a position involving the same basic duties, in the same major subdivision of the agency, and in the same local commuting area is also considered to be an extension of the original appointment.

(2) Restrictions on refilling positions under temporary appointments. Except as provided in paragraph (b)(3) of this section, an agency may not fill any position (or its successor) by a temporary appointment in Schedule A, B, or C if that position had previously been filled by temporary appointment(s) in either the competitive or excepted service for an aggregate of 2 years, or 24 months, within the preceding 3-year period. This limitation does not apply to programs established to provide for systematic exchange between a Federal agency and nonfederal organizations.

(3) Exceptions to the general limits. The service limits and restrictions on refilling positions set out in this section do not apply when:

   (i) Positions involve intermittent or seasonal work, and employment in the same or a successor position under one or more appointing authorities totals less than 6 months (1,040 hours), excluding overtime, in a service year. The service year is the calendar year that begins on the date of the employee’s initial appointment in the agency. Should employment in a position filled under this exception total 6 months or more in any service year, the general limits set out in this section will apply to subsequent extension or reappointment unless OPM approves continued exception under this section. An individual may be employed for training for up to 120 days following initial appointment and up to 2 weeks a year thereafter without regard to the service year limitation.

   (ii) Positions are filled under an authority established for the purpose of enabling the appointees to continue or enhance their education, or to meet academic or professional qualification requirements. These include the authorities set out in paragraphs (r) and (s) of §213.3102 and paragraph (a) of §213.3209, and authorities granted to individual agencies for use in connection with internship, fellowship, residency, or student programs.

   (iii) OPM approves extension of specific temporary appointments beyond 2 years (24 months total service) when necessitated by major reorganizations or base closings or other rare and unusual circumstances. Requests based on major reorganization, base closing, restructuring, or other unusual circumstances that apply agencywide must be made by an official at the headquarters level of the Department or agency. Requests involving extension of appointments to a specific position or project based on other unusual circumstances may be submitted by the employing office to the appropriate OPM service center.


Subpart B—Reserved

Subpart C—Excepted Schedules

§ 213.3101 Positions other than those of a confidential or policy-determining character for which it is impracticable to examine.

Upon specific authorization by OPM, agencies may make appointments under this section to positions which are not of a confidential or policy-determining character, and which are not in the Senior Executive Service, for which it is not practicable to examine. Examining for this purpose means application of the qualification standards and requirements established for the competitive service. Positions filled under this authority are excepted from the competitive service and constitute Schedule A. For each authorization under this section, OPM shall assign an identifying number from 213.3102 through 213.3199 to be used by the appointing agency in recording appointments made under that authorization.

§ 213.3102 Entire executive civil service.

(a) Positions of Chaplain and Chaplain's Assistant.
(b) [Reserved]
(c) Positions to which appointments are made by the President without confirmation by the Senate.
(d) Attorneys.
(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment which was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.
(f) Chinese, Japanese, and Hindu interpreters.
(g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his/her service year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS-3. This limitation on compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.
(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.
(i) Temporary and less-than-full time positions for which examining is impracticable. These are:
   (1) Positions in remote/isolated locations where examination is impracticable. A remote/isolated location is outside the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing examining office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the same agency under a combination of this and any other appointment to positions involving related duties and requiring the same qualifications for more than 1,040 workings hour in a service year. Temporary appointments under this authority may be extended in 1-year increments, with no limit on the number of such extensions, as an exception to the service limits in §213.104.
   (2) Positions for which a critical hiring need exists. This includes both short-term positions and continuing positions that an agency must fill on an interim basis pending completion of competitive examining, clearances, or other procedures required for a longer appointment. Appointments under this authority may not exceed 30 days and may be extended for up to an additional 30 days if continued employment is essential to the agency’s operations. The appointments may not be used to extend the service limit of any other appointing authority. An agency may not employ the same individual under this authority for more than 60 days in any 12-month period.
   (3) Other positions for which OPM determines that examining is impracticable.
(j) Positions filled by current or former Federal employees eligible for placement under special statutory provisions. Appointments under this authority are subject to the following conditions.
   (1) Eligible employees. (i) Persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) who are entitled to placement under §353.110 of this chapter, or who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 8456 by reason of a disability that disqualifies them from membership in the National Guard or from holding the
(ii) Executive branch employees (other than employees of intelligence agencies) who are entitled to placement under § 353.110 but who are not eligible for reinstatement or non-competitive appointment under the provisions of part 315 of this chapter.

(iii) Legislative and judicial branch employees and employees of the intelligence agencies defined in 5 U.S.C. 2302(a)(2)(C)(ii) who are entitled to placement under § 353.110.

(2) Employees excluded. Employees who were last employed in Schedule C or under a statutory authority that specified the employee served at the discretion, will, or pleasure of the agency are not eligible for appointment under this authority.

(3) Position to which appointed. Employees who are entitled to placement under § 353.110 will be appointed to a position that OPM determines is equivalent in pay and grade to the one the individual left, unless the individual elects to be placed in a position of lower grade or pay. National Guard Technicians whose eligibility is based upon a disability may be appointed at the same grade, or equivalent, as their National Guard Technician position or at any lower grade for which they are available.

(4) Conditions of appointment. (i) Individuals whose placement eligibility is based on an appointment without time limit will receive appointments without time limit under this authority. These appointees may be reassigned, promoted, or demoted to any position within the same agency for which they qualify.

(ii) Individuals who are eligible for placement under § 353.110 based on a time-limited appointment will be given appointments for a time period equal to the unexpired portion of their previous appointment.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, or technical experts for consultation purposes.

(m) [Reserved]

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional, or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p)-(q) [Reserved]

(r) Positions established in support of fellowship and similar programs that are filled from limited applicant pools and operate under specific criteria developed by the employing agency and/or a non-Federal organization. These programs may include: internship or fellowship programs that provide developmental or professional experiences to individuals who have completed their formal education; training and associateship programs designed to increase the pool of qualified candidates in a particular occupational specialty; professional/industry exchange programs that provide for a cross-fertilization between the agency and the private sector to foster mutual understanding, an exchange of ideas, or to bring experienced practitioners to the agency; residency programs through which participants gain experience in a Federal clinical environment; and programs that require a period of Government service in exchange for educational, financial or other assistance. Appointments under this authority may not exceed 4 years.

(s) Positions with compensation fixed under 5 U.S.C. 5351-5356 when filled by student-employees assigned or attached to Government hospitals, clinics or medical or dental laboratories. Employment under this authority may not exceed 4 years.

(t) Positions when filled by mentally retarded persons in accordance with the guidance in Federal Personnel Manual Chapter 306. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing instructions issued by the Office.

(u) Positions when filled by severely physically handicapped persons who:
§ 213.3199

(1) Under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by the Office.

(v)–(w) [Reserved]

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under the authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed 1 additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) [Reserved]

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS-11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate’s research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of the Office except when the authority is specifically included in a delegated examining agreement with the Office.

(cc)–(ee) [Reserved]

(ff) Not to exceed 24 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Public Law 91-452 and related statutes. A person appointed under this authority may continue to be employed under it after he ceases to be in a qualifying program only as long as he remains in the same agency without a break in service.

(gg)–(hh) [Reserved]

(ii) Positions of Presidential Intern, GS-9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS-9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to one additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive Order 12364, in accordance with the provisions of §315.708 of this chapter and requirements published in the Federal Personnel Manual.

(jj)–(kk) [Reserved]

(ii) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

(5 U.S.C. 3301, 3307, 8337(h); 5 U.S.C. 3301, 3302; EO 12364, 47 FR 22931)


§ 213.3199 Temporary organizations.

(a) Positions on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific
Office of Personnel Management § 213.3202

Projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s), does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions on the staffs of temporary organizations within continuing agencies when all of the following conditions are met:

(1) The temporary organization is established by an authority outside the agency, usually by law or Executive order;
(2) The temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years;
(3) The work to be performed by the temporary organization is outside the agency’s continuing responsibilities; and
(4) The positions filled under this authority are those for which other staffing resources or authorities are not available within the agency.

An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.


SCHEDULE B

§213.3201 Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination.

(a) Upon specific authorization by OPM, agencies may make appointments under this section to positions which are not of a confidential or policy-determining character, and which are not in the Senior Executive Service, for which it is impracticable to hold open competition or to apply usual competitive examining procedures. Appointments under this authority are subject to the basic qualification standards established by the Office of Personnel Management for the occupation and grade level. Positions filled under this authority are excepted from the competitive service and constitute Schedule B. For each authorization under this section, OPM shall assign a number from 213.3202 through 213.3299 to be used by the appointing agency in recording appointments made under that authorization.

(b) [Reserved]


§213.3202 Entire executive civil service.

(a) Student Educational Employment Program—Student Temporary Employment Program. (1) Students may be appointed to the Student Temporary Employment Program if they are pursuing any of the following educational programs:

(i) High school diploma or General Equivalency Diploma (GED);
(ii) Vocational/Technical certificate;
(iii) Associate degree;
(iv) Baccalaureate degree;
(v) Graduate degree; or
(vi) Professional degree.

(2) Definition of student: A student is an individual who has been accepted for enrollment, or who is enrolled, as a degree (diploma, certificate, etc.) seeking student in an accredited high school, technical or vocational school, 2-year or 4-year college or university, graduate or professional school. If the student is enrolled, the student must be taking at least a half-time academic/vocational/ or technical course load. The definition of half-time is the definition provided by the school in which the student is enrolled. Students need not be in actual physical attendance, so long as all the other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical course load. The definition of half-time is the definition provided by the school in which the student is enrolled. Students need not be in actual physical attendance, so long as all the other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical course load in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

(3) Schedules. Students may work full-time or part-time schedules at any...
time during the year. There are no limitations on the number of hours a student can work per week, but the student’s work schedule should not interfere with the student’s academic schedule.

(4) Breaks in program. A break in program is defined as a period of time when a program participant is working but is unable to go to school, or neither attending classes nor working at the agency. Agencies may use their discretion in either approving or denying a break in program.

(5) Employment of minors. Participation in this program must be in compliance with Federal, State, or local laws and standards governing the employment of minors.

(6) Citizenship. Agencies may appoint non-citizens provided that:

(i) The student is lawfully admitted to the United States as a permanent resident or otherwise authorized to be employed; and

(ii) The agency is authorized to pay aliens under the annual appropriations act and any agency specific enabling and appropriation statutes.

(7) Employment of relatives. In accordance with part 310 of this chapter, a student may work in the same agency with a relative when there is no direct reporting relationship and the relative is not in a position to influence or control the student’s appointment, employment, promotion or advancement within the agency.

(8) Financial need. There is no requirement for students to meet any specific economic/income criteria to be eligible. However, agencies have the option to establish and use financial need as a criteria to select students, if they wish. OPM does not develop or distribute annual economic guidelines for use in determining financial need.

An agency wishing to use the Department of Health and Human Services’ poverty guidelines may call the Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation.

(9) Training expenses. Observing the prohibitions in 5 U.S.C. 4107, agencies may use their training authority in 5 U.S.C. chapter 41 and 5 CFR part 410 to pay all or part of training expenses directly related to students’ official duties.

(10) Appointments. (i) Students are appointed to positions not to exceed 1 year. Appointments under this authority may be extended in one-year increments as long as the individual meets the definition of a student. Agencies may establish minimum academic requirements and on the job performance requirements for continuation in the program. Students under this appointment authority are excepted from the limitations under §213.104.

(ii) The nature of the duties does not have to be related to the student’s academic/career goals.

(iii) Students are not eligible for non-competitive conversion to term, career, or career-conditional appointments. They may be converted to the Student Career Experience Program (refer to paragraph (a)(15) of this section).

(11) Classification. Classification of students is based on the occupational series for which they are hired. Grade level is to be set according to the criteria in the appropriate General Schedule (GS) or wage grade (WG) classification standard.

(12) Qualifications. Students may be evaluated either by agency-developed standards or by the OPM qualification requirements for the position to which appointed. Students are eligible for promotions. Promotions should be documented as a conversion to another excepted appointment, citing the same authority used for the original appointment and maintaining the original not-to-exceed (NTE) date.

(13) Benefits. (i) Students under this program are eligible for annual and sick leave and are generally ineligible for retirement coverage. Refer to §310.201 and §820.105 of this chapter for specific information.

(ii) For rules on health and life insurance coverage refer to §830.202, §890.102, and §890.502 of this chapter.

(14) Reductions-in-Force (RIF). Students are covered by §351.502 of this chapter for purposes of RIF. Students, provided they have completed at least 1 year of current continuous service, are in excepted service Tenure Group III.

(15) Conversion to Student Career Experience Program. (i) Students may be
noncompetitively converted to the Student Career Experience Program whenever they meet the requirements of that program and the agency has an appropriate position available.

(ii) Work experience related to the student's academic program and career goals, gained while under the Student Temporary Employment Program, may be credited towards the 640 hour work experience necessary for noncompetitive conversion to a term, career, or career-conditional appointment.

(iii) Conversions are not subject to requirements of subparts C and D of part 302 of this chapter.

(b) Student Educational Employment Program—Student Career Experience Program. (1)(i) Students may be appointed to the Student Career Experience Program if they are pursuing any of the following educational programs:

(A) High school diploma or General Equivalency Diploma (GED);

(B) Vocational/Technical certificate;

(C) Associate degree;

(D) Baccalaureate degree;

(E) Graduate degree; or

(F) Professional degree.

(ii) Student participants in the Harry S. Truman Foundation Scholarship Program under the provision of Public Law 93-842 are eligible for appointments under the Student Career Experience Program.

(2) Definition of student: A student is an individual who has been accepted for enrollment, or who is enrolled, as a degree (diploma, certificate, etc.) seeking student in an accredited high school, technical or vocational school, 2-year or 4-year college or university, graduate or professional school. If the student is enrolled, the student must be taking at least a half-time academic/vocational or technical course load. The definition of half-time is the definition provided by the school in which the student is enrolled. Students need not be in actual physical attendance, so long as all the other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical course load in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

(3) Schedules. Students may work full-time or part-time schedules at any time during the year. There are no limitations on the number of hours a student can work per week, but the student's work schedule should not interfere with the student's academic schedule.

(4) Breaks in program. A break in program is defined as a period of time when a program participant is working but is unable to go to school, or neither attending classes nor working at the agency. Agencies may use their discretion in either approving or denying a break in program.

(5) Employment of minors. Participation in this program must be in conformance with Federal, State, or local laws and standards governing the employment of minors.

(6) Citizenship. (i) Agencies may appoint non-citizens provided that:

(A) The student is lawfully admitted to the United States as a permanent resident or otherwise authorized to be employed; and

(B) The agency is authorized to pay aliens under the annual appropriations act ban and any agency specific enabling and appropriation statutes.

(ii) All students must be United States citizens at the time they are noncompetitively converted to a term, career, or career-conditional appointment.

(7) Employment of relatives. In accordance with part 310 of this chapter, a student may work in the same agency with a relative when there is no direct reporting relationship and the relative is not in a position to influence or control the student's appointment, employment, promotion or advancement within the agency.

(8) Financial need. There is no requirement for students to meet any specific economic/income criteria to be eligible. However, agencies have the option to establish and use financial need as a criteria to select students, if they wish. OPM does not develop or distribute annual economic guidelines for use in determining financial need. An agency wishing to use the Department of Health and Human Services'
§ 213.320

poverty guidelines may call the Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation.

(9) Training expenses. Observing the prohibitions in 5 U.S.C. 4107, agencies may use their training authority in 5 U.S.C. chapter 41 and 5 CFR part 410 to pay all or part of training expenses directly related to students' official duties.

(10) Appointments. (i) Appointments are subject to all the requirements and conditions governing term, career, or career-conditional employment, including investigation to establish an appointee's qualifications and suitability.

(ii) Appointments of participants who have met all the requirements of the program may be noncompetitively converted to term, career, or career-conditional appointments at any time within 120 days after satisfactory completion of the requirements for his/her diploma, certificate, or degree.

(11) Program requirements for non-competitive conversion. (i) Students, who are U.S. citizens, may be noncompetitively converted from the Student Career Experience Program to a term, career or career-conditional appointment under Executive Order 12015 (as amended by Executive Order 13024) when students have:

(A) Completed within the preceding 120 days, at an accredited school, course requirements conferring a diploma, certificate, or degree;

(B) Completed at least 640 hours of career-related work (agencies have the option of increasing this requirement for some or all of its occupational fields), before completion of, or concurrently with, the course requirements;

(C) Been recommended by the employing agency in which the career-related work was performed; and

(D) Met the qualification standards for the targeted position to which the student will be appointed.

(ii) Conversions must be to an occupation related to the student's academic training and career related work experience.

(iii) The noncompetitive conversion may be to a position within the same agency or any other agency within the Federal Government.

(iv) Agencies who noncompetitively convert Student Career Experience Program participants to term appointments may also noncompetitively convert them to career or career-conditional appointments before the term appointments expire.

(12) Agreement by all parties. (i) The Student Career Experience Program is a formally structured program and requires a written agreement by all parties (agency, school, student) as to the:

(A) Nature of work assignments;

(B) Schedule of work assignments and class attendance;

(C) Evaluation procedures; and

(D) Requirements for continuation and successful completion of the program.

(ii) The work experience with the agency must be related to his/her academic/career goals.

(13) Schedule. Agencies, participating educational institutions, and students should agree on a formally-arranged schedule of school and work to ensure that:

(i) Work responsibilities do not interfere with academic performance;

(ii) Completion of the educational program (awarding of diploma/certificate/degree) and the Student Career Experience Program are accomplished in a reasonable and appropriate timeframe;

(iii) The agency is informed and prepared for the student's periods of employment; and

(iv) Requirements for non-competitive conversion to term, career, or career-conditional employment are understood by all parties.

(14) Classification. Students whose positions are covered by the General Schedule will be classified as student trainees, to the -99 series of the appropriate occupational group. Students whose positions are covered by the Federal Wage System will be classified as student trainees, to the -01 series of the appropriate occupational group.

(15) Qualifications. Students may be evaluated by either agency-developed standards or by the OPM qualifications requirements for the target position. Any OPM test requirements are waived. Students are eligible for promotion.
(16) Benefits. (i) Students appointed under this program earn annual and sick leave and with no prior service or with less than 5 years of prior civilian service, are generally covered by the Federal Employees Retirement System (FERS) (see part 842 of this chapter).
(ii) For life insurance and health benefits coverage refer to § 870.202 and § 890.102 of this chapter.
(17) Tuition assistance. Observing the prohibitions in 5 U.S.C. 4107, agencies may use their training authority in 5 U.S.C. chapter 41 and 5 CFR part 410 to pay all or part of training expenses directly related to students' official duties.
(18) Travel and transportation. Agencies may pay for other expenses directly related to training, such as travel and transportation between duty station and school, for participants.
(19) Reduction-in-force (RIF). (i) Students are in excepted service Tenure Group II for purposes of § 351.502. They are accorded the same retention rights as excepted service employees.
(ii) They may qualify for severance pay if involuntarily separated under part 550, subpart G of this chapter.
(c)-(i) [Reserved]
(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.
(k) Positions at grades GS-15 and below when filled by individuals who:
(1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; and
(2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the positions to which they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.
(l) [Reserved]
(m) Positions when filed under any of the following conditions:
(1) Appointment at grades GS-15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:
(i) Has completed the SES probationary period;
(ii) Has been removed from the SES because of less than fully successful executive performance, failure to be recertified, or a reduction in force; and
(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).
(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).
(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.
(n) Positions when filled by preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of continuous active service and who, in accordance with 5 U.S.C. 3304(f) (Pub. L. 105-339), applied for these positions under merit promotion procedures when applications were being accepted by the agency from individuals outside its own workforce. These veterans may be promoted, demoted, or reassigned, as appropriate, to other positions within the agency but would remain employed under this excepted authority as long as there is no break in service.
§ 213.3301

SCHEDULE C

§ 213.3301 Positions of a confidential or policy-determining nature.

(a) Upon specific authorization by OPM, agencies may make appointments under this section to positions which are policy-determining or which involve a close and confidential working relationship with the head of an agency or other key appointed officials. Positions filled under this authority are excepted from the competitive service and constitute Schedule C. Each position will be assigned a number from § 213.3302 to § 213.3999, or other appropriate number, to be used by the agency in recording appointments made under that authorization.

(b) When requesting Schedule C exception, agencies must submit to OPM a statement signed by the agency head certifying that the position was not created solely or primarily for the purpose of detailing the incumbent to the White House.

(c) The exception from the competitive service for each position listed in Schedule C by OPM is revoked immediately upon the position becoming vacant. An agency shall notify OPM within 3 working days after a Schedule C position has been vacated.

[60 FR 35120, July 6, 1995]

§ 213.3302 Temporary transitional Schedule C positions.

(a) An agency may establish temporary transitional Schedule C positions necessary to assist a department or agency head during the 1-year period immediately following a change in presidential administration, when a new department or agency head has entered on duty, or when a new department or agency is created. These positions may be established only to meet legitimate needs of the agency in carrying out its mission during the period of transition associated with such changeovers. They must be of a confidential or policy-determining character and are subject to instructions issued by OPM.

(b) The number of temporary transitional Schedule C positions established by an agency cannot exceed either 50 percent of the highest number of permanent Schedule C positions filled by that agency at any time over the previous 5 years, or three positions, whichever is higher. In the event a new department or agency is created, the number of temporary transitional positions should reasonable in light of the size and program responsibility of that department or agency. OPM may approve an increase in an agency’s quota to meet a critical need or in unusual circumstances.

(c) Individual appointments under this authority may be made for 120 days, with one extension of an additional 120 days. They may be deemed provisional appointments for purposes of the regulations set out in parts 351, 831, 842, 870, and 890 of this chapter if they meet the criteria set out in §§ 316.401 and 316.403 of this chapter.

(d) An agency shall notify OPM within 5 working days after a temporary transitional Schedule C position has been encumbered and within 3 working days when it has been vacated. The agency must also submit to OPM a statement signed by the agency head certifying that the position was not created solely or primarily for the purpose of detailing the incumbent to the White House.

[60 FR 35120, July 6, 1995]
Subpart A  [Reserved]

Subpart B—General Provisions

§ 214.201 Definitions.
For the purposes of this part:
Agency, Senior Executive Service position, career appointee, limited term appointee, limited emergency appointee, and noncareer appointee have the meanings set forth in section 3132(a) of title 5, United States Code.
Equivalent position as used in section 3132(a)(2) of title 5, United States Code, means a position under any pay system where the level of the duties and responsibilities of the position and the rate of pay are comparable to that of a position above GS–15 or at Executive Level IV or V.
Senior Executive Service has the meaning given that term by section 2101a of title 5, United States Code, and includes all positions which meet the definition in section 3132(a)(2) of title 5.

§ 214.202 Authority to make determinations.
(a) Each agency is responsible for determining, in accordance with Office of Personnel Management guidelines, which of its positions should be included in the Senior Executive Service.
(b) Agency determinations may be reviewed by the Office of Personnel Management to ensure adherence with law and regulation.

§ 214.203 Reporting requirements.
Agencies shall report such information as may be requested by OPM relating to positions and employees in the Senior Executive Service.

§ 214.204 Interchange agreements.
(a) In accordance with 5 CFR 6.7, OPM and any agency with an executive personnel system essentially equivalent to the Senior Executive Service (SES) may, pursuant to legislative and regulatory authorities, enter into an agreement providing for the movement of persons between the SES and the other system. The agreement shall define the status and tenure that the persons affected shall acquire upon the movement.
(b) Persons eligible for movement must be serving in permanent, continuing positions with career or career-type appointments. They must meet the qualifications requirements of any position to which moved.
(c) An interchange agreement may be discontinued by either party under such conditions as provided in the agreement.

Subpart C—Exclusions

§ 214.301 Exclusions.
If not excluded from the Senior Executive Service by section 3132(a) (1) or (2) of title 5, United States Code, an agency, or unit thereof, may be excluded only under the provisions of section 3132(c) through (f) of title 5.

Subpart D—Types of Positions

§ 214.401 Types of positions.
There are two types of positions in the Senior Executive Service:
(a) General positions, which may be filled by a career, noncareer, limited emergency, or limited term appointee.
(b) Career reserved positions, which may be filled only by a career appointee.

§ 214.402 Career reserved positions.
(a) The head of each agency is responsible for designating career reserved positions in accordance with the regulations in this section.
(b) A position shall be designated as a career reserved position if:
(i) The position (except a position in the Executive Office of the President):
(1) Was under the Executive Schedule, or the rate of basic pay was determined by reference to the Executive Schedule, on October 12, 1978;
(2) Was specifically required under section 2102 of title 5, United States Code, or otherwise required by law to be in the competitive service; and
(3) Entailed direct responsibility to the public for the management or operation of particular government programs or functions; or

(2) The position must be filled by a career appointee to ensure impartiality, or the public's confidence in the impartiality, of the Government.

(c) The head of an agency shall use the following criteria in determining whether paragraph (b)(2) of this section is applicable to an individual position:

(1) Career reserved positions include positions the principal duties of which involve day-to-day operations, without responsibility for or substantial involvement in the determination or public advocacy of the major controversial policies of the Administration or agency, in the following occupational disciplines:

(i) Adjudication and appeals;
(ii) Audit and inspection;
(iii) Civil or criminal law enforcement and compliance;
(iv) Contract administration and procurement;
(v) Grants administration;
(vi) Investigation and security matters; and
(vii) Tax liability, including the assessment or collection of taxes and the preparation or review of interpretative opinions.

(2) Career reserved positions also include:

(i) Scientific or other highly technical or professional positions where the duties and responsibilities of the specific position are such that it must be filled by a career appointee to insure impartiality, of the Government.
(ii) Other positions requiring impartiality, or the public's confidence in impartiality, as determined by an agency in light of its mission.

(d) The Office of Personnel Management may review agency designations of general and career reserved positions. If the Office finds that an agency has designated any position as general that should be career reserved, it shall direct the agency to make the career reserved designation.

(2) The Office of Personnel Management may review agency designations of general and career reserved positions. If the Office finds that an agency has designated any position as general that should be career reserved, it shall direct the agency to make the career reserved designation.

(3) The Office of Personnel Management may review agency designations of general and career reserved positions. If the Office finds that an agency has designated any position as general that should be career reserved, it shall direct the agency to make the career reserved designation.

5 CFR Ch. I (1-1-99 Edition)

§ 214.403 Change of position type.

An agency may not change the designation of an established position from career reserved to general, or from general to career reserved, without the prior approval of the Office of Personnel Management.

PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT

Subparts A-C [Reserved]

Subpart D—Agency Authority To Take Personnel Actions in a National Emergency

Sec. 230.401 Agency authority to take personnel actions in a national emergency disaster.

230.401 Agency authority to take personnel actions in a national emergency disaster.

230.402 Agency authority to make emergency-indefinite appointments in a national emergency.


Subparts A-C [Reserved]

Subpart D—Agency Authority To Take Personnel Actions in a National Emergency

§ 230.401 Agency authority to take personnel actions in a national emergency disaster.

(a) Upon an attack on the United States, agencies are authorized to carry out whatever personnel activities may be necessary to the effective functioning of their organizations during a period of disaster without regard to any regulation or instruction of OPM, except those which become effective upon or following an attack on the United States. This authority applies only to actions under OPM jurisdiction.

(b) Actions taken under this section shall be consistent with affected regulations and instructions as far as possible under the circumstances and shall
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be discontinued as soon as conditions permit the reapplication of the affected regulations and instructions.

(c) An employee may not acquire a competitive civil service status by virtue of any action taken under this section.

(d) Actions taken, and authority to take actions, under this section may be adjusted or terminated in whole or in part by OPM.

(e) Agencies shall maintain records of the actions taken under this section.

[35 FR 5173, Mar. 27, 1970]

§ 230.402 Agency authority to make emergency-indefinite appointments in a national emergency.

(a) When a national emergency exists—

(1) Definition. A national emergency must meet all of the following conditions:

(i) It was declared by the President or Congress.

(ii) It involves a danger to the United States' safety, security, or stability that results from specified circumstances or conditions and that is national in scope.

(iii) It requires a national program specifically intended to combat the threat to national safety, security, or stability.

(2) Termination of a national emergency. A national emergency no longer exists if it is officially terminated by the President or Congress, or if the specific circumstances, conditions, or program cited in the original declaration are terminated or corrected.

(b) Basic authority. Agencies may make emergency-indefinite appointments without OPM approval during any national emergency as defined in paragraph (a) of this section. The head of an agency with a defense-related mission may request OPM's approval to make emergency-indefinite appointments without a declared national emergency when the President has authorized the call-up of some portion of the military reserves for some military purpose. The request must demonstrate that normal hiring procedures cannot meet surge employment requirements and that use of emergency-indefinite appointments is necessary for economy and efficiency. Except as provided by paragraphs (c) and (d) of this section, agencies must make emergency-indefinite appointments from appropriate registers of eligibles as long as there are available eligibles.

(c) Appointment outside the register. An agency may make emergency-indefinite appointments under this section outside registers of eligibles when all the following conditions are met:

(1) A number of vacancies must be filled immediately as a result of conditions created by the national emergency;

(2) Either the number of vacancies to be filled exceeds the number of immediately available eligibles or emergency conditions do not allow sufficient time to make this determination; and

(3) Available eligibles on registers are given prior or concurrent consideration for appointment to the extent possible within emergency time considerations.

(d) Appointment noncompetitively. An agency may give emergency-indefinite appointments under this section to the following classes of persons without regard to registers of eligibles and the provisions in §332.102 of this chapter:

(1) Persons who were recruited on a standby basis prior to the national emergency;

(2) Members of the National Defense Executive Reserve, designated in accordance with section 710(e) of the Defense Production Act of 1950, Executive Order 11179 of September 22, 1964, and applications issued by the agency authorized to implement the law and Executive Order; and

(3) Former Federal employees eligible for reinstatement.

(e) Tenure of emergency-indefinite employees. (1) Emergency-indefinite employees do not acquire a competitive status on the basis of their emergency-indefinite appointments.

(2) An emergency-indefinite appointment may be continued for the duration of the emergency for which it is made.

(f) Trial period. (1) The first year of service of an emergency-indefinite employee is a trial period.

(2) The agency may terminate the appointment of an emergency-indefinite employee at any time during the trial period. The employee is entitled to the
procedures set forth in §315.804 or §315.805 of this chapter as appropriate.

(g) Eligibility for within-grade increases. An emergency-indefinite employee serving in a position subject to the General Schedule is eligible for within-grade increases in accordance with subpart D of part 531 of this chapter.

(h) Applications of other regulations. (1) The term “indefinite employee” as used in the following includes an emergency-indefinite employee: Section 316.801, part 351, part 353, subpart G of part 550, and part 752 of this chapter.

(2) The selection procedures of part 333 of this chapter apply to emergency-indefinite employees appointed outside the register under paragraph (c) of this section.

(3) Despite the provisions in §831.201(a)(11) of this chapter, an employee serving under an emergency-indefinite appointment under authority of this section is excluded from retirement coverage, except as provided in paragraph (b) of §831.201 of this chapter.

(i) Promotion, demotion, or reassignment. An agency may promote, demote, or reassign an emergency-indefinite employee to any position for which it is making emergency-indefinite appointments.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))
[44 FR 54691, Sept. 21, 1979, as amended at 60 FR 3057, Jan. 13, 1995]

PART 250—PERSONNEL MANAGEMENT IN AGENCIES

Subpart A—Authority for Personnel Actions in Agencies

Sec. 250.101 Standards and requirements for agency personnel actions.

250.102 Delegation agreements.

250.103 Taking corrective action or suspending or withdrawing agency authority.


SOURCE: 58 FR 36119, July 6, 1993, unless otherwise noted.
agency, including any authority granted by delegation agreement, when it finds that the agency has not complied with qualification standards issued by OPM, the instructions published by OPM in the Federal Personnel Manual, or the regulations in this chapter; or that the suspension or withdrawal is in the interest of the service for any other reason. OPM may suspend or revoke a delegation agreement established under §250.102 at any time, if it judges that the agency is not adhering to the provisions of the agreement.

PART 251—AGENCY RELATIONSHIPS WITH ORGANIZATIONS REPRESENTING FEDERAL EMPLOYEES AND OTHER ORGANIZATIONS

Subpart A—General Provisions

Sec.
251.101 Introduction.
251.102 Coverage.
251.103 Definitions.

Subpart B—Relationships With Organizations Representing Federal Employees and Other Organizations

251.201 Associations of management officials and/or supervisors.
251.202 Agency support to organizations representing Federal employees and other organizations.

Subpart C—Dues Withholding

251.301 Associations of management officials and/or supervisors.
251.302 All other organizations.

SOURCE: 61 FR 32915, June 26, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 251.101 Introduction.
(a) The regulations in this part apply to all Federal executive branch departments and agencies and their officers and employees.
(b) This part provides a framework for consulting and communicating with non-labor organizations representing Federal employees and with other organizations on matters related to agency operations and personnel management.
(c) The purposes of consultation and communication are: the improvement of agency operations, personnel management, and employee effectiveness; the exchange of information (e.g., ideas, opinions, and proposals); and the establishment of policies that best serve the public interest in accomplishing the mission of the agency.
(d) An agency’s consultation and communication with organizations representing Federal employees and with other organizations under this part may not take on the character of negotiations or consultations regarding conditions of employment of bargaining unit employees, which is reserved exclusively to labor organizations, as provided for in Chapter 71 of title 5 of the U.S. Code or comparable provisions of other laws. The regulations in this part do not authorize any actions inconsistent with Chapter 71 of the U.S. Code or comparable provisions of other laws.
(e) The head of a Federal agency may determine that it is in the interest of the agency to consult, from time to time, with organizations other than labor organizations and associations of management officials and/or supervisors to the extent permitted by law. Under section 7(d)(2) and (3) of Executive Order 11491, as amended, recognition of a labor organization does not preclude an agency from consulting or dealing with a veterans organization, or with a religious, social, fraternal, professional, or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the organization or association or are of particular applicability to it or its members.
(f) Federal employees, including management officials and supervisors, may communicate with any Federal agency, officer, or other Federal entity on the employee’s own behalf. However, Federal employees should be aware that 18 U.S.C. 205, in pertinent part, restricts Federal employees from acting, other than in the proper discharge of their official duties, as agents or attorneys for any person or
organization other than a labor organization, before any Federal agency or other Federal entity in connection with any matter in which the United States is a party or has a direct and substantial interest. An exception to the prohibition found in 18 U.S.C. 205 permits Federal employees to represent certain nonprofit organizations before the Government except in connection with specified matters. Agency officials and employees are therefore advised to consult with their designated agency ethics officials for guidance regarding any conflicts of interest that may arise.

§ 251.102 Coverage.

To be covered by this part, an association or organization:

(a) Must be a lawful, nonprofit organization whose constitution and bylaws indicate that it subscribes to minimum standards of fiscal responsibility and employs democratic principles in the nomination and election of officers;

(b) Must not discriminate in terms of membership or treatment because of race, color, religion, sex, national origin, age, or handicapping condition;

(c) Must not assist or participate in a strike, work stoppage, or slowdown against the Government of the United States or any agency thereof or impose a duty or obligation to conduct, assist, or participate in such strike, work stoppage, or slowdown; and

(d) Must not advocate the overthrow of the constitutional form of Government of the United States.

§ 251.103 Definitions.

(a) Organization representing Federal employees and other organizations means an organization other than a labor organization that can provide information, views, and services which will contribute to improved agency operations, personnel management, and employee effectiveness. Such an organization may be an association of Federal management officials and/or supervisors, a group representing minorities, women or persons with disabilities in connection with the agencies’ EEO programs and action plans, a professional association, a civic or consumer group, and organization concerned with special social interests, and the like.

(b) Association of management officials and/or supervisors means an association comprised primarily of Federal management officials and/or supervisors, which is not eligible for recognition under Chapter 71 of title 5 of the U.S. Code or comparable provisions of other laws, and which is not affiliated with a labor organization or federation of labor organizations.

(c) Labor organization means an organization as defined in 5 U.S.C. 7103(a)(4), which is in compliance with 5 U.S.C. 7120, or as defined in comparable provisions of other laws.

Subpart B—Relationships With Organizations Representing Federal Employees and Other Organizations

§ 251.201 Associations of management officials and/or supervisors.

(a) As part of agency management, supervisors and managers should be included in the decision-making process and notified of executive-level decisions on a timely basis. Each agency must establish and maintain a system for intra-management communication and consultation with its supervisors and managers. Agencies must also establish consultative relationships with associations whose membership is primarily composed of Federal supervisory and/or managerial personnel, provided that such associations are not affiliated with any labor organization and that they have sufficient agency membership to assure a worthwhile dialogue with executive management. Consultative relationships with other non-labor organizations representing Federal employees are discretionary.

(b) Consultations should have as their objectives the improvement of managerial effectiveness and the working conditions of supervisors and managers, as well as the identification and resolution of problems affecting agency operations and employees, including supervisors and managers.

(c) The system of communication and consultation should be designed so that individual supervisors and managers are able to participate if they are not
affiliated with an association of management officials and/or supervisors. At the same time, the voluntary joining together of supervisory and management personnel in groups of associations shall not be precluded or discouraged.

§ 251.202 Agency support to organizations representing Federal employees and other organizations.

(a) An agency may provide support services to an organization when the agency determines that such action would benefit the agency's programs or would be warranted as a service to employees who are members of the organization and complies with applicable statutes and regulations. Examples of such support services are as follows:

(1) Permitting employees, in appropriate cases, to use agency equipment or administrative support services for preparing papers to be presented at conferences or symposia or published in journals;

(2) Using the authority under 5 U.S.C. 4109 and 4110, as implemented by 5 CFR part 410, to pay expenses of employees to attend professional organization meetings when such attendance is for the purpose of employee development or directly concerned with agency functions or activities and the agency can derive benefits from employee attendance at such meetings; and

(3) Following a liberal policy in authorizing excused absence for other employees who are willing to pay their own expenses to attend a meeting of a professional association or other organization from which an agency could derive some benefits.

(b) Agencies may provide Government resources support to organizations (such as space in Government facilities for meeting purposes and the use of agency bulletin boards, internal agency mail distribution systems, electronic bulletin boards and other means of informing agency employees about meetings and activities) in accordance with appropriate General Services Administration regulations contained in title 41 of the Code of Federal Regulations. The mere provision of such support to any organization is not to be construed as Federal sponsorship, sanction, or endorsement of the organization or its activities.

Subpart C—Dues Withholding

§ 251.301 Associations of management officials and/or supervisors.

Dues withholding for associations of management officials and/or supervisors is covered in 5 CFR 550.331.

§ 251.302 All other organizations.

Under 5 CFR 550.311(b), an agency may permit an employee to make an allotment for any legal purpose deemed appropriate by the head of the agency. Agencies may provide for the allotment of dues for organizations representing Federal employees under that section.

PART 293—PERSONNEL RECORDS

Subpart A—Basic Policies on Maintenance of Personnel Records

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§ 293.101  Purpose and scope.

(a) This subpart sets forth basic policies governing the creation, development, maintenance, processing, use, dissemination, and safeguarding of personnel records which the Office of Personnel Management requires agencies to maintain in the personnel management or personnel policy setting process.

(b) Agencies in the Executive Branch of the Federal Government are subject to specific Office of Personnel Management recordkeeping requirements to varying degrees, pursuant to statute, Office regulation, or formal agreements between the Office and agencies.

§ 293.102  Definitions.

In this part:

Agency means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the Executive Branch of the Government (including the Executive Office of the President), or any independent regulatory agency;

Data subject means the individual about whom the Office or agency is maintaining information in a system of records;

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence;

Information means papers, records, photographs, magnetic storage media, micro storage media, and other documentary materials regardless of physical form or characteristics, containing data about an individual and required by the Office in pursuance of law or in connection with the discharge of official business, as defined by statute, regulation, or administrative procedure;

Maintain includes collect, use, or disseminate;

Office means the Office of Personnel Management;

Personnel record means any record concerning an individual which is maintained and used in the personnel management or personnel policy setting process. (For purposes of this part, this term is not limited just to those personnel records in a system of records and subject to the Privacy Act);

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history, criminal history, or employment history;
System of records means a group of records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§ 293.103 Recordkeeping standards.
(a) The head of each agency shall ensure that persons having access to or involved in the creation, development, processing, use, or maintenance of personnel records are informed of pertinent recordkeeping regulations and requirements of the Office of Personnel Management and the agency. Authority to maintain personnel records does not constitute authority to maintain information in the record merely because it may be useful; both Government-wide and internal agency personnel records shall contain only information concerning an individual that is relevant and necessary to accomplish the Federal personnel management purposes required by statute, Executive order, or Office regulation.

(b) The Office is responsible for establishing minimum standards of accuracy, relevancy, necessity, timeliness, and completeness for personnel records it requires agencies to maintain. These standards are discussed in appropriate chapters of the Federal Personnel Manual. Before approval of any agency requests for changes in recordkeeping practices governed by the Federal Personnel Manual, the Office will examine the proposal or request in the context of such standards set forth by the agency in support of the proposal and in light of the personnel program area that requires these records.

§ 293.104 Collection of information.
(a) Any information in personnel records whether or not those records are in a system of records, used in whole or in part in making a determination about an individual’s rights, benefits, or privileges under Federal personnel programs should, to the greatest extent practicable, be collected directly from the individual concerned. Factors to be considered in determining whether to collect the data from the individual concerned or a third party are when:

1. The nature of the information is such that it can only be obtained from another party;
2. The cost of collecting the information directly from the individual is unreasonable when compared with the cost of collecting it from another party;
3. There is virtually no risk that information collected from other parties, if inaccurate, could result in a determination adverse to the individual concerned;
4. The information supplied by an individual must be verified by another party; or
5. There are provisions made, to the greatest extent practicable, to verify information collected from another party with the individual concerned.

§ 293.105 Restrictions on collection and use of information.
(a) First Amendment. Personnel records describing how individuals exercise rights guaranteed by the First Amendment are prohibited unless expressly authorized by statute, or by the individual concerned, or unless pertinent to and within the scope of an authorized law enforcement activity. These rights include, but are not limited to, free exercise of religious and political beliefs, freedom of speech and the press, and freedom to assemble and to petition the government.

(b) Social Security Number.

1. Agencies may not require individuals to disclose their Social Security Number unless disclosure would be required:
   (i) Under Federal statute; or
   (ii) Under any statute, Executive order, or regulation that authorizes any Federal, State, or local agency maintaining a system of records that was in existence and operating prior to January 1, 1975, to request the Social Security Number as a necessary means of verifying the identity of an individual.

2. Individuals asked to voluntarily (circumstances not covered by paragraph (b)(1) of this section) provide their Social Security Number shall suffer no penalty or denial of benefits for refusing to provide it.
§ 293.106 Safeguarding information about individuals.

(a) To ensure the security and confidentiality of personnel records, in whatever form, each agency shall establish administrative, technical, and physical controls to protect information in personnel records from unauthorized access, use, modification, destruction, or disclosure. As a minimum, these controls shall require that all persons whose official duties require access to and use of personnel records be responsible and accountable for safeguarding those records and for ensuring that the records are secured whenever they are not in use or under the direct control of authorized persons. Generally, personnel records should be held, processed, or stored only where facilities and conditions are adequate to prevent unauthorized access.

(b) Personnel records must be stored in metal filing cabinets which are locked when the records are not in use, or in a secured room. Alternative storage facilities may be employed provided they furnish an equivalent or greater degree of security than these methods. Except for access by the data subject, only employees whose official duties require access shall be allowed to handle and use personnel records, in whatever form or media the records might appear. To the extent feasible, entry into personnel record storage areas shall be similarly limited. Documentation of the removal of records from storage areas must be kept so that accurate control procedures can be established to assure that removed records are returned on a timely basis.

(c) Disposal and destruction of personnel records shall be in accordance with the General Record Schedule issued by the General Services Administration for the records or, alternatively, with Office or agency records control schedules approved by the National Archives and Records Service of the General Services Administration.

§ 293.107 Special safeguards for automated records.

(a) In addition to following the security requirements of § 293.106 of this part, managers of automated personnel records shall establish administrative, technical, physical, and security safeguards for data about individuals in automated records, including input and output documents, reports, punched cards, magnetic tapes, disks, and online computer storage. The safeguards must be in writing to comply with the standards on automated data processing physical security issued by the National Bureau of Standards, U.S. Department of Commerce, and, as a minimum, must be sufficient to:

1. Prevent careless, accidental, or unintentional disclosure, modification, or destruction of identifiable personal data;
2. Minimize the risk that skilled technicians or knowledgeable persons could improperly obtain access to, modify, or destroy identifiable personnel data;
3. Prevent casual entry by unskilled persons who have no official reason for access to such data;
4. Minimize the risk of an unauthorized disclosure where use is made of identifiable personal data in testing of computer programs;
5. Control the flow of data into, through, and from agency computer operations;
6. Adequately protect identifiable data from environmental hazards and unnecessary exposure; and
7. Assure adequate internal audit procedures to comply with these procedures.

(b) The disposal of identifiable personal data in automated files is to be accomplished in such a manner as to make the data unobtainable to unauthorized personnel. Unneeded personal data stored on reusable media such as magnetic tapes and disks must be erased prior to release of the media for reuse.

§ 293.108 Rules of conduct.

(a) Scope. These rules of conduct apply to all Office and agency employees responsible for creation, development, maintenance, processing, use, dissemination, and safeguarding of personnel records. The Office and agencies shall require that such employees are familiar with these and appropriate supplemental agency internal regulations.
(b) Standards of conduct. Office and agency employees whose official duties involve personnel records shall be sensitive to individual rights to personal privacy and shall not disclose information from any personnel record unless disclosure is part of their official duties or required by executive order, regulation, or statute (e.g., required by the Freedom of Information Act, 5 U.S.C. 552).

(c) Improper uses of personnel information. Any Office or agency employee who makes a disclosure of personnel records knowing that such disclosure is unauthorized, or otherwise knowingly violates these regulations, shall be subject to disciplinary action and may also be subject to criminal penalties where the records are subject to the Privacy Act (5 U.S.C. 552a). Employees are prohibited from using personnel information not available to the public, gained through official duties, for commercial solicitation or sale, or for personal gain.

Subpart B—Personnel Records Subject to the Privacy Act

§ 293.201 Purpose.

The purpose of this subpart is to set forth the criteria to be used to determine when personnel records on individuals are subject both to the regulations contained in this part and to Office or agency regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a. When personnel records are maintained within a system of records, the records are deemed to be within the scope of both the regulations in this part and Office or agency regulations implementing the Privacy Act.

§ 293.202 Records subject to Office or agency Privacy Act regulations.

When the Office of Personnel Management publishes in the Federal Register a notice of system of records for personnel records which are maintained by the agencies or by the Office, that system of records will be subject to the regulations in this part and also to the regulations in part 297 of this chapter. When agencies publish a notice of system of records for personnel records required by the Office that are not included in the Office's notices, those agency systems of records will be subject both to the regulations contained in this part and to agency promulgated regulations that implement the Privacy Act.

§ 293.203 Review of Office or agency practices.

Reviews of agency personnel management policies and practices will be conducted to insure compliance with Office regulations. The Office may direct agencies to take whatever corrective action is necessary. Office or agency officials who have knowledge of violations of these regulations shall take whatever corrective action is necessary. Agencies shall list officials of the Office of Personnel Management as a routine user for personnel records to assist the Office in its oversight responsibilities.

Subpart C—Official Personnel Folder


Source: 50 FR 3309, Jan. 24, 1985, unless otherwise noted.

§ 293.301 Applicability of regulations.

This subpart applies to, and within this subpart agency means, each executive department and independent establishment of the Federal Government, each corporation wholly owned or controlled by the United States, and with respect to positions subject to civil service rules and regulations, the legislative and judicial branches of the Federal Government.

§ 293.302 Establishment of Official Personnel Folder.

Each agency shall establish an Official Personnel Folder (OPF) for each employee occupying a position subject to this part, except as provided in §293.306. Except as provided in the Federal Personnel Manual, there will be only one OPF maintained for each employee regardless of service in various agencies.
§ 293.303 Ownership of folder.

The OPF of each employee in a position subject to civil service rules and regulations is under the jurisdiction and control of, and is part of the records of, the Office of Personnel Management (the Office).

§ 293.304 Maintenance and content of folder.

The head of each agency shall maintain in the Official Personnel Folder the reports of selection and other personnel actions named in section 2951 of title 5, United States Code. The folder shall contain long-term records affecting the employee's status and service as required by OPM's instructions and as designated in the Guide to Personnel Recordkeeping.

[58 FR 65533, Dec. 15, 1993]

§ 293.305 Type of folder to be used.

Each agency shall use only OPFs from Office of Federal Supply and Services stock (Standard Form 66) for the folders required by this part.

§ 293.306 Use of existing folders upon transfer or reemployment.

When an agency hires a person who has served on or after April 1, 1947, in a position subject to this part, it shall request the transfer of the OPF pertaining to the person's employment. The folder so obtained shall be used in lieu of establishing a new OPF. In the event that the prior service occurred wholly before April 1, 1947, the agency shall request any files or records that may be located in the Federal records storage center. The request shall note that because of the dates of service there will likely be no OPF. Any such file or record found for this individual shall be incorporated into the OPF being established for the employee.

(a) When a person for whom an OPF has been established transfers from one agency to another, the last employing (losing) agency shall, on request, transfer the OPF to the new employing agency.

(b) Before transferring the Official Personnel Folder, the losing agency shall:

(1) Remove those records of a temporary nature filed on the left side of

(b) Before transferring the Official Personnel Folder, the losing agency shall:

(1) Remove those records of a temporary nature filed on the left side of

§ 293.307 Disposition of folders of former Federal employees.

(a) Folders of persons separated from Federal employment must be retained by the losing agency for 30 working days after separation, and may be retained for additional 60 days (90 days where administratively necessary, e.g., where an appeal or an allegation of discrimination is made or where an employee retires or dies in service). Thereafter, the OPF must be transferred to the General Services Administration, National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, Missouri 63118.

(b) When a former Federal employee is reappointed in the Federal service, the National Personnel Records Center (Civilian Personnel Records) shall, upon request, transfer the OPF to the new employing agency.

[50 FR 3309, Jan. 24, 1985; 50 FR 8993, Mar. 6, 1985]

§ 293.308 Removal of temporary records from OPFs.

The employing agency having possession of an OPF shall remove temporary records from the OPF before it is transferred to another agency. For these and also for temporary records of their current employees, maintenance of the records shall be in accordance with General Records Schedule 1, promulgated by the General Services Administration.
§ 293.309 Reconstruction of lost OPFs. Agencies will take necessary precautions to safeguard all OPFs. In the event of a lost or destroyed OPF, the current (or last, in the case of a former Federal employee) employing agency shall take the necessary action to reconstruct the essential portions of the OPF as specified in the Federal Personnel Manual or other Office instructions.

§ 293.310 Response to requests for information. The Office, or an agency in physical possession of an OPF in response to a third party Freedom of Information Act (FOIA) request may disclose information as provided in this subpart. A current employee’s request for access to his/her own OPF (also included are employee performance file system folders and files) that cites the FOIA, as with all stated Privacy Act requests made by current employees, shall be processed in accordance with agency Privacy Act procedures consistent with Office regulations in part 297 of this chapter. All requests for their OPFs from former employees, and FOIA requests for former employee OPFs, shall be referred to the Office’s regional or area office nearest to the location of the requester.

§ 293.311 Availability of information. (a) The following information from both the OPF and employee performance file system folders, their automated equivalent records, and from other personnel record files that constitute an agency record within the meaning of the FOIA and which are under the control of the Office, about most present and former Federal employees, is available to the public: (1) Name; (2) Present and past position titles and occupational series; (3) Present and past grades; (4) Present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials); (5) Present and past duty stations (includes room numbers, shop designations, or other identifying information regarding buildings or places of employment); and (6) Position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the release of which would not interfere with law enforcement programs or severely inhibit agency effectiveness. Performance elements and standards (or work expectations) may be withheld when they are so interwined with performance appraisals that their disclosure would reveal an individual’s performance appraisal.

(b) The Office or agency will generally not disclose information where the data sought is a list of names, present or past position titles, grades, salaries, performance standards, and/or duty stations of Federal employees which, as determined by the official responsible for custody of the information: (1) Is selected in such a way that would reveal more about the employee on whom information is sought than the six enumerated items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (2) Would otherwise be protected from mandatory disclosure under an exemption of the FOIA.

(c) In addition to the information described in paragraph (a) of this section, a Government official may provide other information from these records (or automated equivalents) of an employee, to others outside of the agency, under a summons, warrant, subpoena, or other legal process; as provided by the Privacy Act (5 U.S.C. 552a(b)(4) through (b)(11)), under those Privacy Act routine uses promulgated by the Office, and as required by the FOIA.

Subpart D—Employee Performance File System Records


Source: 47 FR 3080, Jan. 22, 1982, unless otherwise noted.
§ 293.401 Applicability of regulations.

This subpart applies to Executive agencies as defined in sections 105, 3132(a)(1) and 4301(1) of title 5, U.S. Code, including Military Departments (but not non-appropriated fund employees) as defined in section 102 of title 5, U.S. Code, and independent establishments as defined in section 104 of title 5, U.S. Code. Within those agencies, the requirements of this subpart apply to all employees occupying positions subject to civil service rules and regulations, including Senior Executive Service positions as defined in 5 U.S.C. 3132(a)(2).

§ 293.402 Establishment of separate employee performance record system.

(a) Copies of employees’ performance ratings of record, including the performance plans on which the ratings are based, must be placed in either the employee’s Official Personnel Folder (OPF) or in the Employee Performance File (EPF). However, other performance-related documents may be retained in the OPF only when the agency prescribes the use of a separate envelope, temporarily located in the OPF, and removed whenever the OPF (except as required in §293.404(b)) is transferred to another agency. Performance ratings of record, including the performance plans on which the ratings are based, shall be retained on the left (temporary) side of the OPF. No other performance-related record shall be retained on the left (temporary) or right (long term) side of the OPF or shall be transferred to the National Personnel Records Center (except as required by §293.404(b)).

(b) Except for performance records maintained in the OPF consistent with paragraph (a) of this section, each agency having employees occupying a position described in §293.401 shall provide for maintenance of performance-related records for such employees in this EPF system. The agency may elect to retain records in a separate file that is located in the same office with the OPF, or in an envelope kept in the OPF itself. If the agency determines that a separate EPF is cost-effective, such a file may be located in another designated agency office (as specified in the agency’s performance appraisal plan) including with supervisors or managers (hereinafter referred to as rating officials) or with Performance Review Boards. Any supporting documents that the agency may prescribe as necessary for agency officials in performance of their duties shall be kept in these files.

(c)(1) Agencies shall provide their employees access to their performance files (automated and manual). Such a request for access shall be processed in accordance with established agency procedures, consistent with Office of Personnel Management regulations regarding access to records contained in part 297 of this chapter. Such access shall be provided to the employee or to the employee’s designated representative, and such records may also be disclosed to other officials of the agency who have a need for the documents in the performance of their duties.

(2) All other requests for performance documents made to agency officials (e.g., Freedom of Information Act requests or requests made under the “routine use” provisions of the Privacy Act) shall be processed by the responsible agency official in accordance with agency procedures consistent with Office of Personnel Management regulations regarding disclosures of such records contained in parts 293 and 297 of this chapter.

(3) Privacy Act requests for amendment of records maintained in this system shall be processed by the responsible agency official in accordance with agency procedures consistent with Office of Personnel Management regulations regarding amendment of records contained in part 297 of this chapter.

(d) Agencies maintaining the EPF in an automated or microform system shall issue instructions that contain necessary procedures to ensure that the same requirements as in paragraph (c) of this section, relating to all manual records, are met.


§ 293.403 Contents of employee performance files.

(a) A decision on what constitutes a performance-related document within the meaning of this subpart rests with
the agency. Agency implementing instructions, for both incumbents of the Senior Executive Service and other positions, shall provide specific written guidance of the description of what constitutes the agency's official performance-related forms and documents.

(b) Agency implementing instructions describing such records shall indicate where and for how long they are retained and how and when they are to be destroyed. Such instructions shall also describe what records are considered to be performance-related (as specifically as is feasible) and shall include all performance-related records maintained as a system of records within the meaning of the Privacy Act. Such records would generally include:

(1) Any form or other document which records the performance appraisal, including appraisals leading to merit pay determinations.

(2) Any form or other document used by rating officials to recommend a personnel action affecting an employee (including a request for personnel action document, but only when the action is not effected) when the basis for the action (e.g., removal, reassignment, demotion, promotion, or merit pay or other performance award) is performance-related.

(3) Recommendations for training that are performance-related.

(4) Any form or other document furnished in support of recommended actions such as those listed in paragraph (b)(2) of this section and the agency's final decision on the matter (e.g., a recommendation for merit pay or an agency decision to grant only one-half the comparability pay adjustment).

(5) Any form or other document which the rating official is required by the agency to keep during an appraisal period (e.g., quality control records, production records, or similar records used to track employee performance during the appraisal period).

(6) Any form or other document regarding Performance Review Board decisions, including supporting documentation and any transcript of hearings or testimony from witnesses.

(7) Any form or other document regarding decisions or recommendations of agency Executive Resources Boards related to performance appraisal or actions resulting from performance appraisals.

(8) Appraisals of potential (e.g., in connection with an agency's merit promotion procedures) if agency implementing instructions specifically require or permit retention of a copy.

(9) Individual development plans.

(10) Copies of licenses, certificates of proficiency, or similar documents required of the position.

(c) General information about the employee, i.e., identification data, information concerning Federal and non-Federal employment experience, and information about any training programs the employee participated in may, if an agency deems it appropriate, be retained in this system.

§ 293.404 Retention schedule.

(a)(1) Except as provided in §293.405(a), performance ratings or documents supporting them are generally not permanent records and shall, except for appointees to the SES and including incumbents of executive positions not covered by SES, be retained as prescribed below:

(i) Performance ratings of record, including the performance plans on which they are based, shall be retained for 4 years;

(ii) Supporting documents shall be retained for as long as the agency deems appropriate (up to 4 years);

(iii) Performance records superseded (e.g., through an administrative or judicial procedure) and performance-related records pertaining to a former employee (except as prescribed in §293.405(a)) need not be retained for a minimum of 4 years. Rather, in the former case they are to be destroyed and in the latter case agencies shall determine the retention schedule; and

(iv) Except where prohibited by law, retention of automated records longer than the maximum prescribed here is permitted for purposes of statistical analysis so long as the data are not used in any action affecting the employee when the manual record has been or should have been destroyed.

§ 293.405 Disposition of records.

(a) When the OPF of a non-SES employee is sent to another servicing office in the employing agency, to another agency, or to the National Personnel Records Center, the “losing” servicing office shall include in the OPF all performance ratings of record that are 4 years old or less, including the performance plan on which the most recent rating was based, and the summary rating prepared when the employee changes positions, as prescribed in part 430 of this chapter. Also, the “losing” office will purge from the OPF all performance ratings and performance plans that are more than 4 years old, and other performance-related records, according to agency policy established under § 293.404(a)(2) and in accordance with FPM Supplement 293-31.

(b) Consistent with transfer instructions pertaining to SES positions contained in this part, employee performance files shall be forwarded to gaining agencies at the same time as the OPF (5 CFR 293.207).

(c) Consistent with retention schedules promulgated in § 293.404, destruction of performance-related records shall be in accordance with agency procedures (e.g., by shredding or burning).

(d) If a former employee returns to an agency, a new employee performance file will be created unless the prior file for this employee is still available. The original file may be reactivated provided that, consistent with the retention schedules and destruction requirements promulgated in this subpart, the contents are properly disposed of.

(2) When an employee is reassigned within the employing agency, disposition of records in this system, including transfer with the employee who changes positions, shall be as agencies prescribe and consistent with § 293.405(a).

(3) Appraisals of unacceptable performance, where a notice of proposed demotion or removal is issued but not effected, and all documents related thereto, manual and automated, pursuant to 5 U.S.C. 4303(d) must be destroyed after the employee completes one year of acceptable performance from the date of the written advance notice of the proposed removal or reduction in grade notice. Under conditions specified by an agency, and earlier destruction date is permitted and destruction must be no later than 30 days after the year is up.

(b) Performance records for Senior Executive Service appointees, including those serving under a Presidential appointment under 5 U.S.C. 3392(c), are to be retained as follows:

(1) Pursuant to 5 U.S.C. 4314(b) (3) and (4), Senior Executive Service appointees shall have their performance-related records maintained for five consecutive years (from the date the appraisal is issued) beginning with the effective date of appointment, including individuals receiving appointments pursuant to 5 U.S.C. 3593(b).

(2) When an appointee of the Senior Executive Service moves to another position in the Service, either with the same or a different agency, all appropriate performance-related documents five years old or less shall be forwarded in the Employee Performance File along with the individual’s OPF.

(3) When an employee in the Senior Executive Service accepts a Presidential appointment pursuant to 5 U.S.C. 3392(c), the employee’s performance file shall be retained as long as the employee remains employed under that Presidential appointment. When the appointment ends, and the individual does not return to the Senior Executive Service, the employee’s performance file shall be destroyed in accordance with agency procedures.

(c) Where any performance-related document is needed in connection with an ongoing administrative, negotiated, quasi-judicial, or judicial proceeding, and it continues to be retained in this system rather than another system, it may be retained for as long as necessary beyond the retention schedules identified in paragraphs (a) and (b) of this section.

(d) Screening and purging of folders/envelopes and rating official’s work files for the purpose of compliance with these retention schedules shall be through any agency process insuring consistency with the requirements.

§ 293.502 Definitions.

For the purpose of this Subpart—

Employee is defined at 5 U.S.C. 2305 and excludes student volunteers and contractor employees.

Employee Assistance and Counseling Record means the record created when an employee participates in an agency assistance/counseling program (e.g., drug or alcohol abuse or personal counseling programs under Pub. L. 91-616, 92-255, and 79-658, respectively).

Employee Exposure Record (which is to be interpreted consistent with the term it is defined at 29 CFR 1910.20(c)(8)) means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents (as defined at 29 CFR 1910.20(c)(11)):

(a) Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;

(b) Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

(c) Material safety data sheets; or

(d) Any other record, in the absence of the above, which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance of harmful physical agent.

Employee Medical File System (EMFS) means the agency’s complete system (automated, microformed, and paper records) for employee occupational medical records.

Employee Medical Folder (EMF) means a separate file folder (normally SF 66-D) established to contain all of the occupational medical records (both long-term and short-term records) designated for retention, which will be maintained by the employing agency during the employee’s Federal service.

Epidemiological Record means a record maintained by an agency or subelement thereof as a result of an official medical research study conducted under the authority of the agency.
§ 293.503 Implementing instructions.

Implementing instructions means any form of internal agency issuance that provides the guidance required in §293.503 and any other guidance the agency deems appropriate.

Occupational Medical Record means an occupation-related, chronological, cumulative record, regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, or automatic data processing media), of information about health status developed on an employee, including personal and occupational health histories and the opinions and written evaluations generated in the course of diagnosis and/or employment-related treatment/examination by medical health care professionals and technicians. This definition includes the definition of medical records at 29 CFR 1910.20(c)(6); when the term “Occupational Medical Record” is used in these regulations, it includes “Employee Exposure Records” (as that term is defined in this section) and occupational illness, accident, and injury records.

Non-occupational/Patient Record means a record of treatment or examination, created and maintained by a health care facility, when the person is admitted to or voluntarily seeks treatment at the health care facility for non-job-related reasons. Records maintained by an agency dispensary are patient records for the purposes of these regulations except when such records result as a condition of employment or relate to an on-the-job occurrence. In these cases, the records are “Occupational Medical Records” as defined herein.

Non-personal Record means any agency aggregate or statistical record or report resulting from studies covering employees or resulting from studies or the work-site environment.

§ 293.503 Implementing instructions.

Agencies must issue written internal instructions describing how their EMFS is to be implemented. These instructions must—

(a) Describe overall operation of the system within the agency including the designation of the agency official who will be responsible for overall system management. When the agency has a medical officer, that individual must be named the system manager. The system manager may then designate others within the agency to handle the day-to-day management of the records, e.g., the custodian of the records at the site where they are maintained;

(b) Be prepared with joint participation by agency medical, health, and safety, and personnel officers;

(c) Describe where and under whose custody employee occupational medical records will be physically maintained;

(d) Designate which agency office(s) will be responsible for deciding when and what occupational medical records are to be disclosed either to other agency officials or outside the agency;

(e) Ensure proper records retention and security, and preserve confidentiality of doctor/patient relationships;

(f) Provide that when the agency is requesting an EMF from the National Personnel Records Center (NPRC), the request form will show the name, title, and address of that agency’s system manager or designee, who is the only official authorized to receive the EMF;

(g) Be consistent with Office regulations relating to personnel actions when medical evidence is a factor (5 CFR parts 339, 432, 630, 752, and 831);

(h) Provide guidance on how an accounting of any record disclosure, as required by the Privacy Act (5 U.S.C. 552a(c)), will be done in a way that ensures that the accounting will be available for the life of the EMF;

(i) When long-term occupational medical records exist, provide for the creation of an EMF for an employee transferring to another agency or leaving Government service, and whether an EMF is to be established at the time an employee is being reassigned within the agency;

(j) Ensure a right of access (consistent with any special Privacy Act handling procedures invoked) to the records, in whatever format they are maintained, by the employee or a designated representative;

(k) Ensure that a knowledgeable official determines that all appropriate long-term occupational medical records are in an EMF prior to its transfer to another agency, to the
§ 293.505 Establishment and protection of Employee Medical Folder.

(a) As required by these rules, agencies must establish an EMF when the employee leaves the employing agency and occupational medical records for that employee exist; agencies may also
§ 293.506 Ownership of the Employee Medical Folder.

The EMF of each employee in a position subject to civil service rules and regulations is part of the records of the Office. When the EMF also contains occupational medical records created during employment in a position not subject to the civil service (e.g., with the Postal Service), the EMF is then part of the records of both the Office and the employing agency.

§ 293.507 Maintenance and content of the Employee Medical Folder.

The agency head must maintain all appropriate employee occupational medical records in the EMFS. When an EMF is established for an employee, as required in §293.504, the agency’s EMFS must be searched to obtain all records designated for retention in the EMF.

§ 293.508 Type of folder to be used.

Each agency must use a folder that (a) has been specifically identified as the EMF and issued through Federal Supply Service contracts (Standard Form 66 D); (b) has been authorized as an exception to this form by the Office for use by a specific agency; or (c) in the case of an EMF containing records under joint control of the Office and another agency, an exception to the use of this form that has been jointly authorized.

§ 293.509 Use of existing Employee Medical Folders upon transfer or reemployment.

The requirements of §293.306, regarding the use of existing OPFs, apply to the use of existing EMFs upon the employee’s transfer to or reemployment in a new employing agency.

§ 293.510 Disposition of Employee Medical Folders.

(a) When an employee transfers to another Federal agency, the EMF must be transferred to the gaining agency at the same time as the employee’s OPF. The EMF is to be addressed only to the gaining agency’s designated manager (medical, health, safety, or personnel officer, or other designee) of the EMFS.

(b) When an employee is separated from the Federal service, the EMF must be forwarded to the NPRC with the OPF, using the instructions in §293.307 of this part.

(c) When a former Federal employee is re-employed by an agency, and that agency believes that an EMF exists, either at the last employing agency or at the NPRC, the agency will request the EMF, but no sooner than 30 days after the date of the new appointment. No EMFs will be routinely retrieved during the initial review process (as is done with the OPF) except when authority exists for the agency to require a medical evaluation prior to reaching a decision on employability. EMFs are to be transferred by the NPRC only to the agency-designated manager (medical, health, safety, or personnel, or other designee) shown on the request form.
§ 293.511 Retention schedule.

(a) Temporary EMFS records must not be placed in a newly-created EMF for a separating employee and must be removed from an already existing EMF before its transfer to another agency or to the NPRC. Such records must be disposed of in accordance with General Records Schedule (GRS) 1, item 2L issued by the National Archives and Records Administration (NARA).

(b) Occupational Medical Records considered to be long-term records must be maintained for the duration of employment, plus 30 years or for as long as the OPF is maintained, whichever is longer. Therefore, upon separation, the records must be provided to the employee’s new agency, or they must be transferred to the NPRC, which will dispose of them in accordance with GRS 1, item 2L issued by NARA.

PART 294—AVAILABILITY OF OFFICIAL INFORMATION

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

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Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

SOURCE: 54 FR 25094, June 13, 1989, unless otherwise noted.

§ 294.101 Purpose.

This subpart contains the regulations of the Office of Personnel Management (OPM) implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552. Except as provided by § 294.105, OPM will use the provisions of this subpart to process all requests for records.

§ 294.102 General definitions.

All of the terms defined in the Freedom of Information Act, and the definitions included in the “Uniform Freedom of Information Act Fee Schedule and Guidelines” issued by the Office of Management and Budget apply, regardless of whether they are defined in this subpart.

Direct costs means the expenditures that an agency actually incurs in searching for, duplicating, and reviewing documents to respond to an FOIA request. Overhead expenses (such as the cost of space, and heating or lighting the facility in which the records are stored), are not included in direct costs.

Disclose or disclosure means making records available, on request, for examination and copying, or furnishing a copy of records.

Duplication means the process of making a copy of a document necessary to respond to an FOIA request. Among the forms that such copies can take are paper, microform, audiovisual materials, or machine readable documentation (e.g., magnetic tape or disk).

Records, information, document, and material have the same meaning as the term agency records in section 552 of title 5, United States Code.

Review means the process of initially examining documents located in response to a request to determine whether any portion of any document
§ 294.103 Definitions of categories and assignment of requests and requesters to categories.

OPM will apply the definitions and procedures contained in this section to assign requesters to categories. The four categories established by 5 U.S.C. 552(a) are requests for commercial use, requests for non-commercial use made by educational or non-commercial scientific institutions, requests for non-commercial use made by representatives of the news media, and all others.

(a) Request for commercial use. A “commercial use request” is from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person or institution on whose behalf the request is made. In determining whether a request properly belongs in this category, OPM will look first to the intended use of the documents being requested.

(b) Request for non-commercial use made by an educational or non-commercial scientific institution. OPM will include requesters in one of the two categories described in paragraphs (b)(1) and (2) of this section when the request is being made as authorized by or under the auspices of, a qualifying institution; and the records are sought, not for a commercial use, but in furtherance of scholarly or scientific research.

(1) Educational institution refers to any public or private, preschool, elementary, or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education, which operates a program or programs of scholarly or scientific research.

(2) A non-commercial scientific institution refers to an institution that is not operated on a commercial basis as that term is referenced in paragraph (a) of this section, and which is operated solely to conduct scientific or scholarly research, the results of which are not intended to promote any particular product or industry.

(c) Request from a representative of the news media. “Representative of the news media” refers to any person actively gathering news for an entity that is organized and operated to publish, broadcast, or otherwise disseminate news to the public. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals who make their products available for purchase or subscription by the general public. Free-lance journalists may be regarded as representatives of the news media if they demonstrate a solid basis for expecting publication, or some other form of dissemination, through a particular organization even though they are not actually employed by it. OPM will assign news media officials to this category only when a request is not for commercial use. If a person meets the other qualifications for inclusion, OPM will not apply the term “commercial use” to his or her request for records in support of a news dissemination function.

(d) Requests from others. The category “all others,” consists of any requesters not covered by paragraphs (a), (b), or (c) of this section. However, as provided by §294.105, OPM will use its Privacy Act regulations, rather than this subpart, when individuals ask for records about themselves that may be filed in OPM systems of records.

§ 294.104 Clarifying a requester’s category.

(a) Seeking clarification of a requester’s category. OPM may seek additional clarification before assigning a person to a specific category if—
Office of Personnel Management § 294.107

(1) There is reasonable cause to doubt the requester's intended use of records; or

(2) The intended use is not clear from the request itself; or

(3) There is any other reasonable doubt about qualifications that may affect the fees applicable or the services rendered under §294.109.

(b) Prompt notification to requester. When OPM seeks clarification as provided by paragraph (a) of this section, it will provide prompt notification either by telephone or in writing of the information or materials needed.

(c) Effect of seeking clarification on time limits for responding. When applying the time limits in section 552 of title 5, United States Code, OPM will not officially consider any request for records as being received until the official who is assigned responsibility for making a decision on releasing the records has received any additional clarification sought under paragraphs (a) and (b) of this section; and has determined that the clarifying information is sufficient to correctly place the requester in one of the categories prescribed in this section. If the requested clarifying information is not received within a reasonable time, OPM will, based on the information available, determine a final category for the request and calculate applicable fees.

[54 FR 25094, June 13, 1989, as amended at 58 FR 32043, June 8, 1993]

§ 294.105 Access to the requester's own records.

When the subject of a record, or a duly authorized representative of the subject, requests his or her own records from a Privacy Act system of records, OPM will process the request under the Privacy Act procedures in part 297 of this chapter.

§ 294.106 Handbook of Publications, Periodicals, and FPM Issuances and addendum.

(a)(1) Annually, OPM publishes OPM-AG-PSD-01, "Handbook of Publications, Periodicals, and FPM Issuances," and accompanying addendum. This handbook and addendum lists material published and offered for sale are available for public inspection or copying. Unless the material is published and offered for sale, OPM makes available for public inspection and copying:

(i) Final opinions made by OPM in the adjudication of cases;

(ii) OPM policy statements and interpretations adopted by OPM but not published in the Federal Register; and

(iii) OPM administrative staff manuals and instructions that affect a member of the public.

(b) A copy of this handbook and addendum is available at no cost from the—Publishing Management Branch, Office of Personnel Management, room B464, 1900 E St. NW, Washington, DC 20415-0001.

(c) OPM indexes material in this handbook and addendum format for the convenience of the public. Indexing does not constitute a determination that all of the material listed is within the category that is required to be indexed by 5 U.S.C. 552(a)(2). Most of OPM's publications may be found in OPM's Library in room 5H27 at the address listed in paragraph (b) of this section.

(d) As provided by 5 U.S.C. 552(a)(2), OPM has determined that it is unnecessary and impractical to publish the "Handbook of Publications, Periodicals, and FPM Issuances" and addendum more frequently than annually because of the small number of revisions that occur.

[57 FR 32150, July 21, 1992]

§ 294.107 Places to obtain records.

(a) Address requests for OPM records to the officials listed in paragraph (b), (c), or (d) of this section.

(b) The following is a list of key Washington, DC, officials of OPM and their principal areas of responsibility. Address requests for records to the appropriate official using the official's name.
title and the following address: Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

<table>
<thead>
<tr>
<th>Send to—</th>
<th>For subject-matter about—</th>
</tr>
</thead>
<tbody>
<tr>
<td>Associate Director for Administration.</td>
<td>Administrative services; information management, including automated data processing; equal employment opportunity; procurement; and personnel.</td>
</tr>
<tr>
<td>Associate Director for Retirement and Insurance.</td>
<td>Retirement; life and health insurance.</td>
</tr>
<tr>
<td>Associate Director for Personnel Systems and Oversight.</td>
<td>Personnel management in agencies; pay; position classification; wage grade jobs; performance management; and employee and labor relations.</td>
</tr>
<tr>
<td>Assistant Director for Workforce Information.</td>
<td>Governmentwide personnel statistics; official personnel and employee medical folders.</td>
</tr>
<tr>
<td>Associate Director for Investigations.</td>
<td>Background investigations and related records on individuals.</td>
</tr>
<tr>
<td>Associate Director for Career Entry.</td>
<td>Nationwide examining and testing for employment; promotions; administrative law judges; affirmative employment programs for minorities, women, veterans, and the handicapped; recruiting and employment; and staffing policy.</td>
</tr>
<tr>
<td>Director, Washington Area Service Center.</td>
<td>Training, education, and development; senior executive service.</td>
</tr>
<tr>
<td></td>
<td>Evaluating, testing, and training operations in Washington, DC.</td>
</tr>
</tbody>
</table>

(c) Direct requests for records on subjects not specifically referred to in this section or in the handbook or addendum, to Plans and Policies Division (CHP-500), Office of Information Resources Management, Administration Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

(d) The following is a list of OPM regional offices. Address requests for regional records to the Regional Director, Office of Personnel Management in the appropriate region:

- Atlanta Region—Richard B. Russell Federal Building, Suite 904, 75 Spring Street, SW., Atlanta, GA 30303-3019.
- Chicago Region—ohn C. Kluczynski Federal Building, 30th Floor, 230 South Dearborn Street, Chicago, IL 60604.
- Dallas Region—1100 Commerce Street, Dallas, TX 75242.
- Philadelphia Region—William J. Green, Jr., Federal Building, 600 Arch Street, Philadelphia, PA 19106-1596.
- San Francisco Region—211 Main Street, 7th Floor, San Francisco, CA 94105.

(e) When an organization does not have records in its custody. When an OPM organization receives a Freedom of Information Act request for OPM records that it does not have in its possession, it will normally either—

1. Retrieve the records from the organization that has possession of them; or
2. Promptly forward the request to the appropriate organization. If a person has asked to be kept apprised of anything that will delay the official receipt of a request, OPM will provide notice of this forwarding action. Otherwise, OPM may, at its option, provide such notice.

(f) Applying the time limits. When applying the time limits in section 552 of title 5, United States Code, OPM will not officially consider any request to be received until it arrives in the OPM organization that has responsibility for the records sought.

(g) Records from other Government agencies. When a person seeks records that originated in another Government agency, OPM may refer the request to the other agency for response. Ordinarily, OPM will provide notice of this type of referral.

(h) Creating records. If a person seeks information from OPM in a format that does not currently exist, OPM will not ordinarily compile the information for the purpose of creating a record to respond to the request. OPM will advise the individual that it does not have records in the format sought. If other existing records would reasonably respond to the request or portions of it, OPM may provide these. If fees as provided in §294.109 apply to any alternative records, OPM will advise the requester before providing the records.


§294.108 Procedures for obtaining records.

(a) Mailing or delivering a request. Any person may ask for records under section 552 of title 5, United States Code, by directing a letter to one of the organizations listed in §294.107, or by delivering a request in person at the addresses listed in that section during business hours on a regular business day.
Office of Personnel Management

§ 294.109

(b) Proper marking. Each request for records should have a clear and prominent notation on the first page, such as “Freedom of Information Act Request.” In addition, if sent by mail or otherwise submitted in an envelope or other cover, mark the outside clearly and prominently with “FOIA Request” or “Freedom of Information Act Request.”

(c) Contents of request letter. A request must describe the records sought in sufficient detail to enable OPM personnel to locate the records with a reasonable amount of effort.

(1) OPM will regard a request for a specific category of records as fulfilling the requirements of this paragraph, if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive to OPM operations.

(2) Whenever possible, a request should include specific information about each record sought, such as the date, number, title or name, author, recipient, and subject matter of the record.

(3) If an OPM organization determines that a request does not reasonably describe the records sought, it will either provide notice of any additional information needed or otherwise state why the request is insufficient. OPM will also offer the record seeker an opportunity to confer, with the objective of reformulating the request so that it meets the requirements of this section.

(d) Medical records. OPM or another Government agency may disclose the medical records of an applicant, employee, or annuitant to the subject of the record, or to a representative designated in writing. However, medical records may contain information about an individual’s mental or physical condition that a prudent physician would hesitate to give to the individual. Under such circumstances, OPM may disclose the records, including the exact nature and probable outcome of the condition, only to a licensed physician designated in writing for that purpose by the individual or his or her designated representative.

(e) Publications. If the subject matter of a request includes material published and offered for sale (e.g., by the Superintendent of Documents, Government Printing Office), OPM will explain where a person may review and/or purchase the publications.

(f) Responses within 10 working days. Except in unusual circumstances (as defined in 5 U.S.C. 552(a)(6)(B)), OPM will determine whether to disclose or deny records within 10 working days after receipt of the request (excluding weekends and holidays) and will provide notice immediately of its determination and the reasons therefor, and of the right to appeal any adverse determination.

[54 FR 25094, June 13, 1989, as amended at 58 FR 32044, June 8, 1993]

§ 294.109 Fees.

(a) Applicability of fees. (1) OPM will furnish, without charge, reasonable quantities of material that it has available for free distribution to the public.

(2) OPM may furnish other materials, subject to payment of fees intended to recoup the full allowable direct costs of providing services. Fees for these materials may be waived if the request meets the requirements specified in paragraph (f) of this section.

(3) If a request does not include an acceptable agreement to pay fees and does not otherwise convey a willingness to pay fees, OPM will promptly provide notification of the estimated fees. This notice will offer an opportunity to confer with OPM staff to reformulate the request to meet the requester’s needs at a lower cost. Upon agreement to pay the required fees, OPM will further process the request.

(4) As described in §294.107, OPM ordinarily responds to FOIA requests in a decentralized manner. Because of this, OPM may at times refer a single request to two or more OPM entities to make separate direct responses. In such cases, each responding entity may assess fees as provided by this section, but only for direct costs associated with any response it has prepared.

(5) If fees for document search are authorized as provided in paragraph (c) of this section, OPM may assess charges for employee time spent searching for documents and other direct costs of a search, even if a search fails to locate records or if records located are determined to be exempt from disclosure. Searches should be conducted in the
§ 294.109

most efficient and least expensive man-
ner so as to minimize the cost for both
the agency and the requester, e.g., per-
sionnel should not engage in line-by-
line search when photocopying an en-
tire document would be a less expen-
sive and quicker way to comply with a request.

(6) Services requested and performed
but not required under the FOIA, such
as formal certification of records as
ture copies, will be subject to charges
under the Federal User Charge Statute
(31 U.S.C. 483a) or other applicable
statutes.

(b) Rates used to compute fees. The fol-
lowing rates form the basis for assess-
ing reasonable, standard charges for
document search, duplication, and re-
view as required by 5 U.S.C. Section
The listing of rates below should be
used in conjunction with the fee com-
ponents listed in paragraph (c) of this
section:

<table>
<thead>
<tr>
<th>Service</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee time</td>
<td>Salary rate plus 16% to cover benefits</td>
</tr>
<tr>
<td>Photocopies (up to 8½&quot; X 14&quot;)</td>
<td>$.013 per page</td>
</tr>
<tr>
<td>Printed materials, per 25 pages</td>
<td>$.025.</td>
</tr>
<tr>
<td>Computer time</td>
<td>Actual direct cost.</td>
</tr>
<tr>
<td>Supplies and other materials</td>
<td>Actual direct cost.</td>
</tr>
<tr>
<td>Other costs not identified above</td>
<td>Actual direct cost.</td>
</tr>
</tbody>
</table>

(c) Assessing fees based on requester’s
category. Rates are assessed differently
for the different categories of request-
ers as defined in §294.103. Requests
have three cost components for the
purpose of assessing fees: the cost of
document search, the cost of dupli-
cation, and the cost of review. OPM will
apply the rates in paragraph (b) of this
section to the cost components that
apply to the requester’s category as
follows:

<table>
<thead>
<tr>
<th>Requester’s category</th>
<th>Search</th>
<th>Review</th>
<th>Duplication</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial</td>
<td>Actual direct costs</td>
<td>No charge</td>
<td>Actual direct costs</td>
</tr>
<tr>
<td>Non-commercial (educational</td>
<td>No charge</td>
<td>Actual direct costs</td>
<td>No charge</td>
</tr>
<tr>
<td>or scientific institution) or</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>news media.</td>
<td></td>
<td></td>
<td>Actual direct costs</td>
</tr>
<tr>
<td>All others</td>
<td>Actual direct costs²</td>
<td>No charge</td>
<td>Actual direct costs</td>
</tr>
</tbody>
</table>

¹First 100 pages of paper copies or reasonable equivalent, such as a microfiche containing the equivalent of 100 pages, are
copied free.
²First 2 hours of manual search time are free. If requested records are maintained in a computerized data base, OPM will use
the following formula, suggested by OMB, to provide the equivalent of 2 hours manual search time free before charging for com-
puter search time: The operator’s hourly salary plus 16% will be added to the hourly cost of operating the central processing unit
that contains the record information.

(d) Payment of fees. Fees are payable
by check or money order to the Office
of Personnel Management.

(1) If the total charge for fulfilling
the request will be less than $25, no fee
will be assessed (except as provided in
paragraph (d)(3) of this section).

(2) If a request may reasonably result
in a fee assessment of more than $25,
OPM will not release the records unless
the requester agrees in advance to pay
the anticipated charges.

(3) OPM may aggregate requests and
charge fees accordingly, when there is
a reasonable belief that a requester, or
a group of requesters acting in concert,
is attempting to break down a request
into a series of requests to evade the
assessment of fees.

(i) If multiple requests of this type
occur within a 30-day period, OPM may
provide notice that it is aggregating
the requests and that it will apply the
fee provisions of this section, including
any required agreement to pay fees and
any advance payment.

(ii) Before aggregating requests of
this type made over a period longer
than 30 days, OPM will assure that it
has a solid basis on which to conclude
that the requesters are acting in con-
cert and are acting specifically to
avoid payment of fees.

(iii) OPM will not aggregate multiple
requests on unrelated subjects from
one person.

(e) Payment of fees in advance. If OPM
estimates or determines that fees are
likely to exceed $250, OPM may require
the payment of applicable fees in ad-
ance.

(1) If an OPM official, who is author-
ized to make a decision on a particular
request, determines that the requester
Office of Personnel Management § 294.109

has a history of prompt payment of FOIA fees, OPM will provide notice of the likely cost and obtain satisfactory assurance of full payment.

(2) When a person, or an organization that a person represents, has previously failed to pay assessed fees in a timely manner (i.e., payment was not made within 30 days of the billing date), OPM will require full payment of all fees in advance.

(3) If a person, or an organization that a person represents, has not paid fees previously assessed, OPM will not begin to process any new request for records until the requester has paid the full amount owed plus any applicable interest, and made a full advance payment for the new request.

(f) Waiver or reduction of fees. OPM will furnish documents without any charge, or at a reduced charge, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and release of the material is not primarily in the commercial interest of the requester.

(1) In determining whether disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, OPM shall consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Government";

(ii) The information value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of Government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities.

(2) In determining whether disclosure of the information is or is not primarily in the commercial interest of the requester, OPM shall consider the following factors:

(i) The existence and magnitude of a commercial interest. Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so—

(ii) The primary interest in disclosure. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(3) In all cases the burden of proof shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(g) Denial of waiver request. (1) An OPM official may deny a request for a full or partial waiver of fees without further consideration if the request does not include:

(i) A clear statement of the requester's interest in the requested information;

(ii) A clear statement of the use proposed for the information and whether the requester will derive income or other benefit from such use;

(iii) A clear statement of how the public will benefit from OPM's release of the requested information; and

(iv) If specialized use of the documents is contemplated, a clear statement of the requester's qualifications that are relevant to the specialized use.

(2) A requester may appeal the denial of a waiver request as provided by §294.110 of this part.

(h) Fees not paid; penalties; debt collection. (1) If a request, which requires the advance payment of fees under the criteria specified in this section, is not accompanied by the required payment, OPM will promptly notify the requester that the required fee must be paid within 30 days, and that OPM will not further process the request until it receives payment.

(2) OPM may begin assessing interest charges on an unpaid bill starting on the 31st day following the date on which the bill was sent. Interest will be charged at the rate prescribed in 31 U.S.C. 3717, and will accrue from the date of the billing.
§ 294.110

(3) To encourage the repayment of debts incurred under this subpart, OPM may use the procedures authorized by Public Law 97-365, the Debt Collection Act of 1982. This may include disclosure to consumer reporting agencies and the use of collection agencies.

[58 FR 32044, June 8, 1993]

§ 294.110 Appeals.

(a) When an OPM official denies records or a waiver of fees under the Freedom of Information Act, the requester may appeal to the—

Office of the General Counsel, Office of Personnel Management, Washington, DC 20415

(b) A person may appeal denial of a Freedom of Information Act request for information maintained by OPM’s Office of the General Counsel to the—

Deputy Director, Office of Personnel Management Washington, DC 20415

(c) If an official of another agency denies a Freedom of Information Act request for records in one of OPM’s Government-wide systems of records, the requester should consult that agency’s regulations for any appeal rights that may apply. An agency may, at its discretion, direct these appeals to OPM’s Office of the General Counsel.

(d) An appeal should include a copy of the initial request, a copy of the letter denying the request, and a statement explaining why the appellant believes the denying official erred.

(e) The appeals provided for in this section constitute the final levels of administrative review that are available. If a denial of information or a denial of a fee waiver is affirmed, the requester may seek judicial review in the district court of the United States in the district in which he or she resides, or has his or her principal place of business, or in which the agency records are situated, or in the District of Columbia.

§ 294.111 Custody of records; subpoenas.

(a) The Chief, Plans and Policies Division, Administration Group, OPM, has official custody of OPM records. A subpoena or other judicial order for an official record from OPM should be served on the—

Chief, Plans and Policies Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415

(b) See 5 CFR part 297, subpart D—Disclosure of Records, of this title, for the steps other officials should take on receipt of a subpoena or other judicial order for an Office record.


§ 294.112 Confidential commercial information.

(a) In general, OPM will not disclose confidential commercial information in response to a Freedom of Information Act request except in accordance with this section.

(b) The following definitions from Executive Order 12600, apply to this section:

(1) Confidential commercial information means records provided to the Government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) Submitter means any person or entity who provides confidential commercial information, directly or indirectly, to OPM. The term includes, but is not limited to, corporations, state governments, and foreign governments.

(c) Submitters of information shall designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of their submissions that they consider to be confidential commercial information. Such designations shall expire 10 years after the date of submission unless the submitter requests, and provides reasonable justification for, a designation period of greater duration.

(d) OPM shall, to the extent permitted by law, provide prompt written notice to an information submitter of Freedom of Information requests or administrative appeals if:

(1) The submitter has made a good faith designation that the requested material is confidential commercial information, or
Office of Personnel Management § 294.201

(2) OPM has reason to believe that the requested material may be confidential commercial information.

(e) The written notice required in paragraph (d) of this section shall either describe the confidential commercial material requested or include as an attachment, copies or pertinent portions of the records.

(f) Whenever OPM provides the notification and opportunity to object required by paragraphs (d) and (h) of this section, it will advise the requester that notice and an opportunity to object are being provided to the submitter.

(g) The notice requirements of paragraph (d) of this section shall not apply if:

(1) OPM determines that the information should not be disclosed;

(2) The information has been lawfully published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(4) The information was submitted on or after August 20, 1992, and has not been designated by the submitter as exempt from disclosure in accordance with paragraph (c) of this section, unless OPM has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such a case, OPM shall, within a reasonable number of days prior to a specified disclosure date, notify the submitter in writing of any final administrative decision to disclose the information.

(h) The notice described in paragraph (d) of this section shall give a submitter a reasonable period from the date of the notice to provide OPM with a detailed written statement of any objection to disclosure. The statement shall specify all grounds for withholding any of the material under any exemption of the Freedom of Information Act. When Exemption 4 of the FOIA is cited as the grounds for withholding, the specifica- tion shall demonstrate the basis for any contention that the material is a trade secret or commercial or financial information that is privileged or confidential. It must also include a specification of any claim of competitive harm, including the degree of such harm, that would result from disclosure. Information provided in response to this paragraph may itself be subject to disclosure under the FOIA. Information provided in response to this paragraph shall also be subject to the designation requirements of paragraph (c) of this section. Failure to object in a timely manner shall be considered a statement of no objection by OPM, unless OPM extends the time for objection upon timely request from the submitter and for good cause shown. The provisions of this paragraph concerning opportunity to object shall not apply to notices of administrative appeals, when the submitter has been previously provided an opportunity to object at the time the request was initially considered.

(i) OPM shall consider carefully a submitter's objections and specific grounds for nondisclosure, when received within the period of time described in paragraph (h) of this section, prior to determining whether to disclose the information. Whenever OPM decides to disclose the information over the objection of a submitter, OPM shall forward to the submitter a written notice, which shall include:

(1) A statement of the reasons why the submitter's disclosure objections were not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date.

(j) OPM will notify both the submitter and the requester of its intent to disclose material a reasonable number of days prior to the specified disclosure date.

(k) Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, OPM shall promptly notify the submitter.

[57 FR 32150, July 21, 1992]

Subpart B—The Public Information Function § 294.201 Public information policy.

(a) In addition to the basic policies of the Office relative to the disclosure of
§ 294.301

Information when requested by a member of the public, the Office has an independent public information policy for bringing to the attention of the public through news releases, publications of the Office, or other methods, information concerning the functions of the Office as a Federal agency, and the programs administered by the Office.

(b) The Assistant Director for Public Affairs carries out the public information policy of the Office. In addition, each employee of the Office shall cooperate in carrying out this policy.

[50 FR 3310, Jan. 24, 1985]

Subpart C—Office Operations

§ 294.301 Policy and interpretations.

(a) Statements of Office policy and interpretations of the laws and regulations administered by the Office which the Office has adopted, whether or not published in the Federal Personnel Manual or the Federal Register, are available to the public.

(b) Generally, memoranda, correspondence, opinions, data, staff studies, information received in confidence, and similar documentary material, when prepared for the purpose of internal communication within the Office or between the Office and other agencies, organizations, or persons, are not available to the public.

[50 FR 3310, Jan. 24, 1985]

Subpart D—Cross References

§ 294.401 References.

The table below provides assistance in locating other OPM regulations in title 5 of the Code of Federal Regulations that have provisions on the disclosure of records:

<table>
<thead>
<tr>
<th>Type of information</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Classification appeal records</td>
<td>511.616.</td>
</tr>
<tr>
<td>Classification information</td>
<td>175.101.</td>
</tr>
<tr>
<td>Employee performance folders</td>
<td>285.311.</td>
</tr>
<tr>
<td>Examination and related subjects</td>
<td>300.201.</td>
</tr>
<tr>
<td>records</td>
<td></td>
</tr>
<tr>
<td>Grade and pay retention records</td>
<td>536.307.</td>
</tr>
<tr>
<td>Investigative records</td>
<td>736.104.</td>
</tr>
<tr>
<td>Job grading reviews and appeals</td>
<td>532.707.</td>
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[54 FR 25098, June 13, 1989, as amended at 58 FR 32046, June 8, 1993]

PART 297—PRIVACY PROCEDURES FOR PERSONNEL RECORDS

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Subpart A—General Provisions

§ 297.101  Purpose and scope.

This part sets forth the regulations of the U.S. Office of Personnel Management (the Office) to govern the maintenance, protection, disclosure, and amendment of records within the systems of records as defined by the Privacy Act of 1974 (5 U.S.C. 552a), Public Law 93–579.

§ 297.102  Definitions.

In this part, the terms agency, individual, maintain, record, statistical records, and systems of records have the same meanings as defined in the Privacy Act, 5 U.S.C. 552a. In addition:

Access means providing a copy of a record to, or allowing review of the original record by, the data subject or the data subject’s authorized representative, parent, or legal guardian;

Act means the Privacy Act of 1974, Public Law 93–579, 5 U.S.C. 552a, as amended;

Agency means any department or independent establishment in the Executive Branch of the Federal Government, including a Government corporation, of Government-controlled corporation, except those specifically excluded from the Office recordkeeping requirements by statute, this title, or formal agreement between the Office and the agency.

Amendment means the correction, addition, deletion, or destruction of a record or specific portions of a record;

Data subject means the individual to whom the information pertains and by whose name or other individual identifier the information is retrieved;

Disclosure means providing personal review of a record, or a copy thereof, to someone other than the data subject or the data subject’s authorized representative, parent, or legal guardian;

Office means the U.S. Office of Personnel Management;

Personnel record means any record concerning an individual which is maintained and used in the personnel management or personnel policy-making process; and

System manager means the Office or agency official, designated by the head of the agency, who has the authority to decide Privacy Act matters relative to each system of records maintained by the Office.

§ 297.103  Designations of authority by system manager.

The responsible Office system manager having jurisdiction over a system of records may designate in writing an Office employee to evaluate and issue the Office’s decision on Privacy Act matters relating to either internal, central, or Governmentwide systems of records.

§ 297.104  Types of records.

The Office manages three generic types of personnel records systems:

(a) Internal systems of records are under the Office’s physical control and are established and maintained by the Office solely on its own employees and, when appropriate, on others in contact with the Office regarding matters within its authority;

(b) Centralized systems of personnel records are physically established and maintained by the Office with regard to most current and former Federal employees and some applicants for Federal employment. Although they are Office records, they are in the physical custody of those agencies. Though in the physical custody of agencies, the Office retains authority under its record management authority and under the Privacy Act to decide appeals of initial agency determinations regarding access to and amendment of material in these systems.

§ 297.105  Agency and Office responsibilities for systems of records and applicability of the regulations.

(a) These regulations apply to processing requests from both current and former Office employees for records contained in internal, central, and Governmentwide systems of records managed by the Office.
§ 297.106 Contact point for Privacy Act matters.

(a) Individual's requesting access to records pertaining to them that are maintained in a system of records should submit a written request to the appropriate system manager and state that the request is being made pursuant to the Privacy Act of 1974.

(b) The Office or agency will require proof of identity from a requester. The Office or agency reserves the right to determine the adequacy of any such proof. The general identifying items the Office will require a requester to provide when a request is made to the Office are—

(1) Full name, signature, and home address;
(2) Social security number (for systems of records that include this identifier);
(3) Current or last place and dates of Federal employment, when appropriate and;
(4) Date and place of birth.
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§ 297.202 Methods of access.

(a) The methods for allowing access to records, when such access has been granted by the Office or agency, are:
(1) Inspection in person in the designated office during the hours specified by the Office or agency; or
(2) Transfer of records at the option of the Office or agency to another more convenient Federal facility.
(b) Generally, Office of Personnel Management offices will not furnish certified copies of records. When copies are to be furnished, they may be provided as determined by the Office and may require payment of any fee levied in accordance with the Office's established fee schedule.
(c) When the requester seeks to obtain original documentation, the Office reserves the right to limit the request to copies of the original records. Original records should be made available for review only in the presence of the system manager or designee. An agency should consult with the Office when it receives a request for original documentation. Section 2701(a) of title 18 of the United States Code makes it a crime to conceal, mutilate, obliterate, or destroy any record filed in a public office, or to attempt to do so.

§ 297.203 Access by the parent of a minor or by the legal guardian of an individual declared to be incompetent.

(a) A parent, legal guardian, or custodian of a minor, upon presentation of suitable personal identification, may access on behalf of a minor any record pertaining to the minor in a system of records maintained by the Office.
(b) A legal guardian, upon presentation of documentation establishing guardianship, may access on behalf of an individual declared to be incompetent by a court of competent jurisdiction, any record pertaining to that individual in a system of records maintained by the Office.
(c) Minors are not precluded from exercising personally those rights provided them by the Privacy Act.

§ 297.204 Access by the representative of the data subject.

A record may be disclosed to a representative of the individual to whom the record pertains after the system manager receives written authorization from the individual who is the subject of the record.

§ 297.205 Access to medical records.

When a request for access involves medical or psychological records that the system manager believes requires special handling, the requester should be advised that the material will be provided only to a physician designated by the data subject. Upon receipt of the designation and upon verification of the physician's identity, the records will be made available to the physician, who will have full authority to disclose those records to the data subject when appropriate.

§ 297.206 Fees charged by the Office.

(a) No fees will be charged for search and review time expended by the Office to produce a record, or for making a photostatic copy of the record, or for having it personally reviewed by the Office when a record is retrieved from a system of records pertaining to that data subject. Additional copies provided may be charged under the Office's established fee schedule.
(b) When the fees chargeable under this section will amount to more than $25, the requester will be notified and payment of fees may be required before the records are provided.
(c) Remittance should be made by either a personal check, bank draft, or a money order that is made payable to the U.S. Office of Personnel Management and addressed to the appropriate system manager.

§ 297.207 Denials of access and appeals with respect to such denials.

(a) If an access request is denied, the Office or agency response will be in writing and will include a statement of the reasons for the denial and the procedures available to appeal the denial, including the name, position title, and address of the Office official responsible for the review.
(b) Nothing in this part should be construed to entitle a data subject the
§ 297.208 Judicial review.

Upon receipt of notification that the denial of access has been upheld on administrative review, the requester has the right to judicial review of the decision for up to 2 years from the date on which the cause of action arose. Judicial review may be sought in the district court of the United States in the district in which—

(a) The requester resides;

(b) The requester has his or her principal place of business; or

(c) The agency records are situated; or it may be sought in the district court of the District of Columbia.

Subpart C—Amendment of Records

§ 297.301 General provisions.

(a) Individuals may request, in writing, the amendment of their records maintained in an Office system of records by contacting the appropriate system manager. The Office or agency will require proof of identity from a requester. The Office or agency reserves the right to determine the adequacy of any such proof. The general identifying items the Office will require a requester to provide when a request is made to the Office are—

(1) Full name, signature, and home address;

(2) Social security number (for systems of records that include this identifier);

(3) Current or last place and dates of Federal employment, when appropriate; and

(4) Date and place of birth.

(b) An individual may be represented by another party when requesting amendment of records.

(c) A request for amendment should include the following:

(1) The precise identification of the records to be amended;

(2) The identification of the specific material to be deleted, added, or changed; and

(3) A statement of the reasons for the request, including all available material substantiating the request.

(d) Requests for amendment of records should include the words “PRIVACY ACT AMENDMENT REQUEST” in capital letters on both the envelope and at the top of the request letter.

(e) A request for administrative review of an agency denial to amend a record in the Office’s systems of records should be addressed to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(f) A request for administrative review of a denial to amend a record by an Office official should be addressed to the Information and Privacy Appeals Counsel, Office of the General Counsel, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(g) The burden of proof demonstrating the appropriateness of the requested amendment rests with the requester; and, the requester must provide relevant and convincing evidence in support of the request.
§ 297.302 Time limits.

The system manager should acknowledge receipt of an amendment request within 10 working days and issue a determination as soon as practicable. This timeframe begins when the request is received by the proper Office or agency official.

§ 297.303 Applicability of amendment provisions.

(a) The amendment procedures are not intended to allow a challenge to material that records an event that actually occurred nor are they designed to permit a collateral attack upon that which has been or could have been the subject of a judicial, quasi-judicial, or administrative proceeding. The amendment procedures are also not designed to change opinions in records pertaining to the individual.

(b) The amendment procedures apply to situations when an occurrence that is documented was challenged through an established judicial, quasi-judicial, or administrative procedure and found to be inaccurately described; when the document is not identical to the individual's copy; or when the document is not created in accordance with the applicable recordkeeping requirements. (For example, the amendment provisions are not designed to allow a challenge to the merits of an agency adverse action that is documented in an individual's Official Personnel Folder.)

§ 297.304 Approval of requests to amend records.

(a) If the system manager determines that amendment of a record is appropriate, the system manager will take the necessary steps to have the necessary changes made and will see that the individual receives a copy of the amended record.

(b) When practicable and appropriate, the system manager will advise all prior recipients of the fact that an amendment of a record has been made.

§ 297.305 Denial of requests to amend records.

(a) If the Office or agency system manager decides not to amend the record in the manner sought, the requester should be notified in writing of the reasons for the denial.

(b) The decision letter should also include the requester's right to appeal the denial and the procedures for appealing the denial to the appropriate official.

§ 297.306 Appeal of a denial of a request to amend a record.

(a) An individual who disagrees with an initial denial to amend a record may file a written appeal of that denial to the appropriate official. In submitting an appeal, the individual should provide a copy of the original request for amendment, a copy of the initial denial decision, and a statement of the specific reasons why the initial denial is believed to be in error. Any appeal should be submitted to the official designated in the initial decision letter. The appeal should include the words “PRIVACY ACT APPEAL” in capital letters on the envelope and at the top of the letter of appeal.

(b) The reviewing official should complete the review and make a final determination in writing no later than 30 working days from the date on which the appeal is received. When circumstances warrant, this timeframe may be extended.

(c) If the Office grants the appeal, it will take the necessary steps either to amend the record itself or to require the originating agency to amend the record. When appropriate and possible, prior recipients of the record should be notified of the Office's action.

(d) The Office reserves the right to hold in abeyance any Privacy Act appeal concerning a record when an individual is involved in challenging an action involving that record in another administrative, judicial, or quasi-judicial forum. At the conclusion of such a challenge, the individual can resubmit the appeal.

(e) If the Office denies the appeal, it will include in the decision letter notification of the appellant's right to judicial review.

§ 297.307 Statement of disagreement.

(a) Upon receipt of a final administrative determination denying a request to amend a record, the requester may file a concise statement of disagreement. Such a statement should be...
§ 297.308 Judicial review.

Upon receipt of notification that the denial to amend a record has been upheld on administrative review, the requester has the right to judicial review of the decision for up to 2 years from the date the cause of action arose. Judicial review may be sought in the district court of the United States in the district in which—

(a) The requester resides;

(b) The requester has his or her principal place of business; or

(c) The agency records are situated; or it may be sought in the district court of the District of Columbia.

Subpart D—Disclosure of Records

§ 297.401 Conditions of disclosure.

An official or employee of the Office or agency should not disclose a record retrieved from a Governmentwide system of records to any person, another agency, or other entity without the express written consent of the subject individual unless disclosure is—

(a) To officers or employees of the Office who have a need for the information in the performance of their duties.

(b) Required by the provisions of the Freedom of Information Act.

(c) For a routine use as published in the Federal Register.

(d) To the Bureau of the Census for uses pursuant to title 13 of the United States Code.

(e)(1) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record. The record will be transferred in a form that is not individually identifiable. The written statement should include as a minimum:

(i) A statement of the purpose for requesting the records; and

(ii) Certification that the records will be used only for statistical purposes.

(2) These written statements should be maintained as records. In addition to deleting personal identifying information from records released for statistical purposes, the system manager will reasonably ensure that the identity of the individual cannot be deduced by combining various statistical records.

(f) To the National Archives of the United States as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or his or her designee to determine whether the record has such value.

(g) To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality or his designated representative has made a written request to the Office or agency that maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.

(h) To a person showing compelling circumstances affecting the health and safety of an individual, not necessarily the individual to whom the record pertains. Upon such disclosure, a notification should be sent to the last known address of the subject individual.

(i) To the Congress or to a Congressional committee, subcommittee, or joint committee to the extent that the subject matter falls within its established jurisdiction.

(j) To the Comptroller General or any authorized representatives of the Comptroller General in the course of the performance of the duties of the General Accounting Office.

(k) Pursuant to the order of a court of competent jurisdiction.
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To a consumer reporting agency in accordance with section 3711 (f) of title 31 of the United States Code.

§ 297.402 Disclosure pursuant to a compulsory legal process served on the Office.

For purposes of this section, the Office considers that a subpoena signed by a judge is equivalent to a court order.

(a) The Office may disclose, without prior consent of the data subject, specified information from a system of records whenever such disclosure is pursuant to an order signed by the appropriate official of a court of competent jurisdiction or quasi-judicial agency. In this subpart, a court of competent jurisdiction includes the judicial system of a state, territory, or possession of the United States.

(b) Notice of the order will be provided to the data subject by the Office as soon as practicable after service of the order. The notice should be mailed to the last known address of the individual and state the name and number of the case or proceeding, and the nature of the information sought.

(c) Before complying or refusing to comply with the order, an official with authority to disclose records under this subpart should consult legal counsel to ensure that the response is appropriate.

(d) Before responding to the order or subpoena signed by a judge, an official with authority to disclose records under this subpart in consulting with legal counsel will ensure that—

1. The requested material is relevant to the subject matter of the related judicial or administrative proceeding;
2. Motion is made to quash or modify an order that is unreasonable or oppressive;
3. Motion is made for a protective order when necessary to restrict the use or disclosure of any information furnished for purposes other than those of the involved proceeding; or
4. Request is made for an extension of time allowed for response, if necessary.

(e) If an order or subpoena signed by a judge for production of documents also requests appearance of an Office employee, the response should be to furnish certified copies of the appropriate records. In those situations where the subpoena is not signed by a judge, the Office will return the document to the sender and indicate that no action will be taken to provide records until the subpoena is signed by a judge.

(f) If oral testimony is requested by the order or subpoena signed by a judge, an explanation that sets forth the testimony desired must be furnished to the Office system manager. The individual who has been ordered or subpoenaed to testify should consult with counsel to determine the matters about which the individual may properly testify.

(g) In all situations concerning an order, subpoena signed by a judge, or other demand for an employee of the Office to produce any material or testimony concerning the records that are subject to the order, that are contained in the Office's systems of records, and that are acquired as part of the employee’s official duties, the employee shall not provide the information without the prior approval of the appropriate Office official.

(h) If it is determined that the information should not be provided, the individual ordered or subpoenaed to do so should respectfully decline to comply with the demand based on the instructions from the appropriate Office official.

(i) Notice of the issuance of the ex parte order or subpoena signed by a judge is not required if the system of records has been exempted from the notice requirement of 5 U.S.C. 552a(e)(8) pursuant to 5 U.S.C. 552a(j) by a Notice of Exemption published in the Federal Register.


§ 297.403 Accounting of disclosure.

(a) The Office or agency will maintain a record of disclosures in cases where records about the individual are disclosed from an Office system of records except—

1. When the disclosure is made pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552); or
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(2) When the disclosure is made to those officers and employees of the Office or agency who have a need for the record in the performance of their duties.

(b) This accounting of the disclosures will be retained for at least 5 years or for the life of the record, whichever is longer, and will contain the following information:

(1) A brief description of the record disclosed;

(2) The date, nature, and purpose for the disclosure;

(3) The name and address of the purpose, agency, or other entity to whom the disclosure is made.

(c) Except for the accounting of disclosure made to agencies, individuals, or entities in law enforcement activities or disclosures made from the Office’s exempt systems of records, the accounting of disclosures will be made available to the data subject upon request in accordance with the access procedures of this part.

Subpart E—Exempt Records

§ 297.501

Exemptions.

(a) Several of the Office’s internal, central, and Governmentwide systems of records contain information for which exemptions appearing at 5 U.S.C. 552a(k)(1), (2), (3), (4), (5), (6), and (7) may be claimed. The systems of records for which the exemptions are claimed, the specific exemptions determined to be necessary and proper with respect to these systems of records, the records exempted, the provisions of the act from which they are exempted, and the justifications for the exemptions are set forth below.

(b) Specific exemptions—(1) Inspector General Investigations Case File Records (OPM/CENTRAL -4). All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(1), (2), (3), (4), (5), (6), and (7) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. The specific applicability of the exemptions to this system and the reasons for the exemptions are as follows:

(i) Inspector General investigations may contain properly classified information that pertains to national defense and foreign policy obtained from other systems or another Federal agency. Application of exemption (k)(1) may be necessary to preclude the data subject’s access to and amendment of such classified information under 5 U.S.C. 552a(d).

(ii) Inspector General investigations may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2); e.g., investigations into the administration of the merit system. Application of exemption (k)(2) may be necessary to preclude the data subject’s access to or amendment of such records under 5 U.S.C. 552a(a)(3) and (d).

(iii) Inspector General investigations may contain information obtained from another system or Federal agency that relates to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. Application of exemption (k)(3) may be necessary to preclude the data subject’s access to and amendment of such records under 5 U.S.C. 552a(d).

(iv) Inspector General case files may contain information that, by statute, is required to be maintained and used solely as a statistical record. Application of exemption (k)(4) may be necessary to ensure compliance with such a statutory mandate.

(v) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). This exemption is claimed because this system contains investigatory material that if disclosed may reveal the identity of a source who furnished information to the Government under an express promise that the source’s identity would be held in confidence or, prior to September 27, 1975, under an implied promise. The application of exemption (k)(5) will be required to honor promises of confidentiality should the data subject request access to or amendment of the records.
or access to the accounting of disclosures of the record.

(vi) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d) relating to access to and amendment of records by the data subject. This exemption is claimed because portions of a case file record may relate to testing and examining material used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(vii) Inspector General case files may contain evaluation material used to determine potential for promotion in the armed services. Application of exemption (k)(7) may be necessary, but only to the extent that the disclosure of the data would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(2) Administrative Law Judge Applicant Records (OPM/CENTRAL-6). (i) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirement of 5 U.S.C. 552a(c)(3) and (d). The exemptions are claimed because this system contains investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(ii) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing and examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(3) Litigation and Claims Records (OPM/CENTRAL-7). (i) When litigation or claim cases occur, information from other existing systems of records may be incorporated into the case file. This information may be material for which exemptions have been claimed by the Office in this section. To the extent that such exempt material is incorporated into a litigation or claim case file, the appropriate exemption (5 U.S.C. 552a(k)(1), (2), (3), (4), (5), (6), or (7)) shall also apply to the material as it appears in this system. The exemptions will be only from those provisions of the Act that were claimed for the systems from which the records originated.

(ii) During the course of litigation or claims cases, it may be necessary to conduct investigations to develop information and evidence relevant to the case. These investigative records may include material meeting the criteria stated in 5 U.S.C. 552a(k)(1), (2), (3), (4), (5), (6), and (7). Such material is exempt from the requirement of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Act relate to making accounting of disclosures available to the data subject and access to and amendment of records. The specific applicability of the exemptions to this system and the reasons for the exemptions are:

(A) Such investigations may contain properly classified information that pertains to national defense and foreign policy obtained from another Federal agency. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d).
(B) Such investigations may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), e.g., administration of the merit system, obtained from another Federal agency. All information about individuals in these records that meets the criteria of 5 U.S.C. 552a(k)(2) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). Application of exemption (k)(2) may be necessary to preclude the data subject’s access to or amendment of these records.

(C) Such investigations may contain information obtained from another agency that relates to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. All information about individuals in these records that meets the criteria of 5 U.S.C. 552a(k)(3) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to or amendment of records by the data subject. Application of exemption (k)(3) may be necessary to preclude the data subject’s access to and amendment of such records.

(D) Such investigations may contain information that, by statute, is required to be maintained and used solely as a statistical record. Application of exemption (k)(4) may be necessary to ensure compliance with such a statutory mandate.

(E) All information about individuals in these records that meets the criteria of 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These exemptions are claimed because this system contains investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(4) may be necessary to honor such a promise should the data subject request access to the accounting of disclosure, or access to or amendment of the record, that would reveal the identity of a confidential source.

(F) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment by the data subject of this information would compromise the objectivity and fairness of the testing or examining process.

(G) Such investigations may contain evaluation material used to determine potential for promotion in the armed services. Application of exemption (k)(7) may be necessary, but only to the extent that the disclosure of the data would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(4) Privacy Act/Freedom of Information Case Records (OPM/CENTRAL-8). In this subpart, the Office has claimed exemptions for its other systems of records where it felt such exemptions are appropriate and necessary. These exemptions are claimed under 5 U.S.C. 552a(k)(1), (2), (3), (4), (5), (6) and (7). During the processing of a Privacy Act/Freedom of Information Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests) exempt materials from those other systems may in turn become part of the case record in this system. To the extent that copies of exempt records from those other systems are entered into this system, the Office hereby claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary system of which they are a part.

(5) Personnel Investigations Records (OPM/CENTRAL-9). All information in these records that meets the criteria
stated in 5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6), and (7) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. The specific applicability of these exemptions to this system and the reasons for the exemptions are as follows:

(i) Personnel investigations may contain properly classified information which pertains to national defense and foreign policy obtained from another Federal agency. Application of exemption (k)(1) may be necessary to preclude the data subject’s access to and amendment of such classified information under 5 U.S.C. 552a(d).

(ii) Personnel investigations may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2); e.g., investigations into the administration of the merit system. Application of exemption (k)(2) may be necessary to preclude the data subject’s access to or amendment of such records under 5 U.S.C. 552a(c)(3) and (d).

(iii) Personnel investigations may contain information obtained from another Federal agency that relates to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. Application of exemption (k)(3) may be necessary to preclude the data subject’s access to and amendment of such records under 5 U.S.C. 552a(d).

(iv) Personnel investigations may contain information that, by statute, is required to be maintained and used solely as a statistical record. Application of exemption (k)(4) may be necessary to ensure compliance with such a statutory mandate.

(v) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These exemptions are claimed because this system contains investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, the applicability of exemption (k)(5) will be required to honor promises of confidentiality should the data subject request access to or amendment of the record, or access to the accounting of disclosures of the record.

(vi) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(vii) Personnel investigations may contain evaluation material used to determine potential for promotion in the armed services. Application of exemption (k)(7) may be necessary, but only to the extent that the disclosure of the data would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(6) Presidential Management Intern Program Records (OPM/CENTRAL–11). All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.
(7) Recruiting, Examining, and Placement Records (OPM/GOVT-5). (i) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. These exemptions are claimed because this system contains investigatory material compiled solely for determining the appropriateness of requests for approval of objections to eligible's qualification for employment in the Federal service. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor promises of confidentiality should the data subject request access to the accounting of disclosures of the record, or access to or amendment of the record.

(ii) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(4) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to or amendment of the records by the data subject. This exemption is claimed because portions of this system relate to records required by statute to be maintained and used solely for statistical purposes. Access to or amendment of this information by the data subject would compromise the confidentiality of these records and their usefulness for statistical research purposes.

(c) The Office also reserves the right to assert exemptions for records received from another agency that could be properly claimed by that agency in response to a request. The Office may refuse access to information compiled in reasonable anticipation of a civil action or proceeding.


PART 300—EMPLOYMENT
(GENERAL)

Subpart A—Employment Practices

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§ 300.103  Basic requirements.

(a) Job analysis. Each employment practice of the Federal Government generally, and of individual agencies, shall be based on a job analysis to identify:

(1) The basic duties and responsibilities;

(2) The knowledge, skills, and abilities required to perform the duties and responsibilities; and

(3) The factors that are important in evaluating candidates. The job analysis may cover a single position or group of positions, or an occupation or group of occupations, having common characteristics.

(b) Relevance. (1) There shall be a rational relationship between performance in the position to be filled (or in the target position in the case of an entry position) and the employment practice used. The demonstration of rational relationship shall include a showing that the employment practice
was professionally developed. A minimum educational requirement may not be established except as authorized under section 3308 of title 5, United States Code.

(2) In the case of an entry position the required relevance may be based upon the target position when—

(i) The entry position is a training position or the first of a progressive series of established training and development positions leading to a target position at a higher level; and

(ii) New employees, within a reasonable period of time and in the great majority of cases, can expect to progress to a target position at a higher level.

(c) Equal employment opportunity. An employment practice shall not discriminate on the basis of race, color, religion, sex, age, national origin, partisan political affiliation, or other nonmerit factor. Employee selection procedures shall meet the standards established by the “Uniform Guidelines on Employee Selection Procedures” (1978), 43 FR 38290 (August 25, 1978).

\[40 FR 15380, Apr. 7, 1975, as amended at 41 FR 51579, Nov. 23, 1976; 44 FR 48653, Aug. 21, 1979; 60 FR 3057, Jan. 13, 1995; 60 FR 47040, Sept. 11, 1995\]

§ 300.104 Appeals, grievances and complaints.

(a) Employment practices. A candidate who believes that an employment practice which was applied to him or her by the Office of Personnel Management violates a basic requirement in § 300.103 is entitled to appeal to the Merit Systems Protection Board under the provisions of its regulations.

(b) Examination ratings. A candidate may file an appeal with the Office from his or her examination rating or the rejection of his or her application, except that, where the Office has delegated examining authority to an agency, the candidate should appeal directly to that agency. The appeal and supporting documents shall be filed with the agency office that determined the rating.

(c) Complaints and grievances to an agency. (1) A candidate may file a complaint with an agency when he believes that an employment practice which was applied to him and which is administered or required by the agency discriminates against him on the basis of race, color, religion, sex, or national origin; or age, provided that at the time of the alleged discriminatory action the candidate was at least 40 years of age but less than 65 years of age. The complaint shall be filed and processed in accordance with subparts B and E of part 713 of this chapter.

(2) Except as provided in paragraph (c)(1) of this section, an employee may file a grievance with an agency when he or she believes that an employment practice which was applied to him or her and which is administered or required by the agency violates a basic requirement in § 300.103. The grievance shall be filed and processed under an agency grievance system, if applicable, or a negotiated grievance system as applicable.

\[40 FR 15380, Apr. 7, 1975, as amended at 41 FR 51579, Nov. 23, 1976; 44 FR 48653, Aug. 21, 1979; 60 FR 3057, Jan. 13, 1995; 60 FR 47040, Sept. 11, 1995\]

Subpart B—Examinations and Related Subjects

§ 300.201 Examinations.

(a) The Office makes available information that will assist members of the public in understanding the purpose of, and preparing for, civil service examinations. This includes the types of questions and the categories of knowledge or skill pertinent to a particular examination. The Office does not release the following: (1) Testing and examination materials used solely to determine individual qualifications, and (2) test material, including test plans, item analysis data, criterion instruments, and other material the disclosure of which would compromise the objectivity of the testing process.

(b) The Office maintains control over the security and release of testing and examination materials which it has developed and made available to agencies for initial competitive appointment or inservice use unless the materials were developed specifically for an agency through a reimbursable contractual agreement. These testing and examination materials include, and are subject to the same controls as, those described in paragraphs (a)(1) and (a)(2) of this section.

(c) Each employee entrusted with test material has a positive duty to
§ 300.401 Definitions.
For purposes of this subpart:
(a) A commercial recruiting firm is a profit-making entity which, by contract, supplies individual candidates for consideration for specific Federal vacancies, in accordance with the requirements set by the Federal agency.
(b) A nonprofit employment service is one legally established as nonprofit under State law. It may be operated, for example, by professional societies, organizations of college graduates, social agencies, or a State or local government. Federal agencies may not, however, use a nonprofit employment service sponsored by a partisan political organization. By contract, a nonprofit employment service supplies individual candidates for consideration for specific Federal vacancies, in accordance with the requirements set by the Federal agency.

§ 300.402 Coverage.
This part applies to filling positions in the competitive service; positions in the expected service under Schedules A, B, and C; and positions in the Senior Executive Service.

§ 300.403 When commercial recruiting firms and nonprofit employment services may be used.

An agency may use a commercial recruiting firm and/or a nonprofit employment service in recruiting for vacancies when:
(a) The agency head or designee determines that such use is likely to provide well-qualified candidates who would otherwise not be available or that well-qualified candidates are in short supply;
(b) The agency has provided vacancy notices to appropriate State Employment Service and OPM offices; and
(c) The agency continues its own recruiting efforts.

§ 300.404 Use of fee-charging firms.
(a) Federal agencies are prohibited from using commercial recruiting firms and nonprofit employment services which charge fees to individuals referred to Federal positions. Federal agencies may not consider a candidate
§ 300.405 Requirement for contract.

(a) A written contract awarded in accordance with procedures stipulated in the Federal Acquisition Regulations is required between the Federal agency and a commercial recruiting firm or nonprofit employment service. The contract will satisfy the "written request" required by 18 U.S.C. 211. That statute prohibits the acceptance of payment for aiding an individual to obtain Federal employment except when an employment agency renders services pursuant to the written request of an executive department or agency.

(b) The contract must include the qualifications requirements for the position(s) to be filled and also provide that the firm or service will:

(1) Screen candidates only against the basic qualifications requirements for the position(s) specified by the Federal agency in the contract and refer to the agency all candidates who appear to meet those requirements;

(2) Refer to the Federal agency only those applicants from whom the firm or service has not accepted fees other than those permitted under § 300.404(b) of this part;

(3) Not imply that it is the sole or primary avenue for employment with the Federal Government or a specific Federal agency; and

(4) Recruit and refer candidates in accordance with applicable merit principles and equal opportunity laws.

§ 300.406 Agency responsibilities.

(a) The purpose of a commercial recruiting firm or nonprofit employment service is to serve as an additional source of applicants. Once recruited, applicants must be evaluated and appointed through regular civil service employment procedures.

(b) The prohibition in paragraph (a) of this section does not apply to registration fees paid by individuals to nonprofit employment services operated by professional organizations when the registration fee is imposed regardless of whether the registrant is referred for employment or placed.

§ 300.407 Documentation.

(a) Agencies are required to maintain records necessary to determine that using commercial recruiting firms or nonprofit employment services is cost effective and has not resulted in the violation of merit system principles or the commission of any prohibited personnel practice.

(b) When requested by OPM, agencies will provide reports on the use of commercial recruiting firms, based on the records required in paragraph (a) of this section.

§ 300.408 Corrective action.

Upon evidence of failure to comply with these regulations, OPM may, pursuant to its authority, order the agency to take appropriate corrective action.
Office of Personnel Management

Subpart E—Use of Private Sector Temporaries

SOURCE: 54 FR 3766, Jan. 25, 1989, unless otherwise noted.

§ 300.501 Definitions.

For purposes of this subpart:

(a) A temporary help service firm is a private sector entity which quickly provides other organizations with specific services performed by its pool of employees, possessing the appropriate work skills, for brief or intermittent periods. The firm is the legally responsible employer and maintains that relationship during the time its employees are assigned to a client. The firm, not the client organization, recruits, tests, hires, trains, assigns, pays, provides benefits and leave to, and as necessary, addresses performance problems, disciplines, and terminates its employees. Among other employer obligations, the firm is responsible for payroll deductions and payment of income taxes, social security (FICA), unemployment insurance, and workers’ compensation, and shall provide required liability insurance and bonding.

(b) Private sector temporaries or outside temporaries are those employees of a temporary help service firm who are supervised and paid by that firm and whom that firm assigns to various client organizations who have contracted for the temporary use of their skills when required.

(c) Parental and family responsibilities are defined in chapter 630 of the Federal Personnel Manual and include situations such as absence for pregnancy, childbirth, child care, and care for elderly or infirm parents or other dependents.

(d) A Federal supervisor of Federal employees is defined in 5 U.S.C. 703(a)(10) as an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment.

(e) A critical need is a sudden or unexpected occurrence: an emergency; a pressing necessity; or an exigency. Such occasions are characterized by additional work or deadlines required by statute, Executive order, court order, regulation, or formal directive from the head of an agency or subordinate official authorized to take final action on behalf of the agency head. A recurring, cyclical peak workload, by itself, is not a critical need.

(f) A local commuting area is defined in part 351 of this chapter.

§ 300.502 Coverage.

(a) These regulations apply to the competitive service and to Schedules A and B in the excepted service.

(b) Agencies may not use temporary help services for the Senior Executive Service or for the work of managerial or supervisory positions.

[61 FR 19510, May 2, 1996]

§ 300.503 Conditions for using private sector temporaries.

An agency may enter into a contract or other procurement arrangement with a temporary help service firm for the brief or intermittent use of the skills of private sector temporaries, when required, and may call for those services, subject to these conditions:

(a) One of the following short-term situations exists—

(1) An employee is absent for a temporary period because of a personal need including emergency, accident, illness, parental or family responsibilities, or mandatory jury service, but not including vacations or other circumstances which are not shown to be compelling in the judgment of the agency, or

(2) An agency must carry out work for a temporary period which cannot be delayed in the judgment of the agency because of a critical need.

(b) The need cannot be met with current employees or through the direct appointment of temporary employees within the time available by the date, and for the duration of time, help is needed. At minimum, this should include an agency determination that there are no qualified candidates on the applicant supply file and on the re-employment priority list (both of
which must provide preference for veterans, and no qualified disabled veterans with a compensable service-connected disability of 30 percent or more under 5 U.S.C. 3112, who are immediately available for temporary appointment of the duration required, and that employees cannot be reassigned or detailed without causing undue delay in their regular work. In instances where a need is foreseeable, as when approval of employee absence is requested well in advance, an agency may have sufficient time to follow the temporary appointment recruiting requirements, including veterans' preference in chapter 316 of the Federal Personnel Manual to determine whether qualified candidates are available by the date needed and for the length of service required.

(c) These services shall not be used:

(1) In lieu of the regular recruitment and hiring procedures under the civil service laws for permanent appointment in the competitive civil service, or

(2) To displace a Federal employee.

(3) To circumvent controls on employment levels.

(4) In lieu of appointing a surplus or displaced Federal employee as required by 5 CFR part 330, subpart F (Agency Career Transition Assistance Plan for Displaced Employees) and subpart G (Interagency Career Transition Assistance Plan for Displaced Employees.)

§ 300.504 Prohibition on employer-employee relationship

No employer-employee relationship is created by an agency's use of private sector temporaries under these regulations. Services furnished by temporary help firms shall be performed by their employees who shall not be considered or treated as Federal employees for any purpose, shall not be regarded as performing a personal service, and shall not be eligible for civil service employee benefits, including retirement. Further, to avoid creating any appearance of such a relationship, agencies shall observe the following requirements:

(a) Time limit on use of temporary help service firm. An agency may use a temporary help service firm(s) in a single situation, as defined in §300.503, initially for no more than 120 workdays. Provided the situation continues to exist beyond the initial 120 workdays, the agency may extend its use of temporary help services up to the maximum limit of 240 workdays.

(b) Time limit on use of individual employee of a temporary help service firm.

(1) An individual employee of any temporary help firm may work at a major organizational element (headquarters or field) of an agency for up to 120 workdays in a 24-month period. The 24-month period begins on the first day of assignment.

(2) An agency may make an exception for an individual to work up to a maximum of 240 workdays only when the agency has determined that using the services of the same individual for the same situation will prevent significant delay.

(c) Individual employees of a temporary help firm providing temporary service to a Federal agency may be eligible for competitive civil service employment only if appropriate civil service hiring procedures are applied to them.

(d) Agencies shall train their employees in appropriate procedures for interaction with private sector temporaries to assure that the supervisory responsibilities identified in paragraph (a) of §300.501 of this subpart are carried out by the temporary help service firm. At the same time, agencies must give technical, task-related instructions to private sector temporaries including orientation, assignment of tasks, and review of work products, in order that the temporaries may properly perform their services under the contract.

§ 300.505 Relationship of civil service procedures.

Agencies continue to have full authority to meet their temporary needs by various means, for example, redistributing work, authorizing overtime, using in-house pools, and making details or time-limited promotions of current employees. In addition, agencies may appoint individuals as civil service employees on various work
§ 300.506 Requirements of procurement.

(a) Agencies must follow the Federal procurement laws and the Federal Acquisition Regulation, as applicable, in procuring services from the private sector.

(b) Agencies should make full use of the provisions of the Federal procurement system to make clear that the firm is the legally responsible employer and to specify the obligations the firm will have to meet to provide effective performance including such matters as the types and levels of skills to be provided, deadlines for providing service, liability insurance, and, when necessary, security requirements. The Federal procurement system also requires contractors to comply with affirmative action requirements to employ and advance in employment qualified disabled and Vietnam era veterans as provided in 41 CFR part 60-250, and with public policy programs including equal employment opportunity, handicapped employment, and small businesses.

§ 300.507 Documentation and oversight.

Agencies are required to maintain records and provide oversight to establish that their use of temporary help service firms is consistent with these regulations. As needed, OPM may require agencies to provide information on their use of temporary help service firms.

[61 FR 19511, May 2, 1996]

Subpart F—Time-In-Grade Restrictions

Source: 56 FR 23002, May 20, 1991, unless otherwise noted.

§ 300.601 Purpose.

The restrictions in this subpart are intended to prevent excessively rapid promotions in competitive service General Schedule positions and to protect competitive principles. They provide a budgetary control on promotion rates and help assure that appointments are made from appropriate registers. These restrictions are in addition to the eligibility requirements for promotion in part 335 of this chapter.

§ 300.602 Definitions.

In this subpart—

Advancement means a promotion (including a temporary promotion) or any type of appointment resulting in a higher grade or higher rate of basic pay.

Competitive appointment means an appointment based on selection from a competitive examination register of eligibles or under a direct hire authority.

Hardship to an agency involves serious difficulty in filling a position, including when:

(a) The situation to be redressed results from circumstances beyond the organization's control and otherwise would require extensive corrective action; or

(b) A position at the next lower grade in the normal line of promotion does not exist and the resulting action is not a career ladder promotion; or

(c) There is a shortage of candidates for the position to be filled.

Inequity to an employee involves situations where a position is upgraded without change in the employee's duties or responsibilities, or where discrimination or administrative error prevented an employee from reaching a higher grade.

Nontemporary appointment means any appointment other than a temporary appointment pending establishment of a register (TAPER) or a temporary or excepted appointment not to exceed 1 year or less.

§ 300.603 Coverage.

(a) Coverage. This subpart applies to advancement to a General Schedule position in the competitive service by any individual who within the previous 52 weeks held a General Schedule position under nontemporary appointment in the competitive or excepted service in the executive branch, unless excluded by paragraph (b) of this section.

(b) Exclusions. The following actions may be taken without regard to this subpart but must be consistent with all...
other applicable requirements, such as qualification standards:

(1) Appointment based on selection from a competitive examination register of eligibles or under a direct hire authority.

(2) Noncompetitive appointment based on a special authority in law or Executive order (but not including transfer and reinstatement) made in accordance with all requirements applicable to new appointments under that authority.

(3) Advancement in accordance with part 335 of this chapter up to any General Schedule grade the employee previously held under nontemporary appointment in the competitive or excepted service.

(4) Advancement of an employee from a non-General Schedule position to a General Schedule position unless the employee held a General Schedule position under nontemporary appointment in the executive branch within the previous 52 weeks.

(5) Advancement of an individual whose General Schedule service during the previous 52 weeks has been totally under temporary appointment.

(6) Advancement of an employee under a training agreement established in accordance with chapter 338 of the Federal Personnel Manual. However, an employee may not receive more than two promotions in any 52-week period solely on the basis of one or more training agreements. Also, only OPM may approve a training agreement that provides for consecutive promotions at rates that exceed those permitted by §300.604 of this part.

(7) Advancement to avoid hardship to an agency or inequity to an employee in an individual meritorious case but only with the prior approval of the agency head or his or her designee. However, an employee may not be promoted more than three grades during any 52-week period on the basis of this paragraph.

(8) Advancement when OPM authorizes it to avoid hardship to an agency or inequity to an employee in individual meritorious situations not defined, but consistent with the definitions, in §300.602 of this part.

§ 300.603(b) of this part:

(a) Advancement to positions at GS-12 and above. Candidates for advancement to a position at GS-12 and above must have completed a minimum of 52 weeks in positions no more than one grade lower (or equivalent) than the position to be filled.

(b) Advancement to positions at GS-6 through GS-11. Candidates for advancement to a position at GS-6 through GS-11 must have completed a minimum of 52 weeks in positions:

(1) No more than two grades lower (or equivalent) when the position to be filled is in a line of work properly classified at 2-grade intervals; or

(2) No more than one grade lower (or equivalent) when the position to be filled is in a line of work properly classified at 1-grade intervals; or

(3) No more than one or two grades lower (or equivalent), as determined by the agency, when the position to be filled is in a line of work properly classified at 1-grade intervals but has a mixed interval promotion pattern.

(c) Advancement to positions up to GS-5. Candidates may be advanced without time restriction to positions up to GS-5 if the position to be filled is no more than two grades above the lowest grade the employee held within the preceding 52 weeks under his or her latest nontemporary competitive appointment.

§ 300.605 Creditable service.

(a) All service at the required or higher grade (or equivalent) in positions to which appointed in the Federal civilian service is creditable towards the time periods required by §300.604 of this part, except as provided in paragraph (c) of this section. Creditable service includes competitive and excepted service in positions under the General Schedule and other pay systems, including employment with a nonappropriated fund instrumentality. Service while on detail is credited at the grade of the employee's position of record, not the grade of the position to which detailed. Also creditable is service with the District of Columbia Government prior to January 1, 1980 (or prior to September 26, 1980, for those
District employees who were converted to the District personnel system on January 1, 1980).

(b) Service in positions not subject to the General Schedule (GS) is credited at the equivalent GS grade by comparing the candidate's rate of basic pay with the representative rate (as defined in §351.203 of this chapter) of the GS position in effect when the non-GS service was performed. The equivalent GS grade is the GS grade with a representative rate that equals the candidate's rate of basic pay. When the candidate's rate of basic pay falls between the representative rates of two GS grades, the non-GS service is credited at the higher grade.

(c) In applying the restrictions in §300.604 of this part, prior service under temporary appointment at a level above that of a subsequent non-temporary competitive appointment is credited as if the service had been performed at the level of the non-temporary appointment. This provision applies until the employee has served in pay status for 52 weeks under non-temporary competitive appointment; thereafter, the service is credited at its actual grade level (or equivalent).

§ 300.703 Agency authority.
An agency may expand on these restrictions consistent with the intent of this subpart or may adopt similar policies to control promotion rates of employees not covered by this subpart.

Subpart G—Statutory Bar to Appointment of Persons Who Fail to Register Under Selective Service Law

Source: 52 FR 7400, Mar. 11, 1987, unless otherwise noted.

§ 300.701 Statutory requirement.
Section 3328 of title 5 of the United States Code provides that—

(a) An individual—

(1) Who was born after December 31, 1959, and is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453); and

(2) Who is not so registered or knowingly and willfully did not so register before the requirement terminated or became inapplicable to the individual, shall be ineligible for appointment to a position in an executive agency of the Federal Government.

(b) The Office of Personnel Management, in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out this section. Such regulations shall include provisions prescribing procedures for the adjudication within the Office of determinations of whether a failure to register was knowing and willful. Such procedures shall require that such a determination may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was neither knowing nor willful.

§ 300.702 Coverage.
Appointments in the competitive service, the excepted service, the Senior Executive Service, or any other civil service personnel management system in an executive agency are covered by these regulations.

§ 300.703 Definitions.
In this subpart—
Appointment means any personnel action that brings onto the rolls of an executive agency as a civil service officer or employee as defined in 5 U.S.C. 2104 or 2105, respectively, a person who is not currently employed in that agency. It includes initial employment as well as transfer between agencies and subsequent employment after a break in service. Personnel actions that move an employee within an agency without a break in service are not covered. A break in service is a period of 4 or more calendar days during which an individual is no longer on the rolls of an executive agency.

Covered individual means a male (a) whose application for appointment is under consideration by an executive agency or who is an employee of an executive agency; (b) who was born after December 31, 1959, and is at least 18 years of age or becomes 18 following appointment; (c) who is either a United States citizen or an alien (including parolees and refugees and those who are lawfully admitted to the United States for permanent residence and for asylum) residing in the United States; and (d) is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453). Nonimmigrant aliens admitted under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101),
such as those admitted on visitor or student visas, and lawfully remaining in the United States, are exempt from registration.


Exemptions means those individuals determined by the Selective Service System to be excluded from the requirement to register under sections 3 and 6(a) of the Military Selective Service Act (50 U.S.C. App. 453 and 456(a)) or Presidential proclamation.

Preponderance of the evidence means that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

Registrant means an individual registered under Selective Service law.

Selective Service law means the Military Selective Service Act, rules and regulations issued thereunder, and proclamations of the President under that Act.

Selective Service System means the agency responsible for administering the registration system and for determining who is required to register and who is exempt.

§ 300.704 Considering individuals for appointment.

(a) An executive agency must request a written statement of Selective Service registration status from each covered individual at an appropriate time during the consideration process prior to appointment, and from each covered employee who becomes 18 after appointment. The individual must complete, sign, and date in ink the statement on a form provided by the agency unless the applicant furnishes other documentation as provided by paragraph (c) of this section.

(b) Statement of Selective Service registration status. Agencies should reproduce the following statement, which has been approved by the Office of Management and Budget for use through October 31, 1989, under OMB Control No. 3206-0166:

APPLICANT’S STATEMENT OF SELECTIVE SERVICE REGISTRATION STATUS

If you are a male born after December 31, 1959, and are at least 18 years of age, civil service employment law (5 U.S.C. 3328) requires that you must be registered with the Selective Service System, unless you meet certain exemptions under Selective Service law. If you are required to register but knowingly and willfully fail to do so, you are ineligible for appointment by executive agencies of the Federal Government.

CERTIFICATION OF REGISTRATION STATUS

Check one:

[ ] I certify I am registered with the Selective Service System.

[ ] I certify I have been determined by the Selective Service System to be exempt from the registration provisions of Selective Service law.

[ ] I certify I have not registered with the Selective Service System.

[ ] I certify I have not reached my 18th birthday and understand I am required by law to register at that time.

NON-REGISTRANTS UNDER AGE 26

If you are under age 26 and have not registered as required, you should register promptly at a United States Post Office, or consular office if you are outside the United States.

NON-REGISTRANTS AGE 26 OR OVER

If you were born in 1960 or later, are 26 years of age or older, and were required to register but did not do so, you can no longer register under Selective Service law. Accordingly, you are not eligible for appointment to an executive agency unless you can prove to the Office of Personnel Management (OPM) that your failure to register was neither knowing nor willful. You may request an OPM determination together with any explanation and documentation you wish to furnish to prove that your failure to register was neither knowing nor willful.

PRIVACY ACT STATEMENT

Because information on your registration status is essential for determining whether you are in compliance with 5 U.S.C. 3328, failure to provide the information requested by this statement will prevent any further consideration of your application for appointment. This information is subject to verification with the Selective Service System and may be furnished to other Federal agencies for law enforcement or other authorized use in implementing this law.
A false statement may be grounds for not hiring you, or for firing you if you have already begun work. Also, you may be punished by fine or imprisonment. (Section 1001 of title 18, United States Code.)

At his option, a covered individual may submit, in lieu of the statement described above, a copy of his Acknowledgment Letter or other proof of registration or exemption issued by the Selective Service System. The individual must sign and date the document and add a note stating it is submitted as proof of Selective Service registration or exemption.

An executive agency will give no further consideration for appointment to individuals who fail to provide the information requested above on registration status.

An agency considering employment of a covered individual who is a current or former Federal employee is not required to request a statement when it determines that the individual's Official Personnel Folder contains evidence indicating the individual is registered or currently exempt from registration.

§ 300.705 Agency action following statement.

(a) Agencies must resolve conflicts of information and other questions concerning an individual’s registration status prior to appointment. An agency may verify, at its discretion, an individual’s registration status by requesting the individual to provide proof of registration or exemption issued by the Selective Service System and/or by contacting the Selective Service System, toll-free telephone number 800-621-5388.

(b) An agency may continue regular pre-employment consideration of individuals whose statements show they have registered or are exempt.

(c) An agency will take the following actions when a covered individual who is required to register has not done so, and is under age 26:

(1) Advise him to register promptly and, if he wishes further consideration, to submit a new statement immediately to the agency once he has registered. The agency will set a time limit for submitting the statement.

(2) Provide written notice to an individual who still does not register after being informed of the above requirements that he is ineligible for appointment according to 5 U.S.C. 3328 and will be given no further employment consideration.

(d) An agency will take the following actions when a covered individual who is age 26 or over, was required to register, and has not done so:

(1) Provide written notice to the individual that, in accordance with 5 U.S.C. 3328, he is ineligible for appointment unless his failure to register was neither knowing nor willful, and that OPM will decide whether his failure to register was knowing and willful if he submits a written request for such decision and an explanation of his failure to register.

(2) Submit the individual’s application, the statement described in §300.704(b), a copy of the written notice, his request for a decision and explanation of his failure to register, and any other papers pertinent to his registration status for determination to—Registration Review, Staffing Operations Division, Career Entry Group, room 6A12, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

(3) An agency is not required to keep a vacancy open for an individual who seeks an OPM determination.

(e) Individuals described in paragraph (c) of this section who do not submit a statement of registration or exemption are not eligible for employment consideration. Individuals described in paragraph (d) of this section are not eligible for employment consideration unless OPM finds that failure to register was neither knowing nor willful. Agencies are not required to follow the objections-to-eligibles procedures described in §332.406 concerning such individuals who were certified or otherwise referred by an OPM examining office or other office delegated examining authority by OPM. Instead, an agency will provide, for information as part of its certification report to that office, a
§ 300.706 Office of Personnel Management adjudication.

(a) OPM will determine whether failure to register was knowing and willful when an individual has requested a decision and presented a written explanation, as described in §300.705. The Associate Director for Career Entry or his or her designee will make the determination based on the written explanation provided by the individual. The burden of proof will be on the individual to show by a preponderance of the evidence that failure to register was neither knowing nor willful.

(b) OPM may consult with the Selective Service System in making determinations.

(c) The Associate Director for Career Entry or his or her designee will notify the individual and the agency in writing of the determination. The determination is final unless reconsidered at the discretion of the Associate Director. There is no further right to administrative review.

(d) The Director of OPM may reopen and reconsider a determination.

(e) The Director of OPM may, at his or her discretion, delegate to an executive agency the authority to make initial determinations. However, OPM may review any initial determination and make a final adjudication in any case. If a delegation is made under this paragraph, the notice in §300.705(d)(1) will state that the individual may submit a written request that OPM review the agency’s initial determination. The agency will forward to OPM copies of all documents relating to the individual’s failure to register, including the individual’s request for review and his explanation of his failure to register.

§ 300.707 Termination of employment.

A covered individual who is serving under an appointment made on or after November 8, 1985, and is not exempt from registration, will be terminated by his agency under the authority of the statute and these regulations if he has not registered as required, unless he registers or unless, if no longer eligible to register, OPM determines in response to his explanation that his failure to register was neither knowing nor willful.

PART 301—OVERSEAS EMPLOYMENT

Subpart A [Reserved]

Subpart B—Overseas Limited Appointment

Sec. 301.201 Appointment of United States citizens recruited overseas.

301.202 Appointment of citizens recruited outside overseas areas.

301.203 Duration of appointment.

301.204 Status and trial period.

301.205 Requirements and restrictions.

301.206 Within-grade increases.

Subpart C—Overseas Employees Eligible for Noncompetitive Appointment Upon Return to the United States

301.301 Eligibility under the authority of Executive Order 12362.

301.302 Overseas appointing procedures.

301.303 Performance appraisal.


Source: 44 FR 54691, Sept. 21, 1979, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Overseas Limited Appointment

§ 301.201 Appointment of United States citizens recruited overseas.

An agency may give an overseas limited appointment without competitive examination to a United States citizen recruited overseas, unless there is an adequate and appropriate register resulting from an examination held in the locality where the vacancy exists.

§ 301.202 Appointment of citizens recruited outside overseas areas.

When an agency determines that unusual or emergency conditions make it infeasible to appoint from a register, it may give an overseas limited appointment to a United States citizen recruited in an area where an overseas limited appointment is not authorized.
§ 301.203 Duration of appointment.

(a) An appointment under this subpart is of indefinite duration unless otherwise limited.

(b) An agency may make an overseas limited term appointment for a period not in excess of 5 years when a time limitation is imposed as a part of a general program for rotating career and career-conditional employees between overseas areas and the United States after specified periods of overseas service.

(c) An agency may make an overseas limited appointment for 1 year or less to meet administrative needs for temporary employment. An agency may extend such an appointment for up to a maximum of 1 additional year.

(d) Upon request from the headquarters level of a Department or agency, OPM may approve, or delegate to agencies the authority to approve, exceptions to the time limits set out in paragraph (c) of this section.

[44 FR 54691, Sept. 21, 1979, as amended at 60 FR 3057, Jan. 13, 1995]

§ 301.204 Status and trial period.

(a) An overseas limited employee does not acquire a competitive status on the basis of his or her overseas limited appointment. He or she is required to serve a trial period of 1 year when given an overseas limited appointment of indefinite duration or an overseas limited term appointment.

(b) The agency may terminate an overseas limited employee at any time during the trial period. The employee is entitled to the procedures set forth in §315.804 or §315.805 of this chapter as appropriate.

§ 301.205 Requirements and restrictions.

The requirements and restrictions in subpart F of part 300 and part 333 of this chapter apply to appointments under this subpart.

§ 301.206 Within-grade increases.

An employee serving under an overseas limited appointment of indefinite duration or an overseas limited term appointment in a position subject to the General Schedule, is eligible for within-grade increases in accordance with subpart D of part 531 of this chapter.


Subpart C—Overseas Employees Eligible for Noncompetitive Appointment Upon Return to the United States


SOURCE: 48 FR 52868, Nov. 23, 1983; correctly designated at 49 FR 5601, Feb. 14, 1984, unless otherwise noted.

§ 301.301 Eligibility under the authority of Executive Order 12362.

Employees who serve under overseas local hire appointments as defined in §315.608(b) of this chapter and meet the eligibility criteria of §315.608(a) of this chapter are eligible for noncompetitive career-conditional, term, or temporary limited appointment when they return to the United States.

§ 301.302 Overseas appointing procedures.

Overseas agencies are required to ensure that selection of employees for local hire appointments in the overseas area is made on the basis of the ability, knowledge, and skills of eligible candidates, in accordance with applicable law and regulation.

§ 301.303 Performance appraisal.

As soon as practicable, but beginning not later than January 1, 1984, overseas agencies are required to evaluate the performance of employees who serve under overseas local hire appointments as defined in §315.608(b) of this chapter and who are eligible to meet the criteria established in §315.608(a) of this chapter in accordance with the agency’s performance appraisal plan established under chapter 43 of title 5, U.S. Code, unless the agency is exempt from the provisions of that chapter.
PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

Subpart A—General Provisions

Sec. 302.101 Positions covered by regulations.
302.102 Method of filling positions and status of incumbents.
302.103 Definitions.
302.104 Applicability of regulations to applicants and employees.
302.105 Special agency plans.

Subpart B—Eligibility Standards

302.201 Persons entitled to veteran preference.
302.202 Qualification requirements.
302.203 Disqualifying factors.

Subpart C—Accepting, Rating and Arranging Applications

302.301 Receipt of applications.
302.302 Examination of applicants.
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Subpart D—Selection and Appointment; Reappointment; and Qualifications for Promotion

302.401 Selection and appointment.
302.402 Reappointment.
302.403 Qualifications for promotion.

Subpart E—Appeals

302.501 Entitlement.


SOURCE: 55 FR 9407, Mar. 14, 1990, unless otherwise noted.

Subpart A—General Provisions

§ 302.101 Positions covered by regulations.

(a) Positions covered. With respect to the application of veteran preference, this part applies to each position in the Executive Branch of the Federal Government that is not in the competitive service and that is subject to the provisions of title 5, United States Code, or subject to a statutory requirement to follow the veteran preference provisions of title 5. With respect to restoration rights that are due to compensable injury and appeals therefrom, this part applies to those positions covered by 5 U.S.C. 8101(1) that are not in the competitive service.

(b) Positions not covered. This part does not apply to a position or appointment that is required by the Congress to be confirmed by, or made with the advice and consent of, the Senate.

(c) Positions exempt from appointment procedures. In view of the circumstances and conditions surrounding employment in the following classes of positions, an agency is not required to apply the appointment procedures of this part to them, but each agency shall follow the principle of veteran preference as far as administratively feasible and, on the request of a qualified and available preference eligible, shall furnish him/her with the reasons for his/her nonselection. Also, the exemption from the appointment procedures of this part does not relieve agencies of their obligation to accord persons entitled to priority consideration (see § 302.103) their rights under 5 U.S.C. 8151:

(1) Positions filled by persons appointed without pay or at pay of $1 a year;

(2) Positions outside the continental United States and outside the State of Hawaii and the Commonwealth of Puerto Rico when filled by persons resident in the locality, and positions in the State of Hawaii and the Commonwealth of Puerto Rico when paid in accordance with prevailing wage rates;

(3) Positions which the exigencies of the national defense program demand be filled immediately before lists of qualified applicants can be established or used, but appointments to these positions shall be temporary appointments not to exceed 1 year which may be renewed for 1 additional year at the discretion of the agency;

(4) Positions filled by appointees serving on an irregular or occasional basis whose hours or days of work are not based on a prearranged schedule and who are paid only for the time when actually employed or for services actually performed;

(5) Positions paid on a fee basis;

(6) Positions included in Schedule A (see subpart C of part 213 of this chapter) and similar types of positions.
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§ 302.105 Special agency plans.

An agency having a position subject to this part may establish a system which will result in granting to eligible persons the preference or priority consideration referred to in sections 1302(c) or 8151 of title 5, United States Code, but which does not conform to all the procedural requirements set forth in this part. The agency establishing such a system must ensure that all eligible applicants entitled to veteran preference or priority consideration receive at least as much advantage in referral as they would receive when OPM agrees with the agency that the positions should be included hereunder;

(7) Positions included in Schedule C (see subpart C of part 213 of this chapter) and positions excepted by statute which are of a confidential, policy-making, or policy-advocating nature;

(8) Student Trainee positions when filled under Schedule B (see subpart C of part 213 of this chapter);

(9) Attorney positions; and

(10) Positions filled by reemployment of an individual in the same agency and commuting area, at the same or lower grade, and under the same appointing authority as the position last held; Provided That, there are no candidates eligible for the position on the agency’s priority reemployment list established in accordance with §302.303.

(c) Upon a finding by OPM that in a particular situation the action will be in the interest of good administration, OPM may authorize an agency to make appointments to specified positions in the excepted service in the same manner as to positions in the competitive service. Persons given career-conditional or career appointments pursuant to a specific authorization by OPM under this paragraph may acquire a competitive status as provided in part 315 of this chapter.


§ 302.104 Applicability of regulations to applicants and employees.

Each agency shall follow the provisions of this part relating to examination, rating, and selection for appointment of an applicant when a qualified preference eligible or person entitled to priority consideration applies for appointment to a position covered by this part. Each agency, in its discretion, may follow these provisions when no preference eligible or person entitled to priority consideration applies.

§ 302.105 Special agency plans.

An agency having a position subject to this part may establish a system which will result in granting to eligible persons the preference or priority consideration referred to in sections 1302(c) or 8151 of title 5, United States Code, but which does not conform to all the procedural requirements set forth in this part. The agency establishing such a system must ensure that all eligible applicants entitled to veteran preference or priority consideration receive at least as much advantage in referral as they would receive when OPM agrees with the agency that the positions should be included hereunder;

(7) Positions included in Schedule C (see subpart C of part 213 of this chapter) and positions excepted by statute which are of a confidential, policy-making, or policy-advocating nature;

(8) Student Trainee positions when filled under Schedule B (see subpart C of part 213 of this chapter);

(9) Attorney positions; and

(10) Positions filled by reemployment of an individual in the same agency and commuting area, at the same or lower grade, and under the same appointing authority as the position last held; Provided That, there are no candidates eligible for the position on the agency’s priority reemployment list established in accordance with §302.303.

(c) Upon a finding by OPM that in a particular situation the action will be in the interest of good administration, OPM may authorize an agency to make appointments to specified positions in the excepted service in the same manner as to positions in the competitive service. Persons given career-conditional or career appointments pursuant to a specific authorization by OPM under this paragraph may acquire a competitive status as provided in part 315 of this chapter.

under the procedures set forth in this part.

Subpart B—Eligibility Standards

§ 302.201 Persons entitled to veteran preference.

In actions subject to this part, each agency shall grant veteran preference as follows:

(a) When numerical scores are used in the evaluation and referral, the agency shall grant 5 additional points to preference eligibles under section 2108(3) (A) and (B) of title 5, United States Code, and 10 additional points to preference eligibles under section 2108(3) (C) through (G) of that title.

(b) When eligible candidates are referred without ranking, the agency shall note preference as "CP" for preference eligibles under 5 U.S.C. 2108(3)(C), as "XP" for preference eligibles under 5 U.S.C. 2108(3) (D) through (G), and as "TP" for all other preference eligibles under that title.

§ 302.202 Qualification requirements.

Before making an appointment to a position covered by this part, each agency shall establish qualification standards such as those relating to experience and training, citizenship, minimum age, physical condition, etc., which shall relate to the duties to be performed. An agency may delegate the establishment of standards relating to a group of positions or a specific position to the appropriate administrative level or subdivision in accordance with the needs of the locality in which the position is located, but the agency shall determine that each standard established is in conformity with this part. Each agency shall make its standards a matter of record in the appropriate office of the agency, and shall furnish information concerning the standards for a position to an applicant on his/her request. Each agency shall apply the standards for a position uniformly to all applicants, except for such waivers as are provided in this part for a preference eligible. An agency shall not include a minimum educational requirement in qualification standards, except for a scientific, technical, or professional position the duties of which the agency decides cannot be performed by a person who does not have a prescribed minimum education.

An agency shall not establish a maximum age requirement for any position. Each agency shall make a part of its records the reasons for its decision under this section and shall furnish those reasons to an applicant on his/her request. The qualification standards shall include:

(a) A provision for waiver by the agency of requirements as to age, height, and weight for each preference eligible when the requirements are not essential to the performance of the duties of the position; and

(b) A provision for waiver by the agency of physical requirements for each preference eligible when the agency, after giving due consideration to the recommendation of an accredited physician, finds that the applicant is physically able to discharge the duties of the position.

§ 302.203 Disqualifying factors.

(a) The qualification standards established by an agency or by an administrative level or subdivision of an agency may provide that certain reasons disqualify an applicant for appointment. The following, among others, may be included as disqualifying reasons:

(1) Dismissal from employment for delinquency or misconduct;

(2) Criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct;

(3) Intentional false statement or deception or fraud in examination or appointment;

(4) Habitual use of intoxicating beverages to excess;

(5) Reasonable doubt as to the loyalty of the person involved to the Government of the United States;

(6) Any legal or other disqualification which makes the individual unfit for service; or

(7) Lack of United States citizenship.

(b) An agency may not disqualify an applicant solely because of his/her retired status.
§ 302.301 Receipt of applications.
(a) Each agency shall establish definite rules regarding the acceptance of applications for employment in positions covered by this part and shall make these rules a matter of record.
(b) Each agency shall apply its rules uniformly to all applicants who meet the conditions of the rules and shall furnish information concerning the rules to an applicant on his/her request.

§ 302.302 Examination of applicants.
(a) Eligibility. An evaluation of the qualifications of applicants for positions covered by this part may be conducted at any time before an appointment is made. The evaluation may involve only determination of eligibility or ineligibility or may include qualitative rating of candidates. If the evaluation involves only basic eligibility numerical scores will not be assigned and eligible candidates will be referred in accordance with the procedures described in paragraph (b)(5) of § 302.304. If qualitative ranking is desired, numerical scores may be assigned in accordance with paragraph (b) of this section. Each agency shall make a part of the records the reasons for its decision to use ranked or unranked referral and, for ranked actions, the quality ranking factors used. This information shall be made available to an applicant on his/her request.
(b) Rating. Numerical scores will be assigned on a scale of 100. Each applicant who meets the qualification requirements for the position established under § 302.202 will be assigned a rating of 70 or more and will be eligible for appointment. Candidates scoring 70 or more will receive additional points for veteran preference as provided in § 302.201. Numerical ratings are not required when all qualified applicants will be offered immediate appointment. When there is an excessive number of applicants, numerical ratings are required only for a sufficient number of the highest qualified applicants to meet the anticipated needs of the agency within a reasonable period of time. The agency must, however, adopt procedures to insure the consideration of preference eligibles in the order in which they would have been considered if all applicants had been assigned numerical ratings. An agency shall furnish a notice of the rating assigned to an applicant on his/her request.
(c) Nonpreference applicants for certain positions. An agency may not consider or rate an application for the position of elevator operator, messenger, guard, or custodian submitted by a non-preference eligible as long as at least three qualified preference eligibles are available for the position.
(d) Evaluating experience. When experience is a factor in determining eligibility, an agency shall credit a preference eligible (1) with time spent in the military service of the United States if the position for which he/she is applying is similar to the position which he/she held immediately before his/her entrance into the military service; and (2) with all valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

§ 302.303 Maintenance of employment lists.
(a) Establishment—(1) Agency’s obligation. An agency must establish a priority reemployment list whenever any applicants rated eligible under § 302.302 meet the conditions set out in paragraphs (b)(1) through (b)(3) of this section and must consider candidates from that list in accordance with § 302.304(a). All applicants not included on the priority reemployment list will be listed on the regular employment list unless the agency elects to establish a reemployment list as provided in paragraph (c) of this section.
(2) Agency discretion. In establishing its lists, an agency may, but is not required to: Afford priority consideration to non-preference eligibles who meet the conditions set out in paragraph (b)(4) of this section; afford priority consideration under paragraph (b) of this section for a longer time and/or in a broader geographic area than the minimum requirement; and/or provide reemployment consideration after the priority list is exhausted to additional
§ 302.303

current and former employees in accordance with paragraph (c) of this section. An agency may limit consideration granted at its discretion to applicants for specific positions or applicants who meet specific conditions, but must make those conditions a matter of record and must apply its policy uniformly to all eligible employees. Generally, full-time employees may be considered only for full-time positions and other-than-full-time employees only for other-than-full-time positions. However, full-time employees may be considered for other-than-full-time positions if there are no other-than-full-time employees on the appropriate priority or reemployment list; and other-than-full-time employees may be considered for full-time positions if there are no full-time employees on the appropriate list.

(b) Priority reemployment list. Candidates are entered on the priority reemployment list in the geographic areas specified in paragraph (b)(1) of this section and remain on the list for 2 years unless the agency elects to provide a longer period of eligibility. The priority reemployment list includes:

1. The name of each former employee of the agency who is a preference eligible, has been furloughed or separated from a continuing appointment without delinquency or misconduct, and applies for reemployment. Candidates in this category are considered in the commuting area where they were separated unless the agency elects to provide broader geographic consideration.

2. The name of each former employee of the agency who has been furloughed or separated due to compensable injury sustained under the provisions of 5 U.S.C. chapter 81, subchapter I, who is not entitled to immediate restoration, and who is eligible for priority consideration under this part. Candidates in this category are considered in the commuting area where they last served and, if the agency determines that an appropriate vacancy is unlikely to occur in that area during the candidates’ period of reemployment priority, in other locations for which they are available.

(4) At the agency’s discretion, the name of each former employee of the agency who is not a preference eligible, has been furloughed or involuntarily separated from a continuing appointment without delinquency or misconduct, and applies for reemployment. Candidates in this category are considered in the geographic area specified by the agency.

(c) Reemployment list. A reemployment list may be established at the agency’s discretion to include the names of current employees of the agency and of former employees of the agency who are to be considered for future employment and who are not eligible for inclusion on the priority reemployment list. Employees may be entered on the reemployment list only for positions in which tenure and/or work schedule is no greater than that of the position previously held.

(d) Order of entry. An agency shall enter the names of all applicants rated eligible under § 302.302 on the appropriate list (priority reemployment, reemployment, or regular employment) in the following order:

1. When candidates have been rated only for basic eligibility under § 302.302(a).
   (i) Preference eligibles having a compensable, service-connected disability of 10 percent or more (designated as “CP”) unless the list will be used to fill professional positions at the GS-9 level or above, or equivalent;
   (ii) All other candidates eligible for 10-point veteran preference;
   (iii) All candidates eligible for 5-point veteran preference; and
   (iv) Qualified candidates not eligible for veteran preference.

2. When qualified candidates have been assigned numerical scores under
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§ 302.304 Order of consideration.

(a) Consideration of priority reemployment candidates. An agency must consider all qualified candidates on its priority reemployment list before it may refer candidates from its reemployment list, if any, or regular employment list. When a qualified candidate is available on the priority list, the agency may appoint an individual who is not on the priority list or who has lower standing than others on that list only when necessary to obtain an employee for duties that cannot be taken over without undue interruption to the agency by an individual who is entitled to reemployment priority or has higher standing on the priority reemployment list than the one appointed. The agency must notify each individual on the priority reemployment list who is adversely affected by an appointment under this paragraph of the reasons for the exception and must further notify each such individual who is a preference eligible of his or her right of appeal to the Merit Systems Protection Board.

(b) Consideration of other candidates. Except as provided in paragraphs (b)(4) and (b)(5) of this section, an agency shall consider applicants on the reemployment and/or regular employment list who have been assigned eligible ratings for a given position in Order A, Order B, or Order C, as described in paragraphs (b)(1) through (b)(3) of this section. Order A must be used when the agency has not established a reemployment list.

(1) Order A. (i) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, in the order of his/her numerical ranking.

(ii) The name of each other qualified applicant in the order of his/her numerical ranking.

(2) Order B. (i) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency’s reemployment list, in the order of his/her numerical ranking.

(ii) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency’s regular employment list, in the order of his/her numerical ranking.

(iii) The name of each other qualified applicant on the agency’s reemployment list, in the order of his/her numerical ranking.

(iv) The name of each other qualified applicant on the agency’s regular employment list, in the order of his/her numerical ranking.

(3) Order C. (i) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency’s reemployment list, in the order of his/her numerical ranking.

(ii) The name of each other qualified applicant on the agency’s reemployment list, in the order of his/her numerical ranking.

(iii) The name of each other qualified applicant on the agency’s regular employment list, in the order of his/her numerical ranking.
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Subpart D—Selection and Appointment; Reappointment; and Qualifications for Promotion

§ 302.401 Selection and appointment.

(a) Selection. When making an appointment from a priority reemployment, reemployment, or regular list on which candidates have not received numerical scores, an agency must make its selection from the highest available preference category, as long as at least three candidates remain in that group. When fewer than three candidates remain in the highest category, consideration may be expanded to include the next category. When making an appointment from a list on which candidates have received numerical scores, the agency must make its selection for each vacancy from not more than the three highest names available for appointment in the order provided in §302.304. Under either method, an agency is not required to—

(1) Accord an applicant on its priority reemployment or reemployment list the preference consideration required by §302.304 if the list on which the applicant’s name appears does not contain the names of at least three preference eligibles; or

(2) Consider an applicant who has previously been considered three times or a preference eligible if consideration of his/her name has been discontinued for the position as provided in paragraph (b) of this section.

(b) Passing over a preference applicant. When an agency, in making an appointment as provided in paragraph (a) of this section, passes over the name of a preference eligible who is entitled to priority consideration under §302.304 and selects a nonpreference eligible, it shall record its reasons for so doing, and shall furnish a copy of those reasons to the preference eligible or his/her representative on request. An agency may discontinue consideration of the name of a preference eligible for a position if on three occasions the agency has considered him/her for the position and has passed over his/her name and recorded its reasons for so doing.
§ 302.402 Reappointment.
An agency may reappoint a current or former nontemporary employee of the executive branch of the Federal Government who is a preference eligible to a position covered by this part without regard to the names of qualified applicants on the agency's priority reemployment, reemployment, or regular employment list.

§ 302.403 Qualifications for promotion.
In determining qualifications for promotion with respect to an employee who is a preference eligible, an agency shall waive:
(a) Requirements as to age, height, and weight unless the requirement is essential to the performance of the duties of the position; and
(b) Physical requirements if, in the opinion of the agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position for which the promotion is proposed.

Subpart E—Appeals

§ 302.501 Entitlement.
An individual who is covered by 5 U.S.C. § 3101(1) and is entitled to priority consideration under this part (see § 302.103) may appeal a violation of his/her restoration rights to the Merit Systems Protection Board under the provisions of the Board's regulations by presenting factual information that he or she was denied restoration rights because of the employment of another person.

PART 304—EXPERT AND CONSULTANT APPOINTMENTS

Sec. 304.101 Coverage.
304.102 Definitions.
304.103 Authority.
304.104 Determining rate of pay.
304.105 Daily and biweekly basic pay limitations.
304.106 Pay and leave administration.
304.107 Reports.
304.108 Compliance.
Authority: 5 U.S.C. 3109.
Source: 60 FR 45648, Sept. 1, 1995, unless otherwise noted.
§ 304.103 Authority.

(a) Basic authority. (1) When authorized by an appropriation or other statute to use 5 U.S.C. 3109, an agency may appoint a qualified expert or consultant to an expert or consultant position that requires only intermittent and/or temporary employment. Such an appointment is excepted from competitive examination, position classification, and the General Schedule pay rates.

(2) An expert or consultant who works on a strictly intermittent basis may be appointed under this authority without time limit or for any period determined by the agency. All other experts and consultants must receive temporary appointments. Temporary experts and consultants may be reappointed in the same agency only as provided in paragraph (c) of this section.

(b) Inappropriate use. An agency must not use 5 U.S.C. 3109 to appoint an expert or consultant:

(1) To a position requiring Presidential appointment. However, subject to the conditions of this part, an agency may appoint an individual awaiting final action on a Presidential appointment to an expert or consultant position to perform demonstrably different duties without regard to the length of that individual’s previous expert or consultant service with the agency. Reappointment to perform substantially the same duties is subject to the following limits:

   (i) An agency may reappoint an expert or consultant who works on a full-time basis for a maximum of 2 years—i.e., on an initial appointment not to exceed 1 year and a reappointment not to exceed 1 additional year.
   (ii) An agency may reappoint an expert or consultant who works on a part-time or intermittent schedule in accordance with one of the following options. The agency must determine which option it will use in advance of any reappointment and must base its determination on objective criteria (e.g., nature of duties, pay level, whether or not work is regularly scheduled). Option 1 must be applied to reappointments of experts and consultants appointed without compensation.

   (i) Option 1—Annual service. An agency may reappoint an expert or consultant, with no limit on the number of reappointments, as long as the individual is paid for no more than 6 months (130 days or 1,040 hours) of work, or works for no more than that amount of time without compensation, in a service year. (The service year is the calendar year that begins on the date of the individual’s initial appointment in the agency.) An expert or consultant who exceeds this limit in his/her first service year may be reappointed for 1 additional year. An expert or consultant who exceeds the limit during any subsequent service year may not be reappointed thereafter.
   (ii) Option 2—Cumulative earnings. Each expert or consultant will have a
lifetime limit of twice the maximum annual rate payable under the annualized basic pay limitations of section 304.105. The agency may adjust this limit to reflect statutory increases in basic pay rates. The agency may re-appoint an expert or consultant until his/her total earnings from expert or consultant employment with the agency reach the lifetime maximum, as determined by using the applicable maximum salary rate. At that point, the employment must be terminated.

(3) OPM may authorize reappointment of an expert or consultant as an exception to the limits in the section when necessitated by unforeseen and unusual circumstances.

§ 304.104 Determining rate of pay.

(a) The rate of basic pay for experts and consultants is set by administrative action. The head of an agency, or his or her designee, must determine the appropriate rate of basic pay on an hourly or daily basis, subject to the limitations described in section 304.106. (b) The head of an agency, or his or her designee, shall consider the following factors in setting the initial rate of basic pay for an expert or consultant:

(1) The level and difficulty of the work to be performed;
(2) The qualifications of the expert or consultant;
(3) The pay rates of comparable individuals performing similar work in Federal or non-Federal sectors; and
(4) The availability of qualified candidates.

(c) An expert or consultant appointed under 5 U.S.C. 3109 may be employed without pay, provided the individual agrees in advance in writing to waive any claim for compensation for those services.

§ 304.105 Daily and biweekly basic pay limitations.

(a) Unless specifically authorized by an appropriation or other statute, agencies subject to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, may not pay for any 1 day an aggregate amount of pay (including basic pay, locality pay under subpart F of part 531 of this chapter, and premium pay under subpart A of part 550 of this chapter) that exceeds the daily equivalent of the highest rate payable under 5 U.S.C. 5332—that is, the daily rate for GS-15, step 10, under the General Schedule (excluding locality pay or any other additional pay). The daily rate is computed by dividing the annual GS-15, step 10, rate by 2,087 hours to find the hourly rate of pay and by multiplying the hourly rate of pay by 8 hours.

(b) Unless specifically authorized by an appropriation or other statute, an expert or consultant shall not be paid for any biweekly pay period an aggregate amount of pay (including basic pay, locality pay under subpart F of part 531 of this chapter, and premium pay under subpart A of part 550 of this chapter) in excess of the biweekly rate of pay for GS-15, step 10, under the General Schedule (excluding locality pay or any other additional pay). The biweekly rate is computed by dividing the annual GS-15, step 10, rate by 2,087 hours to find the hourly rate of pay and by multiplying the hourly rate of pay by 80 hours.

§ 304.106 Pay and leave administration.

(a) The employing agency has the authority to adjust the pay of experts and consultants after initial appointment and to establish appropriate policies governing the amount and timing of any such adjustments, subject to the limitations of § 304.105. In addition to the factors listed in § 304.104(b), the agency may consider factors such as job performance, contributions to agency mission, and the general pay increases granted to other Federal employees. Experts and consultants are not entitled to receive automatic adjustments in their rates of basic pay at the time of general pay increases under 5 U.S.C. 5303 unless specifically provided for in the official appointing document. In the absence of such automatic entitlement, any pay adjustments are at the agency’s discretion.

(b) Experts and consultants paid on a daily rate basis are not entitled to overtime pay under section 5542 of title 5, United States Code. Otherwise, experts and consultants qualify for premium pay under subchapter V of chapter 55 of title 5, United States Code, if
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they meet the applicable eligibility requirements (including the requirement that an employee have a regularly scheduled tour of duty, where applicable).

(c) Experts and consultants may be entitled to overtime pay under the Fair Labor Standards Act if they are non-exempt under OPM regulations implementing that Act for Federal employees. (See 5 CFR part 551).

(d) An expert or consultant may be paid for service on an intermittent basis in more than one expert or consultant position, provided the pay is not received for the same period of time (5 U.S.C. 5533(d)(1)).

(e) Experts and consultants are subject to the provisions of 5 U.S.C. 8344 and 8468 on reduction of basic pay by the amount of annuity received.

(f) Experts and consultants are subject to the provisions of 5 U.S.C. 5532 on reduction of retired military pay.

(g) Experts and consultants with a regularly scheduled tour of duty (i.e., not intermittent) are entitled to sick and annual leave in accordance with chapter 63 of title 5, United States Code, and to pay for any holiday occurring on a workday on which they perform no work, provided that workday is part of the basic workweek. Those employed on an intermittent basis do not earn leave and are not entitled to paid holidays.

§ 304.108 Compliance.

(a) Each agency using 5 U.S.C. 3109 must establish and maintain a system of controls and oversight necessary to assure compliance with 5 U.S.C. 3109 and these regulations. The system must include—

1. Appropriate training and information procedures to ensure that officials and employees using the authority understand the statutory and regulatory requirements; and

2. Appropriate provision for review of expert and consultant appointments.

(b) OPM will, as necessary—

1. Review agency employment of experts and consultants and agency controls and oversight to determine compliance; and

2. Issue instructions and guidance to agencies on employing experts and consultants and on reporting procedures.

PART 305—RESERVED

PART 307—VETERANS READJUSTMENT APPOINTMENTS

Sec.
307.101 Definitions.
307.102 Coverage and general responsibilities.
307.103 Appointing authority.
307.104 Appeal rights.


SOURCE: 58 FR 12145, Mar. 3, 1993, unless otherwise noted.

§ 307.101 Definitions.

In this part,

(a) The term veteran has the meaning given in section 4211 (2)(A), (3) and (4) of title 38, United States Code, as follows:

1. Veteran of the Vietnam era means an eligible veteran any part of whose active military, naval, or air service was during the Vietnam era.

2. Disabled veteran means:

(i) A veteran who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Department of Veterans Affairs; or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

3. Eligible veteran means a person who:

(i) Served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge; or

(ii) Was discharged or released from active duty because of a service-connected disability; or...
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§ 308.101 Definitions.

(iii) As a member of a reserve component under an order to active duty pursuant to section 672(a), (d), or (g), 673, or 673b of title 10 of the United States Code, served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from such duty with other than a dishonorable discharge.

(b) Post-Vietnam-era veteran means an eligible veteran who first became a member of the Armed Forces or first entered on active duty as a member of the Armed Forces after May 7, 1975.

(c) Vietnam era means the period beginning August 5, 1964 and ending May 7, 1975.

(d) Veterans readjustment appointment (VRA) is an excepted appointment made after April 8, 1970, under this part, to a position otherwise in the competitive service of eligible veterans of the Vietnam era and the post-Vietnam era.

§ 307.102 Coverage and general responsibilities.

(a) Federal agencies have the responsibility to provide the maximum of employment and job advancement opportunities to eligible veterans of the Vietnam era and the post-Vietnam era who are qualified for such employment and advancement.

(b) Employees with VRA appointments who satisfactorily complete two years of substantially continuous service under the VRA program, including training when required, shall be converted to career-conditional or career employment, as appropriate.

[58 FR 12146, Mar. 3, 1993, as amended at 60 FR 3058, Jan. 13, 1995]

§ 307.103 Appointing authority.

(a) An agency may appoint any veteran who served on active duty after August 4, 1964, who meets the basic veterans readjustment eligibility provided by law.

(b) Appointments are subject to investigation by OPM. A law, Executive order, or regulation which disqualifies a person for appointment in the competitive service also disqualifies a person for a veterans readjustment appointment.

[60 FR 3058, Jan. 13, 1995]

§ 307.104 Appeal rights.

A veterans readjustment appointment (VRA) is an excepted appointment to a position otherwise in the competitive service. Veterans readjustment appointees have the same appeal rights as excepted service employees under parts 432 and 752 of this chapter, except the appointees are also entitled to limited appeal protection during their 1st year of service as set forth in §315.806 of this chapter. This means that a VRA appointee with more than 1 year of current continuous service, who is also a preference eligible, can appeal an adverse action to the Merit Systems Protection Board. Non-preference eligibles serving under VRA appointments do not get such protection until they are converted to the competitive service.

[60 FR 3058, Jan. 13, 1995]
Volunteer Service under the Act is limited to services performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experience for the student. Such service is to be uncompensated and will not be used to displace any employee or to staff a position which is a normal part of the agency's work force.

§ 308.102 Eligibility and status.

(a) Minimum Age. The selection of students to participate under the program should be in conformance with either Federal, State, or local laws and standards governing the employment of minors.

(b) Status. A student participating under an agency volunteer program is not considered to be a Federal employee for any purposes other than injury compensation or laws related to the Tort Claims Act. Service is not creditable for leave accrual or any other employee benefits.

§ 308.103 Authority.

Section 301 of the Civil Service Reform Act of 1978, Public Law 95-454, authorized Federal departments and agencies to establish programs designed to provide educationally related work assignments for students in non-pay status.

PART 310—EMPLOYMENT OF RELATIVES

Subpart A—Restrictions on the Employment of Relatives

Sec.
310.101 Coverage.
310.102 Definitions.
310.103 Restrictions.

Subpart B—Emergency Exceptions

310.201 Coverage.
310.202 Exceptions.


SOURCE: 33 FR 12418, Sept. 4, 1968, unless otherwise noted.
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(c) For the purpose of this section, a public official who recommends a relative, or refers a relative for consideration by a public official standing lower in the chain of command, for appointment, employment, promotion, or advancement is deemed to have advocated the appointment, employment, promotion, or advancement of the relative.

(d) This section does not prohibit the appointment in the competitive service of a preference eligible if (1) his name is within reach for selection from an appropriate certificate of eligibles and (2) an alternative selection cannot be made from the certificate without passing over the preference eligible and selecting an individual who is not a preference eligible.

Subpart B—Emergency Exceptions

§ 310.201 Coverage.
This subpart applies to an office, agency, or other establishment in the executive, legislative, or judicial branch of the Federal Government, and in the government of the District of Columbia.

(5 U.S.C. 3110)

§ 310.202 Exceptions.
When necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or a national emergency as defined in §230.402(a)(1) of this title, a public official may employ relatives to meet those needs without regard to the restrictions in section 3110 of title 5, United States Code, and this part. Appointments under these conditions are temporary not to exceed 1 month, but may be extended for a 2nd month if the emergency need still exists.

[60 FR 3058, Jan. 13, 1995]
§ 315.201

315.601 Noncompetitive appointment of certain former overseas employees.
315.602 Appointment based on service in United States positions of the Panama Canal Commission.
315.610 Noncompetitive appointment of certain National Guard technicians.

Subpart G—Conversion to Career or Career-Conditional Employment from Other Types of Employment

315.701 Incumbents of positions brought into the competitive service.
315.702 Employees serving without competitive examination in rare cases.
315.703 Employees formerly reached on a register.
315.704 Conversion to career employment from indefinite or temporary employment.
315.705 Employees serving under transitional or veterans readjustment appointments.
315.706 Certain nonpermanent employees of the Department of Energy.
315.707 Disabled veterans.
315.708 Conversion based on service as a Presidential Management Intern.
315.709 Mentally retarded and severely physically handicapped employees serving under Schedule A appointments.
315.710 Professional and administrative career employees serving under Schedule B appointments.
315.711 Readers, interpreters, and personal assistants serving under Schedule A appointments.
315.725 Disqualifications.

Subpart H—Probation on Initial Appointment to a Competitive Position

315.801 Probationary period; when required.
315.802 Length of probationary period; crediting service.
315.803 Agency action during probationary period (general).
315.804 Termination of probationers for unsatisfactory performance or conduct.
315.805 Termination of probationers for conditions arising before appointment.
315.806 Appeal rights to the Merit Systems Protection Board.

Subpart I—Probation on Initial Appointment to a Supervisory or Managerial Position

315.901 Statutory requirement.
315.902 Definitions.
315.903 Coverage.
315.904 Basic requirement.
315.905 Length of the probationary period.
315.906 Crediting service toward completion of the probationary period.
Office of Personnel Management § 315.201

(1) Nontemporary employment. To be creditable, the 3-year period of service must begin with one of the following:

(i) Nontemporary appointment in the competitive service. For this purpose, nontemporary appointment includes a career-conditional appointment; career appointment; reinstatement under subpart D of this part; and transfer under subpart E of this part. The 3-year period may also begin, but not end, with status quo employment under subpart G of part 316 of this chapter, and overseas limited appointment of indefinite duration or overseas limited term appointment under part 301 of this chapter. The 3-year period also may have begun with permanent employment under now obsolete appointing authorities such as probational, war service indefinite, and emergency indefinite appointments. Determinations of whether an obsolete authority provides the basis for creditable service may be obtained from OPM;

(ii) The acquisition of competitive status on January 23, 1955, under provisions of Executive Order 10577, while serving in the excepted service;

(iii) Nontemporary appointment from a civil service register to a position in the excepted service before January 23, 1955;

(iv) Nontemporary appointment to a position in the District of Columbia Government before January 23, 1955, evidencing selection in regular order from a civil service register used to certify for probational appointment in the Federal service. Appointment from a register maintained only for District of Columbia Government would not meet this condition;

(v) Nontemporary appointment to an excepted position, provided the employee’s excepted position was brought into the competitive service and, on that basis, the employee acquired competitive status or was converted to a career or career-conditional appointment;

(vi) Nontemporary appointment to a nonappropriated fund (NAF) position in or under the Department of Defense, provided the employee’s NAF position was brought into the competitive service and, on that basis, the employee acquired competitive status or was converted to a career or career-conditional appointment;

(vii) Nontemporary excepted or nonappropriated fund appointment, Foreign Service appointment, or appointment in the Canal Zone Merit System, provided the employee is appointed or transferred to a competitive service position under the terms of an interexchange agreement with another merit system under §6.7 of this chapter, under Executive Order 11219 as amended by Executive Order 12292, or under Executive Order 11171;

(viii) The date of appointment to a position on the White House Staff or in the immediate office of the President or Vice President, provided the service has been continuous and the individual was appointed to a competitive service position under §315.602 of this chapter;

(ix) The date of nontemporary excepted appointment under §213.3202(b) of this chapter, provided the student’s appointment is converted to career or career-conditional appointment under Executive Order 12015, with or without an intervening term appointment, and without a break in service of one day.

(x) The date of veterans readjustment appointment (VRA), provided the appointment is converted to career or career-conditional appointment under §315.705 of this chapter, or the person is appointed from a civil service register without a break in service while serving under a VRA;

(xi) The date of nontemporary appointment to the Postal Career Service or the Postal Rate Commission after July 1, 1971, provided the individual is appointed to a career or career-conditional appointment under 39 U.S.C. 1006;

(xii) The date of appointment under Schedule A, §§213.3102(t) or 213.3102(u) of this chapter, of a mentally retarded or severely physically handicapped person, provided the employee’s appointment is converted to career or career-conditional appointment under §315.709 of this chapter;

(xiii) The date of appointment as a Presidential Management Intern under Schedule A, §213.3102(ii) of this chapter, provided the employee’s appointment is converted to career or career-conditional appointment under §315.708.
§ 315.201  

(xiv) The date of temporary appointment pending establishment of a register, provided the appointment was converted to career executive assignment;  

(xv) The date of temporary appointment pending establishment of a register (TAPER), provided:  

(A) The employee is serving on or after February 8, 1968, and his or her TAPER employment is changed by conversion or by an appointment without a break in service of a single workday to a career or career-conditional appointment from a civil service register; and  

(B) His or her TAPER service has been continuous without a break in service of more than 30 calendar days by other than status quo or indefinite employment in the competitive service, or military service provided he or she is reemployed as a TAPER employee within 120 days after separation under honorable conditions from the military service;  

(xvi) The starting date of National Guard technician service performed before January 1, 1969, provided the person was employed as a National Guard technician on December 31, 1968, and his or her position was brought into the competitive service on January 1, 1969;  

(xvii) The starting date of active service as an administrative enrollee in the United States Merchant Marine Academy; and  

(xviii) The date on which an employee became eligible for benefits under Public Law 83-121, unless an earlier date can be chosen because of prior nontemporary service.  

(2) Competitive status. Career tenure is acquired only under a permanent appointment in the competitive service that provides or leads to competitive status.  

(3) Substantially continuous service. A single break in creditable service of more than 30 calendar days will require the beginning of a new 3-year period, except for:  

(i) Breaks incident to entry into or return from military service and return from defense transfer, provided the person is reemployed in Federal service during his or her period of statutory or regulatory restoration or reemployment rights;  

(ii) Breaks incident to transfer to and from an international organization, provided the person is reemployed in Federal service under subpart B of part 350 of this chapter;  

(iii) Breaks during which an employee was eligible to receive injury compensation under the Office of Workers’ Compensation Programs, provided the person is reemployed under part 352 of this chapter;  

(iv) Breaks incident to a restoration to correct an unjustified or unwarranted separation;  

(v) Breaks following separation by reduction in force of employees who are eligible for entry on the reemployment priority list under subpart B of part 330 of this chapter, provided the person is reemployed in Federal service during the period of his or her reemployment priority;  

(vi) Breaks following involuntary separation without personal cause of employees who are eligible for a noncompetitive appointment based on an interchange agreement with another merit system under § 6.7 of this chapter, provided the person is reemployed in the competitive service under the agreement during the period of his or her eligibility;  

(vii) Breaks incident to volunteer service or training required after enrollment in volunteer service provided the person is reemployed in Federal service within 90 days of the termination of volunteer service or training. This provision applies to Peace Corps, VISTA, or other ACTION full-time programs that are potentially creditable in subsequent Federal employment for length of service for leave, reduction in force, and retirement purposes;  

(viii) Breaks incident to employment in a nonfederal organization that occurred because a Federal function was transferred to the organization by law, provided the employee moved as a result of the transfer of function without a break in service of more than 3 days to the nonfederal organization and is reemployed by nontemporary appointment in the competitive service without a break in service of more than 30 calendar days after separation from the nonfederal organization;
(ix) Employment with the District of Columbia Government after January 1, 1980 (the date the District implemented an independent merit personnel system not tied to the Federal system), provided the person was a District employee on December 31, 1979, was converted to the District system on January 1, 1980, and is reemployed by non-temporary appointment in the competitive service without a break in service of more than 30 calendar days after separation from District employment; and

(x) Breaks that occur when a career-conditional employee leaves Federal employment to accompany a spouse or parent (if the employee is their unmarried child under 21 years of age) who is a member of the Armed Forces or a Federal civilian employee on official assignment to an overseas post of duty, provided the employee’s separation from employment occurs no more than 90 calendar days prior to going overseas and reinstatement occurs while overseas or within 180 calendar days of return to the United States. Overseas posts of duty are duty locations outside the 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(4) Crediting service. An employee’s creditable service must total 3 years, under the following conditions.

(i) Work schedule. (A) Full-time service, and part-time service on or after July 1, 1962, are counted as calendar time from the date of appointment to date of separation.

(B) Intermittent service on or after July 1, 1962 is counted as 1 day for each day an employee is in pay status, regardless of the number of hours for which the employee is actually paid on a given day. For this purpose, 780 days in pay status are equivalent to 3 years’ service, but the service requirement may not be satisfied in less than 3 years of calendar time.

(C) Part-time and intermittent service before July 1, 1962 is counted based on the number of hours actually employed, including any paid leave. For this purpose, 6,240 hours of paid time are equivalent to 3 years’ service, but the service requirement may not be satisfied in less than 3 years of calendar time.

(ii) Nonpay status on the rolls and time off the rolls. No credit is given for periods of nonpay status and time off the rolls, except under the following conditions:

(A) Credit is given for the first 30 calendar days of each period of nonpay status on the rolls during full-time employment, or during part-time employment on or after July 1, 1962. On this same basis, a seasonal employee receives credit for the first 30 calendar days of each period of nonpay status. Nonpay status in excess of 30 days extends the 3-year waiting period by the amount of the excess;

(B) Full credit is given for periods of nonpay status and time off the rolls incident to entry into and return from military service and return from defense transfer, provided the person is reemployed in Federal service during the period of his or her statutory or regulatory restoration or reemployment rights;

(C) Full credit is given for periods of nonpay status and time off the rolls incident to transfer to and return from an international organization, provided the person is reemployed in Federal service under subpart C of part 352 of this chapter;

(D) Full credit is given for periods of nonpay status during which an employee was eligible to receive continuation of pay or injury compensation under the Office of Workers’ Compensation Programs. Full credit also is given for periods of time off the rolls during which an employee was eligible to receive injury compensation under the Office of Workers’ Compensation Programs, provided the person is reemployed under part 353 of this chapter.

(E) Credit is given for up to 30 calendar days for time off the rolls that follow separation by reduction in force of employees who are eligible for entry on the reemployment priority list under subpart B of part 330 of this chapter, provided the person is reemployed in Federal service during the period of his or her reemployment priority; and

(F) Credit is given for up to 30 calendar days for time off the rolls that follow involuntary separation without personal cause of employees who are
§ 315.202 Conversion from career-conditional to career tenure.

A career-conditional employee becomes a career employee automatically on completion of the service requirement for career tenure.
Subpart C—Career or Career-Conditional Employment From Registers

§ 315.301 Tenure on appointment from register.
(a) Except as provided in paragraph (b) of this section, an eligible appointed from a register for other than temporary or term employment becomes a career-conditional employee.
(b) An eligible appointed from a register for other than temporary or term employment becomes a career employee when he is excepted from the service requirement for career tenure by § 315.201(c).

§ 315.302 Acquisition of competitive status.
An employee appointed as provided in § 315.301 acquires a competitive status automatically on completion of probation.

Subpart D—Career or Career-Conditional Employment by Reinstatement

§ 315.401 Reinstatement.
(a) Agency authority. Subject to part 335 of this chapter and paragraph (b) of this section, an agency may appoint by reinstatement to a competitive service position a person who previously was employed under career or career-conditional appointment (or equivalent).
(b) Time limit. There is no time limit on the reinstatement eligibility of a preference eligible or a person who completed the service requirement for career tenure. Except as provided in paragraph (c) of this section, an agency may reinstate a nonpreference eligible who has not completed the service requirement for career tenure only within 3 years following the date of separation. This time limit begins to run from the date of separation from the last position in which the person served under a career appointment, career-conditioned appointment, indefinite appointment in lieu of reinstatement, or an appointment under which he or she acquired competitive status.
(c) Extension of time limit. Intervening service of the following types extends the 3-year limit on reinstatement of eligibility of a nonpreference eligible who has not completed the service requirement for career tenure:
(1) Employment in Federal competitive service positions under temporary, term, indefinite, or other nonpermanent appointment.
(2) Employment in Federal excepted, nonappropriated fund, or Senior Executive Service positions in the executive branch;
(3) Employment in the Federal judicial branch or in the executive or judicial branches of the insular possessions of the United States;
(4) Employment in Federal legislative branch;
(5) Employment in an international governmental organization or a territorial, State, county, municipal, or foreign government in a position in which the agency determines that the proposed appointee acquired valuable training and experience for the position to be filled;
(6) A substantially full-time training course in any educational institution of recognized standing when the agency finds that the proposed appointee acquired valuable training or experience for the position to be filled;
(7) Compulsory service on work of national importance under civilian direction as required by the Military Selective Service Act;
(8) Active military duty terminated under honorable conditions;
(9) Service with the District of Columbia Government prior to January 1, 1980. In addition, for an employee on the District Government rolls on December 31, 1979, who was converted on January 1, 1980, to the District of Columbia merit personnel system, continuous District Government service after that date also extends the 3-year period;
(10) Periods of nonemployment during which a person is eligible for injury compensation under the Office of Workers’ Compensation Programs;
(11) Periods of nonemployment during which a person receives disability retirement under the Civil Service or Federal Employees Retirement System;
(12) Employment by a nonfederal organization when the person's function...
§ 315.402 Tenure on reinstatement.

(a) Except as provided in paragraph (b) of this section, a person who is reinstated becomes a career-conditional employee.

(b) A person who is reinstated becomes a career employee when he has completed the service requirement for career tenure or is excepted from it by §315.201(c).

§ 315.403 Acquisition of competitive status.

A person who was serving probation when he was separated and who is reinstated under §315.401 acquires a competitive status automatically on completion of probation.

Subpart E—Career or Career-Conditional Employment by Transfer

§ 315.501 Transfer.

Subject to part 335 of this chapter, an agency may appoint by transfer to a competitive service position, without a break in service of a single workday, a current career or career-conditional employee of another agency.

§ 315.502 Tenure on transfer.

(a) General rule. Except as provided in paragraph (b) of this section, a career employee who transfers remains a career employee and a career-conditional employee who transfers remains a career-conditional employee.

(b) Exceptions. (1) A career-conditional employee who transfers to a position required by law to be filled on a permanent basis becomes a career employee.

(2) A career employee who transfers from a position required by law to be filled on a permanent basis becomes a career-conditional employee unless he or she has completed the service requirement for career tenure.

§ 315.503 Acquisition of competitive status.

An employee who was serving probation when he was appointed under §315.501 acquires a competitive status automatically on completion of probation.

Subpart F—Career or Career-Conditional Appointment Under Special Authorities

§ 315.601 Appointment of former employees of the Canal Zone Merit System or Panama Canal Employment System.

(a) Agency authority. This section may be used by an agency to appoint noncompetitively, for other than temporary or term employment, a United States citizen separated from a career or career-conditional appointment under the Canal Zone Merit System, which was in effect before March 31, 1982, or under the Panama Canal Employment System, which became effective on March 31, 1982. (Appointments of such persons for temporary or term employment are to be made under applicable provisions of part 316 of this chapter.)

(b) Service requirement. An agency may appoint such a former employee under this section only when, immediately prior to separation from a qualifying appointment, the employee served continuously for at least one
§ 315.603 Appointment based on former incumbency of a position brought into the competitive service.

(a) Agency authority—(1) Employee in military service. An agency may appoint a former incumbent of a permanent excepted position who was serving under an appointment not limited to 1 year or less, or of a position in public or private enterprise when the position was brought into the competitive service on a continuing basis and who left his position after June 30, 1950, to perform active military service when:
   (i) The position was brought into the competitive service before or during

   (2) On appointment, if he or she has satisfactorily completed a 1-year probationary period under the Canal Zone Merit System and/or the Panama Canal Employment System.

   (3) On satisfactory completion of probation in accordance with §315.80 (a)(3) if he or she had not completed a 1-year probationary period under the Canal Zone Merit System or Panama Canal Employment System.

[48 FR 13951, Apr. 1, 1983]

§ 315.602 Appointment based on service in the Office of the President or Vice-President or on the White House Staff.

(a) Agency authority. An agency may appoint noncompetitively a person who has served at least 2 years in the immediate Office of the President or Vice-President or on the White House Staff, provided that the appointment is effected without a break in service of 1 full workday.

(b) Tenure on appointment. (1) Except as provided in paragraph (b)(2) of this section, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee when he or she has completed the service requirement for career tenure or is excepted from it by §315.201(c).
§ 315.604 Employment of disabled veterans who have completed a training course under Chapter 31 of title 38, United States Code.

(a) When a disabled veteran satisfactorily completes an approved course of training prescribed by the Veterans Administration under chapter 31, title 38, United States Code, and

(ii) The employee's position was brought into the competitive service either before the employee's separation for compensable injury or during his or her period of statutory restoration rights following such injury, and the employee's separation for compensable injury occurred before the end of the time limits set forth in § 315.701(c);

(iii) The agency submits a recommendation for his appointment to OPM within 6 months after release from military service under honorable conditions or after hospitalization continuing after release for not more than 1 year; and

(iv) He performed 6 months of satisfactory service immediately before the date his or her position was brought into the competitive service in the civilian executive branch of the Government, unless OPM has excepted his or her particular type of case from this requirement by a provision of the Federal Personnel Manual.

(b) Review of disapproved recommendations. Agencies shall establish procedures for reviewing disapprovals of recommendations for appointment under this section when such review is requested within 6 months after the date of disapproval.

(c) Tenure on appointment. (1) Except as provided in paragraph (c)(2) of this section, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee when he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(d) Acquisition of competitive status. (1) A person appointed under paragraph (a)(1) of this section acquires a competitive status automatically on appointment.

(2) A person appointed under paragraph (a)(2) or (a)(3) of this section acquires a competitive status automatically on completion of probation.

§ 315.605 Appointment of former ACTION volunteers.

(a) Agency authority. An agency in the executive branch may appoint noncompetitively, for other than temporary employment, a person whom the Director of ACTION certifies as having served satisfactorily as a volunteer or volunteer leader under the Peace Corps Act (22 U.S.C. 2501 et seq.), or as a VISTA volunteer under the Economic Opportunity Act of 1964 (42 U.S.C. 2991 et seq.) or the Domestic Volunteer Service Act of 1973 (Pub. L. 93-113), or as a full-time community volunteer (including criminal justice volunteer, volunteer in justice, and VET REACH volunteer) under part C of title I of Pub. L. 93-113. To be qualifying under this section VISTA and community volunteer service must total at least 1 year. In addition, a community volunteer must have served prior to October 1, 1976.

(b) Time limit. An agency in the executive branch may make an appointment under this section only within 1 year after the person completes the qualifying service. For Community volunteers who have completed their service before March 10, 1978, the 1-year period begins on March 10, 1978. However, an agency may extend the period for 2 more years to a total of 3 years if the person, after the qualifying service, is:

(1) In the military service;
(2) Studying at a recognized institution of higher learning; or
(3) In another activity which, in the agency’s view, warrants extension.

(c) Conditions. Any law, Executive order, or regulation that disqualifies an applicant for appointment also disqualifies an applicant for appointment under this section.

(d) Tenure on appointment. (1) Except as provided in paragraph (d)(2) of this section, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) or this section becomes a career employee if excepted from the service requirement for career tenure by § 315.201(c).

(e) Acquisition of competitive status. A person appointed under paragraph (a) of this section acquires a competitive status automatically on completion of probation.


§ 315.606 Noncompetitive appointment of certain present and former Foreign Service officers and employees.

Subject to the conditions prescribed by OPM in the Federal Personnel Manual, an agency may appoint noncompetitively a present or former career officer or employee of the Foreign Service who was appointed under authority of the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.), or legislation that supplements or replaces that Act, if:

(a) He qualifies under the requirements set forth in Executive Order 11219, and
§ 315.607

(b) OPM has concurred in his present or former agency's plan, and substantive changes thereto, for non-competitive entry of civil service employees into the Foreign Service positions of that agency.

§ 315.607 Noncompetitive appointment of present and former Peace Corps personnel.

(a) An agency in the executive branch may appoint noncompetitively, for other than temporary appointment, an individual:

(1) Who has completed no less than 36 months of continuous service without a break in service of 3 days or more under section 7(a) of the Peace Corps Act (22 U.S.C. 2506) which pertains to the appointment of Peace Corps staff (not volunteers);

(2) Whom the Director of the Peace Corps certifies as having satisfactorily served under such an appointment; and

(3) Who meets OPM qualification standards—including any written test requirements—for the position in question.

(4) Who is not a Peace Corps volunteer as this paragraph does not apply to Peace Corps volunteers.

(b) Time limitations. (1) An individual’s eligibility under this section extends through September 30, 1982, or until 3 years after separation from qualifying service with the Peace Corps, whichever is later.

(2) An agency may not extend this period.

(c) Conditions. Any law, Executive order, or regulation that disqualifies an applicant for appointment in the competitive service also disqualifies an applicant for appointment under this section.

(d) Acquisition of competitive status. A person appointed under paragraph (a) of this section acquires competitive status automatically upon completion of probation.

(e) Tenure on appointment. (1) Except as provided in paragraph (e)(2) of this section, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee if excepted from the service requirement for career tenure by §315.201(c).

§ 315.608 Noncompetitive appointment of certain former overseas employees.

(a) Authority. An executive branch agency may noncompetitively appoint, to a competitive service position within the United States (including Guam, Puerto Rico, and the Virgin Islands), an individual who has completed 52 weeks of creditable overseas service as defined in paragraph (b) of this section and is appointed within the time limits in paragraph (d) of this section. Any law, Executive order, or regulation that disqualifies an applicant for appointment in the competitive service, such as the citizenship requirement, also disqualifies the applicant for appointment under this section. An individual may be appointed to any occupation and grade level for which qualified. An agency may waive any requirement for a written test after determining that the duties and responsibilities of the applicant's overseas position were similar enough to make the written test unnecessary.

(1) Tenure. A person appointed under this section becomes a career-conditional employee unless he or she has already satisfied the requirements for career tenure or is exempt from the service requirement in 5 CFR 315.201.

(2) Competitive status. A person appointed under this section acquires competitive status automatically upon completion of probation.

(b) Creditable overseas service. For purposes of this section only, creditable service is service in an appropriated fund position(s) performed by a family member under a local hire appointment(s) overseas during the time the family member was accompanying a sponsor officially assigned to an overseas area and for which the family member received a fully successful or better (or equivalent) performance rating. Creditable overseas service is computed in accordance with the procedures in the OPM Guide to Processing Personnel Actions. Creditable service may have been under more than one
appointment and need not be continuous. Leave without pay taken during the time an individual is in the overseas area is credited on the same basis as time worked.

(c) Service waiver. Up to 26 weeks of the 52-week service requirement is waived when the head of an agency (or designee) that employed the family member overseas certifies that the family member’s expected 52 weeks of employment were cut short because of a nonpersonal situation that necessitated the relocation of the family member from the overseas area. The certification must include the number of weeks waived. For this purpose, a nonpersonal situation includes disaster, conflict, terrorism or the threat of terrorism, and those situations when a family member is forced to return to the United States because of military deployment, drawdowns, or other management-initiated actions. A nonpersonal situation does not include circumstances that specifically relate to a particular individual, for example, ill health or personal interest in relocating.

(d) Time limit on eligibility. An individual is eligible for appointment(s) under this authority for a period of 3 years following the date of returning from overseas to the United States to resume residence or until March 31, 1998, whichever date is later. An agency may extend an individual’s appointment eligibility beyond 3 years for periods equivalent to—

1. The time the individual was accompanying a sponsor on official assignment to an area of the United States with no significant opportunities for Federal employment; or
2. The time an individual was incapacitated for employment.

(e) Definitions. In this section terms have the following meaning:

1. Family member. An unmarried child under age 23 or a spouse. An individual must have been a family member at the time he or she met the overseas service requirement and other conditions but does not need to be a family member at the time of non-competitive appointment in the United States.
2. Sponsor. A Federal civilian employee, a Federal nonappropriated fund employee, or a member of a uniformed service who is officially assigned to an overseas area.
6. Member of a uniformed service. Personnel of the U.S. Armed Forces (including the Coast Guard), the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(f) Accompanying. The family member resided in the overseas area while the sponsor was officially assigned to an overseas post of duty. The family member need not have physically resided with the sponsor at all times or have traveled with the sponsor to or from the overseas area.

(g) Local hire appointment. An appointment that is not actually or potentially permanent and that is made from among individuals residing in the overseas area. In this section only, a local hire appointment includes nonpermanent employment under:

1. Overseas limited appointment under 5 CFR 301.203(b) or (c);
2. Expected appointment under Schedule A 213.3106(b)(1), 213.3106(b)(6), or 213.3106(d)(1) when the duration of the appointment is tied to the sponsor’s rotation date or when the appointment is made on a not-to-exceed (NTE) basis;
3. An “American family member” or “part-time intermittent temporary (PIT)” appointment in U.S. diplomatic establishments;
4. 50 U.S.C. 403; Public Law 86-36 (50 U.S.C. 402, note); the Berlin Tariff Agreement; or as a local national employee paid from appropriated funds; or
§ 315.609 Appointment based on service in United States positions of the Panama Canal Commission.

(a) Agency authority. An agency may appoint noncompetitively, for other than temporary or term employment, a United States citizen who has served under nontemporary appointment in a continuing career position of the Panama Canal Commission located in the United States.

(b) Service requirement. An agency may appoint such an individual under this section only when, immediately prior to separation from a qualifying appointment with the Panama Canal Commission in the United States, the individual served continuously for at least 1 year under such qualifying appointment or under a combination of such appointment and nontemporary appointment in the Canal Zone Merit System or the Panama Canal Employment System.

(c) Time limits. (1) There is no time limit on the appointment under this section of an employee who:
   (i) Is a preference eligible; or
   (ii) Has completed at least 3 years of service, which did not include any break in service longer than 30 days, under one or more nontemporary appointments in Panama Canal Commission positions located in the United States or in positions under the Canal Zone Merit System and/or the Panama Canal Employment System.

(2) All other individuals appointed under this section become career-conditional employees.

(d) Tenure on appointment. (1) On appointment under paragraph (a) of this section, an individual whose qualifying service does not include any break in service of more than 30 days and totals at least 3 years becomes a career employee.

(2) On satisfactory completion of probation in accordance with §315.801(a)(3) of this section, such an individual becomes a career employee.

(e) Acquisition of competitive status. A person appointed under paragraph (a) of this section automatically acquires a competitive status:

(1) If he or she has satisfactorily completed a 1-year trial period, which did not include more than 22 workdays in nonpay status, during qualifying employment with the Panama Canal Commission.

(2) On satisfactory completion of probation in accordance with §315.801(a)(3) if he or she had not completed such a 1-year trial period.

§ 315.610 Noncompetitive appointment of certain National Guard technicians.

(a) An agency may appoint noncompetitively a National Guard technician who—

   (1) Was involuntarily separated (other than by removal for cause on charges of misconduct or delinquency); and
   (2) Has served at least 3 years as a technician; and
   (3) Meets the qualifications requirements of the job; and
   (4) Is appointed within 1 year after separating from service as a Guard Technician.

(b) The noncompetitive appointing authority also applies to National Guard technicians separated before October 29, 1986, provided they are appointed within a year of the date of separation.

Subpart G—Conversion to Career or Career-Conditional Employment From Other Types of Employment

§ 315.701 Incumbents of positions brought into the competitive service.

(a) Employee coverage. This section applies to an employee retained under §§316.701 and 316.702 of this chapter who:

   (1) Was serving in a permanent excepted position under an appointment not limited to 1 year or less, or in a
Office of Personnel Management § 315.703

§ 315.703 Employees formerly reached on a register.

(a) Employee coverage. An employee who was serving in a position when his public or private enterprise in a position which the agency determines to be a continuing one, at the time his position was brought into the competitive service; and

(2) Performed 6 months of satisfactory service immediately before the date his position was brought into the competitive service, in a position or positions brought into the competitive service, or in the civilian executive branch of the Government, unless OPM has excepted his particular type of case from this requirement by a provision in the Federal Personnel Manual.

(b) Eligibility for conversion. Within the time limits set forth in paragraph (c) of this section, the employment of an employee covered by paragraph (a) of this section may be converted to career or career-conditional employment.

(c) Time limits. Conversion may be initiated under paragraph (b) of this section only within 6 months after the position is brought into the competitive service, except that:

(1) When it is necessary for OPM to determine that § 316.701 or § 316.702 applies to a group of positions, the recommendation shall be submitted within 6 months after OPM advises the agency of its determination; and

(2) When an employee is absent on an assignment to an organization or agency from which reemployment rights are provided under part 352 of this chapter or by statute, the conversion shall be initiated within 6 months after the employee's return from such assignment, when reemployment occurs within the time limits prescribed in the applicable statute or regulation;

(3) When an employee is absent on approved leave without pay, the conversion shall be initiated within 6 months of the employee's return to duty, when such return occurs within time limits authorized by the agency; and

(4) When an employee who is serving on military duty or who is separated and rehired during the 6-month period after the position is brought into the competitive service is eligible for conversion under the provisions of § 315.603, the conversion shall be initiated within the time limits prescribed by that section.

(d) Tenure on approval of conversion. Upon conversion under paragraph (b) of this section, the employee becomes:

(1) A career-conditional employee, except as provided in paragraph (b)(2) of this section;

(2) A career employee when he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(e) Acquisition of competitive status. A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on completion of probation.

(f) Review of disapproved conversions. Agencies shall establish procedures for reviewing disapprovals of conversions under this section when such review is requested within 6 months after the date of the disapproval.


§ 315.702 Employees serving without competitive examination in rare cases.

(a) Recommendation by agency. An agency may recommend to OPM that the employment of an employee who has completed at least 1 year of satisfactory service under § 316.601 be converted to career or career-conditional employment.

(b) Tenure on approval of recommendation. When OPM approves the agency's recommendation submitted under paragraph (a) of this section, the employee becomes:

(1) A career-conditional employee, except as provided in paragraph (b)(2) of this section;

(2) A career employee when he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) Acquisition of competitive status. A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

§ 315.703 Employees formerly reached on a register.

(a) Employee coverage. An employee who was serving in a position when his
or her name was within reach for career or career-conditional appointment on a register appropriate for that position may be converted to career or career-conditional employment when:

(1) The employee's name was included on an appropriate certificate issued while the employee was serving in the position, or reconstruction of the appropriate register verifies that the employee would have been within reach;

(2) The register was being used for career and career-conditional appointments when he or she was reached;

(3) He or she has been continuously employed since being reached;

(4) Conversion is initiated either before the expiration of the register or during a period of continuous service since the employee was reached; and

(5) When the employee is a non-preference eligible who was first reached after February 1, 1955, the Office, or the agency, in accordance with an agreement with the Office, determines that satisfactory reasons existed for passing over any preference eligible who preceded the employee on the register when he or she was reached and who is still within reach and available for appointment.

(b) Tenure on conversion. An employee whose appointment is converted under paragraph (a) of this section becomes:

(1) A career-conditional employee except as provided in paragraph (b)(2) of this section;

(2) A career employee when he or she has completed the service requirement for career tenure or is excepted from it by §315.201(c).

(c) Acquisition of competitive status. An employee whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on completion of probation.

[44 FR 55132, Sept. 25, 1979]

§315.704 Conversion to career employment from indefinite or temporary employment.

(a) General. Employees serving after February 7, 1968, in competitive positions under indefinite appointments or temporary appointments pending establishment of a register or as status quo employees acquire competitive status and are entitled to have their employment converted to career employment when such employees:

(1) Complete a total of at least 3 years of service in such a position under one or more such appointments without a break in service of more than 30 calendar days or without an interruption by nonqualifying service of more than 30 calendar days;

(2) Have rendered satisfactory service for the 12 months immediately preceding the conversion; and

(3) Meet applicable qualification requirements for the positions and are otherwise eligible for career employment. This paragraph does not apply to employees serving under an overseas limited appointment or in positions above GS-15 or equivalent.

(b) Creditable service. (1) In computing creditable service under paragraph (a) of this section for an employee who left a competitive position in which he or she was serving under a qualifying appointment covered in paragraph (a) of this section to enter the armed forces and who is reemployed in such a position within 120 calendar days after separation under honorable conditions, the period from the date he or she left the position to the date of reemployment is creditable.

(2) The Office shall publish in the Federal Personnel Manual the conditions under which full-time, part-time, and intermittent employment is creditable in meeting the service requirement under paragraph (a) of this section.

(c) Termination after failure to meet conversion requirements. An employing agency shall terminate employees covered by paragraph (a) of this section not later than 90 days after they complete the 3-year service requirement referred to in paragraph (a)(1) of this section, if they have not met the requirements and conditions of paragraphs (a)(2) and (3) of this section before the end of the 90-day period. For an employee who is reemployed after intervening service in the armed forces, the 90-day period begins on the date of reemployment if the employee's combined civilian and military service satisfies the 3-year service requirement on that date.

(d) Administrative error. When an employee has met the service requirement
under paragraph (a)(1) of this section but, because of administrative error or oversight, has not been converted to career employment within the time limits prescribed in this section, the employing agency may effect the employee’s conversion as of the date on which he or she met the service requirement, even though the time limit for such conversion has expired.


§ 315.705 Employees serving under transitional or veterans readjustment appointments.

(a) Agency action. (1) An agency shall convert the employment of an employee who has served continuously under a transitional appointment for at least 1 year to career or career-conditional employment within 90 calendar days after he completes the program of education or training approved for him.
(2) Within 30 calendar days after an employee completes (i) 2 years of substantially continuous service under a veterans readjustment appointment or under a combination of transitional and veterans readjustment appointments and (ii) his training or educational programs, the employing agency shall convert his appointment to career or career-conditional employment.

(b) Tenure. Upon conversion of his employment, the employee becomes:

(1) A career-conditional employee, except as provided in paragraph (b)(2) of this section;
(2) A career employee if he has completed the service requirement for career tenure or is excepted from it by §315.201(c).

(c) Acquisition of competitive status. An employee whose employment is converted to career or career-conditional employment under this section acquires competitive status automatically.


§ 315.706 Certain nonpermanent employees of the Department of Energy.

(a) General. Employees transferred to the Department of Energy under Public Law 95-91, who are serving in nonpermanent appointments made under competitive procedures of the former Atomic Energy Commission or Energy Research and Development Administration and are determined by the Department to be performing continuing functions, may be converted to career or career-conditional by OPM upon recommendation by the Department.

(b) Tenure upon conversion. Employees converted under this section become career-conditional employees unless they have completed the service requirement for career tenure.

(c) Acquisition of competitive status. A person whose employment is converted to career or career-conditional employment under this section acquires competitive status automatically.

[35 FR 5661, Apr. 8, 1970. Redesignated at 44 FR 63080, Nov. 2, 1979]

§ 315.707 Disabled veterans.

(a) Eligibility. (1) Subject to requirements concerning qualifications and probationary period published by the Office in the Federal Personnel Manual, an agency may convert the employment of a disabled veteran who meets the conditions below to career or career-conditional employment from a time-limited appointment of more than 60 days.
(2) To be eligible for conversion under this paragraph, the veteran must:

(i) Have been retired from active military service with a disability rating of 30 percent or more;
(ii) Have been rated by the Veterans Administration within the preceding year as having a compensable service-connected disability of 30 percent or more; or
(iii) Have had such a rating by the Veterans Administration at the time of a qualifying temporary appointment effected within the year immediately preceding the conversion.

(b) Tenure on conversion. (1) Except as provided in paragraph (b)(2) of this section, a person converted under paragraph (a) of this section becomes a career-conditional employee.
(2) A person appointed under paragraph (a) of this section becomes a career employee if excepted from the
§ 315.708 Service requirement for career tenure by § 315.201(c).

(c) Acquisition of competitive status. A person converted under paragraph (a) of this section acquires a competitive status automatically on completion of probation.


§ 315.708 Conversion based on service as a Presidential Management Intern.

(a) Agency authority. An agency may convert noncompetitively to career or career-conditional employment, a Presidential Management Intern who:

(1) Has satisfactorily completed a 2-year Presidential Management Internship, under §213.3102(ii) of this chapter, at the time of conversion;

(2) Is recommended for conversion within 90 calendar days before completion of the Internship; and

(3) Meets the citizenship requirement.

(b) Tenure on conversion. Except as provided in paragraph (b)(2) of this section, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee when he or she has completed the service requirement for career tenure or is excepted from it under §315.201(c) of this chapter.

(c) Acquisition of competitive status. A person converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.


§ 315.709 Mentally retarded and severely physically handicapped employees serving under Schedule A appointments.

(a) Coverage. Employees appointed under §§213.3102(t) and 213.3103(u) of this chapter may have their appointments converted to career or career-conditional appointments when they:

(1) Complete 2 or more years of satisfactory service, without a break or more than 30 days, under non-temporary Schedule A appointments;

(2) Are recommended for conversion by their supervisors;

(3) Meet all requirements and conditions governing career and career-conditional appointment except those requirements concerning competitive selection from a register and medical qualifications; and

(4) Are converted without a break in service of one workday.

(b) Tenure on conversion. An employee converted under paragraph (a) of this section becomes:

(1) A career-conditional employee, except as provided in paragraph (b)(2) of this section;

(2) A career employee if he or she has completed 3 years of substantially continuous service in non-temporary appointments under §213.3102(t) or §213.3102(u) of this chapter, or has otherwise completed the service requirement for career tenure, or is excepted from it by §315.201(c).

(c) Acquisition of competitive status. A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.


§ 315.710 Professional and administrative career employees serving under Schedule B appointments.

(a) Coverage. This section covers employees serving in occupations that were covered by the Professional and Administrative Career Examination on August 30, 1982, and that were listed in the consent decree entered on November 19, 1981, by the U.S. District Court for the District of Columbia in the civil action known as Luevano v. Devine and numbered as No. 79-271. Those occupations are designated in these regulations as professional and administrative career (PAC) occupations or positions. OPM will publish a listing of PAC occupations in the Federal Personnel Manual.

(b) Eligibility. An agency may, but is not required to, convert appointments of employees occupying PAC positions under non-temporary appointments effected under §213.3202(1) of this chapter.
to career or career-conditional appointments at the GS-9 level in any position in a PAC occupation when such employees—

(1) Complete at least 1 year of Schedule B service at the GS-7 level that meets the quality of experience requirement for the GS-9 position in which converted (less than full-time service is credited according to the relation it bears to the full-time workweek);

(2) Demonstrate performance that warrants conversion at GS-9 (a current performance rating of fully successful or better for the year immediately preceding conversion is necessary for this purpose);

(3) Meet all requirements and conditions governing career and career-conditional appointment except those requirements concerning competitive selection from a register;

(4) Are converted without a break in service of one workday or more; and

(5) Are converted as a result of a deliberate decision by management.

(c) Tenure on conversion. An employee converted under paragraph (a) of this section becomes—

(1) A career-conditional employee, except as provided in paragraph (c)(2) of this section;

(2) A career employee if he or she has completed 3 years of substantially continuous service in nontemporary appointments under §213.3202(l) of this chapter, or has otherwise completed the service requirement for career tenure, or is excepted from it by §315.201(c).

(d) Acquisition of competitive status. A person appointed under paragraph (a) of this section acquires a competitive status automatically on appointment.

§ 315.801 Probationary period; when required.

(a) The first year of service of an employee who is given a career or career-conditional appointment under this part is a probationary period when the employee:

(1) Was appointed from a register;

(2) Was reinstated under §315.401, unless during any period of service which affords a current basis for reinstatement, the employee completed a probationary period or served with competitive status under an appointment which did not require him to serve a probationary period;

(3) Was appointed under §315.601(a) as a former employee of the Canal Zone Merit System, unless he satisfactorily
§ 315.802 Length of probationary period; crediting service.

(a) The probationary period required by § 315.801 is 1 year and may not be extended.

(b) Prior Federal civilian service (including nonappropriated fund service) counts toward completion of probation when the prior service:

(1) Is in the same agency, e.g., Department of the Army;

(2) Is in the same line of work (determined by the employee's actual duties and responsibilities); and

(3) Contains or is followed by no more than a single break in service that does not exceed 30 calendar days.

(c) Periods of absence while in a pay status count toward completion of probation. Absence in nonpay status while on the rolls (other than for compensable injury or military duty) is creditable up to a total of 22 workdays. Absence (whether on or off the rolls) due to compensable injury or military duty is creditable in full upon restoration to Federal service. Nonpay time in excess of 22 workdays extends the probationary period by an equal amount. An employee serving probation who leaves Federal service to become a volunteer with the Peace Corps or the Corporation for National and Community Service serves the remainder of the probationary period upon reinstatement provided the employee is reinstated within 90 days of termination of service as a volunteer or training for such service.

(d) The probationary period for part-time employees is computed on the basis of calendar time, in the same manner as for full-time employees. For intermittent employees, i.e., those who do not have regularly scheduled tours of duty, each day or part of a day in pay status counts as 1 day of credit toward the 260 days in a pay status required for completion of probation. (However, the probationary period cannot be completed in less than 1 year of calendar time.)

§ 315.803 Agency action during probationary period (general).

The agency shall utilize the probationary period as fully as possible to determine the fitness of the employee and shall terminate his services during this period if he fails to demonstrate fully his qualifications for continued employment.
§ 315.804 Termination of probationers for unsatisfactory performance or conduct.

(a) When an agency decides to terminate an employee serving a probationary or trial period because his work performance or conduct during this period fails to demonstrate his fitness or his qualifications for continued employment, it shall terminate his services by notifying him in writing as to why he is being separated and the effective date of the action. The information in the notice as to why the employee is being terminated shall, as a minimum, consist of the agency's conclusions as to the inadequacies of his performance or conduct.

(b) Probation ends when the employee completes his or her scheduled tour of duty on the day before the anniversary date of the employee's appointment. For example, when the last workday is a Friday and the anniversary date is the following Monday, the probationer must be separated before the end of the tour of duty on Friday since Friday would be the last day the employee actually has to demonstrate fitness for further employment.

[33 FR 12418, Sept. 4, 1988, as amended at 60 FR 53505, Oct. 16, 1995]

§ 315.805 Termination of probationers for conditions arising before appointment.

When an agency proposes to terminate an employee serving a probationary or trial period for reasons based in whole or in part on conditions arising before his appointment, the employee is entitled to the following:

(a) Notice of proposed adverse action. The employee is entitled to an advance written notice stating the reasons, specifically and in detail, for the proposed action.

(b) Employee's answer. The employee is entitled to a reasonable time for filing a written answer to the notice of proposed adverse action and for furnishing affidavits in support of his answer. If the employee answers, the agency shall consider the answer in reaching its decision.

(c) Notice of adverse decision. The employee is entitled to be notified of the agency's decision at the earliest practicable date. The agency shall deliver the decision to the employee at or before the time the action will be made effective. The notice shall be in writing, inform the employee of the reasons for the action, inform the employee of his right of appeal to the Merit Systems Protection Board (MSPB), and inform him of the time limit within which the appeal must be submitted as provided in § 315.806(d).

§ 315.806 Appeal rights to the Merit Systems Protection Board.

(a) Right of appeal. An employee may appeal to the Merit Systems Protection Board in writing an agency's decision to terminate him under §315.804 or §315.805 only as provided in paragraphs (b) and (c) of this section. The Merit Systems Protection Board review is confined to the issues stated in paragraphs (b) and (c) of this section.

(b) On discrimination. An employee may appeal under this paragraph a termination not required by statute which he or she alleges was based on partisan political reasons or marital status.

(c) On improper procedure. A probationer whose termination is subject to §315.805 may appeal on the ground that his termination was not effected in accordance with the procedural requirements of that section.

(d) An employee may appeal to the Board under this section a termination which the employee alleges was based on discrimination because of race, color, religion, sex, or national origin; or age (provided that at the time of the alleged discriminatory action the employee was at least 40 years of age); or handicapping condition if the individual meets the definition of "handicapped person" as set forth in regulations of the Equal Employment Opportunity Commission at 29 CFR 1613.702(a). An appeal alleging a discriminatory termination may be filed under this subsection only if such discrimination is raised in addition to one of the issues stated in paragraph (b) or (c) of this section.

§ 315.901
Subpart I—Probation on Initial Appointment to a Supervisory or Managerial Position

SOURCE: 44 FR 44811, July 31, 1979, unless otherwise noted.

§ 315.901 Statutory requirement.
5 U.S.C. 3321 provides for "a period of probation . . . before initial appointment as a supervisor or manager becomes final." It also says that a supervisor or manager "who does not satisfactorily complete the probationary period . . . shall be returned to a position of no lower grade and pay than the position from which the individual was transferred, assigned or promoted." This subpart contains OPM regulations implementing those requirements of law.

§ 315.902 Definitions.
In this subpart supervisory position and managerial position have the meaning given them by the General Schedule Supervisory Guide.
[60 FR 53505, Oct. 16, 1995]

§ 315.903 Coverage.
This subpart applies to appointments and positions without time limitation in the competitive civil service. Agencies may, at their option, apply these provisions to time-limited appointments and positions. This subpart does not apply to appointments or positions in the Senior Executive Service.

§ 315.904 Basic requirement.
(a) An employee is required to serve a probationary period prescribed by the agency upon initial appointment to a supervisory and/or managerial position.
(b) An employee is required to complete a single probationary period in a supervisory position and a single probationary period in a managerial position, regardless of the number of agencies, occupations, or positions in which the employee serves. However, an agency may by regulation provide for exceptions to the probationary period for managers who have satisfactorily completed a probationary period for supervisors when justified on the basis of performance and experience.

(c) Employees who, as of the date this requirement is effective, are serving or have served in Federal civilian supervisory or managerial positions without time limitation, or in time-limited supervisory or managerial positions under an official assignment exceeding 120 days, are exempt from its provisions, except that supervisors who are assigned to managerial positions may, according to agency regulations, be required to serve a probationary period for managers.

§ 315.905 Length of the probationary period.
The authority to determine the length of the probationary period is delegated to the head of each agency, provided that it be of reasonable fixed duration, appropriate to the position, and uniformly applied. An agency may establish different probationary periods for different occupations or a single one for all agency employees.

§ 315.906 Crediting service toward completion of the probationary period.
(a) An employee who is reassigned, transferred, or promoted to another supervisory or managerial position while serving a probationary period under this subpart is subject to the probationary period prescribed for the new position. Service in the former position counts toward completion of the probationary period in the new position. If the former position was supervisory and the new position managerial, service counts in the manner prescribed by agency regulation.
(b) Service on detail, temporary promotion, or realignment to another supervisory or managerial position while serving probation is creditable toward completion of probation. Service in a nonsupervisory or nonmanagerial position is not creditable.
(c) Absence in nonpay status while on the rolls (other than for compensable injury or military duty) is creditable up to a total of 22 workdays. Absence (whether on or off the rolls) due to compensable injury or military duty is creditable in full upon restoration to Federal service. Nonpay time in excess of 22 workdays extends the probationary period by an equal amount.
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(d) Service during a probationary period from which an employee was separated or demoted for performance or conduct reasons does not count toward completion of probation required under a subsequent appointment. In other situations in which an employee does not complete probation, service is creditable as determined by agency policy.

(e) Temporary service in a supervisory or managerial position under temporary appointment, promotion, or reassignment prior to probation is creditable as determined by agency policy. Prior service under a detail may be credited only when a detail to a supervisory or managerial position is made permanent without a break in service.

[44 FR 44811, July 31, 1979, as amended at 60 FR 53505, Oct. 16, 1995]

§ 315.907 Failure to complete the probationary period.

(a) Satisfactory completion of the prescribed probationary period is a prerequisite to continued service in the position. An employee who, for reasons of supervisory or managerial performance, does not satisfactorily complete the probationary period is entitled to be assigned, except as provided in paragraph (b) of this section, to a position in the agency of no lower grade and pay than the one the employee left to accept the supervisory or managerial position.

(b) A nonsupervisory or nonmanagerial employee who is demoted into a position in which probation under § 315.904 is required and who, for reasons of supervisory or managerial performance, does not satisfactorily complete the probationary period is entitled to be assigned to a position at the same grade and pay as the one the employee left to accept the supervisory or managerial position. The employee is eligible for repromotion in accordance with agency promotion policy.

(c) The agency must notify the employee in writing that he or she is being assigned in accordance with this section.


§ 315.908 Appeals.

(a) An employee who, in accordance with the provisions of this subpart, is assigned to a nonmanagerial or non-supervisory position, has no appeal right.

(b) An employee who alleges that an agency action under this subpart was based on partisan political affiliation or marital status, may appeal to the Merit Systems Protection Board.

§ 315.909 Relationship to other actions.

(a) If an employee is required to concurrently serve both a probationary period under this subpart and a probationary period under subpart H of this part, the latter takes precedence and completion of the probationary period for competitive appointment fulfills the requirements of this subpart.

(b) An action which demotes an employee to a lower grade than the one the employee left to accept the supervisory or managerial position, and an action against an employee for reasons other than supervisory or managerial performance, is governed by part 432 or part 752 procedures, whichever is applicable. If the employee believes an action under this subpart was based on improper discrimination or other prohibited practices under 5 U.S.C. 2302, he or she may appeal to the Merit Systems Protection Board or the Equal Employment Opportunity Commission, as appropriate.

PART 316—TEMPORARY AND TERM EMPLOYMENT

Subpart A—Reserved

Subpart B—TAPER Employment

Sec. 316.201 Purpose and duration.
316.202 Eligibility of TAPER employees for within-grade increases.

Subpart C—Term Employment

316.301 Purpose and duration.
316.302 Selection of term employees.
316.303 Tenure of term employees.
316.304 Trial period.

Subpart D—Temporary Limited Employment

316.401 Purpose and duration.
§ 316.201

316.201 Purpose and duration.

(a) General. OPM may authorize an agency to fill a vacancy by temporary appointment pending establishment of a register (TAPER appointment) when there are insufficient eligibles on a register appropriate for filling the vacancy in a position that will last for a period of more than 1 year and the public interest requires that the vacancy be filled before eligibles can be certified. The agency must follow the provisions of part 333 of this chapter when making a TAPER appointment.

(b) Specific authority for Worker-Trainee positions. Agencies may make TAPER appointments to positions at GS-1, WG-1, and WG-2 and may reassign or promote the appointees to other positions through grade GS-3, WG-4, or equivalent grades in the Federal Wage System consistent with §330.501 of this chapter. Agencies are authorized to reassign or promote Worker-Trainees under this authority.

[60 FR 3058, Jan. 13, 1995, as amended at 63 FR 63783, Nov. 17, 1998]

§ 316.202 Eligibility of TAPER employees for within-grade increases.

A TAPER employee serving in a position subject to the General Schedule is eligible for within-grade increases in accordance with subpart D of part 531 of this chapter.

Subpart C—Term Employment

§ 316.301 Purpose and duration.

(a) An agency may make a term appointment for a period of more than 1 year but not more than 4 years to positions where the need for an employee’s services is not permanent. Reasons for making a term appointment include, but are not limited to: project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization. Agencies may extend appointments made for more than 1 year but less than 4 years up to the 4-year limit in increments determined by the agency. The vacancy announcement should state that the agency has the option of extending a term appointment up to the 4-year limit.

(b) OPM may authorize exceptions beyond the 4-year limit when the extension is clearly justified and is consistent with applicable statutory provisions. Requests to make and/or extend appointments beyond the 4-year limit must be initiated by the employing office and sent to the appropriate OPM service center.

[63 FR 63783, Nov. 17, 1998]

§ 316.302 Selection of term employees.

(a) Competitive term appointment. An agency may make a term appointment under 5 CFR part 332 competitive procedures.

(b) Noncompetitive term appointment. An agency may give a noncompetitive term appointment, without regard to the requirements of parts 332 and 333 of
this chapter, to an individual who is qualified for the position and who is eligible for:

(1) Reinstatement under §315.401 of this chapter;

(2) Veterans readjustment appointment (VRA) under §307.103 of this chapter. Term appointments under this section are permitted only at the grade levels authorized for VRA appointments. Such appointments are competitive service appointments not excepted VRA appointments and do not lead to conversion to career-conditional appointment;

(3) Career or career-conditional appointment under §§315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, 315.703, or 315.711 of this chapter;

(4) Appointment under 5 U.S.C. 312 (veterans with compensable service-connected disability of 30% or more). The disability must be documented by a notice of retirement of discharge due to service-connected disability from active military service dated at any time, or by a notice of compensable disability rating from the Department of Veterans Affairs, dated within the last 12 months;

(5) Appointment under 31 U.S.C. 732(g) for current and former employees of the General Accounting Office;

(6) Appointment under 28 U.S.C. 602 for current and former employees of the Administrative Office of the U.S. Courts;

(7) Reappointment on the basis of having left a term appointment prior to serving the 4-year maximum amount of time allowed under the appointment. Reappointment must be to a position in the same agency appropriate for filling under term appointment and for which the individual qualifies. Combined service under the original term appointment and reappointment must not exceed the 4-year limit; or

(8) Conversion in the same agency from a current temporary appointment when the employee is or was within reach on a certificate of eligibles for term appointment at any time during service in the temporary position. Within reach means that the person could have been selected for the position under competitive hiring procedures, including veterans’ preference. The certificate must have been actually used for term appointment. The person must have been continuously employed in the position from the date found within reach to the date converted to a term appointment.

(c) Term employees are eligible for an extension of their appointment in accordance with the time limits in §316.301 even if their eligibility for non-competitive appointment expires or is lost during the period they are serving under term employment.

§ 316.303 Tenure of term employees.

(a) A term employee does not acquire a competitive status on the basis of his term appointment.

(b) The employment of a term employee ends automatically on the expiration of his term appointment unless he has been separated earlier in accordance with this chapter.

§ 316.304 Trial period.

(a) The first year of service of a term employee is a trial period regardless of the method of appointment. Prior Federal civilian service is credited toward completion of the required trial period in the same manner as prescribed by §315.802 of this chapter.

(b) The agency may terminate a term employee at any time during the trial period. The employee is entitled to the procedures set forth in §315.804 or §315.805 of this chapter as appropriate.

Subpart D—Temporary Limited Employment

§ 316.401 Purpose and duration.

(a) Appropriate use. An agency may make a temporary limited appointment—

(1) To fill a short-term position (i.e., one that is not expected to last longer than 1 year); or

(2) To meet an employment need that is scheduled to be terminated within the timeframe set out in paragraph (c) of this section for such reasons as abolishment, reorganization, or contracting of the function, anticipated reduction in funding, or completion of a specific project or peak workload; or
§ 316.402 Procedures for making temporary appointments.

(a) Competitive temporary appointments. In accordance with the time limits in §316.401, an agency may make a temporary appointment under 5 CFR part 332 competitive procedures or under 5 CFR part 333 “outside-the-register” procedures when there are insufficient eligibles on the appropriate register.

(b) Noncompetitive temporary appointments. In accordance with the time limits in §316.401, an agency may give a noncompetitive temporary appointment, without regard to the requirements of parts 332 and 333 of this chapter, to an individual who is qualified for the position and who is eligible for:

(1) Reinstatement under §315.401 of this chapter;

(2) Veterans readjustment appointment under §307.103 of this chapter. Temporary limited appointments under this section are permitted only at the grade levels authorized for VRA appointments. Such appointments are on the date of the employee’s initial appointment in the agency. Should employment in a position filled under this exception total 6 months or more in any service year, the provisions of paragraph (c) of this section will apply to subsequent extension or reappointment unless OPM approves continued exception under this section. An individual may be employed for training for up to 120 days following initial appointment and up to 2 weeks a year thereafter without regard to the service year limitation.

(2) OPM will authorize exceptions to the limits set out in paragraph (c) of this section only when necessitated by major reorganizations or base closings or other unusual circumstances. Requests based on major reorganization, base closing, restructuring, or other unusual circumstances that apply agencywide must be made by an official at the headquarters level of the Department or agency. Requests involving extension of appointments to a specific position or project based on other unusual circumstances may be submitted by the employing office to the appropriate OPM service center.

[59 FR 46898, Sept. 13, 1994]
not VRA appointments and do not lead to conversion to career-conditional appointment;

(3) Career-conditional appointment under §§ 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, or 315.711 of this chapter;

(4) Appointment under 5 U.S.C. 3112 (veterans with compensable service-connected disability of 30% or more). The disability must be documented by a notice of retirement of discharge due to service-connected disability from active military service dated at any time, or by a notice of compensable disability rating from the Department of Veterans Affairs, dated within the last 12 months;

(5) Appointment under 31 U.S.C. 732(g) for current and former employees of the General Accounting Office;

(6) Appointment under 28 U.S.C. 602 for current and former employees of the Administrative Office of the U.S. Courts;

(7) Reappointment on the basis of being a former temporary employee of the agency who was originally appointed from a certificate of eligibles or under the provisions of part 333 of this chapter. An agency may not reappoint a former temporary employee if the individual has already served the maximum time allowed in §316.401 or if the position has been filled under temporary appointment for the maximum time allowed in §316.401. Reappointment must be to the same position or another position appropriate for temporary appointment with the same qualification requirements;

(8) Reappointment on the basis of being a former temporary employee who was originally appointed from a certificate of eligibles or under the provisions of part 333 of this chapter and who sustained a compensable injury while serving on the temporary appointment. Reappointment must be to the same position or another position appropriate for temporary appointment with the same qualification requirements. If the compensable injury disqualifies the former individual from performing such a position, reappointment may be to any position for which the individual is qualified. Reappointment must be for a minimum of 120 days.

(c) Extension of temporary appointments. An individual who receives a valid temporary appointment will be eligible for an extension in accordance with §316.401 even if his or her eligibility for noncompetitive appointment expires or is lost during the authorized period of temporary employment.

[63 FR 63784, Nov. 17, 1998]

§ 316.403 Designation of provisional appointments.

(a) Conditions for designation. An agency may designate a temporary appointment as a provisional appointment only when all of the following conditions are met:

(1) The appointment is made to fill a continuing position by a provisional appointment leading to permanent appointment when the position must be filled more quickly than would be possible under the procedures required for nontemporary appointment or when such a provisional appointment is a requirement of the applicable authority;

(2) The agency must have current budgetary and appointing authority for the nontemporary appointment (assuming satisfactory completion of the required procedures); and

(3) The agency must have a specific intention to convert the appointee to a nontemporary appointment under appropriate authority before the expiration of the temporary appointment, must state this intention in any written offer of employment and document this intention as part of the permanent record of the initial appointment in accordance with instructions issued by OPM in the Federal Personnel Manual.

(b) Authority for provisional appointments. Provisional appointments must be made under an authority established by law, Executive order, or regulation or granted by OPM. Appointments which may be treated as provisional appointments under this paragraph may be made under any appropriate authority, including, but not limited to:

(1) Noncompetitive temporary appointments of disabled veterans under §316.402(b)(5), when the appointments are intended to afford eligibility for conversion in accordance with §315.707 of this chapter and section 3112 of title 5, United States Code.
§ 316.601 Appointment without competitive examination in rare cases.

(a) An agency may make an appointment without competitive examination when:

(1) The duties and compensation of the position are such, or qualified persons are so rare, that in the interest of good civil service administration the position cannot be filled through open competitive examination;

(2) The person to be appointed meets all applicable qualification requirements for the position; and

(3) The appointment is specifically authorized by the Office or is made under an agreement between the agency and the Office providing for such appointments.

(b) A person appointed under paragraph (a) of this section does not acquire a competitive status on the basis of that appointment.

(c) When a position filled under paragraph (a) of this section becomes vacant, the agency may fill the vacancy by another appointment under paragraph (a) of this section only if the conditions of paragraph (a)(3) of this section are again met.

[44 FR 55132, Sept. 25, 1979]

Subpart G—Retention of Incumbents of Positions brought into the Competitive Service

§ 316.701 Public or private enterprise taken over by Government.

(a) When the Office, or an agency acting under an agreement with the Office, finds that the Federal Government has taken over a public or private enterprise, or an identifiable unit thereof, and that a position has thereby been brought into the competitive service, the agency may retain the incumbent of the position.

(b)(1) When an agency retains an employee under paragraph (a) of this section in a position which it determines to be a continuing one, the agency gives the employee a status quo appointment and shall decide on a timely basis whether it will convert that individual’s employment to career or career-conditional under § 315.701 of this chapter.

(2) When an agency decides not to effect conversion under § 315.701 of this chapter, or the employee fails to qualify for conversion, the agency, in its discretion, may retain the employee as a status quo employee.

(c) An agency may retain an employee under paragraph (a) of this section in a position that it determines is
noncontinuing under a temporary appointment. That appointment may be made for a period not to exceed 1 year and will be subject to the time limits set out in §316.402.

§316.702 Excepted positions brought into the competitive service.

(a) When the Office, or an agency acting under an agreement with the Office, finds that an excepted position has been brought into the competitive service by statute, Executive order, or the revocation of an exception under Civil Service Rule VI (§6.6 of this chapter), or is otherwise made subject to competitive examination, the agency may retain the incumbent of the position.

(b) (1) When an agency retains an employee under paragraph (a) of this section who was serving in an excepted position under an indefinite appointment or an appointment without time limit, the agency gives the employee a status quo appointment and may convert that employee's appointment to career or career-conditional under §315.701 of this chapter.

(2) When the agency decides not to effect conversion under §315.701 of this chapter, or the employee fails to qualify for conversion, the agency, in its discretion, may retain the employee as a status quo employee.

(c) An employee who was serving under an excepted appointment limited to 1 year or less may be retained as a temporary employee under paragraph (a) of this section until the scheduled expiration date of the employee's excepted appointment. Extension of the employee's temporary appointment beyond that date will be subject to the provisions of §316.402.

(d) An employee who was serving under an excepted appointment with a definite time limit longer than 1 year may be retained under a term appointment. The term appointment is subject to all conditions and time limits applicable to term appointments. Service under excepted appointment does not count against the maximum time limit for term appointment in the competitive service.
§ 317.201 Regulatory requirements.

This part contains the regulations of the Office of Personnel Management which implement the following provisions of law:

(a) Section 413 of title IV of the Civil Service Reform Act of 1978;

(b) Subchapter VIII of chapter 33 of title 5, U.S.C. on appointment, reassignment, and transfer in the Senior Executive Service; and

(c) Subchapter V of chapter 35 of title 5, U.S.C. on reinstatement to the Senior Executive Service.

Source: 45 FR 8541, Feb. 8, 1980
(2) An individual appointed or reinstated to a position after it has been designated a Senior Executive Service position;
(3) An employee transferred, promoted, voluntarily reassigned or voluntarily demoted to a position after it has been designated a Senior Executive Service position;
(4) An employee involuntarily reassigned or involuntarily demoted to a position after it has been designated a Senior Executive Service position; and
(5) An employee serving in a position which meets the grade level but not the functional criteria for designation as a Senior Executive Service position.
(6) An employee appointed in his/her former agency under a reemployment right provided, however, that the employee was under a reemployment agreement at the time the Senior Executive Service was implemented in his/her former agency and that the reemployment right was to a position which meets the grade level and functional criteria for inclusion under the Senior Executive Service.
(c) Employees excluded. The following employees are excluded from coverage of this subpart and are not entitled to conversion to the Senior Executive Service.
(1) An employee in a position designated as Senior Executive Service who is serving under a time limited appointment which will terminate before the operational date of the Senior Executive Service.
(2) An employee serving under a temporary promotion, detail, or temporary assignment in a position designated as Senior Executive Service unless the position which the employee encumbered on a permanent basis just prior to the current temporary action has been designated as Senior Executive Service.

§ 317.302 Conversion procedures.
(a) Employees appointed prior to designation; employees involuntarily reassigned or demoted after designation—(1) Notice. Each employee covered by this subpart who was appointed prior to the designation of his/her position as a Senior Executive Service position, or who was involuntarily reassigned or involuntarily demoted to a position after it was designated a Senior Executive Service position, shall be given a written notice which includes the following information:
(i) A statement that the employee's position has been designated as either "general" or "career reserved";
(ii) A statement that the employee is being offered an appointment under the Senior Executive Service or that the employee is not being offered an appointment under the Senior Executive Service but will be separated from the civil service pursuant to §317.305(b)(4) or §317.306(b)(4); if the employee is offered conversion, the notice shall also include:
(iii) A statement that the employee has 90 calendar days from the date of receipt of the written notice to elect either to join the Senior Executive Service or to remain in his/her current appointment system;
(iv) Identification of the position, SES pay rate, and kind of appointment which the employee will receive if the employee elects to convert to the Senior Executive Service;
(v) For excepted appointees who have reinstatement eligibility to a position in the competitive service, or as determined by the Office of Personnel Management, have substantial career-oriented service under career-type appointments as defined in §317.304(a)(2), a statement that the employee may request conversion to career appointment;
(vi) For employees under limited executive assignment who have reinstatement eligibility to a position in the competitive service, or as determined by the Office of Personnel Management, have substantial career-oriented service under career-type appointments as defined in §317.304(a)(2), and who are covered under §317.306(b)(3), a statement that the employee may request conversion to career appointment;
(vii) A summary of the features of the Senior Executive Service (this can be accomplished by appending descriptive material prepared by the Office);
(viii) A statement that the employee must submit his/her decision with regard to paragraphs (a)(1)(iii), (v) and
(vi) of this section, in writing, on or before the end of the notice period; and
(ix) A statement of the right of an employee who is aggrieved to appeal an action under this subpart to the Merit Systems Protection Board.

An employee whose involuntary reassignment or involuntary demotion to a designated position occurs less than 90 days before the operational date of the Senior Executive Service, shall be given this notice at the time of the personnel action. The employee shall have 90 calendar days from the date of receipt of the notice to make an election on conversion.

(2) Pay. Pay shall be set at an authorized SES pay rate. The pay rate given to an employee upon conversion shall not be less than the employee's basic payable salary just prior to conversion. An employee's payable salary upon conversion is subject to pay limitations, if any, imposed by chapter 53 of title 5, United States Code, or other statutes.

(3) Freedom of choice. The employee shall decide whether he/she accepts conversion to the Senior Executive Service. The employing agency shall not attempt to influence the employee's decision through coercion, intimidation or duress.

(4) Employee's election. On or before the end of the notice period, the employee shall signify in writing his/her decision to accept or to decline an appointment under the Senior Executive Service. An excepted or limited assignment employee covered under §317.305(b)(3) or §317.306(b)(3), respectively, shall also indicate whether he/she requests conversion to career appointment. Failure to respond shall be deemed a declination.

(b) Employees receiving appointments after designation but before the operational date of the Senior Executive Service—(1) Condition of appointment. Each individual appointed, reinstated, transferred, promoted, voluntarily reassigned or voluntarily demoted to a position after it has been designated a Senior Executive Service position shall be required to accept conversion to the Senior Executive Service. The agency shall advise the individual of this requirement prior to the appointment or other personnel action. The individual shall signify his/her acceptance of conversion in writing at the time of the personnel action.

(2) Notice. At the time of the personnel action, or 90 days before the Senior Executive Service becomes operational, whichever is later, the agency shall give the employee a written notice which identifies the position, SES pay rate, and kind of appointment the employee will receive under the Senior Executive Service.

(3) Pay. Pay shall be set at an authorized SES pay rate. The pay rate given to a Federal employee who enters the Senior Executive Service without a break in service shall not be less than the employee's basic payable salary just prior to his/her entry into the Senior Executive Service. An employee's payable salary under the Senior Executive Service is subject to pay limitations, if any, imposed by chapter 53 of title 5, United States Code, or other statutes.

(c) Employees whose positions are not designated Senior Executive Service positions—Notice. Each employee covered by §317.301(b)(5) shall be given a written notice advising the employee that his/her position is not designated a Senior Executive Service position; that the employee is not entitled to conversion to the Senior Executive Service; and that the employee has a right to appeal an action under this subpart to the Merit Systems Protection Board.

(d) Employees appointed under a reemployment right—(1) Notice. At the time the employee exercises his/her reemployment right, the agency shall give the employee a written notice which includes the following information:

(i) A statement that the employee meets the requirements of §317.301(b)(6) for eligibility for conversion to the Senior Executive Service and that he/she is being offered an appointment under the Senior Executive Service;

(ii) A statement that the employee has 90 calendar days from the date of receipt of the written notice to elect either to join the Senior Executive Service or to remain under the type of appointment upon which the reemployment right was based;

(iii) Identification of the position, SES pay rate, and kind of appointment which the employee will receive if the...
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§ 317.304 Conversion of career and career-type appointees.

(a) Coverage. This section covers employees serving under:

(1) A career or career-conditional appointment; or

(2) A similar type of appointment ("career-type" appointment) in an excepted service position as determined by the Office. A career-type appointment is an appointment in the excepted service other than an appointment:

(i) To a Schedule C position established under part 213 of this chapter;

(ii) To a position authorized to be filled by noncareer executive assignment under part 305 of this chapter;

(iii) To a position which meets the same criteria as a Schedule C position or a position authorized to be filled by noncareer executive assignment; or

(iv) To a position where the incumbent is traditionally changed upon a change in Presidential Administrations.

(b) Senior Executive Service appointment. An employee covered by this section shall be converted to a Senior Executive Service career appointment.

§ 317.303 Status of employees who decline voluntary conversion to the Senior Executive Service.

(a) An employee who declines conversion pursuant to § 317.302(a)(4) or § 317.302(d)(4) shall remain in his/her current appointment and pay system, and shall retain the grade, seniority, and other rights and benefits associated with such type of appointment and pay system. The employee may continue in the current SES position or be reassigned to another position within or outside the Senior Executive Service.

(b) The assignment of an employee who declines conversion under this subpart shall not result in the separation or reduction in grade of any other employee in the agency.

(c) Nothing in these regulations affects an agency's right to terminate a limited executive appointment pursuant to Civil Service Rule IX.

The employee may be assigned to either a “general” or a “career reserved” position.

§ 317.305 Conversion of excepted appointees.

(a) Coverage. This section covers employees serving under an excepted appointment in a position:

(1) In Schedule C of subpart C of part 213 of title 5, Code of Federal Regulations;

(2) Filled by noncareer executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations;

(3) In the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code, other than a career Executive Schedule position; or,

(4) Filled under an authority equivalent to paragraph (a) (1), (2), or (3) of this section.

(b) Senior Executive Service appointment. An employee covered by this section shall be subject to one of the following actions.

(1) If the employee’s position is designated a “general” position, the agency may convert the employee to a Senior Executive Service noncareer appointment. The employee may be assigned only to a “general” position.

(2) If the employee’s position is designated a “career reserved” position, the agency may convert the employee to a Senior Executive Service noncareer appointment and assign the employee to a “general” position. The employee cannot remain in a “career reserved” position.

(3) If the employee subject to §317.302(a) or §317.302(d) has reinstatement eligibility to a position in the competitive service, or, as determined by the Office of Personnel Management, had substantial career-oriented service under a career-type appointment as defined in §317.304(a)(2), the employee may request conversion to a career appointment. Such request must be made on or before the end of the notice period.

(4) In lieu of action under paragraph (b) (1), (2), or (3) of this section, the agency may separate the employee from the civil service.

§ 317.306 Conversion of employees under time limited appointments.

(a) Coverage. This section covers employees serving under:

(1) A limited executive assignment under subpart E of part 305 of title 5, Code of Federal Regulations; or

(2) A similar type of time limited appointment in an excepted service position.

(b) Senior Executive Service appointment. An employee covered by this section shall be subject to one of the following actions.

(1) If the position in which the employee is serving under a limited executive assignment or similar type of time limited appointment will terminate within three years from the date of the proposed conversion action, the agency may convert the employee to a Senior Executive Service limited term appointment.

(2) If the position in which the employee is serving under a limited executive assignment or similar type of time limited appointment will not terminate within three years from the date of the proposed conversion action, the agency may convert the employee to a Senior Executive Service noncareer appointment and assign the employee to a “general” position.

(3) If the employee subject to §317.302(a) or §317.302(d) has reinstatement eligibility to a position in the competitive service, or, as determined by the Office of Personnel Management, had substantial career-oriented service under a career-type appointment as defined in §317.304(a)(2), the employee may request conversion to a career appointment. Such request must be made on or before the end of the notice period.

(4) If the request is approved by the Office, the agency will convert the employee to a Senior Executive Service career appointment. The employee may be assigned to a “general” or a “career reserved” position. The name of the individual and basis for approving the request must be published in the Federal Register.

(5) If the employee’s request for conversion to career is not approved by the Office, or if the employee elects not to make such a request, the agency will convert the employee to a Senior Executive Service noncareer appointment. The employee may be assigned only to a “general” position.

(6) In lieu of action under paragraph (b) (1), (2), or (3) of this section, the agency may separate the employee from the civil service.
career appointment or career-type appointment in a position now being designated a Senior Executive Service position then the employee may request conversion to a career appointment. Such request must be made on or before the end of the notice period.

(i) If the employee requests conversion to career, the agency will convert the employee to a Senior Executive Service career appointment. The employee may be assigned to a “general” or a “career reserved” position. The name of the individual and basis for approving the request must be published in the Federal Register.

(ii) If the employee does not request conversion to career, the agency will convert the employee as provided for in paragraphs (b) (1) and (2) of this section.

(4) In lieu of action under paragraph (b) (1), (2), or (3) of this section, the agency may separate the employee from the civil service.

Subpart D—Qualifications Standards

Source: 54 FR 9758, Mar. 8, 1989, unless otherwise noted.

§ 317.401 General.

(a) The head of each agency is responsible for establishing qualifications standards for Senior Executive Service (SES) positions in accordance with the procedures described in this subpart.

(b) A written qualification standard must be established for a position before any appointment is made to the position. If a position is being filled competitively, the standard must be established before the position is announced.

[54 FR 9758, Mar. 8, 1989, as amended at 60 FR 6385, Feb. 2, 1995]

§ 317.402 Career reserved positions.

(a) The qualifications standard must be in writing and identify the breadth and depth of the professional/technical and executive/managerial knowledges, skills, and abilities, or other qualifications, required for successful performance in the position.

(b) The standard must be specific enough to enable applicants to be rated and ranked according to their degree of qualifications when the position is being filled on a competitive basis.

(c) Each qualifications criterion in the standard must be job related. The standard may not emphasize agency-related experience, however, to the extent that it precludes otherwise well-qualified candidates from outside the agency from appointment consideration.

(d) The standard may not include—

(1) A minimum length of experience requirement beyond that authorized for similar positions in the General Schedule;

(2) A minimum education requirement beyond that authorized for similar positions in the General Schedule; or

(3) Any criterion prohibited by law or regulation.

§ 317.403 General positions.

An agency may apply the criteria in §317.402 when developing qualifications standards for general positions. If it does not, OPM must be consulted before the agency develops the standard.

§ 317.404 Retention of qualifications standards.

If a qualifications standard is changed, or a position is cancelled, the former standard shall be retained for 2 years.

Subpart E—Career Appointments

Source: 54 FR 9758, Mar. 8, 1989, unless otherwise noted.

§ 317.501 Recruitment and selection for initial SES career appointment.

(a) Executive Resources Board (ERB). The head of each agency shall appoint one or more ERBs from among employees of the agency or commissioned officers of the uniformed services serving on active duty in the agency. The ERB shall, in accordance with the requirements of this section, conduct the merit staffing process for initial SES career appointment.

(b) Recruitment. (1) As a minimum, the source of recruitment to fill a SES position by career appointment must
§ 317.502 Qualifications Review Board certification.

(a) A Qualification Review Board (QRB) convened by OPM must certify the executive/managerial qualifications of a candidate before initial career appointment may be made to an SES position. More than one-half of the members of a QRB must be SES career appointees.

(b) Agency requests for certification of a candidate by a QRB must contain such information as prescribed by OPM, including evidence that merit staffing procedures were followed and that the candidate selected meets the qualifications requirements of the position.

(6) Provide that the appointing authority select from among the candidates identified as best qualified by the ERB and certify in writing that the candidate selected meets the qualifications requirements of the position.

(7) Provide that the appointing authority or the ERB certify in writing that appropriate merit staffing procedures were followed.

(d) Retention of documentation. Agencies must keep such documentation as OPM prescribes for 2 years to permit reconstruction of merit staffing actions.

(e) Applicant inquiries and appeals. Individuals are entitled to obtain information from an agency regarding the process used to recruit and select candidates for career appointment to SES positions. Upon request, applicants must be told whether they were considered qualified for the position and whether they were referred for appointment consideration. Also, they may have access to questionnaires or other written material regarding their own qualifications, except for material that would identify a confidential source. There is no right of appeal by applicants to OPM on SES staffing actions taken by ERBs, Qualifications Review Boards, or appointing authorities.

(f) OPM review. OPM may review proposed career appointments to ensure that they comply with all merit staffing requirements and are free of any impropriety. An agency shall take such action as OPM may require to correct an action contrary to any law, rule, or regulation.

that the appointing authority has certified the candidate's qualifications for the position.

(c) Qualifications Review Board certification of executive qualifications just be based on demonstrated executive experience; successful completion of an OPM-approved candidate development program; or possession of special or unique qualities that indicate a likelihood of executive success. Any existing time limit on a previously approved certification is removed.

(d) OPM may determine the disposition of agency QRB requests where the QRB has not yet acted if the agency head leaves office or announces an intention to leave office, if the President has nominated a new agency head, or if there is a Presidential transition.

(e) OPM will not submit to a QRB any action to convert a noncareer SES employee to a career SES appointment in the employee's current position or a successor to that position.

(f) A new QRB certification is required for an individual to be reappointed as an SES career appointee following separation of the individual from an SES career appointment if:

(1) The individual was removed during the SES probationary period for performance or disciplinary reasons; or

(2) The individual completed an SES probationary period, or did not have to serve one, and was removed for a reason that made the individual ineligible for reinstatement to the SES under subpart G of this part.

§ 317.503 Probationary period.

(a) An individual's initial appointment as an SES career appointee becomes final only after the individual has served a 1-year probationary period as a career appointee.

(b) The probationary period begins on the effective date of the personnel action initially appointing the individual to the SES as a career appointee and ends one calendar year later.

(c) The following conditions apply to crediting service towards completion of the probationary period:

(1) Time on leave with pay while in an SES position is credited. Earned leave for which the employee is compensated by lump-sum payment upon separation is not credited.

(2) Time in a nonpay status while in an SES position is credited up to a total of 30 calendar days (or 22 workdays). After 30 calendar days, the probationary period is extended by adding to it time equal to that served in a nonpay status.

(3) Time absent on military duty or due to compensable injury is credited upon restoration to the SES when no other break in SES service has occurred.

(4) Time following transfer to an SES position in another agency is credited, i.e., the individual does not have to start a new probationary period.

(d) Removal of a career appointee during the probationary period is covered by subpart D of part 359 of this chapter.

(e) A career appointee who resigns or is removed from the SES before completion of the probationary period may not receive another SES career appointment unless selected under SES merit staffing procedures. The individual, however, need not be recertified by a QRB within 3 years of the previous QRB certification, unless the individual was removed for performance or disciplinary reasons.

(f) An individual who separated from the SES during the probationary period and who has been out of the SES more than 30 calendar days must serve a new 1-year probationary period upon reappointment and may not credit previous time in a probationary period. In the following situations, however, there is an exception and the individual is only required to complete the remainder of the previously served probationary period.

(1) The individual left the SES without a break in service for a Presidential appointment and is exercising reinstatement rights under 5 U.S.C. 3593(b).

(2) The individual left the SES without a break in service for other civilian employment that provides a statutory or regulatory reemployment right to the SES when no other break in service occurred.

(3) The break in SES service was the result of military duty or compensable
§ 317.504 Agency recertification.

(a) General. (1) Section 3393a of title 5, U.S.C., provides that each career SES appointee shall be subject to recertification by his or her employing agency "to ensure that the performance of career appointees demonstrates the excellence needed to meet the goals of the Senior Executive Service as set forth in section 3131 * * *.''

(2) For purposes of this section, "agency" is an executive agency as defined in 5 U.S.C. 105 or a military department as defined in 5 U.S.C. 102.

(b) Coverage. (1) This section covers SES career appointees who have been continuously employed in the SES for the 156 weeks preceding the end of the recertification period. One or more breaks in SES service of a total of 6 months or less do not interrupt the 156 weeks of continuous employment.

(2) This section does not apply to SES noncareer, limited emergency, or limited term appointees. It also does not apply to former SES career appointees who took Presidential appointments with Senate confirmation and elected to retain SES benefits under subpart H of this part.

(c) When recertification takes place. (1) The initial recertification shall take place in calendar year 1991. Future recertifications shall take place every 3rd calendar year thereafter.

(2) The agency head shall determine when in the calendar year recertification shall take place and shall establish a date for calculating the 156-week employment period. Recertification may take place at different times during the calendar year for different components within the agency. For recertification actions in calendar year 1991, agencies must consider performance during the annual performance appraisal period ending in calendar year 1991 unless an exception is granted by OPM.

(3) If an individual is recertified in one agency and then transfers to another agency during the calendar year, the individual is not subject to recertification in the new agency. If an individual transfers to another agency during the calendar year and no recertification decision was made in the old agency, a recertification decision must be made in the new agency.

(d) Standard for recertification. (1) To be recertified, the career appointee must perform at the level of excellence expected of a senior executive. Excellence means that the executive has demonstrated over the recertification period that he or she has achieved excellence in:

(i) Planning for, substantially advancing, and attaining Presidential, agency, or organizational goals and objectives that required a sustained superior effort;

(ii) Taking specific initiatives that advanced a major policy and/or significantly improved delivery of services;

(iii) Taking the necessary actions to ensure the achievement of a quality product in a timely manner;

(iv) Making significant technical, scientific, or professional contributions; and, as appropriate

(v) Achieving substantial savings in the execution of programs under his or her direction;

(vi) Maintaining the high quality and effectiveness of a program under his or her direction with reduced resources; and/or

(vii) Providing strong leadership to enhance the development, utilization and achievements of subordinate personnel, including achievement of equal employment opportunity goals.

(2) Agencies may add other criteria, as appropriate, in their written recertification procedures.

(e) Recommendation by the supervising official. (1) The supervising official of the career appointee shall submit to an agency Performance Review Board established under 5 U.S.C. 4314 a written recommendation whether the career appointee's performance justifies recertification as a senior executive. The recommendation shall be based on the executive's overall performance over the 3 preceding years in relation to the standard for recertification in paragraph (d), including consideration of such factors as the career appointee's performance ratings, any award or
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other recognition received by the appointee, any developmental activities of the appointee, or other relevant qualitative factors.

(2) The recommendation shall reflect the official's view whether the appointee's overall performance for the preceding 3 years has demonstrated the excellence expected of a senior executive as defined in paragraph (d) of this section in relation to the written performance requirements for the career appointee's senior executive position.

(3) The appointee shall be given a copy of the recommendation and advised of the right to submit to the Performance Review Board a statement of accomplishments and other documentation giving evidence of the quality of the appointee's performance in relation to the standards set forth in paragraph (d) of this section.

(f) Recommendation by the Performance Review Board. (1) More than one-half of the members of the Board shall consist of SES career appointees, unless OPM determines that there exists an insufficient number of career appointees available to comply with this requirement. Board members may not take part in any deliberations or actions regarding recommendations on their own recertification.

(2) After receiving the recommendation of the supervising official and any information provided by the career appointee under paragraph (e)(3) of this section, the Board shall submit to the appointing authority a recommendation whether the appointee should be recertified, conditionally recertified, or not recertified for continued employment as a senior executive in the SES.

(3) If the Board proposes to recommend conditional recertification or non-recertification, the appointee shall be notified in writing and shall have the opportunity to appear before the Board prior to the forwarding of the recommendation to the appointing authority.

(4) If the Board recommends recertification, it may also recommend that the appointee's rate of basic pay be increased to a higher rate under 5 U.S.C. 5382. If the Board recommends conditional recertification, it may also recommend that the appointee's rate of basic pay be reduced to the next lower rate under 5 U.S.C. 5382.

(5) In addition to its recommendation, the Board shall also provide the appointing authority the recommendation from the supervising official and any information received from the appointee under paragraph (e)(3) or paragraph (f)(3) of this section.

(6) If the appointing authority is also the agency head, the recommendation of the Board shall go directly to the individual as the agency head.

(g) Recommendation by the appointing authority. (1) If the appointing authority determines that the appointee's performance during the 3 preceding years demonstrates the excellence expected of a senior executive, the appointing authority shall recommend to the agency head that the appointee be recertified as a senior executive.

(2) If the appointing authority determines that the appointee's performance has not demonstrated the excellence expected of a senior executive, the appointing authority shall recommend to the agency head that the appointee be conditionally recertified or not be recertified.

(h) Determination by the agency head. (1) The agency head shall determine whether the appointee shall be recertified, conditionally recertified, or not recertified as a senior executive. An agency may not prescribe a distribution of how many or what percentage of executives will be recertified, conditionally recertified, or not recertified.

(2) If the agency head determines that the appointee's performance warrants recertification, the appointee shall continue in the SES. Further, the appointee's rate of basic pay may not be reduced at the time of recertification.

(3) If the agency head determines that the appointee's performance warrants conditional recertification, the appointee:

(i) Shall remain a career appointee in the SES;

(ii) Shall be subject to continuing close review of the appointee's performance by the supervising official in coordination with an Executive Resources Board established under 5 U.S.C. 3393, in accordance with a performance improvement plan developed...
(j) Agency responsibilities. Each agency that has career appointees subject to recertification:
(1) Shall develop written recertification procedures in consultation with its career appointees, shall have the procedures reviewed and approved by OPM before the recertification process is initiated, and shall provide its senior executives and OPM a copy of the final procedures upon issuance and upon any change;
(2) Shall provide for a program, under guidelines issued by OPM, to train its executives who supervise SES career personnel, and members of Performance Review Boards who will be making recertification recommendations, in the objectives and procedures of the recertification process;
(3) Shall maintain such records as OPM may require;
(4) Shall report to OPM such information as OPM may request relating to recertification actions or the training of SES supervisors; and
(5) Shall take such corrective action as may be directed by OPM if OPM finds that the agency’s written procedures, or any actions taken by the agency, are contrary to law or regulation.

[56 FR 170, Jan. 3, 1991]

Subpart F—Limited Emergency and Limited Term Appointments

SOURCE: 45 F.R. 62414, Sept. 19, 1980, unless otherwise noted.

§ 317.601 Authorization.
(a) An agency may make a noncareer or limited appointment only to a general position.
(b) Each use of a noncareer appointment authority must be approved individually by the Office of Personnel Management, and the authority reverts to the Office upon departure of the incumbent, unless otherwise provided by the Office.
(c) Use of a limited appointment authority is subject to the conditions in this paragraph.
(1) Agencies are provided a pool of limited appointment authorities equal to 2 percent of their Senior Executive Service (SES) position allocation, or

(i) Procedures. Written reasons must be provided for any recommendation or decision to conditionally recertify or to not recertify a career appointee.

(ii) Recertification. The process for determining whether to recertify at the end of the 12-month period an individual who has been conditionally recertified shall be the same as for the initial recertification decision, including review and recommendation by a Performance Review Board.
(5) If the agency head determines that the appointee’s performance does not warrant recertification or conditional recertification, the appointee shall be removed from the SES in accordance with 5 U.S.C. 3592 and part 359, subpart C, of this chapter.
(6) The decision to recertify a senior executive may be delegated by the agency head, but no lower than the appointing authority. The decision to conditionally recertify, or to not recertify, a senior executive must be made by the agency head, the deputy agency head, or the head of a major operating unit within a department; but the individual designated may not be at a lower level than the appointing authority. The agency’s written recertification procedures must indicate who is to make the decision.

(j) Agency responsibilities. Each agency that has career appointees subject to recertification:
(1) Shall develop written recertification procedures in consultation with its career appointees, shall have the procedures reviewed and approved by OPM before the recertification process is initiated, and shall provide its senior executives and OPM a copy of the final procedures upon issuance and upon any change;
(2) Shall provide for a program, under guidelines issued by OPM, to train its executives who supervise SES career personnel, and members of Performance Review Boards who will be making recertification recommendations, in the objectives and procedures of the recertification process;
(3) Shall maintain such records as OPM may require;
(4) Shall report to OPM such information as OPM may request relating to recertification actions or the training of SES supervisors; and
(5) Shall take such corrective action as may be directed by OPM if OPM finds that the agency’s written procedures, or any actions taken by the agency, are contrary to law or regulation.

[56 FR 170, Jan. 3, 1991]
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§ 317.605 Tenure of appointees.

(a) A noncareer or limited appointee does not acquire status within the Senior Executive Service on the basis of the appointment.

(b) An agency may terminate a noncareer or limited appointment at any time, unless a limited appointee is covered under 5 CFR 752.601(c)(2). The agency must give the noncareer or limited appointee a written notice at least 1 day prior to the effective date of the removal.

(c) The employment of a limited appointee ends automatically on the expiration of the appointment if the appointment has not been terminated earlier.

(d) An employee: (1) Who received a limited appointment without a break of service in the same agency as the one in which the employee held a career or career conditional appointment

one authority, whichever is greater. An agency may use the pool to make a limited appointment only of an individual who has a career or career-conditional appointment (or an appointment of equivalent tenure) in a permanent civil service position outside the SES. If necessary, the Office of Personnel Management may suspend use of the pool authority.

(2) Each use of a limited appointment authority other than under paragraph (c)(1) of this section must be approved individually by the Office, and the authority reverts to the Office upon departure of the incumbent, unless otherwise provided by the Office.

[60 FR 6386, Feb. 2, 1995]

§ 317.602 Conditions of a limited appointment.

(a) Appointments authorized under this provision may be deemed provisional appointments for purposes of the regulations set out in parts 831, 842, 870, and 890 of this chapter if they meet the criteria set out in §§ 316.401 and 316.403 of this chapter.

(b) A limited appointment is not renewable. If an agency initially made the appointment for less than the maximum period authorized by the Office of Personnel Management, however, the agency may extend the appointment to the maximum period without the approval of the Office. The Office must be notified of the extension.

(c) A limited term or limited emergency appointee may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months, the individual has served more than 36 months, in the aggregate, under any combination of limited term and limited emergency appointments.


§ 317.603 Selection.

An agency may make a noncareer or limited appointment without the use of merit staffing procedures. The appointee, however, must meet the qualifications requirements for the position, as determined in writing by the appointing authority.


§ 317.604 Reassignment.

(a) An agency may reassign a noncareer appointee only with the prior approval of the Office unless otherwise provided by the Office.

(b) An agency may make the following reassignments of limited appointees to positions for which qualified without the prior approval of the Office of Personnel Management. The Office must be notified of the reassignment, however.

(1) An agency may reassign a limited emergency appointee to another general position established to meet a bona fide, unanticipated, urgent need, except that the appointee may not serve in one or more positions in the agency under such appointment in excess of 18 months.

(2) An agency may reassign a limited term appointee to another general position the duties of which will expire at the end of 3 years or less except that the appointee may not serve in one or more positions in the agency under such appointment in excess of 3 years.

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(or an appointment of equivalent tenure) in a permanent civil service position outside the Senior Executive Service, and

(2) Whose limited appointment is terminated for reasons other than misconduct, neglect of duty, or malfeasance, shall be entitled to be placed in his/her former position or a position of like status, tenure, and grade.


Subpart G—SES Career Appointment by Reinstatement

SOURCE: 54 FR 9759, Mar. 8, 1989, unless otherwise noted.

§ 317.701 Agency authority.

As provided for in §§317.702 and 317.703, an agency may reinstate a former SES career appointee without regard to the merit staffing requirements established by OPM in §317.501(c).

§ 317.702 General reinstatement: SES career appointees.

(a) Eligibility for general reinstatement. A former SES career appointee who meets the following conditions is eligible for reinstatement under this section:

(1) The individual completed an SES probationary period under a previous SES career appointment or was exempted from that requirement; and

(2) The individual’s separation from his or her last SES career appointment was not a removal under subpart E of part 359 of this chapter for misconduct, neglect of duty, or malfeasance, or a resignation after receipt of a notice proposing or directing removal under any of the above conditions. Removal for failure to accept a directed reassignment to another commuting area, or to accompany a position in a transfer of function to another commuting area, does not preclude reinstatement to the SES unless the appointment to the original position included acceptance of a written nationwide mobility agreement or policy.

(b) Applying for reinstatement; time limit. Application for reinstatement under this section shall be made directly to the agency in which SES employment is sought. There is no time limit for reinstatement under this section.

(c) Qualifications. The individual must meet the qualification requirements of the position to which reinstated. The agency makes this determination.

(d) Tenure upon reinstatement. An individual who is reinstated under §317.702 becomes an SES career appointee.


§ 317.703 Guaranteed reinstatement: Presidential appointees.

(a) Eligibility for reinstatement. (1) A former SES career appointee who was appointed by the President to a civil service position outside the SES without a break in service, and who left the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance, is entitled by law to be reinstated to the SES.

(2) If an individual is serving under a Presidential appointment with reinstatement entitlement and receives another Presidential appointment without a break in service between the two appointments, the individual continues to be entitled to be reinstated to the SES following termination of the second appointment. If there is an interim period between the two Presidential appointments, the individual must be reinstated as an SES career appointee before the effective date of the second appointment to preserve reinstatement entitlement following termination of the second appointment.

(b) Applying for reinstatement; time limit. Except as provided in paragraph (d) of this section, an application in writing for reinstatement under this section must be made to OPM within 90
days after separation from the Presidential appointment. An application may be submitted as soon as the Presidential appointee’s resignation is requested or submitted.

(c) Directing reinstatement. (1) To the extent practicable, OPM will direct reinstatement within 45 days of the date of receipt by OPM of the application for reinstatement or the date of separation from the Presidential appointment, whichever is later.

(2) OPM will use the following order of precedence in directing reinstatement of a former Presidential appointee:

(i) The agency in which the individual last served as an SES career appointee before accepting the Presidential appointment;

(ii) The successor agency to the one in which the individual last served as an SES career appointee;

(iii) The agency or agencies in which the individual served as a Presidential appointee;

(iv) Any other agency in the Executive branch with positions under the SES.

(3) The agency being directed to take the reinstatement action is responsible for assigning the individual to a position for which he or she meets the qualification requirements.

(4) When directing the reinstatement of a Presidential appointee, OPM may, as appropriate, allocate an additional SES space authority to the agency.

(5) When a Presidential appointee tenders his or her resignation, voluntarily or upon request, the agency in which the Presidential appointment was held, upon approval by OPM, may place the appointee as an interim measure on an SES limited term or limited emergency appointment as appropriate, pending reinstatement, to preclude a break in service after the Presidential appointment has terminated.

(6) To preserve reinstatement rights under this section, an individual who has been serving in a presidential appointment, if selected by the President for another appointment in the same or a new agency, must be reinstated to an appropriate position as an SES career appointee before the effective date of the new Presidential appointment, unless service as a Presidential appointee would be continuous.

(d) Reinstatement following direct negotiations with an agency. (1) A Presidential appointee who qualifies under paragraph (a) of this section may initiate direct negotiations with an agency regarding reinstatement under this section.

(2) An agency may voluntarily reinstate a former Presidential appointee without an order from OPM directing such action.

(3) The agency is responsible for assigning the individual to a position for which he or she meets the qualification requirements.

(4) Direct negotiations with an agency do not extend the time limit stated in paragraph (b) of this section for making application to OPM.

(5) OPM may, when appropriate and upon request by the agency, allocate an additional SES space authority to an agency that voluntarily reinstates a former Presidential appointee under this paragraph.

(6) An individual who is reinstated under this paragraph because of direct negotiations with an agency is not entitled to further assistance by OPM.

(e) Tenure upon reinstatement. (1) An individual reinstated under §317.703 becomes an SES career appointee.

(2) An individual reinstated under §317.703 who was serving an SES probationary period at the time of his or her Presidential appointment is required to complete the 1-year SES probationary period upon reinstatement.

(f) Compliance. (1) An agency must comply with an order to reinstate issued by OPM under this section as promptly as possible, but not more than 30 calendar days from the date of the order.

(2) The agency will notify OPM of a reinstatement action taken under this section within 5 workdays of the effective date of the reinstatement.

(3) An individual who declines a reinstatement ordered by OPM is not entitled to further placement assistance by OPM under this section.

[54 FR 9759, Mar. 8, 1989, as amended at 60 FR 6386, Feb. 2, 1995]
§ 317.801 Retention of SES provisions.

(a) Coverage. This subpart applies to—

(1) A career appointee in the SES appointed at any time by the President to a civilian position in the executive branch with the advice and consent of the Senate at a rate of basic pay which is equal to or greater than the rate payable for Executive Level V; or

(2) A career appointee in the SES who is not covered under paragraph (a)(1) of this section and who was appointed on or after November 1, 1986, to a civilian position in the executive branch which is covered by the Executive Schedule, or the rate of basic pay for which is fixed by statute at a rate equal to one of the levels of the Executive Schedule.

(b) Election. (1) At the time of appointment, an appointee covered by paragraph (a) of this section may elect to retain some, all, or none of the following SES provisions: Basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement. That election shall remain in effect for no less than one year, unless the appointee leaves the position sooner.

(2) The appointing agency is responsible for advising the appointee of the election opportunity. The election decision must be in writing.

(3) If an appointee elects to retain SES basic pay, the appointee is entitled to receive locality-based comparability payments under 5 CFR, part 531, subpart F, if such pay is applicable to SES employees in the locality pay area, and any applicable special pay adjustment for a law enforcement officer under 5 CFR part 531, subpart C, even though the appointee may be in an Executive Schedule position otherwise excluded from such payments.

(c) Change in election. Except as provided by paragraph (b) of this section, a career appointee is permitted to make an election for purposes of adding or dropping coverage no more than once during any twelve-month period.

§ 317.901 Reassignments.

(a) In this section, reassignment means a permanent assignment to another SES position within the employing executive agency or military department. (See 5 U.S.C. 105 for a definition of “executive agency” and 5 U.S.C. 102 for a definition of “military department.”)

(b) A career appointee may be reassigned to any SES position for which qualified in accordance with the following conditions:

(1) Reassignment within a commuting area. For reassignment within a commuting area, the appointee must receive a written notice at least 15 days before the effective date of the reassignment. This notice requirement may be waived only when the appointee consents in writing.

(2) Reassignment outside of a commuting area. For reassignment outside of a commuting area, (i) the agency must consult with the appointee on the reasons for, and the appointee's preferences with respect to, the proposed reassignment; and (ii) following such consultation, the agency must provide the appointee a written notice, including the reasons for the reassignment, at least 60 days before the effective date of the reassignment. This notice requirement may be waived only when the appointee consents in writing.

(c) A career appointee may not be involuntarily reassigned within 120 days after the appointment of the head of an agency, or within 120 days after the appointment of the career appointee's most immediate supervisor who is a noncareer appointee and who has the authority to make an initial appraisal of the career appointee's performance under subpart C of part 430 of this chapter.

(1) In this paragraph—

(i) Head of an agency means the head of an executive or military department or the head of an independent establishment.

(ii) Noncareer appointee includes an SES noncareer or limited appointee, an
appointee in a position filled by Schedule C, or an appointee in an Executive Schedule or equivalent position that is not required to be filled competitively.

(2) These restrictions do not apply to the involuntary reassignment of a career appointee under 5 U.S.C. 4314(b)(3) based on a final performance rating of "Unsatisfactory" that was issued before the appointment of a new agency head or a new noncareer supervisor as defined in paragraph (c)(1) of this section. If a moratorium is already underway at the time the final rating is issued, then that moratorium must be completed before the reassignment action can be effected.

(3) A voluntary reassignment during the 120-day period is permitted, but the appointee must agree in writing before the reassignment.

(4) For the purpose of calculating the 120-day period, any days, not to exceed a total of 60, during which the career appointee is serving on a detail or other temporary assignment apart from the appointee's regular position shall not be counted. Any days in excess of 60 days on one or more details or other temporary assignments shall be counted.

(5) The prohibition in this paragraph on involuntary reassignments may be applied by an agency, at its discretion, in the case of a detail of an individual as the head of an agency or of a noncareer appointee as a supervisor, or when a noncareer appointee in a deputy position is acting as the agency head or in a vacant supervisory position. If the individual later receives a permanent appointment to the position without a break in service, the 120-day moratorium initiated by the permanent appointment shall include any days spent in the position on an acting basis.

(d) A 15 or 60-day advance notice described in paragraph (b) of this section may be issued during the 120-day moratorium on the involuntary reassignment of a career appointee described in paragraph (c) of this section, but an involuntary reassignment may not be effected until the moratorium has ended.

§ 317.903 Details.

(a) Definition. In this section, detail means the temporary assignment of an SES member to another position (within or outside of the SES) or the temporary assignment of a non-SES member to an SES position, with the expectation that the employee will return to the official position of record upon expiration of the detail. For purposes of pay and benefits, the employee continues to encumber the position from which detailed. The provisions of this section cover details within or outside of the employing agency.

(b) Time limits. (1) Details within an executive agency or military department must be made in no more than 120-day increments.

(2) An agency may not detail an SES employee to unclassified duties for more than 240 days.

(3) An agency must use competitive procedures when detailing a non-SES employee to an SES position for more than 240 days unless the employee is eligible for a noncompetitive career SES appointment.

(4) An agency must obtain OPM approval for a detail of more than 240 days if the detail is of:

(i) A non-SES employee to an SES position that supervises other SES positions; or

(ii) An SES employee to a position at the GS-15 or equivalent level or below.

(c) SES career reserved positions. Only a career SES appointee or a career-type non-SES appointee may be detailed to a career reserved position.

(d) SES general positions. Any SES appointee or non-SES appointee may be detailed to a general position.

§ 317.902 Transfers.

(a) Definition. In this section, transfer means a permanent assignment or appointment to another SES position in a different executive agency or military department.

(b) Requirements. Transfers are voluntary and cannot occur without the consent of the appointee and the gaining agency, except transfers connected with a transfer of functions to another agency.

§ 317.904 Change in type of SES appointment.
An agency may not require a career SES appointee to accept a noncareer or limited SES appointment as a condition of appointment to another SES position. If a career appointee elects to accept a noncareer or limited appointment, the voluntary nature of the action must be documented in writing before the effective date of the new appointment. A copy of such documentation must be retained permanently in the appointee's Official Personnel Folder.

Subpart J—Corrective Action
§ 317.1001 OPM authority for corrective action.
If OPM finds that an agency has taken an action contrary to law or regulation under this part, it may require the agency to take appropriate corrective action.

[54 FR 9761, Mar. 8, 1989]

PART 319—EMPLOYMENT IN SENIOR-LEVEL AND SCIENTIFIC AND PROFESSIONAL POSITIONS
Subpart A—General

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Authority: 5 U.S.C. 1104, 3104, 3324, 3325, 5108, and 5376.

Source: 60 FR 6387, Feb. 2, 1995, unless otherwise noted.
Office of Personnel Management

§ 319.104 Applicable instructions.
Provisions in statute, Executive order, or regulations that relate in general to competitive and excepted service positions and employment apply to positions and employment under the SL and ST systems unless there is a specific provision to the contrary.

§ 319.105 Reporting requirements.
Agencies shall report such information as may be requested by OPM relating to SL and ST positions and employees.

Subpart B—Position Allocations and Establishment

§ 319.201 Coverage.
This section applies to SL positions in an executive agency per 5 U.S.C. 5108 and ST positions in any agency per 5 U.S.C. 3104.

§ 319.202 Allocation of positions.
SL and ST positions may be established only under a position allocation approved by OPM.

§ 319.203 Establishment of positions.
(a) Prior approval of OPM is not required to establish individual SL and ST positions within an allocation, but the positions must be established in accordance with the standards and procedures in paragraph (b) of this section. OPM reserves the right to require the prior approval of individual positions if the agency is not in compliance with these standards and procedures.

(b) Before an SL or ST position may be established, an agency must:
(1) Prepare a description of the duties, responsibilities, and supervisory relationships of the position; and

(2) Determine, consistent with published position classification standards and guides and accepted classification principles, that the position is properly classified above GS-15. In addition, for an ST position an agency must determine that the position meets the functional research and development criteria described in § 319.103.

§ 319.302 Individual qualifications.
Agency heads are delegated authority to approve the qualifications of individuals appointed to SL and ST positions. The agency head must determine

Subpart C—Qualifications Requirements

§ 319.301 Qualifications standards.
(a) General. Agency heads are responsible for establishing qualifications standards in accordance with the criteria in this section.

(1) The standard must be in writing and identify the breadth and depth of the knowledges, skills, and abilities, or other qualifications, required for successful performance in the position.

(2) Each criterion in the standard must be job related.

(3) The standard may not include any criterion prohibited by law or regulation.

(b) Standards for senior-level positions.
(1) The standard must be specific enough to enable applicants to be rated and ranked according to their degree of qualifications when the position is being filled on a competitive basis.

(2) The standard may not include a minimum length of experience or minimum education requirement beyond that authorized for similar positions in the General Schedule.

(c) Standards for scientific and professional positions.
(1) Unless the agency obtains the approval of OPM, the standard must provide that the candidate have at least 3 years of specialized experience in, or closely related to, the field in which the candidate will work. At least 1 year of this experience must have been in planning and executing difficult programs of national significance or planning and executing specialized programs that show outstanding attainments in the field of research or consultation.

(2) Agencies may require that at least 1 year of the specialized experience must be at least equivalent to experience at GS-15.

(3) Agencies may require applicants to furnish positive evidence that they have performed highly creative or outstanding research where similar abilities are required in the ST position.

§ 319.302 Individual qualifications.
Agency heads are delegated authority to approve the qualifications of individuals appointed to SL and ST positions. The agency head must determine
§ 319.401

that the individual meets the qualifications standards for the position to which appointed.

Subpart D—Recruitment and Examination

§ 319.401 Senior-level positions.

(a) General. SL positions may be in either the competitive or excepted service. This section only applies to appointments in the competitive service from a civil service register. Reassignments, promotions, transfers, and reinstatements to SL positions in the competitive service shall be made in accordance with applicable statutory and regulatory provisions. Employment of SL employees in the excepted service is covered by 5 CFR, part 302.

(1) Agency heads are delegated authority to recruit and examine applicants for SL positions in the competitive service, establish competitor inventories, and issue certificates of eligibility in conformance with the requirements of this section, other applicable regulations, and statute.

(2) Agencies shall take such action as OPM may require to correct an action taken under delegated authority.

(3) Delegated authority may be terminated or suspended at any time by OPM for reasons such as, but not limited to:

(i) Evidence of unequal treatment of candidates; or

(ii) Identifiable merit system abuses.

(b) Recruitment. (1) A recruiting plan, with appropriate emphasis on affirmative recruitment, must be developed and followed.

(2) Vacancy announcements must remain open for a minimum of 14 calendar days. The closing date may not be a nonworkday.

(3) State Job Service offices must be notified of the vacancy in accordance with 5 CFR 330.102. Publication in OPM’s listing of Senior Executive Service and other executive vacancies, which is provided the offices, will satisfy this requirement.

(c) Evaluation and selection. Examination and selection procedures, and rights of applicants, are subject to the same provisions in statute and regulations that govern civil service examinations and appointments in general.

§ 319.402 Scientific and professional positions.

(a) ST positions are filled without competitive examination under 5 U.S.C. 3325.

(b) ST positions are not subject to the citizenship requirements in 5 CFR part 338, subpart A. Agencies, however, must observe any restrictions on the employment of noncitizens in applicable appropriations acts.

(c) ST employees acquire competitive status immediately upon appointment. They are not required to serve a probationary or trial period.
§ 330.102  Subpart H  [Reserved]

§ 330.102  Subpart I—Full Consideration of Displaced Defense Employees

330.901  Purpose.

330.902  Coverage.

330.903  Full consideration.

Subpart J—Prohibited Practices

330.1001  Withdrawal from competition.

Subpart K—Federal Employment Priority Consideration Program for Displaced Employees of the District of Columbia Department of Corrections

330.1101  Purpose.

330.1102  Duration.

330.1103  Definitions.

330.1104  Eligibility.

330.1105  Selection.

330.1106  Appointment of certain present and former employees of the District of Columbia Department of Corrections to vacancies in other Federal agencies.


Section 330.102 also issued under 5 U.S.C. 3327.

Subpart B also issued under 5 U.S.C. 3315 and 8151.

Section 330.401 also issued under 5 U.S.C. 3310.

Subpart I also issued under sec. 4432 of Pub. Law 102-484.

Subpart K also issued under sec. 11203 of Pub. Law 105-33.

Source: 33 F.R. 12425, Sept. 4, 1968, unless otherwise noted.

Subpart A—Discretion in Filling Vacancies

§ 330.101  Methods of filling vacancies.

An appointing officer may fill a position in the competitive service by any of the methods authorized in this chapter. He shall exercise his discretion in each personnel action solely on the basis of merit and fitness and without the discrimination prohibited in part 713 of this chapter.

§ 330.102  Federal employment information.

(a) Vacancies open to the public. (1) Notice required—(i) Under 5 U.S.C. 3227, Federal agencies must notify OPM promptly of:
§ 330.201

(A) Open competitive examinations;

(B) Vacancies in the competitive service to be filled under direct hire procedures or part 333 of this chapter; and

(C) Vacancies in the Senior Executive Service for which the agency seeks applications from persons outside the Federal service. Also, in accordance with § 317.501(b)(2) of this chapter, agencies must notify OPM of all Senior Executive Service vacancies to be filled by initial career appointment.

(ii) OPM will provide this information to the employment offices of the United States Employment Service.

(2) Agencies covered. Paragraph (a)(1) of this section applies to:

(i) The executive departments listed at 5 U.S.C. 101;

(ii) The military departments listed at 5 U.S.C. 102;

(iii) Government owned corporations in the executive branch as described at 5 U.S.C. 103;

(iv) Independent establishments in the executive branch as described at 5 U.S.C. 104, including the Nuclear Regulatory Commission; and

(v) Government Printing Office.

(b) All other vacancies—(1) Notice required. Under 5 U.S.C. 3330, OPM must maintain, and make available to the public, a list of agency vacancy announcements for positions in the competitive service. Under § 330.707 of this chapter, agencies must notify OPM promptly of competitive service vacancies to be filled for more than 120 days when the agency will accept applications from individuals outside the agency’s own work force.

(2) [Reserved]

(c) Funding. Under 5 U.S.C. 3330(f), OPM is authorized to charge fees to agencies for their share of the cost of providing employment information to the public and to Federal employees. OPM will work with agencies to review the effectiveness and efficiency of the Federal Employment Information System in meeting Federal agency and public needs and identify improvements to the system, consistent with the minimum level of service and statutory requirements. Subsequently, OPM will annually compute the cost of providing employment information and notify each agency of its share, along with a full accounting of the costs, and payment procedures.


Subpart B—Reemployment Priority List (RPL)

SOURCE: 53 FR 45067, Nov. 8, 1988, unless otherwise noted.

§ 330.201 Establishment and maintenance of RPL.

(a) The reemployment priority list (RPL) is the mechanism agencies use to give reemployment consideration to their former competitive service employees separated by reduction in force (RIF) or fully recovered from a compensable injury after more than 1 year. The RPL is a required component of agency positive placement programs. In filling vacancies, the agency must give RPL registrants priority consideration over certain outside job applicants and, if it chooses, also may consider RPL registrants before considering internal candidates.

(b) Each agency is required to establish and maintain a reemployment priority list for each commuting area in which it separates eligible competitive service employees by RIF or when a former employee recovers from a compensable injury after more than 1 year, except as provided in paragraph (c) of this section. For purposes of this subpart, agency means Executive agency as defined in 5 U.S.C. 105. All components of an agency within the commuting area utilize a single RPL and are responsible for giving priority consideration to the RPL registrants.

(c) An agency need not maintain a distinct RPL for employees separated by reduction in force if the agency operates a placement program for its employees and obtains OPM concurrence that the program satisfies the basic requirements of this subpart. The intent of this provision is to allow agencies to adopt different placement strategies that are effective for their particular programs yet satisfy legal entitlements to priority consideration in reemployment.

[60 FR 3058, Jan. 13, 1995]
§ 330.202 Application.

(a)(1) To be entered on the RPL, an eligible employee under §330.203 must complete an application prescribed by the employing agency and inform the agency of any significant changes in the information provided. This application must provide for the employee to specify the conditions under which he or she will accept employment, including grade, occupation, and minimum hours or work per week, in addition to positions at the same representative rate and type of work schedule (e.g., full-time, part-time, seasonal, intermittent, on-call, etc.) as the position from which the employee was or will be separated. Registration may take place as soon as a specific notice of separation under part 351 of this chapter, or a Certification of Expected Separation as provided in §351.807 of this chapter, has been issued. The employee must submit the application within 30 calendar days after the RIF separation date. An employee who fails to submit a timely application is not entitled to be placed on the RPL. If an agency has components scattered throughout a large commuting area, the agency may allow eligibles to indicate their availability only for certain sub-areas within the commuting area. However, the agency cannot deny consideration throughout the entire commuting area if the eligible wants it.

(2) An eligible employee under §330.204 must request reemployment within 30 calendar days after the date compensation ceases, except that when an appeal for continuation of compensation is filed, the 30-day period begins the day after resolution is reached. No specific format is required.

(b) An agency must enroll an individual on the RPL no later than 10 calendar days after receipt of an application or request.

(c) Agencies should be prepared to assist employees, when requested, in identifying and listing on the reemployment priority list (RPL) application those positions within the agency for which the employee qualifies and is interested.

[53 FR 45067, Nov. 8, 1988, as amended at 60 FR 3059, Jan. 13, 1995]

§ 330.203 Eligibility due to reduction in force.

(a) To apply for the RPL, an employee must meet all the following conditions:

1. Be serving under an appointment in the competitive service in tenure group I or II;
2. Have received a rating above unacceptable (level 1) as the last annual performance rating of record for part 351 purposes (except for employees in positions excluded from a performance appraisal system by law, regulation, or OPM administrative action);
3. Have received a specific notice of separation under part 351 of this chapter, or a Certification of Expected Separation as provided in §351.807 of this chapter, has been issued. The employee who fails to submit a timely application is not entitled to be placed on the RPL. If an agency has components scattered throughout a large commuting area, the agency may allow eligibles to indicate their availability only for certain sub-areas within the commuting area. However, the agency cannot deny consideration throughout the entire commuting area if the eligible wants it.

(b) An agency must enroll a specific RIF notice of separation or a Certification of Expected Separation, the agency must give each eligible employee information about the RPL, including appeal rights.

(c) A tenure group I employee is eligible for the RPL for 2 years, and a tenure group II employee is eligible for 1 year, from the date the employee is entered on the RPL.

(d)(1) When an individual declines an offer of career, career-conditional, or excepted appointment without time limit or fails to reply to an inquiry, under this subpart, and the position meets the acceptable conditions shown in his or her application, he or she loses RPL consideration for all positions with a representative rate at or below that grade. However, subject to paragraph (d)(2)(iii) of this section, the individual retains eligibility for positions with a higher representative rate up to the last grade held.

2. Also, an individual is taken off the RPL before the period of eligibility expires when the individual:

(i) Requests removal;

(ii) Receives a career, career-conditional, or excepted appointment without time limit in any agency;
§ 330.204  Eligibility due to compensable injury.

(a) A competitive service employee in tenure group I or II who is separated (or who accepts a lower graded position in lieu of separation) because of a compensable injury of disability (as defined in part 353 of this chapter) who has fully recovered more than 1 year after compensation began is entitled to be placed on the RPL provided the individual applies within the timeframes addressed in §330.202. Part 353 of this chapter contains information on eligibility.

(b) A former tenure group I employee is eligible for the RPL for 2 years, and a former tenure group II employee is eligible for 1 year, from the date the individual is entered on the RPL. An individual is taken off the RPL before the period of eligibility expires when the individual:

(1) Requests removal;
(2) Receives a career, career-conditional, or excepted appointment without time limit in any agency; or
(3) Declines an offer or fails to respond to an inquiry of availability about a specific position that is the same as or equivalent to the position from which separated.

(c) A former employee must request reemployment consideration with the time limits set in § 330.202.

§ 330.205  Employment restrictions.

(a) The restrictions in paragraph (b) of this section apply to the filling of all competitive service vacancies, regardless of whether an agency plans to make a temporary, term, or permanent appointment. This means an agency must consider RPL registrants for nonpermanent as well as permanent positions when they have indicated such interest on their RPL application.

(b) When a qualified individual is available on an agency’s RPL, the
agency may not make a final commitment to an individual not on the RPL to fill a permanent or temporary competitive service position by:

(1) A new appointment, unless the individual appointed is a qualified 10-point preference eligible; or

(2) Transfer or reemployment, unless the individual appointed is a preference eligible, is exercising restoration rights under part 353 of this chapter based on return from military service or recovery from a compensable injury or disability within 1 year, or is exercising other statutory or regulatory reemployment rights.

(c) Paragraph (b) of this section does not apply to actions involving employees on an agency's rolls, as authorized in paragraphs (c)(1), (2), and (3) of this section, or in filling a specific position:

(1) When all qualified individuals on the RPL decline an offer of a specific position or fail to respond to an official agency inquiry about their availability for it; or

(2) By a current, qualified employee of the agency through:

(i) Detail or position change (promotion, demotion, reassignment); or

(ii) Conversion to competitive appointment of employees currently serving under appointments that carry a noncompetitive conversion eligibility (e.g., Veterans Readjustment Appointee, 30 percent disabled veterans, disabled employees under Schedule A appointment, Presidential Management Interns, cooperative education students under Schedule B appointment, and TAPERS); or

(iii) Reappointment without a break in service to the same position currently held by an employee serving under a temporary appointment of 1 year or less (only to another temporary appointment not to exceed 1 year or less and not to a permanent appointment); or

(iv) Extension of an employee's temporary appointment up to the maximum permitted by the appointment authority or as authorized by OPM.

(3) By a 30-day special needs appointment or 700 hour temporary appointment of a severely disabled or mentally restored individual, when the agency's staffing policies provide for these exceptions.

(d) An agency must clear the RPL at the grade level at which it fills a position (regardless of the full performance level). Similarly, if an agency advertises a position at multiple grade levels, it must clear the RPL only at the grade level at which the position is ultimately filled.

(e) Once an agency has cleared its RPL and made a final employment commitment to an individual, the later registration of another employee on the RPL does not prevent the fulfillment of the original commitment, regardless of when the individual actually enters on duty.

(f) An agency may make an exception to this section and appoint an individual not on the RPL as authorized by §330.207(d).

(g) When submitting a request for referral of eligibles, an agency is required to indicate that no qualified RPL registrant is available for the vacancy and therefore the agency may make a new appointment. Similarly, an agency must clear its RPL before making appointments under a directhire authority, which includes the Outstanding Scholar provision, or delegated examining authority.

[60 FR 3059, Jan. 13, 1995]

§ 330.206 Job consideration.

(a)(1) An eligible employee under §330.203 is entitled to consideration for positions in the commuting area for which qualified and available that are at no higher grade (or equivalent), have no greater promotion potential than the position from which the employee was or will be separated, and have the same type of work schedule. In addition, an employee is entitled to consideration for any higher grade previously held on a nontemporary basis in the competitive service from which the employee was demoted under part 351 of this chapter.

(2) An employee is considered for positions having the same type of work schedule as the position from which separated except that the agency, at its discretion, may adopt provisions permitting employees to request consideration for other work schedules in addition to that formerly held.
§ 330.207 Selection from RPL.

(a) Options. An agency must adopt one of the selection methods in paragraphs (b) and (c) of this section for use in operating a single RPL. The agency may adopt the same method for each RPL it establishes or may vary the method by location, but it must adopt a written policy for each RPL it establishes and maintains. After a method is adopted, the agency uses that method in filling all positions. While an agency may not vary the method used by individual vacancy, it may at any time switch selection methods for employees enrolled on the RPL.

(b) Retention standing order. For each vacancy to be filled, the agency shall place qualified individuals in group and subgroup order in accordance with part 351 of this chapter. In making a selection, an agency may not pass over an individual in group I to select from group II and, within a group, may not pass over an individual in a higher subgroup to select from a lower subgroup. Within a subgroup, an agency may select an individual without regard to order of retention standing. A person has no greater priority for the grade or position from which separated than any other person on the list who is qualified for the vacancy. An agency may make an exception to this selection order only in accordance with paragraph (d) of this section.

(c) Rating and ranking. For each vacancy to be filled, the agency rates qualified individuals according to their job experience and education. To do this, an agency shall develop job-related evaluation procedures capable of distinguishing differences in qualifications measured, which shall be applied in a fair and consistent manner. Based on these procedures, the agency shall assign qualified individuals a numerical score of at least 70 on a scale of 100. The agency shall grant 5 additional points to preference eligibles under section 2108(3)(A) and (B) of title 5, United States Code, and 10 additional points to preference eligibles under section 2108(3) (C) through (G) of that title.

(1) Preference eligibles having a compensable service-connected disability of 10 percent or more in the order of
their augmented ratings, unless the position to be filled is a professional position at and above the GS-9 level, or equivalent; and

(ii) All other qualified candidates in the order of their augmented ratings. At each score, qualified candidates eligible for 10-point preference will be entered ahead of all other eligibles, and those eligible for 5-point preference will be entered ahead of those not eligible for veteran preference.

(3) An agency must make its selection from not more than the highest three candidates available and may pass over a preference eligible to select a nonpreference eligible only as an exception under paragraph (d) of this section.

(d) Exceptions. An agency may make an exception to this subpart and appoint an individual who is not on the RPL or has lower standing than others on the RPL. The exception may be granted only when necessary to obtain an employee for duties that cannot be taken over without undue interruption (as defined in §351.203 of this chapter) to the agency by an individual who is on the RPL or has higher standing than the one appointed. The agency shall notify, in writing, each individual on the RPL who is adversely affected by an appointment under this paragraph for the exception and of the right of appeal to the Merit Systems Protection Board.

[53 FR 45067, Nov. 8, 1988, as amended at 60 FR 3061, Jan. 13, 1995]

§ 330.208 Qualification requirements.

(a) Subject to applicable requirements of law and this chapter, an individual is considered qualified for a position if he or she:

(1) Meets OPM-established or approved qualification standards and requirements for the position, including any minimum educational requirements, and any selection placement factors established by the agency;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position; and

(3) Meets any special qualifying condition that OPM has approved for the position.

(4) Meets any other applicable requirement for appointment to the competitive service.

(b) An agency may make an exception to the qualification standard and adopt an alternative standard under the following conditions (this provision does not authorize waiver of the selection order required by §330.207):

(1) The exception is applied consistently and equitably in filling a position;

(2) The individual meets any minimum educational requirement for the position; and

(3) The agency determines that the individual has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

(c) The sex of an individual may not be considered in determining qualifications for a position, except positions for which OPM has determined certification of eligibles by sex is justified.

[53 FR 45067, Nov. 8, 1988, as amended at 60 FR 3061, Jan. 13, 1995]

§ 330.209 Appeals.

An individual who believes that his or her reemployment priority rights under this subpart have been violated because of the employment of another person who otherwise could not have been appointed properly may appeal to the Merit Systems Protection Board under the provisions of the Board’s regulations.

Subpart C—Placement Assistance Programs for Displaced Employees

§ 330.201 Coverage.

(a) This subpart covers the Interagency Placement Program for employees who will be displaced or who have been separated from their Federal jobs as a result of agency workforce reductions, compensable on-the-job injury, discontinued service retirement, or disability retirement. Agencies have the primary responsibility for providing placement assistance to their surplus and displaced employees, and for
administering career transition assistance programs. OPM supplements these agency efforts by administering the Interagency Placement Program which gives surplus or displaced employees priority referral to positions in other agencies.

(b) The operation of this subpart will be suspended from February 29, 1996 through September 30, 1999. In the interim, placement assistance will be provided in accordance with subparts B, F, and G of this part. OPM may extend this date if it determines that the Federal Government is still experiencing an emergency downsizing situation.


§ 330.302 OPM Interagency Placement Program.

OPM operates the Interagency Placement Program (IPP) which provides placement assistance to employees who have received a Certification of Expected Separation or specific notice of separation, or who have been separated.

[59 FR 32872, June 27, 1994]

§ 330.303 Eligibility.

(a) [Reserved]

(b) For the IPP, the registrant must:

(1) Be a present or former career or career-conditional employee, or excepted employee with competitive status and in tenure group I or II as defined in part 351 of this chapter (except that an employee occupying a Schedule C position as defined in part 213 of this chapter is not entitled to placement assistance);

(2) Be serving in or have been separated from a position in an agency whose personnel system is subject to competitive service requirements;

(3) Have a rating above “unacceptable” on his or her most recent performance rating of record as described in §351.203 of this chapter (except individuals qualifying under paragraphs (b)(4)(iii) and (b)(4)(v) of this section or those who are in positions excluded from any performance appraisal system by law, regulation or OPM administrative action);

(4) Must be subject to one of the following:

(i) Has received a specific notice of separation under part 351 of this chapter, or a Certification of Expected Separation as provided in §351.807 of this chapter.

(ii) Has declined a transfer of function to another commuting area or has declined reassignment to another commuting area (as defined in part 351 of this chapter);

(iii) Has fully or partially recovered from a compensable injury in accordance with the provisions of sub-chapter I of chapter 81 of title 5, United States Code, when the agency is unable to restore the employee;

(iv) Has applied for an annuity or has retired under the discontinued service retirement provision in section 8336(d)(1) or 8414(b)(1)(A) of title 5, United States Code; or

(v) Has retired due to disability under section 8337, 8451 or 8457 of title 5, United States Code; and

(5) Must register for the program within time limits specified by OPM.

[53 FR 28364, July 28, 1988, as amended at 59 FR 32872, June 27, 1994]

§ 330.304 Period of eligibility.

Employees registered in the IPP receive 2 years of OPM placement assistance renewable in 6 month increments by the registered employee.

[59 FR 32872, June 27, 1994]

§ 330.305 Placement assistance.

(a) IPP registrants are referred ahead of other candidates when they are qualified and available for vacancies expected to last more than 1 year and that are filled through competitive appointments. No individual may be selected for such a vacancy as long as a qualified IPP registrant is available. Referrals are based on qualifications of registrants.

(b) Placement assistance is nationwide except that registrants who decline transfer or reassignment outside the commuting area may register for placement assistance only within the commuting area of the position from which they will be or were separated. However, these registrants may transfer their eligibility to another commuting area if they later relocate.
(c) A registrant will be referred to vacancies that are at or below the grade level of and have no more promotion potential than the position from which separated. Eligible registrants separated from positions above GS-15 will receive assistance at the GS-15 level and below.

(d) When an agency selects an IPP registrant, it employs him or her under appropriate appointments such as reinstatement, transfer, position change, or excepted appointment.

§ 330.306 Termination of eligibility.

Eligibility for assistance under the IPP will be terminated if one of the following occurs:

(a) A registrant's 2 year period of eligibility expires (except for preference eligibles who are eligible for up to 1 year of additional assistance as specified in § 330.407);

(b) The registrant requests, in writing, that placement assistance be terminated;

(c) The registrant is placed in a non-temporary position in either the competitive or excepted service;

(d) The registrant declines an offer of continuing employment in the competitive or excepted service under conditions (i.e., grade, salary, geographic location, or work schedule) the registrant previously indicated were acceptable, unless OPM determines that an exception is warranted; or

(e) The agency notifies OPM that the registrant no longer meets the eligibility criteria for program registration and placement assistance.

§ 330.307 Agency responsibilities.

(a) Agency programs. (1) Each agency has primary obligation to assist, to the maximum extent practical and in keeping with the requirements set forth in paragraph (a)(2) of this section, in the placement of surplus and displaced employees. OPM's placement program only supplements these efforts and is not intended to relieve an agency of its responsibility to provide the maximum placement assistance possible.

(2) Each agency is required to operate a positive placement program for its own surplus and displaced employees. The program must, at a minimum, provide for the establishment and maintenance of a reemployment priority list for the commuting area for those employees who have received a specific notice of separation through reduction in force or a Certification of Expected Separation, as provided for in subpart B of this part. Additionally, each agency is expected to supplement this basic requirement with other forms of appropriate assistance to be given to employees prior to actual separation. An agency's positive placement program should include the following elements:

(i) Criteria of eligibility for assistance;

(ii) The duration of eligibility;

(iii) The types of assistance provided, including counseling, job referral, and training;

(iv) Consideration of the appropriateness of placing restrictions on filling vacancies by any means when qualified surplus or displaced employees are available in the agency's positive placement program.

(b) Registration of eligible employees. In accordance with subpart H of part 351 of this chapter, agencies must inform affected employees about the Interagency Placement Program at the same time that Certifications of Expected Separation or specific reduction in force notices are distributed. Employees who receive a Certification of Expected Separation may register up to 6 months prior to separation. Agencies are responsible for assisting employees with their registration forms, for completing the information requested on the forms, for ensuring employees meet the minimum qualification requirements for the position(s) registered, and for sending them to the appropriate office as instructed by OPM.

(c) Consideration of individuals referred. Agencies will give full consideration to individuals referred through OPM's Interagency Placement Program. Full consideration is a careful and open review of the qualifications of the registrant as described in the individual's application forms, contact to determine interest and availability.
§ 330.401 Competitive examination.

In each entrance examination for the positions of custodian, elevator operator, guard, and messenger (referred to hereinafter in this subpart as restricted positions), OPM shall restrict competition to preference eligibles as long as preference eligibles are available.

§ 330.402 Direct recruitment.

In direct recruitment by an agency under delegated authority, the agency shall fill each restricted position by the appointment of a preference eligible as long as preference eligibles are available.

§ 330.403 Noncompetitive actions.

An agency may fill a restricted position by the appointment by noncompetitive action of a nonpreference eligible only in particular types of cases as determined by OPM. OPM shall publish in the Federal Personnel Manual a statement of the circumstances under which a restricted position may be filled by noncompetitive action.

§ 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.

OPM and agencies have certain obligations toward preference eligibles occupying restricted positions when a decision is made to contract out a Government-performed commercial activity in accordance with the Office of Management and Budget (OMB) Circular A-76. (Copies of the OMB circular are available from Executive Office of the President, Office of Management and Budget, Publications Office, 725 17th Street, NW., Room 220, New Executive Office Building, Washington, DC 20503.) Preference eligibles are entitled to additional placement assistance through the Interagency Placement Program. These preference eligibles must:

(a) Be occupying restricted positions as designated in 5 U.S.C. 3310 and §330.401;

(b) Be in the competitive service (in tenure I or II); and

(c) Meet the eligibility requirements of the IPP which are described in subpart C of this part.

§ 330.405 Agency placement assistance.

An agency, compelled to conduct a reduction in force and separate a preference eligible from a restricted position because a Government-performed commercial activity is contracted out, must alert affected preference eligible employees of their placement rights and their opportunity to participate in agency and OPM placement programs. Agencies must make maximum effort to find suitable positions for the preference eligible. This effort must include—

(a) Conducting an internal positive placement program;

(b) Emphasizing selection procedures using reemployment priority lists in accordance with subpart B of this part and subpart J of part 351 for every vacant agency position for which the preference eligible qualifies and is available;

(c) Notifying preference eligibles of the right to register in the IPP at least 60 days before the effective date of separation.

(d) Assuring that OMB's policy directives on the preference eligibles' right of first refusal for employment openings in contracting out situations are met;

(e) Continuing liaison with State Job Service offices for placement assistance for eligible employees who wish to
be considered for jobs outside the Federal Government. This includes cooperation with Local Veteran Employment Representatives (LVER) and Disabled Veterans Outreach Program (DVOP) specialists;
(f) Referring names of interested preference eligibles to the U.S. Postal Service for consideration for employment opportunities.

§ 330.406 OPM placement assistance.
OPM’s responsibilities include:
(a) Assisting agencies in operating positive placement programs.
(b) Making priority referral in accordance with § 330.304 of subpart C of this part.
(c) Assuring that all agencies that have vacancies to fill through the competitive examination process give full consideration to adversely affected preference eligibles registered in the IPP.
(d) Encouraging cooperation between local U.S. Postal Service installations and local Federal installations to assist these displaced preference eligibles in applying for U.S. Postal Service positions.
(e) Monitoring this placement assistance through IPP procedures.

§ 330.407 Duration of eligibility for assistance.
Adversely affected preference eligibles may remain in the IPP for 1 year after their normal IPP eligibility expires with placement assistance renewable in 6 month increments by the registered employee. Eligibility may, however, be terminated earlier in accordance with other IPP procedures.
[59 FR 32873, June 27, 1994]

Subpart E—Restrictions To Protect Competitive Principles

§ 330.501 General restriction on movement after competitive appointment.
An agency may promote an employee or reassign him to a different line of work, or to a different geographical area, and it may transfer a present employee or reinstate a former employee of the same or another agency to a higher grade or different line of work, or to a different geographical area, only after 3 months have elapsed since the employee’s latest nontemporary competitive appointment. OPM may waive the restriction against movement to a different geographical area when it is satisfied that the waiver is consistent with the principles of open competition.
[37 FR 11965, June 16, 1972]

§ 330.502 [Reserved]

§ 330.503 Assessment of compliance with competitive principles.
As one factor in assessing an agency’s compliance with competitive principles, OPM will consider the relationship between appointments from competitive examinations and subsequent position changes. When OPM finds that an agency has not complied with competitive principles, either in an individual case or on a program basis, OPM will require the agency to take appropriate corrective action.
[37 FR 11965, June 16, 1972]

§ 330.504 Special restrictions after appointment under Part-time Direct Hire Program.
(a) A person hired under the Part-time Direct Hire Program may not be changed to full time through:
(1) Position change;
(2) Work schedule change;
(3) Transfer; or
(4) Reinstatement based on appointment under the Part-time Direct Hire Program until he or she has completed at least 1 calendar year of service in a part-time position under the program.
(b) In the event of a break in service, the service requirement in paragraph (a) of this section is computed on the basis of the employee’s total time in a pay status, 365 days equaling 1 calendar year.
(c) Agencies may waive this restriction only in the event of extreme personal hardship to the employee.
[45 FR 65493, Oct. 3, 1980]
§ 330.505 Nonapplicability to persons within reach on registers.

The restrictions in this subpart do not apply to a person who is within reach on a register for competitive appointment to the position to be filled.

[34 FR 2649, Feb. 27, 1969]

Subpart F—Agency Career Transition Assistance Plans (CTAP) for Local Surplus and Displaced Employees

AUTHORITY: Presidential memorandum dated September 12, 1995, entitled “Career Transition Assistance for Federal Employees”.

SOURCE: 62 FR 31320, June 9, 1997, unless otherwise noted.

§ 330.601 Purpose.

(a) This subpart implements the President’s memorandum of September 12, 1995, to establish agency Career Transition Assistance Plans for Federal employees during a period of severe Federal downsizing. It is the policy of the United States Government to provide services to help surplus and displaced Federal employees take charge of their own careers and find other job offers, either within the Federal Government or in the private sector.

(b) These regulations set forth minimum criteria for agency Career Transition Assistance Plans. Consistent with the regulations, agencies may supplement these provisions to expand career transition opportunities to their surplus and displaced workers at their discretion.

(c) Sections 330.602(a)(2) and 330.604 through 330.609 do not apply to the Department of Defense Priority Placement Program.

(d) New negotiated agreements and agreements which have expired since February 29, 1996, the effective date of the interim regulations, will be subject to the provisions set forth in this part.

§ 330.602 Agency plans.

(a) Each agency will establish a Career Transition Assistance Plan (CTAP) to actively assist its surplus and displaced employees. A copy of the final plan and any additional modified plans will be sent to OPM as approved by the agency/department head or deputy or under secretary. An agency plan will include:

(i) Policies to provide career transition services to all surplus and displaced agency employees affected by downsizing or restructuring, including employees in the excepted service and the Senior Executive Service, which include the following:

(1) Types of career transition services to be provided by the agency;

(2) Use of excused absence for employees to use the services and facilities;

(iii) Access to services or facilities after separation;

(iv) The requirement for a specific orientation session for surplus and displaced employees on the use of career transition services and the eligibility requirements for selection priority under CTAP and ICTAP. The orientation session must include information on how to apply for vacancies under the CTAP and ICTAP (if applicable);

(v) Retraining to be provided to employees;

(vi) Access by employees, including those with disabilities, to services in headquarters, field offices, and remote site locations;

(vii) Access to resource information on other forms of Federal, state, and local assistance which are available to support career transition for employees with disabilities;

(viii) Role of employee assistance programs in providing services; and

(ix) Designation of agency components, if the agency exercises its discretion under §330.606(d)(24).

(2) Policies to provide special selection priority to well-qualified surplus and/or displaced agency employees, as defined by §330.604 (c) and (l), who apply for agency vacancies in the local commuting area, before selecting any other candidate from either within or outside the agency, and agency procedures for reviewing qualification issues; and

(3) Operation of the agency’s Reemployment Priority List under subpart B of 5 CFR part 330.

(b) Each agency is responsible for assuring that its Career Transition Assistance Plan and the provisions of
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these subparts are uniformly and consistently applied to all employees.

§ 330.604 Definitions.

For purposes of this subpart:

(a) Agency means an Executive Department, a Government corporation, and an independent establishment as cited in 5 U.S.C. 105. For the purposes of this program, the term “agency” includes all components of an organization, including its Office of Inspector General.

(b) Component means the first major subdivision of an agency, that is separately organized and clearly distinguished from other components in work function and operation.

(c) Displaced employee means:

(1) A current career or career conditional competitive service employee in tenure group 1 or 2, at grade levels GS-15 or equivalent and below, who has received a specific reduction in force (RIF) separation notice or notice of proposed removal for declining a directed reassignment or transfer of function outside of the local commuting area; or,

(2) A current Executive Branch agency employee in the excepted service, serving on an appointment without time limit, at grade levels GS-15 or equivalent and below, who has received a certificate of expected separation or other official certification issued by the agency indicating that the position is surplus, for example, a notice of position abolishment, or a notice stating that the employee is eligible for discontinued service retirement; or,

(d) Eligible employee means a surplus or displaced employee who meets the conditions set forth in § 330.605(a).

(e) Local commuting area means the geographic area that usually constitutes one area for employment purposes as determined by the agency. It includes any population center (or more than one) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment.

(f) Reorganization means the planned elimination or redistribution of work functions within an agency, normally announced in writing.

(g) Special selection priority means that, except as provided by § 330.606(d), surplus and/or displaced employees eligible under this subpart must be selected over any other candidate for vacancies in the local commuting area for which they apply and are found well-qualified.

(h) Suitability means determinations based on an individual’s character or conduct that may impact the efficiency of the service by jeopardizing an agency’s accomplishment of its duties or responsibilities, or by interfering with or preventing effective service in the competitive, excepted or SES position applied for or employed in, and determinations that there is a statutory or regulatory bar to employment.

(i) Surplus employee means:

(1) A current agency employee serving under an appointment in the competitive service, in tenure group 1 or 2, at grade levels GS-15 or equivalent and below, who has been given noncompetitive appointment eligibility and selection priority by statute for positions in the competitive service, and who is in receipt of a reduction in force separation notice or notice of proposed removal for declining a transfer of function or directed reassignment outside of the local commuting area; or,

(2) A current Executive Branch agency employee in the excepted service, serving on an appointment without time limit, at grade levels GS-15 or equivalent and below, who has been issued a certificate of expected separation or other official certification issued by the agency indicating that the position is surplus, for example, a certificate of expected separation or other official certification issued by the agency indicating that the position is surplus, for example, a notice of position abolishment, or a notice stating that the employee is eligible for discontinued service retirement; or,

(3) A current Executive Branch agency employee serving on an excepted service appointment without time limit, at grade levels GS-15 or equivalent and below, who has been issued a certificate of expected separation or other official certification indicating that his or her position is surplus, for example, a certificate of expected separation or other official agency certification indicating that his or her position is surplus, for example, a notice of position abolishment or a notice stating that the employee is eligible for discontinued service retirement, and who has been conferred noncompetitive appointment eligibility and special selection priority by statute for positions in the competitive service; and
§ 330.605 Eligibility.

(a) To be eligible for the special selection priority, an individual must meet all of the following conditions:

(1) Is a surplus or displaced employee (still on the agency rolls) as defined in §330.604 (c) and (i);

(2) Has a current performance rating of record of at least fully successful or equivalent;

(3) Applies for a vacancy that is at or below the grade level from which the employee may be or is being separated, that does not have a greater promotion potential than the position from which the employee may be or is being separated;

(4) Occupies a position in the same local commuting area of the vacancy; or, at the agency's discretion, occupies a position beyond the local commuting area. An eligible agency applicant outside of the local commuting area, however, can only exercise selection priority when there are no eligible surplus and displaced agency employees within the local commuting area who apply and are found well-qualified;

(5) Files an application for a specific vacancy within the time frames established by the agency, and provides proof of eligibility as required under §330.608(a)(2); and

(6) Is determined by the agency to be well-qualified for the specific vacancy.
(b) Eligibility for special selection priority begins on the date the agency issues the employee a RIF separation notice, certificate of expected separation, notice of proposed separation for declining a directed reassignment or transfer of function outside of the local commuting area, or other official agency certification identifying the employee as being in a surplus organization or occupation, whichever is earliest.

(c) Eligibility expires on the earliest of:
   (1) The RIF separation date, the date of the employee's resignation from the agency, or the date of separation under adverse action procedures for declining a directed reassignment or transfer of function to another local commuting area; or
   (2) Cancellation of the RIF separation notice, certificate of expected separation, notice of proposed removal for declining a directed reassignment or transfer of function outside of the commuting area, or other official agency certification identifying the employee as surplus; or
   (3) When an eligible employee receives a career, career-conditional, or excepted appointment without time limit in any agency at any grade level; and
   (4) Within an agency, and at the agency's discretion, when an eligible employee declines a career, career-conditional, or excepted appointment (without time limit), for which the employee has applied and been rated well-qualified.

§ 330.606 Order of selection for filling vacancies from within the agency.

(a) Except as provided in paragraph (d) of this section, when filling a vacancy as defined in §330.604(j), an agency must select an employee eligible under §330.605 of this subpart before selecting any other candidate from within or outside the agency, unless the agency can show that another employee would otherwise be separated by reduction in force. In addition, agencies may not procure temporary help services under 5 CFR part 300, subpart E, in lieu of appointing a surplus or displaced Federal employee as required by subparts F and G of this chapter.

(b) Once the agency has met its obligation to select employees eligible under its CTAP, it is free to select any other competitive service tenure group 1 or 2 candidate from within its workforce, under appropriate procedures. An agency may provide selection priority to surplus and displaced agency employees from another commuting area after it has discharged its obligation to eligible surplus and displaced agency employees from within the local commuting area.

(c) When an agency selects a candidate from outside of its workforce, the agency is subject to the order of selection prescribed in §330.705.

(d) The following are not covered under this subpart:
   (1) Actions taken under 5 CFR part 335, including reassignments, changes to lower grade, or promotions, when no employees eligible under this subpart apply;
   (2) Reemployment of a former agency employee exercising regulatory or statutory reemployment rights, including the reemployment of injured workers who have either been restored to earning capacity by the Office of Workers' Compensation Programs (OWCP), or who have received a notice that their compensation benefits will cease because of recovery from the disabling injury or illness;
   (3) Position changes resulting from disciplinary actions;
   (4) Temporary appointments of under 121 days (including all extensions);
   (5) Exchange of positions between or among agency employees, when the actions involve no increase in grade or promotion potential, i.e., job swaps;
   (6) Conversion of an employee of the same agency who is serving on an excepted appointment which confers eligibility for noncompetitive conversion into the competitive service, e.g., conversion of a veterans' readjustment appointee to a career conditional appointment under §315.705;
   (7) An action taken under part 351 of this chapter;
   (8) Non-competitive placement of an employee into a different position as a result of a formal reorganization, when the former position ceases to exist, and no actual vacancy results;
   (9) Assignments made under the Intergovernmental Personnel Act (IPA) as provided in part 334 of this chapter;
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(10) The filling of a position through an excepted appointment;
(11) Details;
(12) Time-limited promotions of under 121 days, including all extensions;
(13) Noncompetitive movement of surplus or displaced employees within the agency, and within the same local commuting area;
(14) Movement of excepted service employees within an agency;
(15) A placement under 5 U.S.C. 8337 or 8451 to allow continued employment of an employee who has become unable to provide useful and efficient service in his or her current position because of a medical condition;
(16) A placement that is a “reasonable offer” as defined in 5 U.S.C. 8336(d) and 8414(b);
(17) Career ladder promotions or position changes resulting from reclassification actions, e.g., accretion of duties, or application of new position classification standards;
(18) Recall of seasonal or intermittent employees from nonpay status;
(19) The internal placement of an injured or disabled worker whose agency has identified a position for which he or she can be reasonably accommodated;
(20) An action taken by the agency head or his designee pursuant to the settlement of a formal complaint, grievance, appeal, or other litigation;
(21) An action taken to return an employee to his or her original or similar position during a supervisory probationary period;
(22) The retention of individuals whose positions are brought into the competitive service under §316.703 or §316.704 of this chapter and subsequent conversion, when applicable, under §315.701 of this chapter;
(23) The retention of an employee for whom OPM has approved a rule 5.1 variation;
(24) The reemployment of a former agency employee who retired under a formal trial retirement and reemployment program, and who seeks reemployment with that agency under the program’s provisions, and within the program’s applicable time limits;
(25) Extensions of temporary or term actions, up to the full period allowed, provided that the original action, upon which the extension is based, was made on or before February 29, 1996; or for actions initially made after February 29, 1996, the original vacancy announcement must have specified that the position was open to CTAP candidates and that if they were found well-qualified, would be afforded selection priority. The original announcement must have stated that an extension was possible without further announcement;
(26) Noncompetitive movement of displaced employees between agencies as a result of reorganization, transfer of function, or mass transfer; and
(27) The placement of a member of the Senior Executive Service under 5 U.S.C. 3594.

§ 330.607 Notification of surplus and displaced employees

(a) In addition to meeting the requirements of §330.602(a)(1)(iv), at the time it issues a specific RIF separation notice, certificate of expected separation, or other official agency certification that identifies an employee as being likely to be separated by RIF, or by adverse action procedures for declining a directed reassignment or transfer of function outside of the local commuting area, an agency must give each of its eligible employees information in writing about the special selection priority available to them under the agency’s Career Transition Assistance Plan. Such information must contain guidance to the employee on how to apply for vacancies under the CTAP, and what documentation is generally required as proof of eligibility.

(b) Agencies must take reasonable steps to ensure eligible employees are notified of all vacancies the agency is filling and what is required for them to be determined well-qualified for the vacancies. Vacancy announcements within an agency must contain information on how eligible employees within the
agency can apply, what proof of eligibility is required, and the agency’s definition of “well-qualified.”

(c) Each agency is required to advise, in writing, their surplus and displaced employees who apply for specific vacancies within its local commuting area of the results of their application, and whether or not they were found well-qualified. If they are not found well-qualified, such notice must include information on the results of an independent, second review conducted by the agency. If an applicant is found well-qualified, and another well-qualified surplus or displaced candidate is selected, the applicant must be so advised.

§ 330.608 Application and selection.

(a) Application.

(1) To receive this special selection priority, an eligible employee must apply for a specific agency vacancy in the same local commuting area as the position the employee occupies within the prescribed time frames, attach the appropriate proof of eligibility as described in paragraph (a)(2) of this section, and be determined well-qualified by the agency for the specific vacancy.

(b) Selection. An agency may decide the specific order of selection of its eligible employees within the provisions set forth in § 330.606(a) (e.g., the agency may decide to select displaced employees before surplus employees or may select surplus and/or displaced employees from within a particular component of the agency before selecting surplus and/or displaced employees from another component of the agency).

(c) An agency cannot select any other candidate from within or outside the agency if eligible employees are available for the vacancy or vacancies.

(d) If two or more eligible employees apply for a vacancy and are determined to be well-qualified, any of these eligible employees may be selected.

(e) If no eligible employees apply or none is deemed well-qualified, the agency may select another agency employee without regard to this subpart.

§ 330.609 Qualification reviews.

Agencies will ensure that a documented, independent second review is conducted whenever an otherwise eligible employee is determined to be not well-qualified. The applicant must be advised in writing of the results of the second review.

§ 330.610 Reporting.

(a) Each agency shall submit an annual report covering each fiscal year activity under this subpart to OPM no later than December 31 of each year.

(b) Each report will include the following:

(1) Number of employees identified by the agency as surplus and displaced during that fiscal year;

(2) The number of CTAP applicants who were found to be well-qualified;

(3) The number of CTAP applicants who were found to be not well-qualified;

(4) Number of selections of eligible employees under the agency’s CTAP, or in the case of the Department of Defense, under its Priority Placement Program;

(5) The number of second reviews and the results of those reviews;

(6) The number of CTAP eligibles who declined job offers; and

(7) The name, title, and telephone number of the agency official responsible for the report.

(c) Reports should be addressed to: U.S. Office of Personnel Management, Workforce Restructuring Office, Employment Service, 1900 E Street, NW., Washington, DC 20415, FAX: 202-606-2329.
§ 330.611 Oversight.

OPM provides advice and assistance to agencies in implementing their Career Transition Assistance Programs. OPM is also responsible for oversight of agency CTAPs and may conduct reviews of the plans at any time.

Subpart G—Interagency Career Transition Assistance Plan for Displaced Employees

AUTHORITY: Presidential memorandum dated September 12, 1995, entitled “Career Transition Assistance for Federal Employees”.

SOURCE: 62 FR 31323, June 9, 1997, unless otherwise noted.

§ 330.701 Purpose.

(a) This subpart implements the President's memorandum of September 12, 1995, to establish a special interagency career transition assistance program for Federal employees during a period of severe Federal downsizing.

(b) This subpart is effective July 9, 1997.

(c) The provisions of the Reemployment Priority List (RPL) set forth in subpart B of this part will remain in effect during the period of severe Federal downsizing. When an agency considers candidates from outside the agency for vacancies, registrants in an agency's RPL have priority for selection over employees eligible under this subpart in accordance with § 330.705.

(d) This subpart applies only when agencies are making selections from outside their workforce, and does not prohibit movement within an agency, as permitted by subpart F of this part.

§ 330.702 Duration.

This subpart will expire on September 30, 1999, unless the U. S. Office of Personnel Management extends the program based on its determination that the Federal Government is still experiencing an emergency downsizing situation.

§ 330.703 Definitions.

For the purposes of this subpart:

(a) Agency has the meaning given in § 330.604(a).

(b) Displaced employee means:

1. A current career or career-conditional competitive service employee, in tenure group 1 or 2, at grade levels GS-15 or equivalent and below, who has received a specific RIF separation notice, or a notice of proposed removal for declining a directed reassignment or transfer of function outside of the local commuting area;

2. A former career or career-conditional competitive service employee, in tenure group 1 or 2, at grade levels GS-15 or equivalent and below, who was separated through reduction in force, or removed for declining a directed reassignment or transfer of function outside of the local commuting area;

3. A former career or career-conditional employee who was separated because of a compensable injury or illness as provided under the provisions of subchapter I of chapter 81 of title 5, United States Code, whose compensation has been terminated and whose former agency is unable to place the individual as required by part 353 of this chapter;

4. A former career or career-conditional competitive service employee, in tenure group 1 or 2, who retired with a disability under sections 8337 or 8451 of title 5, United States Code, whose disability annuity has been or is being terminated;

5. A former career or career-conditional competitive service employee, in tenure group 1 or 2, at grades GS-15 level or equivalent or below, who received a RIF separation notice, and who retired on the effective date of the reduction in force or under the discontinued service retirement option;

6. A former Military Reserve Technician or National Guard Technician who is receiving a special disability retirement annuity from OPM under section 8337(h) or 8456 of title 5 United States Code, as described in subpart H of this part;

7. A current Executive Branch agency employee in the excepted service, serving on an appointment without time limit, at grade levels GS-15 or equivalent and below, who has been given noncompetitive appointment eligibility and selection priority by statute for positions in the competitive service, and who is in receipt of a reduction in force separation notice or
notice of proposed removal for declining a transfer of function or directed reassignment outside of the local commuting area; or

(8) A former Executive Branch agency employee in the excepted service, who served on an appointment without time limit, at grade levels GS–15 or equivalent and below, who has been given noncompetitive appointment eligibility and selection priority by statute for positions in the competitive service, and who has been separated through reduction in force or removed for declining a transfer of function or directed reassignment outside of the local commuting area.

(c) Eligible employee means a displaced employee who meets the conditions set forth in §330.704(a).

(d) Local commuting area has the meaning given in §330.604(e).

(e) Special selection priority has the meaning given in §330.604(g).

(f) Vacancy has the meaning given in §330.604(j).

(g) Well-qualified employee has the meaning given in §330.604(k).

§ 330.704 Eligibility.

(a) To be eligible for the special selection priority, an individual must meet all of the following conditions:

(1) Is a displaced employee as defined in §330.703(b);

(2) Has a current (or a last) performance rating of record of at least fully successful or equivalent (except for those eligible under §330.703(b)(3), (b)(4), and (b)(6);

(3) Applies for a vacancy at or below the grade level from which the employee has been or is being separated, that does not have a greater promotion potential than the position from which the employee has been or is being separated;

(4) Occupies, or was displaced from a position in the same local commuting area of the vacancy;

(5) Files an application for a specific vacancy within the time frames established by the agency, and provides proof of eligibility required under §330.708(a)(2); and

(6) Is determined by the agency to be well-qualified for the specific position.

(b) Eligibility for special selection priority begins:

(1) On the date the agency issues the RIF separation notice;

(2) On the date an agency certifies that it cannot place an employee eligible under §330.703(b)(3);

(3) On the date an employee eligible under §330.703(b)(4) is notified that his or her disability annuity has been or is being terminated;

(4) On the date the agency issues a formal notice of proposed separation to an employee for declining a transfer of function or directed reassignment outside the local commuting area; or

(5) On the date the National Guard Bureau or Military Department certifies that an employee under §330.703(b)(6) has retired under 5 U.S.C. 8337(h) or 8456.

(c) Eligibility expires:

(1) 1 year after separation, except for those employees separated on or after September 12, 1995, and prior to February 29, 1996. For these employees, eligibility expired February 28, 1997;

(2) 1 year after an agency certifies that an individual under §330.703(b)(3) cannot be placed;

(3) 1 year after an individual under §330.703(b)(4) receives notification that his/her disability annuity has been or will be terminated;

(4) When the employee receives a career, career-conditional, or excepted appointment without time limit in any agency at any grade level;

(5) When the employee no longer meets the eligibility requirements set forth in paragraph (a) of this section (e.g., the employee is no longer being separated by RIF, or under adverse action procedures for declining a transfer of function or directed reassignment outside the local commuting area, or separates by resignation or non-discontinued service retirement prior to the RIF effective date); or

(6) At an agency’s discretion, when an eligible employee declines a career, career-conditional, or excepted appointment (without time limit), for which the employee has applied and been rated well-qualified; or upon the failure of the applicant to respond within a reasonable period of time to an offer or official inquiry of availability.
§ 330.705 Order of selection in filling vacancies from outside the agency’s workforce.

(a) Except as provided in paragraph (c) of this section, when filling a vacancy from outside the agency’s workforce an agency must select:

(1) Current or former agency employees eligible under the agency’s Reemployment Priority List described in subpart B of this part, then;
(2) At the agency’s option, any other former employee displaced from the agency (under appropriate selection procedures), then;
(3) Current or former Federal employees displaced from other agencies eligible under this subpart; and then;
(4) Any other candidate (under appropriate selection procedures) (optional).

(b) The following actions are subject to the above order of selection and are covered under this subpart:

(1) Competitive appointments (e.g., from registers or delegated examining);
(2) Noncompetitive appointments to the competitive service (e.g., the types listed in part 315, subpart F of this chapter, as well as Outstanding Scholar and Bilingual/Bicultural appointments made under the authority of the Luevano consent decree);
(3) Movement between agencies (e.g., transfer), except as provided for in paragraph (c)(8) of this section or part 351 of this chapter;
(4) Reinstatements (except as provided for in paragraph (a)(2) of this section);
(5) Time-limited competitive appointments of 121 days or more, including all extensions, except as provided in (c)(11) of this section.

(c) The following actions are not covered under this subpart:

(1) Selections from an agency’s internal Career Transition Assistance Plan or Reemployment Priority List as described in subparts F and B of this part respectively or any other internal agency movement of current agency employees;
(2) Appointments of 10 point veteran preference eligibles (CP, CPS, and XP), if reached through an appropriate appointing authority;
(3) Reemployment of former agency employees who have either been restored to earning capacity by the Office of Workers’ Compensation Programs (OWCP), or who have received a notice that their compensation benefits will cease because of recovery from the disabling injury or illness;
(4) Temporary appointments of under 121 days (including all extensions);
(5) An action taken under part 351 of this chapter;
(6) The filling of a position by an excepted appointment;
(7) Conversion of an employee of the same agency who is serving on an excepted appointment that confers eligibility for noncompetitive appointment into the competitive service, e.g., conversion of a veterans’ readjustment appointee to a career conditional appointment under §315.705 of this chapter;
(8) Noncompetitive movement of displaced employees between agencies as a result of reorganization, transfer of function, or mass transfer;
(9) The reemployment of a former agency employee who retired under a formal trial retirement and reemployment program, and who seeks reemployment with that agency under the program’s provisions, and within the program’s applicable time limits;
(10) An action taken by the agency head or his or her designee pursuant to the settlement of a formal complaint, grievance, appeal, or other litigation;
(11) Extensions of temporary or term actions, up to the full period allowed, provided that the original action, upon which the extension is based, was made on or before February 29, 1996 (the effective date of the interim regulations); or for actions initially made after February 29, 1996, the original vacancy announcement must have specified that the position was open to ICTAP candidates, and that if they were found well-qualified, would be afforded selection priority. The original announcement must have stated that an extension was possible without further announcement. This exception includes extensions granted by OPM to the 2 or 4 year limit allowed for temporary and term appointments, respectively;
(12) The reappointment of former employees with their agency into hard-to-fill positions, the duties of which require unique skills and experience necessary to conduct a formal skills-based training program for the agency;
(13) The retention of individuals whose positions are brought into the competitive service under §316.701 or §316.702 of this chapter and subsequent conversion, when applicable, under §315.701 of this chapter;
(14) The retention of an employee for whom OPM has approved a rule 5.1 variation;
(15) The placement of a member of the Senior Executive Service under 5 U.S.C. 3594; and
(16) Assignments made under the Intergovernmental Personnel Act (IPA) as provided in part 334 of this chapter.

§330.706 Notification of displaced employees.
(a) In addition to meeting the requirements of §330.602(a)(1)(iv) and §330.607(a), at the time it issues a specific RIF separation notice or notice of proposed removal for declining a directed reassignment or transfer of function outside of the local commuting area, an agency must give each of its eligible employees information in writing about the special selection priority available to them under the Interagency Career Transition Assistance Plan. Such information must contain guidance to the employee on how to apply for vacancies under the ICTAP, and what documentation is generally required as proof of eligibility.
(b) Agencies must take reasonable steps to ensure eligible employees are notified of all vacancies the agency is filling and what is required for them to be determined well-qualified for the vacancies.
(c) Each agency is required to advise, in writing, ICTAP candidates who apply for specific vacancies within its local commuting area of the results of their application, and whether or not they were found well-qualified. If they are not found well-qualified, such notice must include information on the results of an independent, second review conducted by the agency. If an applicant is found well-qualified, and another well-qualified surplus or displaced candidate is selected, the applicant must be so advised.

§330.707 Reporting vacancies to OPM.
(a) Agencies are required to report all competitive service vacancies to OPM when accepting applications from outside the agency (including applications for temporary positions lasting 121 or more days), except when they elect to fill a position by the transfer or reassignment of an ICTAP eligible from another agency.
(b) Content. Notice to OPM of job announcements must include the position title, location, pay plan and grade (or pay rate) of the vacant position; application deadline; and other information specified by OPM. In addition, for all positions reported, agencies are required to provide OPM with an electronic file of the complete vacancy announcement or recruiting bulletin, which must contain:
(1) Title, series, pay plan, and grade (or pay rate);
(2) Duty location;
(3) Open and closing dates, plus any other information dealing with how application receipt will be controlled, such as the use of early cut-off dates;
(4) Name of issuing agency and announcement number;
(5) Qualification requirements, including knowledges, skills, and abilities;
(6) Entrance pay;
(7) Brief description of duties;
(8) Basis of rating;
(9) What to file;
(10) Instructions on how to apply;
(11) Information on how to claim veterans’ preference, if applicable;
(12) The agency’s definition of well-qualified and information on how CTAP and/or ICTAP candidates may apply, including proof of eligibility required; and
(13) Equal employment opportunity statement.

§330.708 Application and selection.
(a) Application.
(1) To receive this special selection priority, eligible employees must apply directly to agencies for specific vacancies in the local commuting area within the prescribed time frames, attach
§ 330.709 Qualification reviews.

Agencies will ensure that a documented, independent second review is conducted whenever an otherwise eligible employee is found to be not well-qualified. The applicant must be advised in writing of the results of the second review.

§ 330.710 Reporting.

(a) Each agency shall submit an annual report covering each fiscal year activity under this subpart to OPM no later than December 31 of each year.

(b) Each report will include data specified in § 330.610 of subpart F of this part, and will also include information on:

1. The number of selections of ICTAP eligible employees from other Federal agencies;
2. The number of ICTAP candidates found not well-qualified;
3. The number of ICTAP candidates found well-qualified;
4. The number of selections of competitive service tenure group 1 or 2 employees from other Federal agencies who are not displaced;
5. The number of declinations from ICTAP eligible candidates;
6. The number of competitive service tenure group 1 or 2 appointments from outside the Federal Government; and
7. The number of placements made from the agency’s Reemployment Priority List.

§ 330.711 Oversight.

OPM is responsible for oversight of the Interagency Career Transition Assistance Plan for Displaced Employees and may conduct reviews of agency activity at any time.

Subpart H [Reserved]

Subpart I—Full Consideration of Displaced Defense Employees

SOURCE: 58 FR 18141, Apr. 8, 1993, unless otherwise noted.

§ 330.901 Purpose.

The purpose of this subpart is to implement section 4432 of the National Defense Authorization Act for Fiscal
Office of Personnel Management

§ 330.902 Coverage.

(a) Agencies covered. This subpart applies to:

(1) The executive departments listed at 5 U.S.C. 101, except the Department of Defense;

(2) Government corporations in the executive branch as described at 5 U.S.C. 103; and


(b) Positions covered. This subpart applies to vacant positions being filled in the Senior Executive Service, competitive service, and excepted service. Excluded are positions determined to be of a confidential, policy-determining, policy-making, or policy-advocating character, positions filled prior to October 24, 1992, and positions for which an agency had made a final employment commitment prior to issuance of this subpart.

(c) Actions covered. This subpart applies to any action for which a displaced employee is within reach for appointment, including, but not limited to, selection from a competitive list of eligibles, under a direct-hire or non-competitive appointment authority, under a merit promotion action, in accordance with part 302 or 333 of this chapter, and from a list of referrals from OPM’s displaced employee program.

(d) Displaced employees covered. Displaced employees entitled to full consideration under this subpart are competing employees as defined under part 351 of this chapter as follows:

(1) A former employee who was separated from employment with the Department of Defense by reduction in force in accordance with part 351 of this chapter during the period October 23, 1991, through October 22, 1992. Eligibility for full consideration ends when such an employee is employed at any grade level under an appointment in the same (or higher) tenure group as the appointment from which separated at the Department of Defense, or October 22, 1994, whichever occurs first; and

(2) An employee of the Department of Defense who receives, during the period from October 23, 1991, through September 30, 1997, a specific notice of separation by reduction in force in accordance with part 351 of this chapter. The employee is entitled to full consideration beginning on the date of the specific notice of separation or October 23, 1992, whichever is later. If the employee is actually separated, eligibility for full consideration ends when the employee is employed at any grade level under an appointment in the same (or higher) tenure group as the appointment from which separated at the Department of Defense, or 24 months after separation from the Department of Defense, whichever occurs first. If the notice of separation from the Department of Defense is canceled, the employee’s right to full consideration under this subpart is terminated on the date of the cancellation.

§ 330.903 Full consideration.

(a) In filling a vacant position for which a covered displaced employee has filed a timely application with evidence of eligibility under this subpart, an agency shall give full consideration to the application of the displaced employee before selecting any candidate from outside the agency for the position. For purposes of this subpart, the following are not considered to be outside candidates:

(1) An individual entitled to reemployment or restoration rights with the agency;

(2) A Presidential appointee entitled to guaranteed reinstatement to the Senior Executive Service under § 317.703 of this chapter;

(3) An individual appointed from a reemployment priority list established by the agency in accordance with either subpart B of this part or part 302, subpart C, of this chapter;

(4) A current employee of the agency, regardless of the type of appointment under which he or she is serving; and

(5) An individual given a special needs appointment in accordance with the Federal Personnel Manual, Chapter 316.
§ 330.1001

(b) For purposes of this subpart, "full consideration" is a careful, bona fide review of the qualifications of the displaced employee as described in his or her application forms, and including an interview if the displaced employee's qualifications are comparable to other outside candidates in the highest qualified group who are being interviewed. Before selecting another candidate from outside the agency, the agency must assure that the displaced employee was accorded at least the same degree of consideration as the other candidate.

(c) To receive full consideration under this subpart, the displaced employee must file a timely job application, request full consideration with evidence of eligibility under this subpart, and must meet all eligibility requirements for the position, including qualification requirements, appointment eligibility, and recruitment source (including geographic area) from which applications are being accepted. The displaced employee must be within reach for selection, consistent with otherwise applicable provisions of law and regulation. Evidence of eligibility under this subpart is a copy of the employee's specific notice of separation by reduction in force and/or the SF 50, Notification of Personnel Action, documenting separation from employment with the Department of Defense as a result of reduction in force.

(d) For any position for which a covered displaced employee has applied and is eligible for full consideration, the agency must identify such employee and document the consideration given. This information must be retained with other records pertaining to the filling of the vacancy.

Subpart J—Prohibited Practices

§ 330.1001 Withdrawal from competition.

An applicant for competitive examination, an eligible on a register, and an officer or employee in the executive branch of the Government shall not persuade, induce, or coerce, or attempt to persuade, induce, or coerce, directly or indirectly, a prospective applicant to withhold filing application, or an applicant or eligible to withdraw from competition or eligibility, for a position in the competitive service, for the purpose of improving or injuring the prospects of an applicant or eligible for appointment. OPM shall cancel the application or eligibility of an applicant or eligible who violates this section, and shall impose such other penalty as it considers appropriate.


Subpart K—Federal Employment Priority Consideration Program for Displaced Employees of the District of Columbia Department of Corrections

SOURCE: 63 FR 41387, Aug. 4, 1998, unless otherwise noted.

§ 330.1101 Purpose.

A displaced employee of the District of Columbia (DC) Department of Corrections (DOC) who is separated from his/her position as a result of the closure of the Lorton Correctional Complex, and who does not meet the qualifications and suitability requirements for Federal Bureau of Prisons law enforcement positions, is entitled to priority consideration for other Federal vacancies when he/she applies and is determined to be well-qualified.

§ 330.1102 Duration.

This program shall terminate one year after the closing of the Lorton Correctional Complex or December 31, 2002, whichever is later.

§ 330.1103 Definitions.

For purposes of this subpart:

(a) Displaced employee means a current or former employee of the District of Columbia Department of Corrections who has received a specific reduction in force (RIF) separation notice as a result of the closure of the Lorton Correctional Complex.

(b) Does not meet the qualifications and suitability requirements for Bureau of Prisons law enforcement positions means a DC DOC employee who has not been appointed to a Federal Bureau of Prisons law enforcement position.
(c) Non-Bureau of Prisons positions in the Federal Government means any competitive service positions (other than positions covered by the Federal Bureau of Prisons Priority Consideration Program).

(d) Priority consideration means a displaced DC DOC employee eligible under this subpart who applies for a vacancy and is determined to be well-qualified is accorded similar priority and order of selection as an eligible current or former displaced Federal employee under 5 CFR 330, subpart G—Interagency Career Transition Assistance Plan for Displaced Employees. In addition, DC DOC employees are eligible for this priority consideration without regard to any geographical restrictions.

(e) Well-qualified employee means an eligible employee who possesses the knowledge, skills, and abilities which clearly exceed the minimum qualifications for the position. A well-qualified employee will not necessarily meet the agency's definition of "highly or best qualified," when evaluated against other candidates who apply for a particular vacancy, but must satisfy the following criteria, as determined and consistently applied by the agency.

(1) Meets the basic qualification standards and eligibility requirements for the position, including any medical qualifications, suitability, citizenship, and minimum educational and experience requirements;

(2) Satisfies one of the following qualifications requirements:
   (i) Meets all selective factors where applicable. Meets appropriate quality rating factor levels as determined by the agency. Selective and quality ranking factors cannot be so restrictive that they run counter to the goal of placing displaced employees. In the absence of selective and quality ranking factors, selecting officials will document the job-related reason(s) the eligible employee is or is not considered to be well qualified; or
   (ii) Is rated by the agency to be above minimally qualified in accordance with the agency's specific rating and ranking process. Generally, this means that the individual may or may not meet the agency's test for "highly qualified," but would in fact, exceed the minimum qualifications for the position;

(3) Is physically qualified, with reasonable accommodation where appropriate, to perform the essential duties of the position;

(4) Meets any special qualifying condition(s) that OPM has approved for the position; and

(5) Is able to satisfactorily perform the duties of the position upon entry.

§ 330.1104 Eligibility.

(a) To be eligible for priority consideration, an employee of the DC DOC must:

(1) Be in receipt of a RIF separation notice from the DC Department of Corrections in connection with the closure of the Lorton Correctional Complex.

(2) Have not been appointed to a Federal Bureau of Prisons law enforcement position.

(3) Apply for a vacancy within the time frames established by the agency;

(b) Eligibility for priority consideration begins: on the date the DC DOC employee receives or is issued a specific RIF separation notice by the DC DOC.

(c) Eligibility expires:

(1) One year after the closing of the Lorton Correctional Complex;

(2) When the DC DOC employee is no longer being separated by RIF;

(3) When the DC DOC employee receives a career, career-conditional, or excepted appointment without time limit in any Federal agency at any grade level;

(4) When the DC DOC employee voluntarily separates by resignation or retirement prior to the RIF effective date; or

(5) When the DC DOC employee is separated involuntarily other than by RIF prior to the RIF effective date.

§ 330.1105 Selection.

If two or more individuals apply for a vacancy and are determined to be well-qualified, and meet the eligibility requirements under § 330.704(a) or § 330.1104(a), the agency would have the discretion of selecting any of these eligible employees.
§ 330.1106 Appointment of certain present and former employees of the District of Columbia Department of Corrections to vacancies in other Federal agencies.

(a) Appointments made under this section are excepted appointments to positions in the competitive service.

(b) Eligibility for appointment under this subpart expires 1 year after the closing of the Lorton Correctional Complex or December 31, 2002, whichever is later.

PART 332—RECRUITMENT AND SELECTION THROUGH COMPETITIVE EXAMINATION

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332.102 Definitions.
332.103 Filling certain postmaster positions.

Subpart B [Reserved]

Subpart C—Period of Competition and Eligibility

GENERAL

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ACCEPTANCE OF APPLICATIONS AFTER CLOSING DATE OF EXAMINATIONS

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332.407 Restriction of consideration to one sex.

SOURCE: 33 FR 12426, Sept. 4, 1968, unless otherwise noted.

Subpart A—General Provisions

§ 332.101 General policy of competition.

(a) Examinations for entrance into the competitive service shall be open competitive, except that OPM may authorize noncompetitive examinations when sufficient competent persons do not compete.

(b) An examination for promotion, demotion, reassignment, transfer, or reinstatement may be a noncompetitive examination.

§ 332.102 Definitions.

In this part:
(a) Certificate means a list of eligibles from a register submitted to an appointing officer so that he may consider the eligibles for appointment.

(b) Active military duty means active duty in full pay status in the Armed Forces of the United States, including an initial period of active duty for training.

§ 332.103 Filling certain postmaster positions.

(a) When a vacancy occurs or is about to occur in a postmaster position in a fourth-class post office and the position involves fewer than 7 daily hours of service, a representative of the U.S. Postal Service shall visit the locality and, after due public notice has been given, accept applications from interested persons. The representative shall establish a register based on the qualifications and suitability of each applicant and on his ability to provide proper facilities for transacting the business of the office. The U.S. Postal Service shall submit to OPM for postaudit one copy of the representative's report showing the qualifications of all applicants, the basis for ranking the eligibles, and the selection of an eligible from the register. The report shall be accompanied by the applications of all applicants. A person selected for appointment from such a register may be
appointed after the date the postmaster position is determined to involve 7 or more daily hours of service only with the prior approval of OPM.

(b) When making an appointment from a register established under paragraph (a) of this section, the appointing officer shall select an eligible in accordance with §§ 332.404 through 332.407.

(c) When OPM, after holding two examinations, is unable to secure a complete certificate of three eligibles for a postmaster position involving 7 or more daily hours of service, it may authorize the establishment of a register and selection therefrom in accordance with paragraphs (a) and (b) of this section.

[34 FR 19748, Dec. 17, 1969]

Subpart B [Reserved]

Subpart C—Period of Competition and Eligibility

§ 332.301 Termination of eligibility.

(a) Except as provided in paragraph (b) of this section, a person's eligibility on a register is terminated when:

(1) He accepts a career or career-conditioned appointment from the register; or

(2) OPM terminates the eligibility of all persons on the register.

(b) OPM may determine that in particular types of cases eligibility may not be terminated in less than 1 year. OPM shall publish in the Federal Personnel Manual the conditions under which eligibility may not be terminated in less than 1 year.

Acceptance of Applications After Closing Date of Examinations

§ 332.311 Quarterly examinations.

(a) A 10-point preference eligible is entitled to file an application at any time for an examination for any position for which OPM maintains a register, for which a register is about to be established, or for which a non-temporary appointment was made in the preceding three years. For the purposes of this paragraph OPM shall hold an examination not later than the quarterly period succeeding that in which the application is filed.

(b) When there is no appropriate existing register, OPM may establish special registers containing the names of eligibles from the quarterly examinations authorized by paragraph (a) of this section, together with the names of eligibles described in § 332.322, and use these registers for certification to fill appropriate vacancies.


§ 332.312 Applicants in military or overseas service.

Subject to the time limits and other conditions published by OPM in the Federal Personnel Manual, the following persons are entitled to file applications for open competitive examinations after the closing date for receipt of applications when there is an existing register or a register about to be established:

(a) A person who could not file an application during the filing period, or appear for an assembled examination, because of military service, or hospitalization continuing for 1 year or less following discharge from military service;

(b) An employee of the Federal Government who, as a member of a reserve unit of the military service, could not file an application during the filing period, or appear for an assembled examination, because of active duty beyond 15 days with the military service even though the duty is designated for training purposes; and

(c) A United States citizen who could not file an application during the filing period, or appear for an assembled examination, because of overseas service with a Federal agency or with an international organization in which the United States Government participates.

§ 332.313 Preference eligibles separated from competitive positions.

The following persons are entitled to have their names entered on an appropriate existing register in the order prescribed by § 332.403 if they were last employed under career or career-conditioned appointments:
§ 332.314 Displaced employees eligible for placement assistance.

Subject to the time limits and other conditions published by OPM, a person who is eligible for placement assistance through the Interagency Placement Program described in subpart C of part 330 of this chapter is entitled to file applications for competitive examinations after the closing date for receipt of applications when there is an existing register or a register is about to be established. Applications may be filed at any grade or level above the position from which the person is about to be or was displaced, for which such person is qualified.

[59 FR 32873, June 27, 1994]

RESTORATION OF ELIGIBILITY

§ 332.321 Preference eligibles who resigned from competitive positions.

A qualified preference eligible who resigned without delinquency or misconduct from career or career-conditional employment is entitled to have his name reentered on each register on which his name formerly appeared (or on a successor register) if he applies within 90 days after separation.

§ 332.322 Persons who lost eligibility because of military service.

(a) A person who lost a period of eligibility on a register because he has served on active military duty since June 30, 1950, is entitled to have his name restored to that register or a successor register when he meets the following conditions:

(1) He has not served more than four years following the date of his entrance on active military duty, exclusive of any additional service imposed pursuant to law. The date of entrance on duty means the first date between June 30, 1950, and July 1, 1971, on which he began a new period of active military duty, whether it was by original entry, reentry or extension.

(2) He is honorably separated from active military duty.

(3) He applies for restoration of eligibility within 90 days after discharge from active military duty or from hospitalization continuing for 1 year or less following separation from active military duty.

(4) He is still qualified to perform the duties of the position for which the register is used.

(b) When a person is entitled to have his name restored to a register under paragraph (a) of this section, OPM shall enter his name at the top of the appropriate group on the register if another eligible standing lower on the register on which his name formerly appeared was given a career or career-conditional appointment from that register. For professional and scientific positions in GS-9 and above and in comparable pay levels under other pay-fixing authorities, all eligibles are in one group. For all other positions, preference eligibles with a compensable service-connected disability of 10 percent or more are in one group and all other eligibles in another.

(c) When there is no appropriate existing register, OPM may establish special registers containing the names of persons entitled to priority of certification under paragraph (b) of this section, together with the names of eligibles described in §332.311, and use these registers for certification to fill appropriate vacancies.


§ 332.323 Employees separated during probation.

An employee who is separated (voluntarily or involuntarily) without delinquency or misconduct during his probationary period is entitled to have his name restored to the register of eligibles from which he was appointed, if he applies for restoration while the register is still in use.
Subpart D—Consideration for Appointment

§ 332.401 Order on registers.

Subject to appointment, residence, and other requirements of law and this chapter, OPM shall enter the names of eligibles on the appropriate register in accordance with their numerical ratings, except that the names of:

(a) Preference eligibles shall be entered in accordance with their augmented ratings and ahead of others having the same rating; and

(b) Preference eligibles who have a compensable service-connected disability of 10 percent or more shall be entered at the top of the register in the order of their ratings unless the register is for professional or scientific positions in GS-9 and above and in comparable pay levels under other pay-fixing authorities.

§ 332.402 Regular order of certification for appointment.

When OPM receives a request for certification of eligibles, it shall prepare a certificate from the top of the appropriate register containing the names of a sufficient number of eligibles to permit the appointing officer to consider three eligibles in connection with each vacancy.

§ 332.403 Selective certification.

When there is no register appropriate as a whole for the certification of eligibles for a particular position, OPM may prepare a certificate from the most nearly appropriate existing register by the selective certification of eligibles qualified for the particular position in the order of their ranking on the register. Special overseas selection factors may also be used as a basis for selective certification from a register used for filling overseas positions. When appropriate, OPM may rerate the eligibles on the register on the basis of the particular requirements of the position.

§ 332.404 Order of selection from certificates.

An appointing officer, with sole regard to merit and fitness, shall select an eligible for:

(a) The first vacancy from the highest three eligibles on the certificate who are available for appointment; and

(b) The second and each succeeding vacancy from the highest three eligibles on the certificate who are unselected and available for appointment.

§ 332.405 Three considerations for appointment.

An appointing officer is not required to consider an eligible who has been considered by him for three separate appointments from the same or different certificates for the same position.

§ 332.406 Objections to eligibles.

(a) An appointing officer is not required to consider an eligible to whose certification for the particular position he makes an objection that is sustained by OPM for any of the reasons stated in § 339.101 or § 731.201 of this chapter or for other reasons considered by OPM to be disqualifying for the particular position. OPM may also sustain an objection to certification of an otherwise qualified eligible for an overseas position on the basis of special overseas selection factors.

(b) An appointing officer may not pass over a preference eligible to select a non-preference eligible unless an objection to the preference eligible is sustained by OPM.

(c) Pending OPM action on an agency’s objection to an eligible, the agency may not appoint an eligible who would be within reach only if the objection is sustained.

(d) Paragraphs (b) and (c) of this section, do not apply if the agency has more than one position to fill from the same certificate and holds a position for the individual objected to in the event OPM does not sustain the objection.

(e) Agencies shall follow the procedures for objecting to an eligible published by OPM in the Federal Personnel Manual.

[42 FR 61240, Dec. 2, 1977]

§ 332.407 Restriction of consideration to one sex.

An appointing officer may not restrict his consideration of eligibles or
employees for competitive appointment or appointment by noncompetitive action to a position in the competitive service to one sex, except in unusual circumstances when OPM finds the action justified.


PART 333—RECRUITMENT AND SELECTION FOR TEMPORARY AND TERM APPOINTMENTS OUTSIDE THE REGISTER

Subpart A—General Provisions

Sec.
333.101 Standards for temporary and term appointments outside the register.
333.102 Notice of job announcements to OPM.
333.103 Preference in temporary and term appointments outside the register.

Subpart B—Consideration for Appointment

333.201 Making appointments from an unrated list.
333.202 Making appointments from a numerically ranked list.


Subpart A—General Provisions

§ 333.101 Standards for temporary and term appointments outside the register.

Except as OPM may otherwise specify, an agency, in making a temporary or term appointment outside the register, shall determine that the applicant meets the qualification standards issued by OPM and that he or she is not disqualified for any of the reasons listed in §339.101 and §731.201 of this chapter. Candidates found to be qualified shall be assigned either an eligible rating or a numerical score of at least 70 on a scale of 100.

[60 FR 3061, Jan. 13, 1995]

§ 333.102 Notice of job announcements to OPM.

Under 5 U.S.C. 3327 and 3330, agencies are required to report job announcements to OPM when recruiting outside the register. This requirement is implemented through §330.102 of this chapter.

[61 FR 11501, Mar. 21, 1996]

§ 333.103 Preference in temporary and term appointments outside the register.

In actions subject to this part, each agency shall grant veteran preference as follows:

(a) When numerical scores are used in evaluation and referral, the agency shall grant 5 additional points to preference eligibles under section 2108(3)(A) and (B) of title 5, United States Code, and 10 additional points to preference eligibles under section 2108(3)(C) through (G) of that title.

(b) When eligible candidates are referred without ranking, the agency shall note preference as “CP” for preference eligibles under section 2103(3)(C) of title 5, United States Code, and as “IP” for all other preference eligibles under that title. (At its discretion, the agency may use the notation “XP” for preference eligibles under section 2108(3)(D) through (G) of title 5, but those eligibles will not be distinguished from “IP” eligibles in the referral process.)


Subpart B—Consideration for Appointment

§ 333.201 Making appointments from an unrated list.

In making temporary and term appointments from a list of eligible candidates who have not received numerical scores, an agency shall give preference to preference eligibles as follows:

(a) For professional and scientific positions at the GS-9 level or above, or equivalent, preference should be given to preference eligibles without regard to the type of preference.

(b) For other positions, preference shall be given first to preference eligibles with compensable service-connected disability of 10 percent or more, and second to other preference eligibles.

(c) Except as provided in paragraph (b) of §333.202 and in §333.203, qualified
candidates not eligible for veteran preference may be selected only when no qualified veteran preference eligibles are available.


§ 333.202 Making appointments from a numerically ranked list.

(a) Establishing the list. An agency shall enter the names of all applicants having an eligible numerical score on the employment list in the following order:

(1) Preference eligibles having a compensable service-connected disability of 10 percent or more in the order of their augmented ratings, unless the list will be used to fill professional positions at the GS-9 level and above, or equivalent.

(2) All other qualified candidates in the order of their augmented ratings. At each score, qualified candidates eligible for 10-point preference will be entered ahead of those eligible for 5-point preference or those not eligible for veteran preference, and those eligible for 5-point preference will be entered ahead of those not eligible for preference.

(b) Selection. When making an appointment from a list on which candidates have received numerical scores, the agency must make its selection from not more than the highest three names available for appointment in the order provided in paragraph (a) of this section, except that an agency is not required to—

(1) Consider an applicant who has previously been considered three times by the same appointing officer for positions at the same grade level and for the same line of work;

(2) Consider a preference eligible whose eligibility for further consideration for the position has been discontinued as provided in § 333.203.

[b]§ 333.203 Passing over a preference eligible.[/b]

(a) Preference eligibles with compensable service-connected disabilities of 30 percent or more. When an agency making an appointment passes over the name of a preference eligible who is entitled to prior consideration under paragraph (b) of § 333.201 or under paragraph (a) of § 333.202 and who has a compensable service-connected disability of 30 percent or more and proposes to select a nonpreference eligible, the agency must—

(1) Submit its reasons for so doing to the OPM office with examining jurisdiction over the position;

(2) Notify the preference eligible of the proposed passover, the reasons for it, and his or her right to respond to OPM within 15 days after the date of notification; and

(3) Obtain OPM’s approval for the proposed passover before selecting the nonpreference eligible.

(b) Other preference eligibles. When an agency making an appointment passes over the name of a preference eligible other than one described in paragraph (a) of this section who is entitled to prior consideration under paragraph (b) of § 333.201 or under paragraph (a) of § 333.202 and selects a nonpreference eligible, it must record its reasons for so doing and must furnish a copy of those reasons to the preference eligible and to his or her representative on request.

(c) Discontinuing consideration. An agency may discontinue consideration of a preference eligible for a position if, on three occasions, the agency has considered the candidate for the position and has either—

(1) Obtained OPM’s approval to pass over his or her name and select a nonpreference eligible in accordance with paragraph (a) of this section; or

(2) Passed over his or her name and recorded its reasons for so doing as provided in paragraph (b) of this section.

[56 FR 64470, Dec. 10, 1991]
§ 334.101 Purpose.

The purpose of this part is to carry into effect the objectives of title IV of the Intergovernmental Personnel Act of 1970 and title VI of the Civil Service Reform Act which authorize the temporary assignment of employees between Federal agencies and State, local, and Indian tribal governments, institutions of higher education and other eligible organizations.

§ 334.102 Definitions.

In this part:

Assignment means a period of service under chapter 33, subchapter VI of title 5, United States Code;

Employee means an individual serving in a Federal agency under a career or career-conditional appointment including career appointees in the Senior Executive Service, individuals under appointments of equivalent tenure in excepted service positions, and presidential management interns; or an individual employed for at least 90 days in a career position with a State, local, or Indian tribal government, institution of higher education, or other eligible organization;

Federal agency means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management;

Institution of higher education means a domestic, accredited public or private 4-year college or university, or a technical or junior college;

Indian tribal government refers to any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 668) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, S. 105);

Local government means any political subdivision, instrumentality, or authority of a State or States; and any general or special purpose agency of such a political subdivision, instrumentality, or authority;

Other organization means a national, regional, Statewide, areawide, or metropolitan organization representing member State or local governments; an association of State or local public officials; or a nonprofit organization which has as one of its principal functions the offering of professional advisory, research, education, or development services, or related services to governments or universities concerned with public management; and

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and a territory or possession of the United States; and an instrumentality or authority of a State or States; and a Federal-State authority or instrumentality.

334.103 Approval of instrumentalities or authorities of State and local governments and “other organizations”.

(a) Organizations interested in participating in the mobility program as an instrumentality or authority of a State or local government or as an “other organization” as set out in this part must have their eligibility certified by the Federal agency with which they are entering into an assignment.
(b) Written requests for certification should include a copy of the organization's:
(1) Articles of incorporation;
(2) Bylaws;
(3) Internal Revenue Service non-profit statement; and
(4) Any other information which indicates that the organization has as a principal function the offering of professional advisory, research, educational, or development services, or related services to governments or universities concerned with public management.

c) Federally funded research and development centers which appear on a master list maintained by the National Science Foundation are eligible to enter into mobility agreements.

d) An organization denied certification by an agency may request reconsideration by the Office of Personnel Management.


§ 334.104 Length of assignment.

(a) An assignment may be made for up to 2 years and may be extended by the head of a Federal agency, or his or her designee, for up to 2 more years, given the concurrence of the other parties to the agreement.

(b) A Federal agency may not send on assignment an employee who has served on mobility assignments for more than a total of 6 years during his or her Federal career. This applies only to Federal employees. The Office of Personnel Management may waive this provision upon the written request of the agency head, or his or her designee.

(c) A Federal agency may not send or receive on assignment an employee who has served under the mobility authority for 4 continuous years without at least a 12-month return to duty with the organization from which originally assigned.


§ 334.105 Obligated service requirement.

(a) A Federal employee assigned under this subchapter must agree as a condition of accepting an assignment to serve with the Federal Government upon completion of the assignment for a period equal to the length of the assignment.

(b) If the employee fails to carry out this agreement, he or she must reimburse the Federal agency for its share of the costs of the assignment (exclusive of salary and benefits). The head of the Federal agency, or his or her designee, may waive this reimbursement for good and sufficient reason.


§ 334.106 Requirement for written agreement.

(a) Before an assignment is made the Federal agency and the State, local, or Indian tribal government, institution of higher education, or other eligible organization and the assigned employee shall enter into a written agreement which records the obligations and responsibilities of the parties as specified in 5 U.S. Code 3373-3375.

(b) Agencies must maintain a copy of each assignment agreement form as well as any modification to the agreement.


§ 334.107 Termination of agreement.

(a) An assignment may be terminated at any time at the request of the Federal agency or the State, local, or Indian tribal government, institution of higher education, or other participat- ing organization. Where possible, the party terminating the assignment prior to the agreed upon date should provide 30-days advance notice along with a statement of reasons to the other parties to the agreement.

(b) Federal assignees continue to encumber the positions they occupied prior to assignment, and the position is subject to any personnel actions that might normally occur. At the end of the assignment, the employee must be allowed to resume the duties of his/her position or must be reassigned to another position of like pay and grade.

(c) An assignment is terminated, automatically, when the employer/employee relationship ceases to exist between the assignee and his or her original employer.

(d) The Office of Personnel Management shall have the authority to direct
§ 334.108

Federal agencies to terminate assignments or take other corrective actions when assignments are found to have been made in violation of the requirements of the Intergovernmental Personnel Act and/or this part.


§ 334.108 Reports required.

A Federal agency which assigns an employee to or receives an employee from a State, local, or Indian tribal government, institution of higher education or other eligible organization in accordance with this part shall submit to the Office of Personnel Management such reports as the Office of Personnel Management may request.

[44 FR 25394, May 1, 1979. Redesignated at 45 FR 996, Jan. 4, 1980]

PART 335—PROMOTION AND INTERNAL PLACEMENT

Subpart A—General Provisions

§ 335.101 Effect of position change on status and tenure.

(a) Status. A position change authorized by § 335.102 does not change the competitive status of an employee.

(b) Tenure. Except as provided in paragraph (c) of this section and § 316.703 of this chapter, a position change authorized by § 335.102 does not change the tenure of an employee.

(c) Exceptions. (1) A career-conditional employee who is promoted, demoted, or reassigned to a position paid under chapter 45 of title 39, United States Code, or required by law to be filled on a permanent basis becomes a career employee.

(2) A career employee who is promoted, demoted, or reassigned from a position paid under chapter 45 of title 39, United States Code, or required by law to be filled on a permanent basis to a position under the career-conditional employment system becomes a career-conditional employee unless he has completed the service requirement for career tenure.

[33 FR 12428, Sept. 4, 1968]

§ 335.102 Agency authority to promote, demote, or reassign.

Subject to § 335.103 and, when applicable, to part 319 of this chapter, an agency may:

(a) Promote, demote, or reassign a career or career-conditional employee;

(b) Reassign an employee serving under a temporary appointment pending establishment of a register to a position to which his original assignment could have been made by the same appointing officer from the same recruiting list under the same order of consideration;

(c) Promote, demote, or reassign an employee serving under an overseas limited appointment of indefinite duration or an overseas limited term appointment to another position to which an initial appointment under § 301.201, § 301.202, or § 301.203 of this chapter is authorized;

(d) Promote, demote, or reassign (1) an employee serving under an overseas limited appointment of indefinite duration or an overseas limited term appointment to another position to which an initial appointment under § 301.201, § 301.202, or § 301.203 of this chapter is authorized; and

(e) Promote, demote, or reassign a term employee serving on a given project to another position within the project which the agency has been authorized to fill by term appointment;

(f) Make time-limited promotions to fill temporary positions, accomplish project work, fill positions temporarily pending reorganization or downsizing, or meet other temporary needs for a
specified period of not more than 5 years, unless OPM authorizes the agency to make and/or extend time-limited promotions for a longer period.

(1) The agency must give the employee advance written notice of the conditions of the time-limited promotion, including the time limit of the promotion; the reason for a time limit; the requirement for competition for promotion beyond 120 days, where applicable; and that the employee may be returned at any time to the position from which temporarily promoted, or to a different position of equivalent grade and pay, and the return is not subject to the procedures in parts 351, 432, 752, or 771 of this chapter. When an agency effects a promotion under a nondiscretionary provision and is unable to give advance notice to the employee, it must provide the notice as soon as possible after the promotion is made.

(2) This paragraph applies to a career, career-conditional, status quo, indefinite, or term employee and to an employee serving under an overseas limited appointment of indefinite duration, or an overseas limited term appointment.

§ 335.103 Agency promotion programs.

(a) Merit promotion plans. Except as otherwise specifically authorized by OPM, an agency may make promotions under §335.102 of this part only to positions for which the agency has adopted and is administering a program designed to insure a systematic means of selection for promotion according to merit. These programs shall conform to the requirements of this section.

(b) Merit promotion requirements. (1) Requirement 1. Each agency must establish procedures for promoting employees which are based on merit and are available in writing to candidates. Agencies must list appropriate exceptions, including those required by law or regulation, as specified in paragraph (c) of this section. Actions under a promotion plan—whether identification, qualification, evaluation, or selection of candidates—shall be made without regard to political, religious, or labor organization affiliation or nonaffiliation, marital status, race, color, sex, national origin, nondisqualifying physical handicap, or age, and shall be based solely on job-related criteria.

(2) Requirement 2. Areas of consideration must be sufficiently broad to ensure the availability of high quality candidates, taking into account the nature and level of the positions covered. Agencies must also ensure that employees within the area of consideration who are absent for legitimate reason, e.g., on detail, on leave, at training courses, in the military service, or serving in public international organizations or on Intergovernmental Personnel Act assignments, receive appropriate consideration for promotion.

(3) Requirement 3. To be eligible for promotion or placement, candidates must meet the minimum qualification standards prescribed by the Office of Personnel Management (OPM). Methods of evaluation for promotion and placement, and selection for training which leads to promotion, must be consistent with instructions in part 300, subpart A, of this chapter. Due weight shall be given to performance appraisals and incentive awards.

(4) Requirement 4. Selection procedures will provide for management’s right to select or not select from among a group of best qualified candidates. They will also provide for management’s right to select from other appropriate sources, such as reemployment priority lists, reinstatement, transfer, handicapped, or Veteran Readjustment Act eligibles or those within reach on an appropriate OPM certificate. In deciding which source or sources to use, agencies have an obligation to determine which is most likely to best meet the agency mission objectives, contribute fresh ideas and new viewpoints, and meet the agency’s affirmative action goals.

(5) Requirement 5. Administration of the promotion system will include recordkeeping and the provision of necessary information to employees and the public, ensuring that individuals’ rights to privacy are protected. Each agency must maintain a temporary record of each promotion sufficient to allow reconstruction of the promotion...
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action, including documentation on how candidates were rated and ranked. These records may be destroyed after 2 years or after the program has been formally evaluated by OPM (whichever comes first) if the time limit for grievance has lapsed before the anniversary date.

c) Covered personnel actions—(1) Competitive actions. Except as provided in paragraphs (c)(2) and (3) of this section, competitive procedures in agency promotion plans apply to all promotions under § 335.102 of this part and to the following actions:

(i) Time-limited promotions under § 335.102(f) of this part for more than 120 days to higher graded positions (prior service during the preceding 12 months under noncompetitive time-limited promotions and noncompetitive details to higher graded positions counts toward the 120-day total). A temporary promotion may be made permanent without further competition provided the temporary promotion was originally made under competitive procedures and the fact that might lead to a permanent promotion was made known to all potential candidates;

(ii) Details for more than 120 days to a higher grade position or to a position with higher promotion potential (prior service during the preceding 12 months under noncompetitive details to higher graded positions and noncompetitive time-limited promotions counts toward the 120-day total);

(iii) Selection for training which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion as specified in § 410.302 of this chapter;

(iv) Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in the competitive service (except as permitted by reduction-in-force regulations);

(v) Transfer to a position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service;

(vi) Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than

(2) Noncompetitive actions. Competitive procedures do not apply to:

(i) A promotion resulting from the upgrading of a position without significant change in the duties and responsibilities due to issuance of a new classification standard or the correction of an initial classification error; and

(ii) A position change permitted by reduction-in-force procedures in part 351 of this chapter.

(3) Discretionary actions. Agencies may at their discretion except the following actions from competitive procedures of this section:

(i) A promotion without current competition of an employee who was appointed in the competitive from a civil service register, by direct hire, by noncompetitive appointment or noncompetitive conversion, or under competitive promotion procedures for an assignment intended to prepare the employee for the position being filled (the intent must be made a matter of record and career ladders must be documented in the promotion plan);

(ii) A promotion resulting from an employee's position being classified at a higher grade because of additional duties and responsibilities;

(iii) A temporary promotion, or detail to a higher grade position or a position with known promotion potential of 120 days or less;

(iv) Promotion to a grade previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement approved under § 6.7 of this chapter) from which an employee was separated or demoted for other than performance or conduct reasons;

(v) Promotion, reassignment, demotion, transfer, reinstatement, or detail to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement approved under § 6.7 of this chapter) and did not lose because of performance or conduct reasons; and
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§ 337.101 Rating applicants.

(vi) Consideration of a candidate not given proper consideration in a competitive promotion action.

(vii) Appointments of career SES appointees with competitive service reinstatement eligibility to any position for which they qualify in the competitive service at any grade or salary level, including Senior-Level positions established under 5 CFR Part 319—Employment in Senior-Level and Scientific and Professional positions.

(d) Grievances. Employees have the right to file a complaint relating to a promotion action. Such complaints shall be resolved under appropriate grievance procedures. The standards for adjudicating complaints are set forth in part 300, subpart A, of this chapter. While the procedures used by an agency to identify and rank qualified candidates may be proper subjects for formal complaints or grievances, nonselection from among a group of properly ranked and certified candidates is not an appropriate basis for a formal complaint or grievance. There is no right of appeal of OPM, but OPM may conduct investigations of substantial violations of OPM requirements.

[59 FR 67121, Dec. 29, 1994, as amended at 63 FR 34258, June 24, 1998]

§ 335.104 Eligibility for career ladder promotion.

No employee shall receive a career ladder promotion unless his or her current rating of record under part 430 of this chapter is “Fully Successful” (level 3) or higher. In addition, no employee may receive a career ladder promotion who has a rating below “Fully Successful” on a critical element that is also critical to performance at the next higher grade of the career ladder.

[51 FR 8411, Mar. 11, 1986]

§ 335.105 Notice of job announcements to OPM.

Under 5 U.S.C. 3330, agencies are required to report job announcements to OPM for vacancies for which an agency will accept applications from outside the agency’s work force. This requirement is implemented through § 330.102 of this chapter.

[61 FR 11501, Mar. 21, 1996]

§ 335.106 Special selection procedures for certain veterans under merit promotion.

Preference eligibles or veterans who have been separated under honorable conditions from the armed forces after 3 or more years of continuous active service may compete for vacancies under merit promotion when an agency accepts applications from individuals outside its own workforce.

[63 FR 66705, Dec. 3, 1998]
§ 337.102 Evaluating qualifications for employees who are in a retained grade.

(a) Employees who are in a retained grade must have the experience they gain subsequent to the downgrading action that placed them in a retained grade considered in the following manner. For placements during the period the employee is in a retained grade, agencies must consider the experience subsequent to the downgrading action to be either:

(1) At the level of the retained grade and in the series of the position which he or she occupied at the time of the downgrading; or

(2) At the grade and in the series of the position to which the employee was downgraded.

(b) Agencies must determine which experience to consider on the basis of which will most likely result in placement. For placements or promotions after the retained grade period, the experience is considered only at the grade level and in the series of the position to which the employee was downgraded.

(5 U.S.C. 5364)

[45 FR 18365, Mar. 21, 1980]

PART 338—QUALIFICATION REQUIREMENTS (GENERAL)

Subpart A—Citizenship Requirements

Sec. 338.101 Citizenship.

Subpart B [Reserved]

Subpart C—Consideration for Appointment

338.301 Competitive service appointment.
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Subparts D-E [Reserved]

Subpart F—Age Requirements

§ 338.601 Prohibition of maximum-age requirements.

A maximum-age requirement may not be applied in either competitive or noncompetitive examinations for positions in the competitive service except as provided by:

(a) Section 3307 of title 5, United States Code; or

(b) Public Law 93-259 which authorizes OPM to establish a maximum-age requirement after determining that age is an occupational qualification necessary to the performance of the duties of the position.

[40 FR 42734, Sept. 16, 1975]

PART 339—MEDICAL QUALIFICATION DETERMINATIONS

Subpart A—General

Sec.

339.101 Coverage.

339.102 Purpose and effect.

339.103 Compliance with EEOC regulations.

339.104 Definitions.

Subpart B—Physical and Medical Qualifications

339.201 Disqualification by OPM.

339.202 Medical standards.

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339.204 Waiver of standards and requirements.

339.205 Medical evaluation programs.

339.206 Disqualification on the basis of medical history.

Subpart C—Medical Examinations

339.301 Authority to require an examination.

339.302 Authority to offer examinations.

339.303 Examination procedures.

339.304 Payment for examination.

339.305 Records and reports.

339.306 Processing medical eligibility determinations on certificates of eligibles.


Source: 54 FR 9763, Mar. 8, 1989, unless otherwise noted.

§ 339.103

Coverage.

This part applies to all applicants for and employees in competitive service positions; and to excepted service employees when medical issues arise in connection with an OPM regulation which governs a particular personnel decision, for example, removal of a preference eligible employee in the excepted service under part 752.

Purpose and effect.

(a) This part defines the circumstances under which medical documentation may be acquired and examinations and evaluations conducted to determine the nature of a medical condition which may affect safe and efficient performance.

(b) Personnel decisions based wholly or in part on the review of medical documentation and the results of medical examinations and evaluations shall be made in accordance with appropriate parts of this title.

(c) Failure to meet a properly established medical standard or physical requirement under this part means that the individual is not qualified for the position unless a waiver or reasonable accommodation is indicated, as described in §§ 339.103 and 339.204. An employee’s refusal to be examined in accordance with a proper agency order authorized under this part is grounds for appropriate disciplinary or adverse action.

[54 FR 9763, Mar. 8, 1989, as amended at 60 FR 3061, Jan. 13, 1995]

Compliance with EEOC regulations.

Actions under this part must be consistent with 29 CFR 1613.701 et seq. Particularly relevant to medical qualification determinations are §1613.704 (requiring reasonable accommodation of individuals with handicaps); §1613.705 (prohibiting use of employment criteria that screen out individuals with handicaps unless shown to be related to the job in question) and §1614.706 (prohibiting pre-employment inquiries related to handicap and pre-employment medical examinations, except under specified circumstances). In addition,
use of the term “qualified” in these regulations shall be interpreted consistently with §1613.702(f), which provides that a “qualified handicapped person” is a handicapped person “who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others.”

§ 339.104 Definitions.

For purposes of this part—

Accommodation means reasonable accommodation as described in 29 CFR 1613.704.

Arduous of hazardous positions means positions that are dangerous or physically demanding to such a degree that an incumbent’s medical condition is necessarily an important consideration in determining ability to perform safely and efficiently.

Medical condition means health impairment which results from injury or disease, including psychiatric disease.

Medical documentation or documentation of a medical condition means a statement from a licensed physician or other appropriate practitioner which provides information the agency considers necessary to enable it to make an employment decision. To be acceptable, the diagnosis or clinical impression must be justified according to established diagnostic criteria and the conclusions and recommendations must not be inconsistent with generally accepted professional standards. The determination that the diagnosis meets these criteria is made by or in coordination with a physician or, if appropriate, a practitioner of the same discipline as the one who issued the statement. An acceptable diagnosis must include the following information, or parts identified by the agency as necessary and relevant:

(a) The history of the medical condition, including references to findings from previous examinations, treatment, and responses to treatment;
(b) Clinical findings from the most recent medical evaluation, including any of the following which have been obtained: Findings of physical examination; results of laboratory tests; X-rays; EKG’s and other special evaluations or diagnostic procedures; and, in the case of psychiatric evaluation of psychological assessment, the findings of a mental status examination and the results of psychological tests, if appropriate;
(c) Diagnosis, including the current clinical status;
(d) Prognosis, including plans for future treatment and an estimate of the expected date of full or partial recovery;
(e) An explanation of the impact of the medical condition on overall health and activities, including the basis for any conclusion that restrictions or accommodations are or are not warranted, and where they are warranted, an explanation of their therapeutic of risk avoiding value;
(f) An explanation of the medical basis for any conclusion which indicates the likelihood that the individual is or is not expected to suffer sudden or subtle incapacitation by carrying out, with or without accommodation, the tasks or duties of a specific position;
(g) Narrative explanation of the medical basis for any conclusion that the medical condition has or has not become static or well stabilized and the likelihood that the individual may experience sudden or subtle incapacitation as a result of the medical condition. In this context, “static or well-stabilized medical condition” means a medical condition which is not likely to change as a consequence of the natural progression of the condition, specifically as a result of the normal aging process, or in response to the work environment or the work itself. “Subtle incapacitation” means gradual, initially imperceptible impairment of physical or mental function whether reversible or not which is likely to result in performance or conduct deficiencies. “Sudden incapacitation” means abrupt onset of loss of control of physical or mental function.

Medical evaluation program means a program of recurring medical examinations or tests established by written agency policy or directive, to safeguard the health of employees whose work may subject them or others to significant health or safety risks due to occupational or environmental exposure or demands.
Office of Personnel Management § 339.206

Medical standard is a written description of the medical requirements for a particular occupation based on a determination that a certain level of fitness of health status is required for successful performance.

Physical requirement is a written description of job-related physical abilities which are normally considered essential for successful performance in a specific position.

Physician means a licensed Doctor of Medicine or Doctor of Osteopathy, or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this part.

Practitioner means a person providing health services who is not a medical doctor, but who is certified by a national organization and licensed by a State to provide the service in question.

Subpart B—Physical and Medical Qualifications

§ 339.201 Disqualification by OPM.

Subject to subpart C of part 731 of this chapter, OPM may deny an applicant examination, deny an eligible appointment, and instruct an agency to remove an appointee by reason of physical or mental unfitness for the position for which he or she has applied, or to which he or she has been appointed. An OPM decision under this section is separate and distinct from a determination of disability under § 831.502, 844.103, 844.202, or subpart L of part 831 of this title, and does not necessarily entitle the employee to disability retirement under sections 8337 or 8451 of title 5, United States Code.

§ 339.202 Medical standards.

OPM may establish or approve medical standards for a Governmentwide occupation (i.e., an occupation common to more than one agency). An agency may establish medical standards for positions that predominate in that agency (i.e., where the agency has 50 percent or more of the positions in a particular occupation). Such standards must be justified on the basis that the duties of the position are arduous or hazardous, or require a certain level of health status or fitness because the nature of the positions involve a high degree of responsibility toward the public or sensitive national security concerns. The rationale for establishing the standard must be documented. Standards established by OPM or an agency must be:

(a) Established by written directive and uniformly applied,

(b) Directly related to the actual requirements of the position, and

(c) Consistent with OPM instructions published in FPM chapter 339.

§ 339.203 Physical requirements.

Agencies are authorized to establish physical requirements for individual positions without OPM approval when such requirements are considered essential for successful job performance. The requirements must be clearly supported by the actual duties of the position and documented in the position description.

§ 339.204 Waiver of standards and requirements.

Agencies must waive a medical standard or physical requirement established under this part when there is sufficient evidence that an applicant or employee, with or without reasonable accommodation, can perform the essential duties of the position without endangering the health and safety of the individual or others.

§ 339.205 Medical evaluation programs.

Agencies may establish periodic examination or immunization programs by written policies or directives to safeguard the health of employees whose work may subject them or others to significant health or safety risks due to occupational or environmental exposure or demands. The need for a medical evaluation program must be clearly supported by the nature of the work. The specific positions covered must be identified and the applicants or incumbents notified in writing of the reasons for including the positions in the program.

§ 339.206 Disqualification on the basis of medical history.

A candidate may not be disqualified for any position solely on the basis of medical history. For positions with
§ 339.301 Authority to require an examination.

(a) A routine preappointment examination is appropriate only for a position which has specific medical standards, physical requirements, or is covered by a medical evaluation program established under these regulations.

(b) Subject to § 339.103 of this part, an agency may require an individual who has applied for or occupies a position which has medical standards or physical requirements or which is part of an established medical evaluation program, to report for a medical examination:

(1) Prior to appointment or selection (including reemployment on the basis of full or partial recovery from a medical condition);

(2) On a regularly recurring, periodic basis after appointment; or

(3) Whenever there is a direct question about an employee's continued capacity to meet the physical or medical requirements of a position.

(c) An agency may require an employee who has applied for or is receiving continuation of pay or compensation as a result of an on-the-job injury or disease to report for an examination to determine medical limitations that may affect placement decisions.

(d) An agency may require an employee who is released from his or her competitive level in a reduction in force to undergo a relevant medical evaluation if the position to which the employee has reassignment rights has medical standards or specific physical requirements which are different from those required in the employee's current position.

(e)(1) An agency may order a psychiatric examination (including a psychological assessment) only when:

(i) The result of a current general medical examination which the agency has the authority to order under this section indicates no physical explanation for behavior or actions which may affect the safe and efficient performance of the individual or others, or

(ii) A psychiatric examination is specifically called for in a position having medical standards or subject to a medical evaluation program established under this part.

(2) A psychiatric examination or psychological assessment authorized under (i) or (ii) above must be conducted in accordance with accepted professional standards, by a licensed practitioner or physician authorized to conduct such examinations, and may only be used to make legitimate inquiry into a person's mental fitness to successfully perform the duties of his or her position without undue hazard to the individual or others.

§ 339.302 Authority to offer examinations.

An agency may, at its option, offer a medical examination (including a psychiatric evaluation) in any situation where the agency needs additional medical documentation to make an informed management decision. This may include situations where an individual requests for medical reasons a change in duty status, assignment, working conditions, or any other benefit or special treatment (including reasonable accommodation or reemployment on the basis of full or partial recovery from a medical condition) or where the individual has a performance or conduct problem which may require agency action. Reasons for offering an examination must be documented. An offer of an examination shall be carried out and used in accordance with 29 CFR 1613.706.

§ 339.303 Examination procedures.

(a) When an agency orders or offers a medical examination under this subpart, it must inform the applicant or employee in writing of its reasons for doing so and the consequences of failure to cooperate. (A single notification...
§ 339.304 Payment for examination.

Agencies shall pay for all examinations ordered or offered under this subpart, whether conducted by the agency's physician or the applicant's or employee's physician. Applicants and employees must pay for a medical examination conducted by a private physician (or practitioner) where the purpose of the examination is to secure a benefit sought by the applicant or employee.

§ 339.305 Records and reports.

(a) Agencies will receive and maintain all medical documentation and records of examinations obtained under this part in accordance with instructions provided by OPM, under provisions of 5 CFR part 293, subpart E.

(b) The report of an examination conducted under this subpart must be made available to the applicant or employee under the provisions of part 297 of this chapter.

(c) Agencies must forward to the Office of Workers' Compensation Programs (OWCP), Department of Labor, a copy of all medical documentation and reports of examinations of individuals who are receiving or have applied for injury compensation benefits including continuation of pay. The agency must also report to the OWCP the failure of such individuals to report for examinations that the agency orders under this subpart. When the individual has applied for disability retirement, this information must be forwarded to OPM.

§ 339.306 Processing medical eligibility determinations on certificates of eligibles.

(a) In accordance with the provisions of this part, agencies are authorized to medically disqualify a nonpreference eligible. A nonpreference eligible so disqualified has a right to a higher level review of the determination within the agency.

(b) OPM must approve the sufficiency of the agency's reasons to:

(1) Medically disqualify or pass over a preference eligible on a certificate in place of a nonpreference eligible,

(2) Medically disqualify or pass over a 30 percent or more compensably disabled veteran for a position in the U.S. Postal Service in favor of a nonpreference eligible,

(3) Medically disqualify a 30 percent or more compensably disabled veteran for assignment to another position in a reduction in force, or

(4) Medically disqualify a 30 percent or more disabled veteran for non-competitive appointment.
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SOURCE: 44 FR 57380, Oct. 5, 1979, unless otherwise noted.

Subpart A—Principal Statutory Requirements—Part-Time Employment

§ 340.101 Principal statutory requirements.

This subpart incorporates for the benefit of the user of the principal statutory requirements governing part-time career employment, as contained in 5 U.S.C. 3401-3408, and related provisions of Public Law 95-437.

SHORT TITLE

SEC. 1. This Act may be cited as the “Federal Employees Part-Time Career Employment Act of 1978”.

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) many individuals in our society possess great productive potential which goes unused because they cannot meet the requirements of a standard work week; and

(2) part-time permanent employment—

(A) provides older individuals with a gradual transition into retirement;

(B) provides employment opportunities to handicapped individuals or others who require a reduced work week;

(C) provides parents opportunities to balance family responsibilities with the need for additional income;

(D) benefits students who must finance their own education or vocational training;

(E) benefits the Government, as an employer, by increasing productivity and job satisfaction, while lowering turnover rates and absenteeism, offering management more flexibility in meeting work requirements, and filling shortages in various occupations; and

(F) benefits society by offering a needed alternative for those individuals who require or prefer shorter hours (despite the reduced income), thus increasing jobs available to reduce unemployment while retaining the skills of individuals who have training and experience.

(b) The purpose of this Act is to provide increased part-time career employment opportunities throughout the Federal Government.

§ 3401. Definitions

“For the purpose of this subchapter—

“(1) ‘agency’ means—

“(A) an Executive agency;

“(B) a military department;

“(C) an agency in the judicial branch;

“(D) the Library of Congress;

“(E) the Botanic Garden; and

“(F) the Office of the Architect of the Capitol; but does not include—

“(i) a Government controlled corporation;

“(ii) the Tennessee Valley Authority;

“(iii) the Alaska Railroad;

“(iv) the Virgin Island Corporation;

“(v) the Panama Canal Company;

“(vi) the Federal Bureau of Investigation, Department of Justice;

“(vii) the Central Intelligence Agency; and

“(viii) the National Security Agency, Department of Defense; and

“(2) ‘part-time career employment’ means part-time employment of 16 to 32 hours a week under a schedule consisting of an equal or varied number of hours per day, whether in a position which would be part-time without regard to this section or one established to allow job-sharing or comparable arrangements, but does not include employment on a temporary or intermittent basis.

§ 3402. Establishment of part-time career employment programs

“(a) (1) In order to promote part-time career employment opportunities in all grade levels, the head of each agency, by regulation, shall establish and maintain a program for part-time career employment within such agency. Such regulations shall provide for—

“(A) the review of positions which, after such positions become vacant, may be filled on a part-time career employment basis (including the establishment of criteria to be used in identifying such positions);

“(B) procedures and criteria to be used in connection with establishing or converting positions for part-time career employment, subject to the limitations of section 3393 of this title;

“(C) annual goals for establishing or converting positions for part-time career employment, and a timetable setting forth interim and final deadlines for achieving such goals;

“(D) a continuing review and evaluation of the part-time career employment program established under such regulations; and

“(E) procedures for notifying the public of positions which, after such positions become vacant, may be filled on a part-time career employment basis (including the establishment of criteria to be used in identifying such positions), subject to the limitations of section 3393 of this title.

“(2) The head of each agency shall provide for communication between, and coordination of the activities of, the individuals within such agency whose responsibilities relate to the part-time career employment program established within that agency.

“(3) Regulations established under paragraph (1) of this subsection may provide for such exceptions as may be necessary to carry out the mission of the agency.

“(b) (1) The Civil Service Commission, by regulation, shall establish and maintain a
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§ 340.101 Nonapplicability

"(a) If, on the date of enactment of this subchapter, there is in effect with respect to positions within an agency a collective-bargaining agreement which establishes the number of hours of employment a week, then this subchapter shall not apply to those positions.

(b) This subchapter shall not require part-time career employment in positions the rate of basic pay for which is fixed at a rate equal to or greater than the minimum rate fixed for GS-16 of the General Schedule.

§ 340.101 Regulations

"Before any regulation is prescribed under this subchapter, a copy of the proposed regulation shall be published in the Federal Register and an opportunity provided to interested parties to present written comment and, where practicable, oral comment. Initial regulations shall be prescribed not later than 180 days after the date of the enactment of this subchapter.

§ 3407. Reports

"(a) Each agency shall prepare and transmit on a biannual basis a report to the Office of Personnel Management on its activities under this subchapter, including—

"(1) details on such agency's progress in meeting part-time career employment goals established under section 3392 of this title; and

"(2) an explanation of any impediments experienced by such agency in meeting such goals or in otherwise carrying out the provisions of this subchapter, together with a statement of the measures taken to overcome such impediments.

"(b) The Commission shall include in its annual report under section 1308 of this title a statement of its activities under this subchapter, and a description and evaluation of the activities of agencies in carrying out the provisions of this subchapter.

§ 3408. Employee organization representation

"If an employee organization has been accorded exclusive recognition with respect to a unit within an agency, then the employee organization shall be entitled to represent all employees within that unit employed on a part-time career employment basis.

"Sec. 4. (a) Section 8347(g) of title 5, United States Code, is amended by inserting after the item relating to section 3385 the following:

"SUBCHAPTER VII—PART-TIME CAREER EMPLOYMENT OPPORTUNITIES

"(b) Subpart B of the table of chapters of part III of the analysis of chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3385 the following:

"(b) This subchapter shall not require part-time career employment in positions the rate of basic pay for which is fixed at a rate equal to or greater than the minimum rate fixed for GS-16 of the General Schedule.
§ 340.201 Regulatoy requirements—Part-Time Employment

(a) Definitions. Part-time career employment means regularly scheduled work of from 16 to 32 hours per week performed by an employee of an agency as defined in 5 U.S.C. 3401 (a) through (f), who has an appointment in tenure group I or II and who becomes employed on such part-time basis on or after April 8, 1979.

(b) Agency Exceptions. As an exception to the general definition of part-time employment in § 340.201(a) and under the authority provided in 5 U.S.C. 3402(a)(3), an agency may permit an employee who has an appointment in tenure group I or II to perform regularly scheduled work of from 1 to 15 hours per week.

(c) Mixed Tours of Duty. The provisions of this subpart and the term “part-time career employment” do not apply to employees with appointments in tenure groups I or II who work under mixed tours of duty. For this purpose, a mixed tour of duty consists of annually recurring periods of full-time, part-time, or intermittent service as...
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§ 340.402 Seasonal employment.

(a) Appropriate use. Seasonal employment allows an agency to develop an experienced cadre of employees under career appointment to perform work which recurs predictably year-to-year. Consistent with the career nature of the appointments, seasonal employees receive the full benefits authorized to attract and retain a stable workforce. As a result, seasonal employment is appropriate when the work is expected to last at least 6 months during a calendar year. Recurring work that lasts less than 6 months each year is normally best performed by temporary employees. Seasonal employment may not be used as a substitute for full-time employment or as a buffer for the full-time workforce.

(b) Length of the season. Agencies determine the length of the season, subject to the condition that it be clearly tied to nature of the work. The season must be defined as closely as practicable so that an employee will have a reasonably clear idea of how much work he or she can expect during the year. To minimize the adverse impact of seasonal layoffs, an agency may assign seasonal employees to other work during the projected layoff period.
§ 340.403

While in nonpay status, a seasonal employee may accept other employment, Federal or non-Federal, subject to the regulations on political activity (part 733 of this title) and on employee responsibilities and conduct (part 735), as well as applicable agency policies. Subject to the limitation on pay from more than one position (5 U.S.C. 5533), a seasonal employee may hold more than one appointment.

(c) Employment agreement. An employment agreement must be executed between the agency and the seasonal employee prior to the employee’s entering on duty. At a minimum, the agreement must inform the employee:

(1) That he or she is subject to periodic release and recall as a condition of employment,
(2) The minimum and maximum period the employee can expect to work,
(3) The basis on which release and recall procedures will be effected, and
(4) The benefits to which the employee will be entitled while in a nonpay status.

(d) Release and recall procedures. A seasonal employee is released to nonpay status at the end of a season and recalled to duty the next season. Release and recall procedures must be established in advance and uniformly applied. They may be based on performance, seniority, veterans’ preference, other appropriate indices, or a combination of factors. A seasonal layoff is not subject to the procedures for furlough prescribed in parts 351 and 752 of this title. Reduction in force or adverse action procedures, as applicable, are required for a seasonal layoff that is not in accordance with the employment agreement, for example, if an agency intends to have an employee work less than the minimum amount of time specified in the employment agreement. However, an agency may develop a new employment agreement to reflect changing circumstances.

(e) Noncompetitive movement. Seasonal employees serving under career appointment may move to other positions in the same way as other regular career employees.

§ 340.403 Intermittent employment.

(a) Appropriate use. An intermittent work schedule is appropriate only when the nature of the work is sporadic and unpredictable so that a tour of duty cannot be regularly scheduled in advance. When an agency is able to schedule work in advance on a regular basis, it has an obligation to document the change in work schedule from intermittent to part-time or full-time to ensure proper service credit.

(b) Noncompetitive movement. Intermittent employees serving under career appointment may move to other positions in the same way as other regular career employees.

PART 351—REDUCTION IN FORCE

Subpart A [Reserved]

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§ 351.202 Coverage.

(a) Employees covered. Except as provided in paragraph (b) of this section, this part applies to each civilian employee in:

(1) The executive branch of the Federal Government; and

(2) Those parts of the Federal Government outside the executive branch which are subject by statute to competitive service requirements or are determined by the appropriate legislative or judicial administrative body to be covered hereunder. Coverage includes administrative law judges except as modified by part 930 of this chapter.

(b) Employees excluded. This part does not apply to an employee:

(1) In a position in the Senior Executive Service; or

(2) Whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the United States Senate, except a postmaster.
(c) Actions excluded. This part does not apply to:

1. The termination of a temporary or term promotion or the return of an employee to the position held before the temporary or term promotion or to one of equivalent grade and pay.

2. A change to lower grade based on the reclassification of an employee's position due to the application of new classification standards or the correction of a classification error.

3. A change to lower grade based on reclassification of an employee's position due to erosion of duties, except that this exclusion does not apply to such reclassification actions that will take effect after an agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within 180 days. This exception ends at the completion of the reduction in force.

4. The change of an employee from regular to substitute in the same pay level in the U.S. Postal Service field service.

5. The release from a competitive level of a National Guard technician under section 709 of title 32, United States Code.

6. Placement of an employee serving on an intermittent, part-time, on-call, or seasonal basis in a nonpay and nonduty status in accordance with conditions established at time of appointment.

7. A change in an employee's work schedule from other-than-full-time to full-time. (A change from full-time to other than full-time for a reason covered in §351.201(A)(2) is covered by this part.)

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§ 351.203 Definitions.

In this part:

Competing employee means an employee in tenure group I, II, or III.

Current rating of record is the rating of record for the most recently completed appraisal period as provided in §351.201(A)(2).

Days means calendar days.

Function means all or a clearly identifiable segment of an agency's mission (including all integral parts of that mission), regardless of how it is performed.

Furlough under this part means the placement of an employee in a temporary nonduty and nonpay status for more than 30 consecutive calendar days, or more than 22 workdays if done on a discontinuous basis, but not more than 1 year.

Local commuting area means the geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment.

Modal rating is the summary rating level assigned most frequently among the actual ratings of record that are:

1. Assigned under the summary level pattern that applies to the employee's position of record on the date of the reduction in force;

2. Given within the same competitive area, or at the agency's option within a larger subdivision of the agency or agencywide; and

3. On record for the most recently completed appraisal period prior to the date of issuance of reduction in force notices or the cutoff date the agency specifies prior to the issuance of reduction in force notices after which no new ratings will be put on record.

Rating of record has the meaning given that term in §430.203 of this chapter. For an employee not subject to 5 U.S.C. Chapter 43, or part 430 of this chapter, it means the officially designated performance rating, as provided for in the agency's appraisal system, that is considered to be an equivalent rating of record under the provisions of §430.201(c) of this chapter.

Reorganization means the planned elimination, addition, or redistribution of functions or duties in an organization.

Representative rate means the fourth step of the grade for a position subject to the General Schedule, the prevailing rate for a position under a wage-board or similar wage-determining procedure, and for other positions, the rate designated by the agency as representative of the position.
Transfer of function means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected; or the movement of the competitive area in which the function is performed to another commuting area.

Undue interruption means a degree of interruption that would prevent the completion of required work by the employee 90 days after the employee has been placed in a different position under this part. The 90-day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if an employee needed more than 90 days after the reduction in force to perform the optimum quality or quantity of work. The 90-day standard may be extended if placement is made under this part to a low priority program or to a vacant position.

§ 351.204 Responsibility of agency.
Each agency covered by this part is responsible for following and applying the regulations in this part when the agency determines that a reduction in force is necessary.

§ 351.205 Authority of OPM.
The Office of Personnel Management may establish further guidance and instructions for the planning, preparation, conduct, and review of reductions in force through the Federal Personnel Manual system. OPM may examine an agency’s preparations for reduction in force at any stage. When OPM finds that an agency’s preparations are contrary to the express provisions or to the spirit and intent of these regulations or that they would result in violation of employee rights or equities, OPM may require appropriate corrective action.

Subpart C—Transfer of Function

§ 351.301 Applicability.
(a) This subpart is applicable when the work of one or more employees is moved from one competitive area to another as a transfer of function regardless of whether or not the movement is made under authority of a statute, Executive order, reorganization plan, or other authority.
(b) In a transfer of function, the function must cease in the losing competitive area and continue in an identical form in the gaining competitive area (i.e., in the gaining competitive area, the function continues to be carried out by competing employees rather than by noncompeting employees).

§ 351.302 Transfer of employees.
(a) Before a reduction in force is made in connection with the transfer of any or all of the functions of a competitive area to another continuing competitive area, each competing employee in a position identified with the transferring function or functions shall be transferred to the continuing competitive area without any change in the tenure of his or her employment.
(b) An employee whose position is transferred under this subpart solely for liquidation, and who is not identified with an operating function specifically authorized at the time of transfer to continue in operation more than 60 days, is not a competing employee for other positions in the competitive area gaining the function.
(c) Regardless of an employee’s personal preference, an employee has no right to transfer with his or her function, unless the alternative in the competitive area losing the function is separation or demotion.
(d) Except as permitted in paragraph (e) of this section, the losing competitive area must use the adverse action procedures found in 5 CFR part 752 if it chooses to separate an employee who declines to transfer with his or her function.
§ 351.303 Identification of positions with a transferring function.

(a) The competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function. A competing employee is identified with the transferring function on the basis of the employee's official position. Two methods are provided to identify employees with the transferring function:

(1) Identification Method One; and

(2) Identification Method Two.

(b) Identification Method One must be used to identify each position to which it is applicable. Identification Method Two is used only to identify positions to which Identification Method One is not applicable.

(c) Under Identification Method One, a competing employee is identified with a transferring function if—

(1) The employee performs the function during at least half of his or her work time; or

(2) Regardless of the amount of time the employee performs the function during his or her work time, the duties controlling his or her grade or rate of pay.

(3) In determining what percentage of time an employee performs a function in the employee's official position, the agency may supplement the employee's official position description by the use of appropriate records (e.g., work reports, organizational time logs, work schedules, etc.).

(d) Identification Method Two is applicable to employees who perform the function during less than half of their work time and are not otherwise covered by Identification Method One. Under Identification Method Two, the losing competitive area must identify the number of positions it needed to perform the transferring function. To determine which employees are identified for transfer, the losing competitive area must establish a retention register in accordance with this part that includes the name of each competing employee who performed the function. Competing employees listed on the retention register are identified for transfer in the inverse order of their retention standing. If for any retention register this procedure would result in the separation or demotion by reduction in force at the losing competitive area of any employee with higher retention standing, the losing competitive area must identify competing employees on that register for transfer in the order of their retention standing.

(e)(1) The competitive area losing the function may permit other employees to volunteer for transfer with the function in place of employees identified under Identification Method One or Identification Method Two. However, the competitive area may permit these other employees to volunteer for transfer only if no competing employee who is identified for transfer under Identification Method One or Identification Method Two is separated or demoted solely because a volunteer transferred in place of him or her to the competitive area that is gaining the function.

(2) If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area may give preference to the volunteers with the...
highest retention standing, or make selections based on other appropriate criteria.

[52 FR 10024, Mar. 30, 1987, as amended at 60 FR 3062, Jan. 13, 1995]

Subpart D—Scope of Competition

§ 351.401 Determining retention standing.

Each agency shall determine the retention standing of each competing employee on the basis of the factors in this subpart and in subpart E of this part.

§ 351.402 Competitive area.

(a) Each agency shall establish competitive areas in which employees compete for retention under this part.

(b) A competitive area must be defined solely in terms of the agency's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined. A competitive area may consist of all or part of an agency. The minimum competitive area is a subdivision of the agency under separate administration within the local commuting area.

(c) When a competitive area will be in effect less than 90 days prior to the effective date of a reduction in force, a description of the competitive area shall be submitted to the OPM for approval in advance of the reduction in force. Descriptions of all competitive areas must be made readily available for review.

(d) Each agency shall establish a separate competitive area for each Inspector General activity established under authority of the Inspector General Act of 1978, Public Law 95-452, as amended, in which only employees of that office shall compete for retention under this part.


§ 351.403 Competitive level.

(a)(1) Each agency shall establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that an agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption.

(2) Competitive level determinations are based on each employee's official position, not the employee's personal qualifications.

(3) Sex may not be the basis for a competitive level determination, except for a position OPM designates that certification of eligibles by sex is justified.

(4) A probationary period required by subpart I of part 315 of this chapter for initial appointment to a supervisory or managerial position is not a basis for establishing a separate competitive level.

(b) Each agency shall establish separate competitive levels according to the following categories:

(1) By service. Separate levels shall be established for positions in the competitive service and in the excepted service.

(2) By appointment authority. Separate levels shall be established for excepted service positions filled under different appointment authorities.

(3) By pay schedule. Separate levels shall be established for positions under different pay schedules.

(4) By work schedule. Separate levels shall be established for positions filled on a full-time, part-time, intermittent, seasonal, or on-call basis. No distinction may be made among employees in the competitive level on the basis of the number of hours or weeks scheduled to be worked.

(5) By trainee status. Separate levels shall be established for positions filled by an employee in a formally designated trainee or developmental program having all of the characteristics covered in § 351.702(e)(1) through (e)(4) of this part.

(c) An agency may not establish a competitive level based solely upon:

(1) A difference in the number of hours or weeks scheduled to be worked by other-than-full-time employees who would otherwise be in the same competitive level;

(2) A requirement to work changing shifts;
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(3) The grade promotion potential of the position; or
(4) A difference in the local wage areas in which wage grade positions are located.


§ 351.404 Retention register.

(a) When a competing employee is to be released from a competitive level under this part, the agency shall establish a separate retention register for that competitive level. The retention register is prepared from the current retention records of employees. Upon displacing another employee under this part, an employee retains the same status and tenure in the new position. Except for an employee on military duty with a restoration right, the agency shall enter on the retention register, in the order of retention standing, the name of each competing employee who is:

(1) In the competitive level;
(2) Temporarily promoted from the competitive level by temporary or term promotion; or
(3) Detailed from the competitive level under 5 U.S.C. 3341 or other appropriate authority.

(b)(1) The name of each employee serving under a time limited appointment or promotion to a position in a competitive level shall be entered on a list apart from the retention register for that competitive level, along with the expiration date of the action.

(2) The agency shall list, at the bottom of the list prepared under paragraph (b)(1) of this section, the name of each employee in the competitive level with a written decision of removal under part 432 or 752 of this chapter.


§ 351.405 Demoted employees.

An employee who has received a written decision under part 432 or 752 of this chapter to demote him or her competes under this part from the position to which he or she will be or has been demoted.


§ 351.501 Order of retention—competitive service.

(a) Competing employees shall be classified on a retention register on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order as follows:

(1) By tenure group I, group II, group III; and
(2) Within each group by veteran preference subgroup AD, subgroup A, subgroup B; and
(3) Within each subgroup by years of service as augmented by credit for performance under § 351.504, beginning with the earliest service date.

(b) Groups are defined as follows:

(1) Group I includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by subpart I of part 315 of this title is in group I if the employee is otherwise eligible to be included in this group.) The following employees are in group I as soon as the employee completes any required probationary period for initial appointment:

(i) An employee for whom substantial evidence exists of eligibility to immediately acquire status and career tenure, and whose case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors);
(ii) An employee who acquires competitive status and satisfies the service requirement for career tenure when the employee's position is brought into the competitive service;
(iii) An administrative law judge;
(iv) An employee appointed under 5 U.S.C. 3104, which provides for the employment of specially qualified scientific or professional personnel, or a similar authority; and
(v) An employee who acquires status under 5 U.S.C. 3304(c) on transfer to the competitive service from the legislative or judicial branches of the Federal Government.

(2) Group II includes each career-conditional employee, and each employee serving a probationary period under subpart H of part 315 of this chapter. (A
supervisory or managerial employee serving a probationary period required by subpart I of part 315 of this title is in group II if the employee has not completed a probationary period under subpart H of part 315 of this title.) Group II also includes an employee when substantial evidence exists of the employee's eligibility to immediately acquire status and career-conditional tenure, and the employee's case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors).

(3) Group III includes all employees serving under indefinite appointments, temporary appointments pending establishment of a register, status quo appointments, term appointments, and any other nonstatus nontemporary appointments which meet the definition of provisional appointments contained in §§316.401 and 316.403 of this chapter.

(c) Subgroups are defined as follows:

(1) Subgroup AD includes each preference eligible employee who has a compensable service-connected disability of 30 percent or more.

(2) Subgroup A includes each preference eligible employee not included in subgroup AD.

(3) Subgroup B includes each non-preference eligible employee.

(d) A retired member of a uniformed service is considered a preference eligible under this part only if the member meets at least one of the conditions of the following paragraphs (d)(1), (2), or (3) of this section, except as limited by paragraph (d)(4) or (d)(5):

(1) The employee's military retirement is based on disability that either:
   (i) Resulted from injury or disease received in line of duty as a direct result of armed conflict; or
   (ii) Was caused by an instrumentality of war incurred in line of duty during a period of war as defined by sections 101 and 301 of title 38, United States Code.

(2) The employee's retired pay from a uniformed service is not based upon 20 or more years of full-time active service, regardless of when performed but not including periods of active duty for training.

(3) The employee has been continuously employed in a position covered by this part since November 30, 1964, without a break in service of more than 30 days.

(4) An employee retired at the rank of major or above (or equivalent) is considered a preference eligible under this part if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code, and meets one of the conditions covered in paragraph (d)(1), (2), or (3) of this section.

(5) An employee who is eligible for retired pay under chapter 67 of title 10, United States Code, and who retired at the rank of major or above (or equivalent) is considered a preference eligible under this part at age 60, only if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code.

§ 351.503  Length of Service.

(a) Each agency shall establish a service date for each competing employee.

(b) An employee’s service date is whichever of the following dates reflects the employee’s creditable service:

(1) The date the employee entered on duty, when he or she has no previous creditable service;

(2) The date obtained by subtracting the employee’s total creditable previous service from the date he or she last entered on duty; or

(3) The date obtained by subtracting from the date in paragraph (b)(1) or (b)(2) of this section, the service equivalent allowed for performance ratings under § 351.504.

(c) An employee who is a retired member of a uniformed service is entitled to credit under this part for:

(1) The length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(2) The total length of time in active service in the armed forces if the employee is considered a preference eligible under § 351.501(d) of this part.

(d) Each agency shall adjust the service date for each employee to withhold credit for noncreditable time.

§ 351.504  Credit for Performance.

NOTE TO § 351.504: Compliance dates: Subject to the requirements of 5 U.S.C. Section 7116(a)(7), agencies may implement revised § 351.504 at any time between December 24, 1997 and October 1, 1998. For reduction in force actions effective between December 24, 1997 and September 30, 1998, agencies may use either § 351.504 effective December 24, 1997, or the prior § 351.504 in 5 CFR part 351 (January 1, 1997 edition).

(a) Ratings used. (1) Only ratings of record as defined in § 351.203 shall be used as the basis for granting additional retention service credit in a reduction in force.

(2) For employees who received ratings of record while covered by part 430, subpart B, of this chapter, those ratings of record shall be used to grant additional retention service credit in a reduction in force.

(3) For employees who received performance ratings while not covered by the provisions of 5 U.S.C. Chapter 43 and part 430, subpart B, of this chapter, those performance ratings shall be considered ratings of record for granting additional retention service credit in a reduction in force only when it is determined that those performance ratings are equivalent ratings of record under the provisions of § 430.201(c) of this chapter. The agency conducting the reduction in force shall make that determination.

(b)(1) An employee’s entitlement to additional retention service credit for performance under this subpart shall be based on the employee’s three most recent ratings of record received during the 4-year period prior to the date of issuance of reduction in force notices, except as otherwise provided in paragraphs (b)(2) and (c) of this section.

(2) To provide adequate time to determine employee retention standing, an agency may provide for a cutoff date, a specified number of days prior to the issuance of reduction in force notices after which no new ratings of record will be put on record and used for purposes of this subpart. When a cutoff date is used, an employee will receive performance credit for the three most recent ratings of record received during the 4-year period prior to the cutoff date.

(3) To be creditable for purposes of this subpart, a rating of record must have been issued to the employee, with all appropriate reviews and signatures, and must also be on record (i.e., the rating of record is available for use by the office responsible for establishing retention registers).

(4) The awarding of additional retention service credit based on performance for purposes of this subpart must be uniformly and consistently applied within a competitive area, and must be consistent with the agency’s appropriate issuance(s) that implement these policies. Each agency must specify in its appropriate issuance(s):

(i) The conditions under which a rating of record is considered to have been received for purposes of determining
whether it is within the 4-year period prior to either the date the agency issues reduction in force notices or the agency-established cutoff date for ratings of record, as appropriate; and

(ii) If the agency elects to use a cutoff date, the number of days prior to the issuance of reduction in force notices after which no new ratings of record will be put on record and used for purposes of this subpart.

(c) Missing ratings. Additional retention service credit for employees who do not have three actual ratings of record during the 4-year period prior to the date of issuance of reduction in force notices or the 4-year period prior to the agency-established cutoff date for ratings of record permitted in paragraph (b)(2) of this section shall be determined under paragraphs (d) or (e) of this section, as appropriate, and as follows:

(1) An employee who has not received any rating of record during the 4-year period shall receive credit for performance based on the modal rating for the summary level pattern that applies to the employee’s official position of record at the time of the reduction in force.

(2) An employee who has received at least one but fewer than three previous ratings of record during the 4-year period shall receive credit for performance based on the basis of the value of the actual rating(s) of record divided by the number of actual ratings received. If an employee has received only two actual ratings of record during the period, the value of the ratings is added together and divided by two (and rounded in the case of a fraction to the next higher whole number) to determine the amount of additional retention service credit. If an employee has received only one actual rating of record during the period, its value is the amount of additional retention service credit provided.

(d) Single rating pattern. If all employees in a reduction in force competitive area have received ratings of record under a single pattern of summary levels as set forth in §430.208(d) of this chapter, the additional retention service credit provided to employees shall be expressed in additional years of service and shall consist of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee’s applicable ratings of record, under paragraphs (b)(1) and (c) of this section computed on the following basis:

(1) Twenty additional years of service for each rating of record with a Level 5 (Outstanding or equivalent) summary;

(2) Sixteen additional years of service for each rating of record with a Level 4 summary; and

(3) Twelve additional years of service for each rating of record with a Level 3 (Fully Successful or equivalent) summary.

(e) Multiple rating patterns. If an agency has employees in a competitive area who have ratings of record under more than one pattern of summary levels, as set forth in §430.208(d) of this chapter, it shall consider the mix of patterns and provide additional retention service credit for performance to employees expressed in additional years of service in accordance with the following:

(1) Additional years of service shall consist of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the additional retention service credit that the agency established for the summary levels of the employee’s applicable rating(s) of record.

(2) The agency shall establish the amount of additional retention service credit provided for summary levels only in full years; the agency shall not establish additional retention service credit for summary levels below Level 3 (Fully Successful or equivalent).

(3) When establishing additional retention service credit for the summary levels at Level 3 (Fully Successful or equivalent) and above, the agency shall establish at least 12 years, and no more than 20 years, additional retention service credit for a summary level.

(4) The agency may establish the same number of years additional retention service credit for more than one summary level.

(5) The agency shall establish the same number of years additional retention service credit for all ratings of record with the same summary level in the same pattern of summary levels as set forth in §430.208(d) of this chapter.
§ 351.505 Records.

Each agency shall maintain the current correct records needed to determine the retention standing of its competing employees. The agency shall allow the inspection of its retention registers and related records by:

(a) A representative of OPM; and
(b) An employee of the agency to the extent that the registers and records have a bearing on a specific action taken, or to be taken, against the employee.

The agency shall preserve intact all registers and records relating to an employee for at least 1 year from the date the employee is issued a specific notice.

§ 351.506 Effective date of retention standing.

Except for applying the performance factor as provided in §351.504:

(a) The retention standing of each employee released from a competitive level in the order prescribed in §351.601 is determined as of the date the employee is so released.

(b) The retention standing of each employee retained in a competitive level as an exception under §351.606(b), §351.607, or §351.608, is determined as of the date the employee would have been released had the exception not been used. The retention standing of each employee retained under any of these provisions remains fixed until completion of the reduction in force action which resulted in the temporary retention.

(c) When an agency discovers an error in the determination of an employee’s retention standing, it shall correct the error and adjust any erroneous reduction-in-force action to accord with the employee’s proper retention standing as of the effective date established by this section.


Subpart F—Release From Competitive Level

§ 351.601 Order of release from competitive level.

(a) Each agency shall select competing employees for release from a competitive level under this part in the inverse order of retention standing, beginning with the employee with the lowest retention standing on the retention register. An agency may not release a competing employee from a competitive level while retaining in that level an employee with lower retention standing except:

(1) As required under §351.606 when an employee is retained under a mandatory exception or under §351.806 when an employee is entitled to a new written notice of reduction in force; or

(2) As permitted under §351.607 when an employee is retained under a permissive continuing exception or under §351.608 when an employee is retained under a permissive temporary exception.

(b) When employees in the same retention subgroup have identical service dates and are tied for release from a competitive level, the agency may select any tied employee for release.

§ 351.602 Prohibitions.

An agency may not release a competing employee from a competitive level while retaining in that level an employee with:

(a) A specifically limited temporary appointment; or

(b) A specifically limited temporary or term promotion;
§ 351.606 Mandatory exceptions.

(a) Armed Forces restoration rights. When a agency applies §351.601 or §351.605, it shall give retention priorities over other employees in the same subgroup to each group I or II employee entitled under 38 U.S.C. 2021 or 2024 to retention for, as applicable, 6 months or 1 year after restoration, as provided in part 353 of this chapter.

(b) Use of annual leave to reach initial eligibility for retirement or continuance of health benefits. (1) An agency shall make a temporary exception under this section to retain an employee who is being involuntarily separated under this part, and who elects to use annual leave to remain on the agency's rolls after the effective date the employee would otherwise have been separated by reduction in force, in order to establish initial eligibility for immediate retirement under 5 U.S.C. 8336, 8412, or 8414, and/or to establish initial eligibility under 5 U.S.C. 8905 to continue health benefits coverage into retirement.

(2) An agency shall make a temporary exception under this section to retain an employee who is being involuntarily separated under authority of part 752 of this chapter because of the employee's decision to decline relocation (including transfer of function), and who elects to use annual leave to remain on the agency's rolls after the effective date the employee would otherwise have been separated by adverse action, in order to establish initial eligibility for immediate retirement under 5 U.S.C. 8336, 8412, or 8414, and/or to establish initial eligibility under 5 U.S.C. 8905 to continue health benefits coverage into retirement.

(3) An employee retained under paragraph (b) of this section must be covered by chapter 63 of title 5, United States Code.

(4) An agency may not retain an employee under paragraph (b) of this section past the date that the employee first becomes eligible for immediate retirement, or for continuation of health benefits into retirement, except that an employee may be retained long enough to satisfy both retirement and health benefits requirements.

(5) Except as permitted by 5 CFR 351.608(d), an agency may not approve
§ 351.607 Permissive continuing exceptions.

An agency may make exception to the order of release in §351.601 and to the action provisions of §351.603 when needed to retain an employee on duties that cannot be taken over within 90 days and without undue interruption to the activity by an employee with higher retention standing. The agency shall notify in writing each higher-standing employee reached for release from the same competitive level of the reasons for the exception.

§ 351.608 Permissive temporary exceptions.

(a) General. (1) In accordance with this section, an agency may make a temporary exception to the order of release in §351.601 and to the action provisions of §351.603, when needed to retain an employee after the effective date of a reduction in force. Except as otherwise provided in paragraphs (c) and (e) of this section, an agency may not make a temporary exception for more than 90 days.

(2) After the effective date of a reduction in force action, an agency may not amend or cancel the reduction in force notice of an employee retained under a temporary exception so as to avoid completion of the reduction in force action. This does not preclude the employee from receiving or accepting a job offer in the same competitive area in accordance with a Reemployment Priority List established under part 330, subpart B, of this chapter, or under a Career Transition Assistance Plan established under part 330, subpart E, of this chapter, or equivalent programs.

(b) Undue interruption. An agency may make a temporary exception for not more than 90 days when needed to continue an activity without undue interruption.

(c) Government obligation. An agency may make a temporary exception to satisfy a Government obligation to the retained employee without regard to the 90-day limit set forth under paragraph (a)(1) of this section.

(d) Sick leave. An agency may make a temporary exception to retain an employee on sick leave a lower standing employee covered by chapter 63 of title 5, United States Code (or other applicable leave system for Federal employees), who is on approved sick leave at the effective date of the reduction in force, for a period not to exceed the date the employee's sick leave is exhausted. Use of sick leave for this purpose must be in accordance with the requirements in part 630, subpart D, of this chapter (or other applicable leave system for Federal employees). Except as authorized by §351.606(b), an agency may not approve an employee's use of any other type of leave after the employee has been retained under this paragraph (d).

(e)(1) An agency may make a temporary exception to retain an employee who:

(i) Is being involuntarily separated under this part;

(ii) Is covered by a Federal leave system under authority other than chapter 63 of title 5, United States Code; and

(iii) Will attain first eligibility for an immediate retirement benefit under 5 U.S.C. 8336, 8412, or 8414 (or other authority), and/or establish eligibility under 5 U.S.C. 8905 (or other authority) to carry health benefits coverage into retirement during the period represented by the amount of the employee's accrued annual leave.

(2) An agency may not approve an employee's use of any other type of leave after the employee has been retained under this paragraph (e).

(3) This exception may not exceed the date the employee first becomes eligible for immediate retirement or for continuation of health benefits into retirement, except that an employee may be retained long enough to satisfy both
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retirement and health benefits requirements.

(4) Accrued annual leave includes all accumulated, accrued, and restored annual leave, as applicable, in addition to annual leave earned and available to the employee after the effective date of the reduction in force. When approving a temporary exception under this provision, an agency may not advance annual leave or consider any annual leave that might be credited to an employee's account after the effective date of the reduction in force other than annual leave earned while in an annual leave status.

(f) Other exceptions. An agency may make a temporary exception under this section to extend an employee's separation date beyond the effective date of the reduction in force when the temporary retention of a lower standing employee does not adversely affect the right of any higher standing employee who is released ahead of the lower standing employee. The agency may establish a maximum number of days, up to 90 days, for which an exception may be approved.

(g) Notice to employees. When an agency approves an exception for more than 30 days, it must:

(1) Notify in writing each higher standing employee in the same competitive level reached for release of the reasons for the exception and the date the lower standing employee's retention will end; and

(2) List opposite the employee's name on the retention register the reasons for the exception and the date the employee's retention will end.

§ 351.701 Assignment involving displacement

(a) General. When a group I or II competitive service employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent, or higher, is released from a competitive level, an agency shall offer assignment, rather than furlough or separate, in accordance with paragraphs (b), (c), and (d) of this section to another competitive position which requires no reduction, or the lease possible reduction, in representative rate. The employee must be qualified for the offered position. The offered position shall be in the same competitive area, last at least 3 months, and have the same type of work schedule (e.g., full-time, part-time, intermittent, or seasonal) as the position from which the employee is released. Upon accepting an offer of assignment, or displacing another employee under this part, an employee retains the same status and tenure in the new position. The promotion potential of the offered position is not a consideration in determining an employee's right of assignment.

(b) Lower subgroup—bumping. A released employee shall be assigned in accordance with paragraph (a) of this section and bump to a position that:

(1) Is held by another employee in a lower tenure group or in a lower subgroup within the same tenure group; and

(2) Is no more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee was released.

(c) Same subgroup—retreating. A released employee shall be assigned in accordance with paragraphs (a) and (d) of this section and retreat to a position that:

(1) Is held by another employee with lower retention standing in the same tenure group and subgroup;

(2) Is not more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee was released, except that for a preference eligible employee with a compensable service-connected disability of 30 percent or more the limit is five grades (or appropriate grade intervals or equivalent); and

(3) Is the same position, or an essentially identical position, formerly held by the released employee as a competing employee in a Federal agency (i.e., when held by the released employee in an executive, legislative, or judicial branch agency, the position would have been placed in tenure groups I, II, or III, or equivalent). In determining whether a position is essentially identical, the determination is based on the
§ 351.702 Qualifications for assignment.

(a) Except as provided in §351.703, an employee is qualified for assignment under §351.701 if the employee:

(1) Meets the OPM standards and requirements for the position, including any minimum educational requirement, and any selective placement factors established by the agency;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position;

(3) Meets any special qualifying condition which the OPM has approved for the position; and

(4) Has the capacity, adaptability, and special skills needed to satisfactorily perform the duties of the position without undue interruption. This determination includes recency of experience, when appropriate.

(b) The sex of an employee may not be considered in determining whether an employee is qualified for a position, except for positions which OPM has determined certification of eligibles by sex is justified.

(c) An employee who is released from a competitive level during a leave of absence because of a compensable injury may not be denied an assignment right solely because the employee is not physically qualified for the duties of the position if the physical disqualification resulted from the compensable injury.
§ 351.704 Rights and prohibitions.

(a)(1) An agency may satisfy an employee's right to assignment under §351.701 by assignment to a vacant position under §351.201(b), or by assignment under any applicable administrative assignment provisions of §351.705, to a position having a representative rate equal to that the employee would be entitled under §351.701. An agency may also offer an employee assignment under §351.201(b) to a vacant position in lieu of separation by reduction in force under 5 CFR part 351. Any offer of assignment under §351.201(b) to a vacant position must meet the requirements set forth under §351.701.

(b) Section 351.701 does not:

(1) Authorize or permit an agency to assign an employee to a position having a higher representative rate;

(2) Authorize or permit an agency to displace a full-time employee by an other-than-full-time employee, or to satisfy an other-than-full-time employee's right to assignment by assigning
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the employee to a vacant full-time position.

(3) Authorize or permit an agency to displace an other-than-full-time employee by a full-time employee, or to satisfy a full-time employee's right to assignment by assigning the employee to a vacant other-than-full-time position.

(4) Authorize or permit an agency to assign a competing employee to a temporary position (i.e., a position under an appointment not to exceed 1 year), except as an offer of assignment in lieu of separation by reduction in force under this part when the employee has no right to a position under §351.701 or §351.704(a)(1) of this part.

This option does not preclude an agency from, as an alternative, using a temporary position to reemploy a competing employee following separation by reduction in force under this part.

(5) Authorize or permit an agency to displace an employee or to satisfy a competing employee's right to assignment by assigning the employee to a position with a different type of work schedule (e.g., full-time, part-time, intermittent, or seasonal) than the position from which the employee is released.

§ 351.705 Administrative assignment.

(a) An agency may, at its discretion, adopt provisions which:

(1) Permit a competing employee to displace an employee with lower retention standing in the same subgroup consistent with §351.701 when the agency cannot make an equally reasonable assignment by displacing an employee in a lower subgroup;

(2) Permit an employee in subgroup III-A-D to displace an employee in subgroup III-A or III-B, or permit an employee in subgroup III-A to displace an employee in subgroup III-B consistent with §351.701; or

(3) Provide competing employees in the excepted service with assignment rights to other positions under the same appointing authority on the same basis as assignment rights provided to competitive service employees under

§ 351.701 and in paragraphs (a) (1) and (2) of this section.

(b) Provisions adopted by an agency under paragraph (a) of this section:

(1) Shall be consistent with this part;

(2) Shall be uniformly and consistently applied in any one reduction in force;

(3) May not provide for the assignment of an other-than-full-time employee to a full-time position;

(4) May not provide for the assignment of a full-time employee to an other-than-full-time position;

(5) May not provide for the assignment of an employee in a competitive service position to a position in the excepted service; and

(6) May not provide for the assignment of an employee in an excepted position to a position in the competitive service.


Subpart H—Notice to Employee

SOURCE: 60 FR 2679, Jan. 11, 1995, unless otherwise noted.

§ 351.801 Notice period.

(a)(1) Except as provided in paragraph (b) of this section, each competing employee selected for release from a competitive level under this part is entitled to a specific written notice at least 60 full days before the effective date of release.

(2) Under authority of section 4433 of Pub. L. 102-484, as amended by section 341(a) of Pub. L. 103-337, each competing employee of the Department of Defense is entitled, under implementing regulations issued by that agency, to a specific written notice at least 120 full days before the effective date of release.

The basic requirement for 60 full days notice set forth in paragraph (a) of this section is still applicable during the period from January 20, 1993, through January 31, 2000. The basic requirement for 60 full days specific written notice set forth in paragraph (a) of this section is still applicable when less than a significant number of employees will be separated by reduction in force.
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(3) At the same time an agency issues a notice to an employee, it must give a written notice to the exclusive representative(s), as defined in 5 U.S.C. 7103(a)(16), of each affected employee at the time of the notice. When a significant number of employees will be separated, an agency must also satisfy the notice requirements of §§351.803(b) and (c).

(b) When a reduction in force is caused by circumstances not reasonably foreseeable, the Director of OPM, at the request of an agency head or designee, may approve a notice period of less than 60 days, or a notice period of less than 120 days when a significant number of Department of Defense employees will be separated. The shortened notice period must cover at least 30 full days before the effective date of release. An agency request to OPM shall specify:

(1) The reduction in force to which the request pertains;
(2) The number of days by which the agency requests that the period be shortened;
(3) The reasons for the request; and
(4) Any other additional information that OPM may specify.

(c) The notice period begins the day after the employee receives the notice.

(d) When an agency retains an employee under §351.607 or §351.608, the notice to the employee shall cite the date on which the retention period ends as the effective date of the employee's release from the competitive level.


§ 351.803 Notice of eligibility for reemployment and other placement assistance.

(a) An employee who receives a specific notice of separation under this part must be given information concerning the right to reemployment consideration and career transition assistance under subparts B (Reemployment Priority List), F and G (Career Transition Assistance Programs) of part 330 of this chapter. The employee must also be given a release to authorize, at his or her option, the release of his or her resume and other relevant employment information for employment referral to State dislocated worker unit(s) and potential public or private sector employers. The employee must also be given information concerning how to apply both for unemployment insurance through the appropriate State program and benefits available under the State dislocated worker unit(s), as designated or created under title III of the Job Training Partnership Act, and an estimate of severance pay (if eligible).

NOTE TO §351.803(a): Compliance dates: Subject to the requirements of 5 U.S.C. 7116(a)(7), agencies may implement revised §351.803(a) at any time between December 24, 1997 and October 1, 1998. For reduction in force actions effective between December 24, 1997 and September 30, 1998, agencies may use either §351.803(a) effective December 24, 1997, or the prior §351.803(a) in 5 CFR part 351 (January 1, 1997, edition).
§ 351.804 Expiration of notice.

(a) A notice expires when followed by the action specified, or by an action less severe than specified, in the notice or in an amendment made to the notice before the agency takes the action.

(b) An agency may not take the action before the effective date in the notice; instead, the agency may cancel the reduction in force notice and issue a new notice subject to this subpart.


§ 351.805 New notice required.

(a) An employee is entitled to a written notice of, as appropriate, at least 60 or 120 full days if the agency decides to take an action more severe than first specified.

(b) An agency must give an employee an amended written notice if the reduction in force is changed to a later date. A reduction in force action taken after the date specified in the notice given to the employee is not invalid for that reason, except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for a reduction in force action as a result of the change in dates.

(c) An agency must give an employee an amended written notice and allow the employee to decide whether to accept a better offer of assignment under subpart G of this part that becomes available before or on the effective date of the reduction in force. The agency must give the employee the amended notice regardless of whether the employee has accepted or rejected a previous offer of assignment, provided that the employee has not voluntarily separated from his or her official position.


§ 351.806 Status during notice period.

When possible, the agency shall retain the employee on active duty status during the notice period. When in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee on annual leave with or without his or her consent, or leave without pay with his or her consent, or in a nonpay status without his or her consent.


§ 351.807 Certification of Expected Separation.

(a) For the purpose of enabling otherwise eligible employees to be considered for eligibility to participate in dislocated worker programs under the Job Training Partnership Act administered by the U.S. Department of Labor, an agency may issue a Certificate of Expected Separation to a competing employee who the agency believes, with a reasonable degree of certainty, will be separated from Federal employment by reduction in force procedures under this part. A certification may be issued up to 6 months prior to the effective date of the reduction in force.

(b) This certification may be issued to a competing employee only when the agency determines:

(1) There is a good likelihood the employee will be separated under this part;

(2) Employment opportunities in the same or similar position in the local commuting area are limited or nonexistent;
(3) Placement opportunities within the employee's own or other Federal agencies in the local commuting area are limited or nonexistent; and

(4) If eligible for optional retirement, the employee has not filed a retirement application or otherwise indicated in writing an intent to retire.

(c) A certification is to be addressed to each individual eligible employee and must be signed by an appropriate agency official. A certification must contain the expected date of reduction in force, a statement that each factor in paragraph (b) of this section has been satisfied, and a description of Job Training Partnership Act programs, the Interagency Placement Program, and the Reemployment Priority List.

(d) A certification may not be used to satisfy any of the notice requirements elsewhere in this subpart.

(e) An agency determination of eligibility for certification may not be appealed to OPM or the Merit Systems Protection Board.

(f) An agency may also enroll eligible employees in the Interagency Placement Program and the Reemployment Priority List up to 6 months in advance of a reduction in force. For requirements and criteria for these programs, see subparts B and C of part 330 of this chapter.

[60 FR 2678, Jan. 11, 1995, as amended at 60 FR 44254, Aug. 25, 1995]

Subpart I—Appeals and Corrective Action

§ 351.901 Appeals.

An employee who has been furloughed for more than 30 days, separated, or demoted by a reduction in force action may appeal to the Merit Systems Protection Board.

[52 FR 46051, Dec. 4, 1987]

§ 351.902 Correction by agency.

When an agency decides that an action under this part was unjustified or unwarranted and restores an individual to the former grade or rate of pay held or to an intermediate grade or rate of pay, it shall make the restoration retroactively effective to the date of the improper action.

Subpart J [Reserved]

PART 352—REEMPLOYMENT RIGHTS

Subpart A [Reserved]

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Letter of Authority.

(a) Definition. A Letter of Authority is an authorization from OPM to an agency appointing officer to grant reemployment rights.

(b) Scope of authority. A Letter of Authority shall specify the conditions under which it may be used, including the types of positions covered and the organizational and geographic areas to which it is restricted.

(c) Time limit of authority. A Letter of Authority shall remain in force for one year from date of issuance unless earlier revoked by OPM. Renewals or extensions will not be issued unless justified by exceptional circumstances.

§ 352.202 Request for Letter of Authority.

When an agency believes that an emergency situation is so critical as to justify offers of reemployment rights, it may request OPM to issue a Letter of Authority. In submitting the request the agency shall present its justification in terms of the standards provided in § 352.203.

§ 352.203 Standards for issuing Letters of Authority.

OPM will determine the standards to be used in issuing Letters of Authority, which shall include the following:

(a) The positions to be filled must be related to emergency situations for which the usual recruiting methods are inadequate.

(b) The positions must be a part of a specific program immediately essential to the national interest.

(c) The positions must be essential to the functioning of the program.

(d) There must be substantial basis for the belief that reemployment rights will be a significant and reasonable aid in meeting the emergency situation.
§ 352.204 Basic eligibility for reemployment rights.

(a) Employees eligible. The following employees in the executive branch of the Government are eligible to be granted reemployment rights when they are hired by another executive agency without break in service of a full workday by transfer or reinstatement, or by excepted appointment, in a position which the agency is currently authorized to fill with reemployment rights:

1. An employee serving in a competitive position under a career or career-conditional appointment;
2. An employee serving in the Senior Executive Service (SES); or
3. A nontemporary excepted employee.

(b) Employees not eligible. The following employees are not eligible to be granted reemployment rights:

1. An employee who is serving a probationary or trial period under an appointment to a position in the excepted or competitive service or the SES.
2. An employee serving in an obligated position;
3. An employee serving with reemployment rights granted under this subpart;
4. An employee who has received a notice of involuntary separation because of reduction in force or otherwise;
5. An employee who has already submitted a resignation.


§ 352.205 Appeal of losing agency.

An appointing officer who intends to employ with reemployment rights an employee of another executive agency shall give the losing agency written notice at least 15 calendar days before the effective date of the proposed action. If the losing agency believes the grant of reemployment rights would be detrimental to the public interest, it may appeal the proposed grant to OPM within 15 calendar days after receipt of the notice. The losing agency, at the same time, shall furnish a copy of the appeal to the prospective appointing officer, who shall withhold the proposed grant pending decision on the appeal. OPM shall determine whether the employee will be given reemployment rights and notify both agencies accordingly. If the losing agency does not appeal within 15 calendar days, the employee shall be granted reemployment rights.

[51 FR 25187, July 11, 1986]

§ 352.205a Authority to return employee to his or her former or successor agency.

The transfer of an employee with a grant of reemployment rights under this subpart authorizes the return of the employee to his or her former or successor agency—

(a) Without a break in service of 1 workday or more in any position at the same or higher grade in the same occupational field and geographical area as the position he or she last held in the former or successor agency; and
(b) At not less than the rate of pay he or she would have been receiving in the position last held in the former or successor agency if he or she had not been transferred.

[51 FR 25187, July 11, 1986]

§ 352.205b Authority to return an SES employee to his or her former or successor agency.

The transfer of a career SES appointee with a grant of reemployment rights under this subpart authorizes the return of the employee to his or her former or successor agency when the employee is reemployed in his or her former or successor agency—

(a) Without a break in service of 1 workday or more in any position in the SES for which the employee is qualified; and
(b) At not less than the SES pay level at which the employee was being paid immediately before his or her transfer.

[51 FR 25187, July 11, 1986]

§ 352.206 Expiration of reemployment rights.

Reemployment rights granted under a Letter of Authority expire at the end of 2 years following the date of the personnel action, unless exercised or otherwise terminated before that time, except that the reemployment rights of
§ 352.207 Exercise or termination of reemployment rights.

(a) Exercise. The time limits for application for reemployment under this subpart are:

(1) Within 30 calendar days before the expiration of the term of reemployment rights;

(2) Within 30 calendar days after receipt of notice of involuntary separation;

(3) At least 30 calendar days in advance of the person's scheduled entry into active military duty. In this case he shall be reemployed and separated, furloughed, or granted leave of absence for military service by the reemploying agency; or

(4) At any time before the expiration of the term of reemployment rights with the written consent of the current employing agency if application for reemployment is made within 30 days after date of separation, or after receipt of advance notice of proposed demotion by the current employing agency.

(b) Termination. An employee's reemployment rights terminate if:

(1) He fails to apply within the time limits stated in paragraph (a) of this section;

(2) He resigns without the written consent of the current employing agency; or

(3) Within 10 calendar days, he fails to accept an offer of reemployment made under § 352.208 which is determined to be a proper offer of reemployment by the reemploying agency or by the Merit Systems Protection Board on appeal.

§ 352.208 Agency's obligation to reemploy.

(a) Employee's right to reemployment. An employee is entitled to be reemployed by the reemploying agency as promptly as possible but not more than 30 calendar days after receipt of his application. Except as provided in paragraph (c) of this section, the employee is entitled to reemployment in the occupational field and at the same grade or level and in the same geographical area as the position which the employee last held in that agency. If the reemployment would cause the separation or demotion of another employee, the applicant shall then be considered an employee for the purpose of applying the reduction-in-force regulations (5 CFR part 351) to determine to what, if any, position, he or she is entitled.

(b) Reemployment in a higher grade. The reemploying agency may reemploy the employee in a position of higher grade than that to which he is entitled, but not if this reemployment would cause the displacement of another employee.

(c) Reemployment in SES. When the employee's right is to a position in the SES, reemployment or return may be to any position in the SES for which the employee is qualified.

(d) Seniority in postal service. On reemployment in the postal service, the employee is entitled to the seniority he would have attained had he remained in the postal service.

(e) Basis for agency refusal to reemploy. An agency may refuse to reemploy under this section only when the employee was last separated for serious cause evidencing his unsuitability for reemployment.


§ 352.209 Employee appeals to the Merit Systems Protection Board.

When an agency denies reemployment to a person claiming reemployment rights under this subpart, the agency shall inform him or her of that denial by a written notice. In the same notice, the agency shall inform him/her of his/her right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

[44 FR 48952, Aug. 21, 1979]

Subpart C—Detail and Transfer of Federal Employees to International Organizations

§ 352.301 Purpose.

The purpose of this subpart is to encourage details and transfers of employees for service with international organizations as authorized by sections 3343 and 3581-3584 of title 5, United States Code, and to provide procedures for participation in the program.

§ 352.302 Definitions.

In this subpart:
(a) Agency, employee, international organization, and transfer have the meaning given them by section 3581 of title 5, United States Code;
(b) Detail has the meaning given it by section 3343 of title 5, United States Code; and
(c) Term of employment means not more than (1) 5 consecutive years of employment, except that when the Secretary of State determines it to be in the national interest, the detail or transfer may be extended for up to an additional 3 years, or (2) the period of less than 5 years specified at the time of consent to transfer or detail, beginning with entrance on duty in the international organization.

§ 352.303 Effective date of equalization allowance.

Section 352.310 applies to employment with an international organization that occurs after December 29, 1969.

§ 352.304 International organizations covered.

Without prior approval of OPM, an agency may detail or transfer an employee under this subpart to any organization which OPM has designated in the Federal Personnel Manual as an international organization. An agency may detail or transfer an employee under this subpart to any other public international organization or international organization preparatory commission, only when OPM, after consultation with the Department of State, agrees that the organization concerned could be designated in the Federal Personnel Manual as an international organization covered by sections 3343 and 3581 of title 5, United States Code.

§ 352.305 Eligibility for detail.

An employee, including a person serving under a career appointment in the Senior Executive Service (SES), is eligible to be detailed to an international organization with the rights provided for in, and in accordance with, section 3343 of title 5, United States Code, and this subpart.

[51 FR 25188, July 11, 1986]

§ 352.306 Length of details.

A detail or series of details shall not exceed 5 consecutive years, except that when the Secretary of State, on the recommendation of the head of the agency, determines it to be in the national interest, the 5-year detail may be extended for up to an additional 3 years. A detail or series of details or combination of details and transfers shall not exceed 8 years in the aggregate.

§ 352.307 Eligibility for transfer.

An employee is eligible for transfer to an international organization with the rights provided for in, and in accordance with, sections 3581-3584 of title 5, United States Code, and this subpart, except the following:
(a) A Presidential appointee (other than a postmaster, a Foreign Service officer or a Foreign Service information officer), regardless of whether his appointment was made by and with the advice and consent of the Senate.
(b) A person serving in the executive branch in a confidential or policy-determining position excepted from the competitive service under Schedule C of part 213 of this chapter.
(c) A person serving under a non-career, limited emergency, or limited term appointment in the SES.
(d) A person serving under a temporary appointment pending establishment of a register.
(e) A person serving under an appointment specifically limited to 1 year or less.
§ 352.308 Effecting employment by transfer.

(a) Authority to approve transfers. On written request by an international organization for the services of an employee, the agency may authorize the transfer of the employee to the organization for any period not to exceed 5 years, except that when the Secretary of State determines it to be in the national interest, a period of employment by transfer may be extended, subject to the approval of the head of the agency, for up to an additional 3 years. A transfer or series of transfers or combination of details and transfers shall not exceed 8 years in the aggregate. Refusal by the head of the agency to authorize the transfer or the extension of the transfer is not reviewable by or appealable to OPM.

(b) Letter of consent. When an agency consents to the transfer of an employee, the agency shall give its consent in writing to the international organization and shall furnish the employee with a copy of the consent.

(c) Effective date. The agency and the international organization shall establish the effective date of transfer by mutual agreement.

(d) Recording requirement. The agency shall furnish the employee with a statement of his leave account when he is separated for transfer. In addition, the agency shall include on the personnel action form effecting the employee’s separation for transfer, (1) identification of the international organization to which he transfers, (2) a clear statement of the period during which he has reemployment rights in the agency under section 3582 of title 5, United States Code, and this subpart, and of the legal and regulatory conditions of his reemployment.

§ 352.309 Retirement, health benefits, and group life insurance.

(a) Agency and employee action. At the time of consent to the transfer of an employee, the agency shall notify the employee in writing that it will make agency contributions and he will retain coverage with resulting rights and benefits under the retirement, health benefits, and group life insurance systems or any of them if employee payments are currently deposited in the respective funds. The employee shall acknowledge, in writing, receipt of the notice and state whether or not he wishes to retain his coverage under the retirement, health benefits, and group life insurance systems or any of them by continuing required employee payments.

(b) Agency responsibility. A transferred employee is deemed to remain an employee of the agency from which transferred for retirement, health benefits, and group life insurance purposes. For retirement and group life insurance purposes, the agency is responsible for determining the applicable rate of pay in accordance with the provisions of section 3583 of title 5, United States Code. The agency is also responsible for collecting, accounting for, and depositing in the respective funds all agency contributions. The agency shall furnish the employee with specific information as to how, when, and where the payments are to be submitted.

(c) Coverage. Employee payments are currently deposited if received by the agency before, during, or within 3 months after the end of the pay period covered thereby. Failure to deposit the payment currently terminates a transferred employee’s retirement, health benefits, and group life insurance coverage on the last day of the pay period for which payments were currently deposited, subject to a 31-day extension of group life insurance and health benefits coverage as provided in parts 870 and 890 of this chapter and to the conversion benefits provided in parts 870 and 890 of this chapter. Coverage so terminated may not attach again before the employee actually enters on duty on his first day in a pay status in an agency. However, terminated civil service retirement, health benefits, and
§ 352.310 Group life insurance coverage shall be reinstated retroactively when, in the judgment of OPM, the failure to make the required current deposit was due to circumstances beyond the control of the employee and the required payments were deposited at the first opportunity. Coverage under a system other than the civil service retirement system shall be reinstated retroactively if the agency which administers the retirement system determines that the failure to make the required current deposit was due to circumstances beyond the control of the employee and the required payments were deposited at the first opportunity.

§ 352.310 Equalization allowance.

(a) An employee transferred to an international organization is entitled to be paid in accordance with paragraphs (a)(1) through (4) of this section, an amount equal to the difference between the pay, allowances, post differential, and other monetary benefits paid by the international organizations and the pay, allowances, post differential, and other monetary benefits that would have been paid by the agency had he been detailed to the international organization under section 3343 of title 5, United States Code, (i) on reemployment; or (ii) on his death which occurs during the period of transfer or during the period after separation from an international organization when he is exercising or could exercise his reemployment rights.

(1) To determine the difference, the Department of State defines pay (i) for the Federal Government, as the amount paid an employee before the deduction of State and local taxes, but after the deduction of hypothetical U.S. Federal tax using the standard deduction considering the number of exemptions and appropriate tax table prescribed by the Department; (ii) for international organizations following the Common System of Salaries and Allowances of the United Nations and Specialized Agencies, the amount actually paid to the employee after the deduction of the Staff Assessment; (iii) for other international organizations, as the amount actually paid to the employee. In cases where pay is subject to State and local taxes, this shall be the pay before the deduction of the taxes.

(2) Allowances, post differential, and other monetary benefits are defined by the Secretary of State as follows:

(i) Federal Government: The amount that would have been paid under sections 5921-5925 of title 5, United States Code, applicable provisions of chapters 100, 200, and 500 of the Standardized Regulations (Government Civilians Foreign Areas) and implementing agency regulations had the employee been detailed to the international organization under section 3343 of title 5, United States Code;

(ii) International organizations following the Common System of Salaries and Allowances of the United Nations and Specialized Agencies: The amount paid under pertinent provisions of the Staff Regulations and Rules of the United Nations and the Specialized Agencies;

(iii) Other international organizations not under the Common System of Salaries and Allowances of the United Nations and Specialized Agencies: The amount paid under pertinent conditions of service applied by the organizations as determined to be appropriate by the releasing agency with the concurrence of the Secretary of State.

(3) Travel and subsistence expenses, transportation of effects, and leave are not considered monetary benefits for purposes of this section.

(4) In exceptional circumstances where a hardship or an inequity would otherwise occur the Secretary of State, on the recommendation of the head of the agency, may specify allowances or other monetary benefits in lieu of or in addition to those specified above.

(b) Authoritative information on pay, allowances, post differential, and other monetary benefits as defined in paragraph (a) of this section for the Federal Government and the international organizations is maintained currently by the Department of State and is made available on request to any Federal department, agency, or employee concerned.

(c) Agency and employee responsibilities for reporting and documenting payments received from international
§ 352.311 Reemployment.  
(a) A transferred employee is entitled to be reemployed in his or her former position or one of like seniority, status, and pay within 30 days of his or her application for reemployment if he or she meets the following conditions:  
(1) He or she is separated, either voluntarily or involuntarily, within his or her term of employment with an international organization; and  
(2) He or she applies for reemployment to his or her former agency or its successor no later than 90 days after his or her separation.  
(b) When an employee's right is to a position in the SES, reemployment or return may be to any position in the SES for which the employee is qualified. The employee shall be returned at not less than the SES pay level at which the employee was being paid immediately before his or her transfer, or if pay has been adjusted under §352.314(c), at not less than the adjusted pay level.  

§ 352.312 When to apply.  
An employee may apply for reemployment either before or after separation by the international organization. If he applies before separation, the 30-day period prescribed in §352.311 begins either within the date of the application or 30 days before the employee’s date of separation, whichever is later.  

§ 352.313 Failure to reemploy and right of appeal.  
(a) When an agency fails to reemploy an employee within 30 days of his/her application, it shall notify him/her in writing of the reasons and of his/her right to appeal to the Merit Systems Protection Board under the provisions of the Board’s regulations.  
(b) If the agency fails to reach and issue a decision to the employee within 30 days from his/her application for reemployment, the employee is entitled to appeal the failure of the agency to the Merit Systems Protection Board under the provisions of the Board’s regulations.  

§ 352.314 Consideration for promotion and pay increases.  
(a) Each agency shall consider each employee detailed or transferred to an international organization for all promotions for which he would be considered were he not absent. A promotion based on this consideration is effective on the date it would have been made if the employee were not absent.  
(b) When the position of an employee absent on detail or transfer to an international organization is regraded upward during his absence, his agency shall place him in the regraded position.  
(c) Each agency shall consider each employee detailed or transferred to an international organization from an ungraded pay system for all pay increases for which the employee would be considered were the employee not absent. An increase is effective on the date it would have been made if the employee were not absent.  

§ 352.315 Employee right to reemployment in a state, local, or private sector job.  
(a) When an employee is transferred to an international organization, he or she may elect to be reemployed in a position with a state, local, or private sector employer without regard to the Civil Service requirements.  

Subpart D—Employment of Presidential Appointees and Elect ed Officers by the International Atomic Energy Agency  

§ 352.401 Purpose.

The purpose of this subpart is to implement section 6(b) of the International Atomic Energy Agency Participation Act of 1957 and Executive Order 10774 as amended by Executive Order 10804 to protect the civil service rights and privileges, wherever appropriate, of Presidential appointees and elected officers who leave their positions and within 90 days enter employment with the International Atomic Energy Agency.

§ 352.402 Coverage.

This subpart applies to all officers, as defined in §352.403(b), of any branch of the Federal Government.

§ 352.403 Definitions.

In this subpart:
(a) Agency means the International Atomic Energy Agency;
(b) Officer means any Presidential appointee or elected officer who leaves his position after August 27, 1957, and within 90 days enters employment with the agency; and
(c) Term of employment means not more than 3 consecutive years of employment beginning with entrance on duty in the agency.

§ 352.404 Retirement and insurance.

(a) Coverage. (1) To obtain retirement benefits for a term of employment with the agency, an officer covered by subchapter III of chapter 83 of title 5 United States Code, within 90 days after the date he is separated from the agency, shall pay to OPM all necessary employee deductions and agency contributions for coverage under that subchapter for his term of employment with the agency. Interest shall not be charged an officer on any payment of necessary employee deductions and agency contributions. The amount of the employee deductions so paid shall be added to the officer's lump-sum credit in the Civil Service Retirement and Disability Fund.

(2) To retain coverage under chapter 87 of title 5, United States Code, during his term of employment with the agency, an officer covered by that chapter shall currently pay employee deductions and agency contributions necessary for coverage under that chapter for his term of employment with the agency. Collections may be made under procedures which may be determined in accordance with written agreements reached between accounting representatives of OPM and the agency.

(3) All retirement and insurance benefits and obligations shall be computed in the same manner as if the rate of basic pay the officer was receiving on the last day he was in his Federal position before employment with the agency had continued without change.

(4) An officer not covered by either subchapter III of chapter 83, or chapter 87, of title 5, United States Code, in the Federal position which he last held or from which he separates to enter employment with the agency does not acquire coverage or benefits under these statutes based on employment with the agency.

(b) Death coverage. An officer who dies during his term of employment or within 90 days of his separation therefrom is deemed to have died in the Federal Service.

§ 352.405 Resumption of Federal service.

(a) Pay increase. Except for an employee whose right is to a position in the Senior Executive Service (SES), an officer who is reemployed in the Federal position which he or she left or one of like seniority, status, and pay within 90 days of his or her separation from the agency following a term of employment, is entitled to the rate of basic pay to which he/she would have been entitled had he or she remained in the Federal Service. When the employee's right is to a position in the SES, this subpart authorizes reemployment to any position in the SES for which the employee is qualified at not less than the SES pay level at which the employee was being paid immediately before his or her transfer.

(b) Sick leave account. An officer shall have any sick leave account which he may have had in his last Federal position reestablished for credit or charge, if he returns to an appropriate leave system within 52 calendar weeks after the date he is separated from his term of employment with the agency.
§ 352.501

(c) Service credit for agency employment. An officer who is reemployed in the Federal service within 90 days after completion of his term of employment with the agency is entitled to credit as Federal service for his term of employment with the agency. However, OPM shall give service credit for subchapter III of chapter 83 of title 5, United States Code, purposes only if the officer complies with the requirements of § 352.404(a)(1).

[33 FR 12433, Sept. 4, 1968, as amended at 51 FR 25188, July 11, 1986]

Subpart E—Reinstatement Rights After Service Under Section 233(d) and 625(b) of the Foreign Assistance Act of 1961

Authority: Sec. 625, 75 Stat. 449; 22 U.S.C. 2193(d) and 22 U.S.C. 235(b); E.O. 10973; 3 CFR 1959-1963 Comp., p. 493; Section 352.508 also issued under 5 U.S.C. 7701 et seq.

§ 352.501 Purpose.

This subpart governs reinstatement authorized by sections 233(d) and 625(b) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2193(d) and 22 U.S.C. 235(b)).

[36 FR 13897, July 28, 1971]

§ 352.502 Coverage.

This subpart applies to any of the following serving in a position in the Federal Government:

(a) A person serving in the competitive service under a career or career-conditional appointment.

(b) A person serving under a career appointment in the Senior Executive Service (SES).

(c) A person serving in the excepted service under an appointment without a specific time limitation.

(d) A person appointed or assigned under authority of the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.).

[33 FR 12433, Sept. 4, 1968, as amended at 51 FR 25188, July 11, 1986]

§ 352.503 Definitions.

In this subpart:

(a) Act means the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 et seq.); and

(b) Former position means the position that an employee was occupying at the time of his appointment to a position under authority of section 233(d) or section 625(b) of the Act.

[36 FR 13897, July 28, 1971]

§ 352.504 Basic entitlement.

Subject to the conditions specified in this subpart, an employee who is appointed to a position under authority of section 233(d) or section 625(b) of the Act is entitled, on termination of that appointment for any reason other than his or her own misconduct or delinquency, to be reinstated in his or her former position or in one of like seniority, status, and pay in the same agency. When the employee’s right is to a position in the SES, reinstatement may be to any position in the SES for which the employee is qualified. The employee shall be returned at not less than the SES pay level at which the employee was being paid immediately before his or her transfer. If the functions with which the employee’s former position was identified have been transferred to another agency, the employee’s right to reinstatement is in the gaining agency.

[51 FR 25188, July 11, 1986]

§ 352.505 Proposed termination.

At least 45 days before termination of the appointment of an employee entitled to reinstatement, the agency terminating the employee shall notify the employee and his former agency in writing of the proposed termination. However, notification under this section is not required when:

(a) The termination is at the employee’s own request; or

(b) The employee is reinstated without a break in service under an arrangement made between the agencies concerned.

§ 352.506 Application for reinstatement.

An employee who desires reinstatement shall apply for reinstatement, in writing, no later than 30 days after his
appointment under authority of section 233(d) or section 625(b) of the Act is terminated, unless arrangement has been made for his reinstatement without a break in service under §352.505(b).

§ 352.507 Reinstatement.

An employee eligible for reinstatement is entitled to be reinstated as soon as possible after his application for reinstatement, filed in accordance with §352.506, is received. In any event, he is entitled to be reinstated (a) within 30 days after his application for reinstatement is received, or (b) on termination of the appointment made under authority of section 233(d) or section 625(b) of the act, whichever is later.

[36 FR 13897, July 28, 1971]

§ 352.508 Appeals to the Merit Systems Protection Board.

(a) If an agency determines that an employee who has applied for reinstatement is not eligible for reinstatement, it shall notify the employee as promptly as possible of its decision, of the basis therefor, and of the employee's appeal rights under this subpart. The employee is entitled to appeal the decision to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of §1201.21 of this title.

(b) If an agency fails to reinstate an employee within the time limits specified in §352.507, the employee is entitled to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

(c) If an employee considers that his reinstatement is not in accordance with the act and this subpart, he or she is entitled to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

[36 FR 13897, July 28, 1971]

§ 352.701 Purpose.

This subpart governs reemployment rights authorized by section 105(i) of the Indian Self-Determination Act (88 Stat. 2210; Pub. L. 93-638, the Act) and E.O. 11899 after service in an Indian tribal organization under the Act.

§ 352.702 Definitions.

In this subpart:

(a) Agency means the Bureau of Indian Affairs and the Indian Health Service. For reemployment purposes, the Public Health Service shall be considered the agency to which Indian Health Service employees may return.

(b) Competitive area is the same as defined in §351.402 of this title.

(c) Tribal organization is defined in section 4(c) of the Indian Self-Determination Act (88 Stat. 2204).

§ 352.703 Basic entitlement to reemployment rights on leaving Federal employment.

(a) Employees entitled. The following employees of the Bureau of Indian Affairs, Department of the Interior, and the Indian Health Service and the Public Health Service of the Department of Health and Human Services, are granted reemployment rights subject to the conditions of this subpart, to the Bureau of Indian Affairs, the Indian Health Service, or the Public Health...
§ 352.704 Duration of reemployment rights.

(a) Termination of authority. Rights are not granted to persons who leave Federal employment for employment with a tribal organization after the date (December 31, 1985, at present) specified in section 105(e) of the Indian Self-Determination Act (88 Stat. 2209).

(b) Maximum period of entitlement. Entitlement to reemployment terminates at the end of 6 years following the date employment commences in the tribal organization unless exercised or otherwise terminated before that time as provided in this subpart.

§ 352.705 Return to Federal employment.

(a) Conditions. Reemployment rights may be exercised only under the following conditions. The individual must apply in writing to the former employing agency for reemployment not later than 30 calendar days after:

(1) Receipt of notice of involuntary separation from tribal employment. For this purpose, involuntary separation means any separation against the will and without consent of the individual.

(2) Reversion of the function to Federal operation, whether reversion is through tribal or Federal action; or

(3) Separation with the joint consent of the tribal organization and the Federal agency for reasons of personal hardship or other special circumstances.

(b) Termination. A former employee's entitlement to reemployment terminates for:

(1) Failure to apply for reemployment within the time limit stated in paragraph (a) of this section;

(2) Resignation from tribal service without the joint consent, described in paragraph (a)(3) of this section, of the tribal organization and the Federal employer; or

(3) Failure to accept, within 10 calendar days of receipt thereof, an offer of reemployment made under § 352.706 which is determined by the employing agency or by the Merit Systems Protection Board on appeal to be a proper offer of reemployment.

§ 352.706 Agency response to reemployment application.

(a) Employee's right to reemployment. An employee is entitled to be reemployed by the reemploying agency as promptly as possible, and, in any event, within 45 calendar days after agency receipt of application.

(b) Maximum period of entitlement. Entitlement to reemployment terminates at the end of 6 years following the date employment commences in the tribal organization.
(ii) One in the same competitive level; or

(iii) Another position for which qualified and eligible at the same grade or level and in the same competitive area as the position the employee last held in the agency. The employing agency determines the position under paragraph (a)(1)(i), (ii), or (iii) of this section to which the employee is entitled. Reduction-in-force procedures shall be applied where necessary in determining the position to which the employee has a right. In applying the reduction-in-force regulations, the applicant shall be considered an employee of the agency.

(2) Extending the area. Responsibility for reemploying an applicant is nationwide within the agency. If the applicant is not placed under paragraph (a)(1) of this section, the agency must extend reemployment rights, based on the employee's availability, for assignment outside the competitive area. The employee is entitled to a position, for which qualified and eligible, at the same grade or level as the position last held in the agency. Where necessary, reduction-in-force procedures shall be applied in determining the position to which the employee has a right. The applicant shall be considered an employee for the purpose of applying the reduction-in-force regulations.

(b) Employee option. Before the competitive area is extended under paragraph (a)(2) of this section, an employee who cannot be placed under paragraph (a)(1) of this section, in the competitive area at the same grade or level as the position last held in the agency, shall be considered an employee for the purpose of applying the reduction-in-force regulations.

(c) Agency option. At any stage in the process, the agency has the option to satisfy the employee's right to reemployment by offering a vacant position which, under reduction-in-force regulations, is in accord with the employee's rights. Also, with the employee's consent, right to reemployment can be met by placement in a vacant position, for which the employee is qualified according to agency determination, and available, outside the organizational or geographic area of entitlement, either at the appropriate grade or at a grade other than the one to which entitled.

(d) Reemployment to an SES position. When the employee's right is to a position in the SES, reemployment or return may be to any position in the SES for which the employee is qualified. The employee shall be returned at not less than the SES pay level at which the employee was being paid immediately before his or her transfer.

(e) Basis for agency refusal to reemploy. An agency may refuse to reemploy when the employee was last separated from tribal employment for serious cause establishing unsuitability for reemployment.

(f) Basis for agency inability to reemploy. An agency may find it is unable to reemploy in the event no position can be found under procedures in this section.

[41 FR 27713, July 6, 1976, as amended at 51 FR 25188, July 11, 1986]

§ 352.707 Employee appeals to the Merit Systems Protection Board.

(a) If an agency denies reemployment to a person claiming reemployment rights under this subpart, the agency shall inform the individual of that denial and of the reasons therefor by a written notice. In the same notice, the agency shall inform the employee of the right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

(b) If an employee considers reemployment to be not in accordance with this subpart, the employee is entitled to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

(c) Refusal of a tribe to hire a Federal employee is not appealable to the Merit Systems Protection Board.

[44 FR 48953, Aug. 21, 1979]

Subpart H—Reemployment Rights Under the Taiwan Relations Act

Authority: 22 U.S.C. 3310; E.O. 12143, 44 FR 37109; Section 352.807 also issued under 22 U.S.C. 3310; E.O. 12143, 45 FR 37452.
§ 352.801 Purpose.

This subpart governs reemployment rights authorized by section 11(a)(1) and (2) of the Taiwan Relations Act (Pub. L. 96-8) after service in the American Institute in Taiwan (AIT) under the Act.

§ 352.802 Definitions.

For the purposes of this subpart:

Act refers to Taiwan Relations Act (Pub. L. 96-8).

Competitive area is the same as defined in §351.402 of this title; Institute means the American Institute in Taiwan.

Specified period of service shall be a period of not more than 6 years.

§ 352.803 Basic entitlement to reemployment rights on leaving Federal employment.

(a) This subpart applies to all executive agencies as defined in section 105 of title 5, United States Code, the U.S. Postal Service, the Postal Rate Commission, and to the employees thereof, and to those positions in the competitive civil service and the employees occupying those positions.

(b) The agency must give employees entitled to reemployment rights under this subpart written notice of these rights at the time of their separation.

(c) Employees entitled. The following employees or former employees are granted reemployment rights subject to the conditions of this subpart, if they leave their Federal employment to be employed (on the date of incorporation of AIT or within 30 calendar days following separation from their agency) by the Institute in Taiwan.

(i) An employee serving in a competitive position under a career or career-conditional appointment;

(ii) A non-temporary excepted service employee; or

(iii) An employee serving under a career appointment in the Senior Executive Service.

(d) Employees not entitled. The following employees are not entitled to reemployment rights under this subpart:

(1) An employee who has received a notice of involuntary separation because of reduction in force, or other cause, not directly related to employment with the Institute under the Act;

(2) An employee whose resignation has been accepted for reasons other than to accept employment with the Institute under this subpart;

(3) An employee serving under a Schedule C excepted appointment; or

(4) An employee serving under a non-career, limited emergency, or limited term appointment in the Senior Executive Service.


§ 352.804 Maximum period of entitlement to reemployment.

Entitlement to reemployment terminates at the end of 6 years and 30 days, following the date employment commences in the Institute unless exercised or otherwise terminated before that time as provided in this subpart.

§ 352.805 Position to which entitled on reemployment.

(a) Basic position entitlement. (1) On reemployment, an employee is entitled to be appointed to a position in the employee's former or successor agency in the following order:

(i) To the position last held in the former agency:

(A) If that position has been identified for transfer to a different agency, reemployment rights must be exercised with the gaining agency.

(B) If that position has been reclassified, the employee should be placed in the reclassified position;

(ii) A position in the same competitive level; or

(iii) Another position for which otherwise qualified at the same grade or level and in the same competitive area.

(2) The employing agency determines under paragraph (a)(1) of this section the position to which the employee is entitled. Reduction-in-force procedures shall be applied when necessary in determining the position to which the employee has a right. In applying reduction-in-force procedures, the applicant shall be considered an employee of the agency.
(3) Extending the area. Responsibility for reemploying an applicant is agencywide. If the applicant is not placed under paragraph (a)(1) of this section, the agency must extend reemployment rights, based on the agency’s need, for assignment outside the competitive area. The employee is entitled to a position, for which qualified and eligible, at the same grade or level as the position last held in the agency. Where necessary, reduction-in-force procedures shall be applied in determining the position to which the employee has a right. The applicant shall be considered an employee for the purpose of applying the reduction-in-force procedures.

(b) Employee option. Before the competitive area is extended under paragraph (a)(3) of this section, an employee who cannot be placed under paragraph (a)(1) of this section in the same competitive area at the grade or level as the position last held, is entitled, if the employee elects, to reemployment in a position at a lower grade or level identified under the same conditions and procedures as paragraph (a)(1) of this section.

(c) Agency option. At any stage in the process, the agency has the option to satisfy the employee’s right to reemployment by offering a vacant position which, under reduction-in-force regulations, is in accord with the employee’s rights. Also, with the employee’s consent, right to reemployment can be met by placement in a vacant position, for which the employee is qualified according to agency determination and need, outside the organizational or geographic area of entitlement, either at the appropriate grade or at a grade other than the one to which entitled.

(d) Basic position entitlement in the Senior Executive Service. (1) On reemployment, an employee (who meets the requirements to §352.803c(3)) is entitled to be given a career appointment in the Senior Executive Service the employee’s former or successor agency.

(2) The employee may be assigned to any position in the Senior Executive Service for which he or she meets the qualifications requirements.

(3) The employee may elect to accept reemployment in a position outside the Senior Executive Service. Such placement would be subject to the provisions of paragraphs (b) and (c) of this section.

§ 352.806 Return to Federal employment.

(a) Conditions: Reemployment rights may be exercised only under the following conditions. The employees must apply in writing to their former or successor agency:

(1) No less than 30 calendar days before completion of the specified period of service with the Institute; or

(2) No more than 30 calendar days after involuntary separation from the Institute; or

(3) No more than 30 calendar days after separation based on personal hardship or other special circumstances with the consent of Institute and former employing agency.

(b) An agency must act on the former employee’s request for reemployment within 30 calendar days of receipt thereof, i.e., the agency must provide the employee with a written notice stating the agency’s decision whether to reemploy and the position being offered, if the employee is to be reemployed.

(c) Termination of reemployment rights. A former employee’s entitlement to reemployment terminates for:

(1) Failure to apply, except for good cause shown, for reemployment within the time limits stated in paragraph (a) of this section;

(2) Resignation from the Institute without the consent of the Institute or the former employing agency; or

(3) Failure to accept, within 15 workdays of receipt thereof, an offer of reemployment under §352.803 which is determined to be a proper offer of reemployment by the employing agency and by Merit Systems Protection Board (MSPB), if appealed.

§ 352.807 Appeals.

An employee may appeal to MSPB, under the provisions of the Board’s regulations, an agency’s decision on his or her request for reemployment which he or she believes is in violation of this subpart.
Subpart I—Reemployment Rights After Service With the Panama Canal Commission


Source: 50 FR 13963, Apr. 9, 1985, unless otherwise noted.

§ 352.901 Purpose.

This subpart implements section 1203 of the Panama Canal Act of 1979, which provides for the detail or transfer of Federal employees to the Panama Canal Commission with reemployment rights in the former agency.

§ 352.902 Definitions.

In this subpart—

Act means the Panama Canal Act of 1979 (22 U.S.C. 3601 et seq.).

Agency means an Executive agency, the United States Postal Service, and the Smithsonian Institution.

Commission means the Panama Canal Commission as established by section 1101 of the Act.

Competitive area is defined in §351.402 of part 351 of this chapter.

Competitive level is defined in §351.403(a) of part 351 of this chapter.

Detail is the assignment of loan of an employee to the Commission without the employee's transfer. The employee remains an employee of the agency in which employed and continues to be the incumbent of the position from which detailed.

Term of employment means the period of employment specified in the written agreement between the Commission and the agency for the transfer of an employee or extension of transfer.

Transfer means the change in appointment of an employee from an agency to a new appointment with the Commission.

§ 352.903 Effecting a detail or transfer.

(a) Authority to approve. The head of an agency may enter into written agreements with the Commission for the detail or voluntary transfer, for set periods of time, of agency employees to the Commission in accordance with section 3643 of title 22, United States Code, and this subpart. Refusal by the head of the agency to agree to a detail or transfer, or extension of detail or transfer, is not reviewable by the Office of Personnel Management or appealable.

(b) Employee notice. The agency will furnish the employee with a copy of the written agreement which must contain a statement of the time limits for exercising reemployment rights and the conditions of reemployment.

§ 352.904 Eligibility.

This subpart covers only eligible employees transferred or detailed to Commission positions with duty stations in the Republic of Panama.

(a) Employees eligible. Except as provided in paragraph (b) of this section, an employee serving in a position in an agency under any of the following appointments may be granted rights under this subpart:

(1) Career or career-conditional appointment in the competitive service;

(2) An appointment without a specific time limit in the excepted service; or

(3) A career appointment in the Senior Executive Service.

(b) Employee not eligible. The following employees are not eligible under this subpart:

(1) An employee who is serving a trial period or probationary period under an initial appointment;

(2) An employee who has received a proposed notice of involuntary separation (e.g., separation based on reduction in force, adverse action, or performance);

(3) An employee who is serving in a position excepted from the competitive service under Schedule C of part 213 of this chapter, or under Presidential appointment; or

(4) An employee whose resignation has been accepted for reasons other than to accept employment with the Commission.

[50 FR 13963, Apr. 9, 1985, as amended at 57 FR 10125, Mar. 24, 1992]

§ 352.905 Employees on detail.

(a) An employee detailed to the Commission is subject to the same conditions of employment at his or her employing agency as if the employee has not been detailed.

(b) The Commission and the employing agency will arrange for the termination of a detail and the agency will
Office of Personnel Management

§ 352.906 Termination of transfer.

At the conclusion of a term of employment agreed upon as provided in § 352.903, employment with the Commission may be terminated without regard to parts 351, 359, 432, 752, or 771 of this chapter.

§ 352.907 Exercise or termination of reemployment rights.

(a) Exercise. An individual who has been transferred under this subpart to the Commission and wishes to be reemployed must apply in writing to the former employing agency. The time limits for application for reemployment are—

(1) No later than 30 calendar days after the expiration of the term of employment with the Commission;

(2) No later than 30 calendar days after receipt of notice of involuntary separation during the term of employment with the Commission; or

(3) No later than 30 calendar days after resignation with the consent of the Commission.

(b) Termination. Reemployment rights terminate if the individual—

(1) Fails to apply within the time limits stated in paragraph (a) of this section;

(2) Resigns without the written consent of the Commission; or

(3) Within 10 calendar days, fails to accept an offer of reemployment made under § 352.908 that is determined to be a proper offer of reemployment by the reemploying agency or by the Merit Systems Protection Board on appeal.

§ 352.908 Agency obligation.

(a) Time limits. An employee is to be reemployed by the reemploying agency as promptly as possible, but not later than 30 calendar days after receipt of the reemployment application or on termination of the term of employment with the Commission, whichever is later.

(b) Conditions. An employee will be reemployed or returned from detail without loss of pay, seniority, or other rights or benefits to which the employee would have been entitled had he or she not been transferred or detailed. An employee in the Senior Executive Service will be reemployed or returned at not less than the rate at which paid immediately before the transfer or detail. An employee who is reemployed is not eligible for grade or pay retention under part 536 of this chapter based on a grade or rate of pay attained while employed by the Commission.

(c) Position to which entitled. (1) If the function with which the employee's former position was identified has been transferred, the employee's right is to a position in the gaining agency or activity.

(2) An employee whose right is to a position in the Senior Executive Service may be reemployed in or returned to any Senior Executive Service position in the former agency for which qualified.

(3) All other employees are entitled to be reemployed in or returned to a position at the same grade or level and in the same competitive area as the position last held in the former agency. If the reemployment would cause the separation or demotion of another employee, the applicant should be considered an employee for the purpose of applying the reduction-in-force regulations to determine to what, if any, position the employee is entitled. If the employee is not placed at the former grade or level, the agency must extend consideration beyond the competitive area. Responsibility for reemployment is agencywide.

(4) Reemployment may be at a higher grade than that to which the employee is entitled if all appropriate standards and requirements are satisfied and if this will not cause the displacement of another employee.

(5) The reemployment obligation may be satisfied by placement in any position within the agency that is acceptable to the employee.

(d) Agency refusal to reemploy. An agency may refuse to reemploy under this section only when the employee was separated from the Commission for serious cause showing unsuitability for reemployment.
§ 352.909 Appeals.

(a) If an agency denies reemployment to an applicant who claims reemployment rights under this subpart, the agency must notify the applicant in writing of that denial and its reasons. In the same notice, the agency will inform the applicant of the right to appeal to the Merit Systems Protection Board under the provisions of the Board’s regulations. The agency must comply with the provisions of §1201.21 of this title.

(b)(1) When an agency has reemployed or returned an employee, it will advise the employee of the right of appeal if he or she considers the reemployment or return not to be in accordance with the Act and this subpart.

(2) An employee in a bargaining unit covered by a negotiated grievance procedure that does not exclude this matter must use the negotiated grievance procedure.

(3) An employee to whom paragraph (b)(2) of this section does not apply is entitled to appeal to the Merit Systems Protection Board under the provisions of the Board’s regulations. The agency must comply with the provisions of §1201.21 of this title.

PART 353—RESTORATION TO DUTY FROM UNIFORMED SERVICE OR COMPENSABLE INJURY

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Source: 60 FR 45652, Sept. 1, 1995, unless otherwise noted.
a military department as defined in 5 U.S.C. 102. In the case of a National Guard technician employed under 32 U.S.C. 709, the employing agency is the adjutant general of the State in which the technician is employed.

Fully recovered means compensation payments have been terminated on the basis that the employee is able to perform all the duties of the position he or she left or an equivalent one.

Injury means a compensable injury sustained under the provisions of 5 U.S.C. chapter 81, subchapter I, and includes, in addition to accidental injury, a disease proximately caused by the employment.

Leave of absence means military leave, annual leave, without pay (LWOP), furlough, continuation of pay, or any combination of these.

Military leave means paid leave provided to Reservists and members of the National Guard under 5 U.S.C. 6323.

Notice means any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an agency by the employee performing the service or by the uniformed service in which the service is to be performed.

Partially recovered means an injured employee, though not ready to resume the full range of his or her regular duties, has recovered sufficiently to return to part-time or light duty or to another position with less demanding physical requirements. Ordinarily, it is expected that a partially recovered employee will fully recover eventually.

Physically disqualified means that:

(1)(i) For medical reasons the employee is unable to perform the duties of the position formerly held or an equivalent one, or

(ii) There is a medical reason to restrict the individual from some or all essential duties because of possible incapacitation (for example, a seizure) or because of risk of health impairment (such as further exposure to a toxic substance for an individual who has already shown the effects of such exposure).

(2) The condition is considered permanent with little likelihood for improvement or recovery.

Reasonable efforts in the case of actions required by an agency for a person returning from uniformed service means actions, including training, that do not place an undue hardship on the agency.

Service in the uniformed services means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and a period for which a person is absent from employment for the purpose of examination to determine fitness to perform such duty.

Status means the particular attributes of a specific position. This includes the rank or responsibility of the position, its duties, working conditions, pay, tenure, and seniority.

Undue hardship means actions taken by an agency requiring significant difficulty or expense, when considered in light of—

(1) The nature and cost of actions needed under this part;

(2) The overall financial resources of the facility involved in taking the action; the number of persons employed at the facility; the effect on expenses and resources, or the impact otherwise of the action on the operation of the facility; and

(3) The overall size of the agency with respect to the number of employees, the number, type, and location of its facilities and type of operations, including composition, structure, and functions of the work force.

Uniformed services means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the Commissioned Corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

§ 353.103 Persons covered.

(a) The provisions of this part pertaining to service in the uniformed services cover each agency employee who enters into such service. However,
§ 353.104 Notification of rights and obligations.

When an agency separates, grants a leave of absence, restores or fails to restore an employee because of uniformed service or compensable injury, it shall notify the employee of his or her rights, obligations, and benefits relating to Government employment, including any appeal and grievance rights. However, regardless of notification, an employee is still required to exercise due diligence in ascertaining his or her rights, and to seek reemployment within the time limits provided by chapter 43 of title 38, United States Code, for restoration after uniformed service, or as soon as he or she is able after a compensable injury.

§ 353.105 Maintenance of records.

Each agency shall identify the position vacated by an employee who is injured or leaves to enter uniformed service. It shall also maintain the necessary records to ensure that all such employees are preserved the rights and benefits granted by law and this part.

§ 353.106 Personnel actions during employee's absence.

(a) An employee absent because of service in the uniformed services is to be carried on leave without pay unless the employee elects to use other leave or freely and knowingly provides written notice of intent not to return to a position of employment with the agency, in which case the employee can be separated. (NOTE: A separation under this provision affects only the employee's seniority while gone; it does not affect his or her restoration rights.)

(b) An employee absent because of compensable injury may be carried on leave without pay or separated unless the employee elects to use sick or annual leave.

(c) Agency promotion plans must provide a mechanism by which employees who are absent because of compensable injury or uniformed service can be considered for promotion.

§ 353.107 Service credit upon reemployment.

Upon reemployment, an employee absent because of uniformed service or compensable injury is generally entitled to be treated as though he or she had never left. This means that a person who is reemployed following uniformed service or full recovery from compensable injury receives credit for the entire period of the absence for purposes of rights and benefits based upon seniority and length of service, including within-grade increases, career tenure, completion of probation, leave rate accrual, and severance pay.

§ 353.108 Effect of performance and conduct on restoration rights.

The laws covered by this part do not permit an agency to circumvent the protections afforded by other laws to employees who face the involuntary loss of their positions. Thus, an employee may not be denied restoration rights because of poor performance or conduct that occurred prior to the employee's departure for compensable injury or uniformed service. However, separation for cause that is substantially unrelated to the injury or to the performance of uniformed service negates restoration rights. Additionally,
if during the period of injury or uniformed service the employee's conduct is such that it would disqualify him or her for employment under OPM or agency regulations, restoration rights may be denied.

§ 353.109 Transfer of function to another agency.

If the function of an employee absent because of uniformed service or compensable injury is transferred to another agency, and if the employee would have been transferred with the function under part 351 of this chapter had he or she not been absent, the employee is entitled to be placed in a position in the gaining agency that is equivalent to the one he or she left. It shall also assume the obligation to restore the employee in accordance with law and this part.

§ 353.110 OPM placement assistance.

(a) Employee returning from uniformed service.

(1) OPM will offer placement in the executive branch to the following categories of employees upon notification by the agency and application by the employee: (Such notification should be sent to the Associate Director for Employment, OPM, 1900 E Street, NW., Washington, DC 20415.)

(i) Executive branch employees (other than an employee of an intelligence agency) when OPM determines that:

(A) their agencies no longer exist and the functions have not been transferred, or;

(B) it is otherwise impossible or unreasonable for their former agencies to place them;

(ii) Legislative and judicial branch employees when their employers determine that it is impossible or unreasonable to reemploy them;

(iii) National Guard technicians when the Adjutant General of a State determines that it is impossible or unreasonable to reemploy them; and

(iv) Employees of the intelligence agencies (defined in 5 U.S.C. 2302(a)(2)(C)(i)) when their agencies determine that it is impossible or unreasonable to reemploy them.

(2) OPM will determine if a vacant position equivalent (in terms of pay, grade, and status) to the one time the individual left exists, for which the individual is qualified, in the commuting area in which he or she was employed immediately before entering the uniformed services. If such a vacancy exists, OPM will order the agency to place the individual. If no such position is available, the individual may elect to be placed in a lesser position in the commuting area, or OPM will attempt to place the individual in an equivalent position in another geographic location determined by OPM. If the individual declines an offer of equivalent employment, he or she has no further restoration rights.

(b) Employee returning from compensable injury.

OPM will provide placement assistance to an employee with restoration rights in the executive, legislative, or judicial branches who cannot be placed in his or her former agency and who either has competitive status or is eligible to acquire it under 5 U.S.C. 3304(C). If the employee's agency is abolished and its functions are not transferred, or it is not possible for the employee to be restored in his or her former agency, OPM will provide placement assistance by enrolling the employee in OPM's Interagency Placement Program (or its successor) under part 330 of this chapter. This paragraph does not apply to an employee serving under a temporary appointment pending establishment of a register (TAPER).

Subpart B—Uniformed Service

§ 353.201 Introduction.

The Uniformed Services Employment and Reemployment Rights Act of 1994 revised and strengthened the existing Veterans' Reemployment Rights law, made the Department of Labor responsible for investigating employee complaints, required OPM to place certain returning employees in other agencies, established a separate restoration rights program for employees of the intelligence agencies, and altered the appeals rights process. The new law applies to persons exercising restoration rights on or after December 12, 1994.
§ 353.202 Discrimination and acts of reprisal prohibited.

A person who seeks or holds a position in the Executive branch may not be denied hiring, retention in employment, or any other incident or advantage of employment because of any application, membership, or service in the uniformed services. Furthermore, an agency may not take any reprisal against an employee for taking any action to enforce a protection, assist or participate in an investigation, or exercise any right provided for under chapter 43 of title 38, United States Code.

§ 353.203 Length of service.

(a) Counting service after the effective date of USERRA (12/12/94). To be entitled to restoration rights under this part, cumulative service in the uniformed services while employed by the Federal Government may not exceed 5 years. However, the 5-year period does not include any service—

(1) That is required beyond 5 years to complete an initial period of obligated service;

(2) During which the individual was unable to obtain orders releasing him or her from service in the uniformed services before expiration of the 5-year period, and such inability was through no fault of the individual;

(3) Performed as required pursuant to 10 U.S.C. 10147, under 32 U.S.C. 502(a) or 503, or to fulfill additional training requirements determined and certified in writing by the Secretary of the military department concerned to be necessary for professional development or for completion of skill training or retraining;

(4) Performed by a member of a uniformed service who is:

(i) Ordered to or retained on active duty under sections 12301(a), 12301(g), 12302, 12304, 12305, or 688 of title 10, United States Code, or under 14 U.S.C. 331, 332, 359, 360, 367, or 712;

(ii) Ordered to or retained on active duty (other than for training) under any provision of law during a war or during a national emergency declared by the President or the Congress;

(iii) Ordered to active duty (other than for training) in support, as determined by the Secretary of the military department concerned, of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304;

(iv) Ordered to active duty in support, as determined by the Secretary of the military department concerned, of a critical mission or requirement of the uniformed services, or

(v) Called into Federal service as a member of the National Guard under chapter 15 or under section 12406 of title 10, United States Code.

(b) Counting service prior to the effective date of USERRA. In determining the 5-year total that may not be exceeded for purposes of exercising restoration rights, service performed prior to December 12, 1994, is considered only to the extent that it would have counted under the previous law (the Veterans' Reemployment Rights statute). For example, the service of a National Guard technician who entered on an Active Guard Reserve (AGR) tour under section 502(f) of title 32, United States Code, was not counted toward the 4-year time limit under the previous statute because it was specifically considered active duty for training. However, title 32, section 502(f) AGR service is not exempt from the cumulative time limits allowed under USERRA and service after the effective date counts under USERRA rules. Thus, if a technician was on a 32 U.S.C. 502(f) AGR tour on October 13, 1994, (the date USERRA was signed into law), but exercised restoration rights after December 11, 1994, (the date USERRA became fully effective), AGR service prior to December 12 would not count in computing the 5-year total, but all service beginning with that date would count.

(c) Nature of Reserve service and resolving conflicts. An employee who is a member of the Reserve or National Guard has a dual obligation—to the military and to his or her employer. Given the nature of the employee's service obligation, some conflict with job demands is often unavoidable and a good-faith effort on the part of both the employee and the agency is needed to minimize conflict and resolve differences. Some accommodation may be necessary by both parties. Most Reserve component members are required, as a minimum, to participate in
drills for 2 days each month and in 2 weeks of active duty for training per year. But some members are required to participate in longer or more frequent training tours. USERRA makes it clear that the timing, frequency, duration, and nature of the duty performed is not an issue so long as the employee gave proper notice, and did not exceed the time limits specified. However, to the extent that the employee has influence upon the timing, frequency, or duration of such training or duty, he or she is expected to use that influence to minimize the burden upon the agency. The employee is expected to provide the agency with as much advance notice as possible whenever military duty or training will interfere with civilian work. When a conflict arises between the Reserve duty and the legitimate needs of the employer, the agency may contact appropriate military authorities to express concern. Where the request would require the employee to be absent from work for an extended period, during times of acute need, or when, in light of previous leaves, the requested leave is cumulatively burdensome, the agency may contact the military commander of the employee’s military unit to determine if the military duty could be rescheduled or performed by another member. If the military authorities determine that the military duty cannot be rescheduled or cancelled, the agency is required to permit the employee to perform his or her military duty.

(d) Mobilization authority. By law, members of the Selected Reserve (a component of the Ready Reserve), can be called up under a presidential order for purposes other than training for as long as 270 days. If the President declares a national emergency, the remainder of the Ready Reserve—the Individual Ready Reserve and the Inactive National Guard—may be called up. The Ready Reserve as a whole is subject to as much as 24 consecutive months of active duty in a national emergency declared by the President.

§ 353.204 Notice to employer.

To be entitled to restoration rights under this part, an employee (or an appropriate officer of the uniformed service in which service is to be performed) must give the employer advance written or verbal notice of the service except that no notice is required if it is precluded by military necessity or, under all relevant circumstances, the giving of notice is otherwise impossible or unreasonable.

§ 353.205 Return to duty and application for reemployment.

Periods allowed for return to duty are based on the length of time the person was performing service in the uniformed services, as follows:

(a) An employee whose uniformed service was for less than 31 days, or who was absent for the purpose of an examination to determine fitness for the uniformed services, is required to report back to work not later than the beginning of the first regularly scheduled work day on the first full calendar day following completion of the period of service and the expiration of 8 hours after a period allowing for the safe transportation of the employee from the place of service to the employee’s residence, or as soon as possible after the expiration of the 8-hour period if reporting within the above period is impossible or unreasonable through no fault of the employee.

(b) If the service was for more than 30 but less than 181 days, the employee must submit an application for reemployment not later than 14 days after completing the period of service. (If submitting the application is impossible or unreasonable through no fault of the individual, it must be submitted the next full calendar day when it becomes possible to do so.)

(c) If the period of service was for more than 180 days, the employee must submit an application for reemployment not later than 90 days after completing the period of service.

(d) An employee who is hospitalized or convalescing from an injury or illness incurred in, or aggravated during uniformed service is required to report for duty at the end of the period that is necessary for the person to recover, based on the length of service as discussed in paragraphs (a), (b), and (c) of this section, except that the period of recovery may not exceed 2 years (extended by the minimum time required
§ 353.206 Documentation upon return.

Upon request, a returning employee who was absent for more than 30 days, or was hospitalized or convalescing from an injury or illness incurred in or aggravated during the performance of service in the uniformed services, must provide the agency with documentation that establishes the timeliness of the application for reemployment, and length and character of service. If documentation is unavailable, the agency must restore the employee until documentation becomes available.

§ 353.207 Position to which restored.

(a) Timing. An employee returning from the uniformed services following an absence of more than 30 days is entitled to be restored as soon as possible after making application, but in no event later than 30 days after receipt of the application by the agency.

(b) Nondisabled. If the employee's uniformed service was for less than 91 days, he or she must be employed in the position for which qualified that he or she would have attained if continuously employed. If not qualified for this position after reasonable efforts by the agency to qualify the employee, he or she is entitled to be placed in the position he or she left. For service of 91 days or more, the agency has the option of placing the employee in a position of like seniority, status, and pay. (NOTE: Upon reemployment, a term employee completes the unexpired portion of his or her original appointment.) If unqualified (for any reason other than disability incurred in or aggravated during service in the uniformed services) after reasonable efforts by the agency to qualify the employee for such position or the position the employee left, he or she must be restored to any other position of lesser status and pay for which qualified, with full seniority.

(c) Disabled. An employee with a disability incurred in or aggravated during uniformed service and who, after reasonable efforts by the agency to accommodate the disability, is entitled to be placed in another position for which qualified that will provide the employee with the same seniority, status, and pay, or the nearest approximation consistent with the circumstances in each case. The agency is not required to reemploy a disabled employee if, after making due efforts to accommodate the disability, such reemployment would impose an undue hardship on the agency.

(d) Two or more persons entitled to restoration in the same position. If two or more persons are entitled to restoration in the same position, the one who left the position first has the prior right to restoration in that position. The other employee(s) is entitled to be placed in a position as described in paragraphs (b) and (c) of this section.

(e) Relationship to an entitlement based on veterans' preference. An employee's right to restoration under this part does not entitle the person to retention, preference, or displacement rights over any person with a superior claim based on veterans' preference.

§ 353.208 Use of paid leave during uniformed service.

An employee performing service with the uniformed services must be permitted, upon request, to use any accrued annual leave (or sick leave, if appropriate), or military leave during such service. (Note, however, that under 5 U.S.C. 6323, military leave cannot be used for inactive duty, e.g., drills.)

§ 353.209 Retention protections.

(a) During uniformed service. An employee may not be demoted or separated (other than military separation) while performing duty with the uniformed services except for cause. (Reduction in force is not considered "for cause" under this subpart.) He or she is not a "competing employee" under §351.404 of this chapter. If the employee's position is abolished during such absence, the agency must reassign the
(b) Upon reemployment. Except in the case of an employee under time-limited appointment who finishes out the unexpired portion of his or her appointment upon reemployment, an employee reemployed under this subpart may not be discharged, except for cause—

(1) If the period of uniformed service was more than 180 days, within 1 year; and

(2) If the period of uniformed service was more than 30 days, but less than 181 days, within 6 months.

§ 353.210 Department of Labor assistance to applicants and employees.

USERRA requires the Department of Labor’s Veterans’ Employment and Training Service (VETS) to provide employment and reemployment assistance to any Federal employee or applicant who requests it. VETS staff will attempt to informally resolve employment disputes brought to them. If informal dispute resolution proves unsuccessful, VETS may ask the Office of the Special Counsel to represent the individual in an appeal before the Merit Systems Protection Board (MSPB).

§ 353.211 Appeal rights.

An individual who believes an agency has not complied with the provisions of law and this part relating to the employment or reemployment of the person by the agency may—

(a) File a complaint with the Department of Labor, as noted in §353.210, or

(b) Appeal directly to MSPB if the individual chooses not to file a complaint with the Department of Labor, or is informed by either Labor or the Office of the Special Counsel that they will not pursue the case.

Subpart C—Compensable Injury

§ 353.301 Restoration rights.

(a) Fully recovered within 1 year. An employee who fully recovers from a compensable injury within 1 year from the date eligibility for compensation began (or from the time compensable disability recurs if the recurrence begins after the employee resumes regular full-time employment with the United States), is entitled to be restored immediately and unconditionally to his or her former position or an equivalent one. Although these restoration rights are agencywide, the employee’s basic entitlement is to the former position or equivalent in the local commuting area the employee left. If a suitable vacancy does not exist, the employee is entitled to displace an employee occupying a continuing position under temporary appointment or tenure group III. If there is no such position in the local commuting area, the agency must offer the employee a position (as described above) in another location. This paragraph also applies when an injured employee accepts a lower-grade position in lieu of separation and subsequently fully recovers. A fully recovered employee is expected to return to work immediately upon the cessation of compensation.

(b) Fully recovered after 1 year. An employee who separated because of a compensable injury and whose full recovery takes longer than 1 year from the date eligibility for compensation began (or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States), is entitled to priority consideration, agencywide, for restoration to the position he or she left or an equivalent one provided he or she applies for reappointment within 30 days of the cessation of compensation. Priority consideration is accorded by entering the individual on the agency’s reemployment priority list for the competitive service or reemployment list for the excepted service. If the individual cannot be placed in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency. (See parts 302 and 330 of this chapter for more information on how this may be accomplished for the excepted and competitive services, respectively.) This subpart also applies when an injured employee accepts a lower graded position in lieu of separation and subsequently fully recovers.

(c) Physically disqualified. An individual who is physically disqualified for
§ 353.302 Retention protections. An injured employee enjoys no special protection in a reduction in force. Separation by reduction in force or for cause while on compensation means the individual has no restoration rights.

§ 353.303 Restoration rights of TAPER employees. An employee serving in the competitive service under a temporary appointment pending establishment of a register (TAPER) under §316.201 of this chapter (other than an employee serving in a position classified above GS-15), is entitled to be restored to the position he or she left or an equivalent one in the same commuting area.

§ 353.304 Appeals to the Merit Systems Protection Board. (a) Except as provided in paragraphs (b) and (c) of this section, an injured employee or former employee of an agency in the executive branch (including the U.S. Postal Service and the Postal Rate Commission) may appeal to the MSPB an agency’s failure to restore, improper restoration, or failure to return an employee following a leave of absence. All appeals must be submitted in accordance with MSPB’s regulations.

(b) An individual who fully recovers from a compensable injury more than 1 year after compensation begins may appeal to MSPB as provided for in parts 302 and 330 of this chapter for excepted and competitive service employees, respectively.

(c) An individual who is partially recovered from a compensable injury may appeal to MSPB for a determination of whether the agency is acting arbitrarily and capriciously in denying restoration. Upon reemployment, a partially recovered employee may also appeal the agency’s failure to credit time spent on compensation for purposes of rights and benefits based upon length of service.

PART 359—REMOVAL FROM THE SENIOR EXECUTIVE SERVICE; GUARANTEED PLACEMENT IN OTHER PERSONNEL SYSTEMS

Subpart A—[Reserved]

Subpart B—General Provisions Sec. 359.201 Regulatory requirements. 359.202 Definitions.

Subpart C—Removal of Career Appointees for Failure to Be Recertified Sec. 359.301 Coverage. 359.302 Notice requirements. 359.303 Restrictions. 359.304 Appeals.

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Subpart E—Removal of Career Appointees for Less Than Fully Successful Executive Performance

§ 359.501 General.
§ 359.502 Procedures.
§ 359.503 Restrictions.
§ 359.504 Appeals.

Subpart F—Removal of Career Appointees as a Result of Reduction in Force

§ 359.601 General.
§ 359.602 Agency reductions in force.
§ 359.603 OPM priority placement.
§ 359.604 Removal from the SES and placement rights outside the SES.
§ 359.605 Notice requirements.
§ 359.606 Appeals.
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§ 359.608 Transfer of function.

Subpart G—Guaranteed Placement

§ 359.701 Coverage.
§ 359.702 Placement rights.
§ 359.703 Responsibility for placement.
§ 359.704 Restrictions.
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Subpart H—Furloughs in the Senior Executive Service

§ 359.801 Agency authority.
§ 359.802 Definitions.
§ 359.803 Competition.
§ 359.804 Length of furlough.
§ 359.805 Appeals.
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§ 359.807 Records.

Subpart I—Removal of Noncareer and Limited Appointees and Reemployed Annuitants

§ 359.901 Coverage.
§ 359.902 Conditions of removal.

Authority: 5 U.S.C. 1302 and 3596, unless otherwise noted.

Source: 54 FR 18876, May 3, 1989, unless otherwise noted.

Subpart A [Reserved]

Subpart B—General Provisions

§ 359.201 Regulatory requirements.

This part contains the regulations of the Office of Personnel Management (OPM) that implement subchapter V of chapter 35 of title 5, United States Code, on the Senior Executive Service (SES).

§ 359.202 Definitions.

Agency, Senior Executive Service position, senior executive, career appointee, limited emergency appointee, limited term appointee, and noncareer appointee, are defined in 5 U.S.C. 3132(a).

Probation and probationary period mean the 1-year probation required by 5 U.S.C. 3393(d) upon initial career appointment to the SES.

Reemployed annuitant means an individual who is receiving an annuity under the Civil Service Retirement System or the Federal Employees’ Retirement System on the basis of his or her former Federal service. A reemployed annuitant serves at the pleasure of the appointing authority.

§ 359.301 Coverage.

(a) This subpart covers a career appointee who has failed to be recertified under § 317.504 of this chapter.

(b) This subpart does not cover, however, a career appointee who is serving as a reemployed annuitant. See subpart I of this part for removal of a reemployed annuitant.

§ 359.302 Notice requirements.

(a) The agency shall notify the career appointee in writing before the effective date of the action. If the appointee has completed the SES probationary period, or was not required to serve a probationary period, the notice shall be at least 30 calendar days before the effective date of the removal.

(b) The notice shall advise the appointee of:

(1) The basis for the action;

(2) The appointee’s placement rights under subpart G of this part—the position to which the appointee will be assigned shall be identified either in the advance notice or in a supplementary notice issued no later than 10 calendar days before the effective date of the action;

(3) The appointee’s right to appeal to the Merit Systems Protection Board,
§ 359.303 Restrictions.

(a) Removal from the SES under this subpart may not be made effective within 120 days after—

(1) The appointment of a new agency head; or

(2) The appointment in the agency of the career appointee’s most immediate supervisor who—

(i) Is noncareer appointee; and

(ii) Has the authority to remove the career appointee.

(b) For purposes of this section, a noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C, or an appointee in an Executive Schedule or equivalent position other than a career Executive Schedule or equivalent position.


§ 359.304 Appeals.

Removal under this subpart is appealable to the Merit Systems Protection Board under 5 U.S.C. 7701. Under 5 U.S.C. 7701(c)(1)(A), the decision of the agency shall be sustained if it is supported by substantial evidence, which is defined in the Board’s regulations at 5 CFR 1201.56(c). The burden is on the agency to show that there is substantial evidence to support its action. Once such substantial evidence is demonstrated, the burden shifts to the appellant to refute the agency’s case that there was substantial evidence or to make a demonstration under 5 U.S.C. 7701(c)(2).

Subpart D—Removal of Career Appointees During Probation

§ 359.401 General exclusions.

This subpart does not apply to the removal of a career appointee during probation when—

(a) The action is initiated under 5 U.S.C. 1206(g) or 5 U.S.C. 7542;

(b) The removal is effected under subpart C of this part for failure to be re-certified; or

(c) The appointee is a reemployed annuitant. See subpart I of this part for removal of a reemployed annuitant.

[56 FR 172, Jan. 3, 1991]


(a) Coverage. This section covers the removal of a career appointee from the SES during the probationary period for unacceptable performance.

(b) Basis for action. A removal under this section need not be based upon a final rating under the agency’s SES performance appraisal system established under subpart C of part 430 of this chapter. Even if a removal is based on such a rating, the removal action is taken under this section.

(c) Procedures. The agency shall notify the appointee in writing before the effective date of the action. The notice shall, as a minimum—

(1) State the agency’s conclusions as to the inadequacies of the appointee’s performance;

(2) State whether the appointee has placement rights under § 359.701 and, if so, identify the position to which the appointee will be assigned; and

(3) Show the effective date of the action.

§ 359.403 Removal: Conduct.

(a) Coverage. (1) This section covers the removal of a career appointee from the SES during the probationary period for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(2) This section does not apply, however, when the appointee was covered under 5 U.S.C. 7511 immediately before appointment to the SES. In that case, the removal is subject to the provisions of part 752, subpart F, of this chapter.

(b) Procedures. The agency shall notify the appointee in writing before the effective date of the action. The notice shall, as a minimum—
Office of Personnel Management § 359.406

(1) State the basis for the removal action (including the act(s) of misconduct, neglect of duty, or malfeasance if those factors are involved); and (2) Show the effective date of the action.

§ 359.404 Removal: Conditions arising before appointment.

(a) Coverage. (1) This section covers the removal of a career appointee from the SES during the probationary period when the action is based in whole or in part on conditions arising before the appointment.

(b) Procedures. (1) The agency shall give the appointee an advance written notice stating the specific reasons for the proposed removal.

(c) Basis for action. The appointee must have been identified for removal from the SES under competitive procedures established by the agency in accordance with the requirements of 5 U.S.C. 3595(a). Removal action shall be taken under 5 U.S.C. 3592(a).

(d) Procedures. The agency shall notify the appointee in writing before the effective date of the action. The notice shall state, as a minimum—

(1) Whether the appointee has placement rights under § 359.701 to a position outside the SES and, if so, the position to which the appointee will be assigned;

(2) The effective date of the action;

(3) The appointee's appeal rights, including the time limit for appeal and the location of the Merit System Protection Board office to which an appeal should be sent; and (4) Such other information as may be required by OPM.

§ 359.406 Restrictions.

(a) Removal from the SES under §§ 359.402 through 359.404 may not be made effective within 120 days after—

(1) The appointment of a new agency head; or

(2) The appointment in the agency of the career appointee's most immediate supervisor who—

(i) Is a noncareer appointee; and

(ii) Has the authority to remove the career appointee.

(b) For purposes of this section, a noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C, or an appointee in an Executive Schedule or equivalent position other than a career Executive Schedule or equivalent position.

(c) The restrictions in paragraph (a) of this section do not apply—

(1) When the career appointee has received a final rating of unsatisfactory under the performance appraisal system established by the agency under subchapter II of chapter 43 of title 5, United States Code, before the appointment of a new agency head or the appointment of the career appointee's most immediate noncareer supervisor who has the authority to remove the career appointee;

(2) To a disciplinary action initiated before the appointment of a new agency head or the appointment of the career appointee's most immediate noncareer supervisor who has the authority to remove the career appointee;

(3) To a disciplinary action when there is a reasonable cause to believe that the career appointee has committed a crime for which a sentence of imprisonment can be imposed; or

(4) To a disciplinary action when the circumstances are such that retention of the career appointee—

(i) May pose a threat to the appointee or others;

(ii) May result in loss of or damage to Government property; or

(iii) May otherwise jeopardize legitimate Government interests.
§ 359.407  
(d) The following procedures must be observed when an agency invokes an exception to the 120-day restriction under paragraphs (c)(3) or (c)(4) of this section: 
(1) The agency shall include in the notice the reasons for invoking the exception.
(2) The appointee shall be given a reasonable time, but no less than 7 days, to respond regarding the propriety of the use of the exception.
(3) The agency shall give the appointee a notice of decision on the propriety of the use of the exception at or before the time the action will be effective.
(4) When circumstances require immediate action, the agency may place the appointee in a nonduty status with pay for such time as necessary to effect the action.
(e) The imposition of the 120-day moratorium does not extend the probationary period.

§ 359.402 Appeals.
(a) Removal under § 359.402, 359.403, or 359.404 is not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.
(b) Removal under § 359.405 is appealable to the Merit Systems Protection Board under 5 U.S.C. 7701 as to whether the reduction in force complies with the competitive procedures required under 5 U.S.C. 3595(a).

Subpart E—Removal of Career Appointees for Less Than Fully Successful Executive Performance

§ 359.501 General.
(a) Coverage. (1) This subpart covers—
(i) A career appointee who has completed the probationary period in the SES; and
(ii) A career appointee who is not required to serve a probationary period in the SES.
(2) This subpart does not cover, however, a career appointee who is serving as a reemployed annuitant. See subpart I of this part for removal of a reemployed annuitant.
(b) Definitions. (1) Final rating means the rating of record made by an appointing authority under the SES performance appraisal system in accordance with the requirements of 5 U.S.C. 4314(c)(3) and part 430, subpart C, of this chapter.
(2) A less than fully successful final rating means a rating of unsatisfactory or minimally satisfactory.
(c) Optional removal from the SES. The agency may remove a career appointee from the SES after the appointee has been given one final rating of unsatisfactory.
(d) Mandatory removal from the SES. The agency must remove a career appointee from the SES after—
(1) The appointee has been given two final ratings of unsatisfactory within 5 consecutive years; or
(2) The appointee has been given two final ratings of less than fully successful within 3 consecutive years.

§ 359.502 Procedures.
(a) Notice. The agency shall notify the career appointee in writing at least 30 calendar days before the effective date of the action. The notice shall advise the appointee of—
(1) The basis for the action;
(2) The appointee's placement rights under subpart G of this part—the position to which the appointee will be assigned shall be identified either in this advance notice or in a supplementary notice issued no later than 10 calendar days before the effective date of the action;
(3) The appointee's right to request an informal hearing from the Merit Systems Protection Board;
(4) The effective date of the removal action; and
(5) When applicable, the appointee's eligibility for immediate retirement under 5 U.S.C. 8336(h) or 8414(a).
(b) Informal hearing. (1) A career appointee being removed from the SES under this section shall, at least 15 days before the effective date of the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board. The appointee shall submit the request for an informal hearing to the Board. This request may be made
§ 359.601 General.  
(a) Coverage. (1) This subpart covers the removal of a career appointee from the SES as a result of a reduction in force.  
(2) This subpart does not cover, however, a career appointee who is serving as a reemployed annuitant. See subpart I of this part for removal of a reemployed annuitant.  
(b) Definitions—(1) Probationary period is defined in § 359.202 of this part.  
(2) Reduction in force is defined in 5 U.S.C. 3595(d) as including “the elimination or modification of a position due to a reorganization, due to a lack of funds or curtailment of work, or due to any other factor.”  
(3) Agency in this subpart means an executive department or an independent establishment.  
(c) Agency procedures. An agency must have issued written procedures before conducting a reduction in force. A copy of the procedures shall be provided OPM upon issuance.  
§ 359.602 Agency reductions in force.  
(a) Competitive procedures. (1) This paragraph applies to all SES career appointees in the agency, including appointees serving a probationary period.  
(2) An agency shall establish competitive procedures in writing to determine who will be removed from the SES in any reduction in force of career appointees within the agency. Such competitive procedures shall be based primarily on performance. When performance ratings are used, they shall be the final ratings under 5 CFR part 430, subpart C.  
(3) An appointee who has completed the probationary period must be retained over an appointee who has not completed the probationary period if they both have the same retention standing.  
(4) Competitive procedures are not required if an agency is being abolished, without a transfer of functions,
§ 359.603 OPM priority placement.

(a) Agency certification. (1) If there is no vacant SES position within the agency for which an appointee covered by §359.602(b) is qualified, the agency head, or the acting agency head, shall certify to OPM in writing that no such position is available. This certification may not be delegated below the Assistant Secretary level in a department, or an equivalent level above the director of personnel in other agencies.

(2) The 45-day period during which OPM will attempt to place the appointee begins on the day the certification is acknowledged by OPM.

(3) It is the continuing responsibility of an agency that has a surplus career appointee to place the appointee in any vacant SES position in the agency for which the appointee is qualified, even after the appointee is certified to OPM.

(b) OPM authority. As provided by §U.S.C. 3595(b)(3), OPM may require an agency to take any action that OPM considers necessary to carry out a placement.

(c) OPM referrals. (1) OPM may formally refer a career appointee to an agency for a specific SES vacancy or general priority consideration. Such a referral may not become a part of the regular competitive staffing process. The appointee must be considered by the agency for a noncompetitive SES appointment.

(2) Any objection by the agency to the qualifications of the appointee must be based on the professional/technical qualifications in the standard for the position. An agency may not rely solely on lack of agency-specific experience for an objection based on lack of professional/technical qualifications if the appointee is otherwise qualified.

(d) Agency response. (1) In order to expedite placement of surplus career appointees, an agency shall respond to an OPM referral within the time period prescribed by OPM.

(2) If an agency fails to place a referred career appointee in an SES position because of objection to the appointee's qualifications or because of any other reason, the agency response must be in writing and must be signed by the agency head, or the acting agency head in the absence of the agency head. The response may not be delegated below the Assistant Secretary level in a department, or an equivalent level above the director of personnel in other agencies.

(3) If an agency cancels a position while a referral to the position is pending, the appointee will be entitled to priority consideration for the position if it or a successor position is reestablished in the SES within 1 year of the cancellation date and the appointee has not been placed in another SES position.

(e) Corrective action. If an agency fails to provide bona fide priority consideration, OPM may order appropriate corrective action.

(f) Declination by employee. If a career appointee declines a reasonable offer of placement, OPM's placement efforts will cease. The appointee may be removed from the SES at the expiration of the agency notice period.

§ 359.604 Removal from the SES and placement rights outside the SES.

(a) If a probationary appointee is identified for reduction in force under § 359.602(a), removal action is taken under § 359.405. Placement rights outside the SES are covered under subpart G of this part.

(b) If a career appointee who has completed the probationary period, or who did not have to serve one, is identified for reduction in force under § 359.602(a) and is not placed elsewhere in the SES under § 359.602(b) or § 359.603, or declines a placement offer under § 359.603, removal action is taken under § 359.604(b). Placement rights outside the SES are covered under subpart G of this part.

§ 359.605 Notice requirements.

(a) Each career appointee subject to removal under § 359.604(b) is entitled to a specific, written notice at least 45 calendar days before the effective date of the removal. The notice shall state, as a minimum—

1. The action to be taken and its prospective effective date;
2. The nature of the competition, including the appointee’s competitive area, if less than the agency, and standing on the retention register;
3. The place where the appointee may inspect the regulations and records pertinent to the action;
4. Placement rights within the agency and through OPM, including how the employee can apply for OPM placement assistance; and
5. The appointee’s appeal rights, including the time limit for appeal and the location of the Merit Systems Protection Board office to which an appeal should be sent.

(b) A career appointee who has received a notice under paragraph (a) of this section is entitled to a second notice in writing at least 1 day before removal from the SES. The notice shall state, as a minimum—

1. The basis for the removal, i.e., 5 U.S.C. 3595(b)(5) if the basis is expiration of the 45-day OPM placement period, or 5 U.S.C. 3595(b)(4) if the basis is declination of a reasonable offer of placement, in which case identify the position offered and the date on which it was declined;
2. The effective date of the removal;
3. Placement rights outside the SES and, when applicable, the appointee’s eligibility for discontinued service retirement in lieu of placement; and
4. Reminder of the appointee’s appeal rights.

[60 FR 6389, Feb. 2, 1995]

§ 359.606 Appeals.

A career appointee may appeal to the Merit Systems Protection Board whether the reduction in force complies with the competitive procedures in § 359.602(a).

§ 359.607 Records.

Each agency shall maintain current records needed to determine the retention standing of its competing appointees. The agency shall allow the inspection of its retention registers and related records by an appointee to the extent that they have a bearing on the appointee’s situation. The agency shall preserve intact all registers and records relating to a reduction-in-force action for at least 2 years from the effective date of the action.

§ 359.608 Transfer of function.

(a) Transfer of function means the transfer of the performance of a continuing function from one agency to one or more other agencies.

(b) A career appointee is entitled to accompany his or her function to the new agency without any change in tenure if the alternative is removal from the SES in the current agency under reduction in force.

Subpart G—Guaranteed Placement

§ 359.701 Coverage.

This subpart covers career appointees, other than reemployed annuitants, who are removed from the SES under any of the following conditions:

(a) Removal during the probationary period under subpart C of this part or under subpart D of this part for other than misconduct, neglect of duty, malfeasance, or other disciplinary reasons under § 359.403, § 359.404, or part 752, subpart F, of this chapter, if at the time of appointment to the SES the individual
§ 359.702 Placement rights.

(a) An appointee covered by this subpart is entitled to be placed in a vacant civil service position (other than an SES position) in any agency that is—

(1) A continuing position at GS-15 or above, or equivalent, that will last at least three months; and

(2) A position for which the appointee meets the qualifications requirements.

(b) A probationary appointee, or a nonprobationary appointee who at the time of appointment to the SES held a career or career-conditional appointment (or an appointment of equivalent tenure, as defined in §359.701(a)), is entitled to be placed in a position of tenure equivalent to that of the appointment held at the time of appointment to the SES. This tenure requirement does not apply—

(1) If the agency taking the removal action does not have a position of equivalent tenure for which the appointee meets the qualifications requirements; or

(2) If the appointee is willing to accept a position having a different tenure.

§ 359.703 Responsibility for placement.

The agency taking the removal action is responsible for placing the appointee in an appropriate position within the agency, or for arranging a transfer to an appropriate position in another agency. Any transfer must be mutually acceptable to the appointee and the gaining agency.

§ 359.704 Restrictions.

Placement of an appointee under this subpart shall not cause the separation or reduction in grade of any other employee.

§ 359.705 Pay.

(a) An appointee placed under this subpart is entitled to receive basic pay at the highest of—

(1) The rate of basic pay in effect for the position in which the appointee is being placed;

(2) The rate of basic pay currently in effect for the position that the appointee held in the civil service immediately before being appointed to the SES; or

(3) The rate of basic pay in effect for the appointee immediately before removal from the SES.

(b) An employee who is placed under this subpart in a position outside the SES in another agency is entitled to receive basic pay under the provisions of this section.

(c) An employee who is placed under this subpart in a General Schedule position is not subject to the limitation on General Schedule basic pay plus locality-based comparability payments in 5 U.S.C. 5304(g)(1) of level IV of the Executive Schedule.

(d) An employee receiving basic pay under paragraph (a)(2) or (a)(3) of this section shall have future pay adjusted in accordance with 5 U.S.C. 3594(c)(2).

(e) Pay received under this section shall terminate if:

(1) The employee has a break in service of 1 workday or more; or
§ 359.801 Agency authority.

This subpart sets the conditions under which an agency may furlough career appointees in the Senior Executive Service. The furlough of a noncareer, limited term, or limited emergency appointee is not subject to this subpart. The furlough of a reemployed annuitant holding a career appointment also is not subject to the subpart.

§ 359.802 Definitions.

For the purpose of this subpart, furlough means the placing of an appointee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

§ 359.803 Competition.

Any furlough for more than 30 calendar days, or for more than 22 workdays if the furlough does not cover consecutive calendar days, shall be made under competitive procedures established by the agency. The procedures shall be made known to the SES members in the agency.

§ 359.804 Length of furlough.

A furlough may not extend more than one year. It may be made only when the agency intends to recall the appointee within one year.

§ 359.805 Appeals.

A career appointee who has been furloughed and who believes this subpart or the agency’s procedures have not been correctly applied may appeal to the Merit Systems Protection Board under provisions of the Board’s regulations.

§ 359.806 Notice.

(a) An appointee is entitled to a 30 days’ advance written notice of a furlough. The full notice period may be shortened, or waived, only in the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities.

(b) The written notice shall advise the appointee of:

(1) The reason for the agency decision to take the furlough action.

(2) The expected duration of the furlough and the effective dates;

(3) The basis for selecting the appointee for furlough when some but not all Senior Executive Service appointees in a given organizational unit are being furloughed;

(4) The reason if the notice period is less than 30 days;

(5) The place where the appointee may inspect the regulations and records pertinent to the action;

(6) The appointee’s appeal rights, including the time limit for the appeal and the location of the Merit Systems Protection Board office to which the appeal should be sent.

§ 359.807 Records.

The agency shall preserve all records relating to an action under this subpart for at least one year from the effective date of the action.

Subpart I—Removal of Noncareer and Limited Appointees and Reemployed Annuitants

§ 359.901 Coverage.

(a) This subpart covers the removal from the SES of—

(1) A noncareer appointee;

(2) A limited emergency or a limited term appointee; and

(3) A reemployed annuitant holding any type of appointment under the SES.

(b) Coverage does not include, however, a limited emergency or a limited term appointee who is being removed for disciplinary reasons and who is covered by 5 CFR 752.601(c)(2).
§ 359.902 Conditions of removal.

(a) Authority. The agency may remove an appointee subject to this subpart at any time.

(b) Notice. The agency shall notify the appointee in writing before the effective date of the removal.

(c) Placement rights. An appointee covered by this subpart is not entitled to the placement rights provided for career appointees under subpart G of this part.

(d) Appeals. Actions taken under this subpart are not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

PART 362—PRESIDENTIAL MANAGEMENT INTERN PROGRAM

Subpart A—Purpose and Definitions

§ 362.101 Purpose.

The Presidential Management Intern (PMI) Program is designed to attract Federal service outstanding men and women from a wide variety of academic disciplines who have a clear interest in, and commitment to, a career in the analysis and management of public policies and programs.

§ 362.102 Definitions.

(a) A Presidential Management Intern is appointed in the excepted service under § 213.3102(ii) of this chapter, in an executive agency or department. The individual must have completed a graduate course of study at a qualifying college or university, received the nomination of the dean or academic program director, successfully completed an OPM-administered assessment process, and been selected and appointed by an agency for a 2-year Presidential Management Internship.

(b) A qualifying college or university is an academic institution formally accredited by an accrediting organization recognized by the Secretary of the U.S. Department of Education (34 CFR part 602).

Subpart B—Program Administration

§ 362.201 Nomination and selection.

(a) Eligibility. Individuals eligible to be nominated for the Program are graduate students from a variety of academic disciplines completing or expecting to complete, during the current academic year, an advanced degree from a qualifying college or university. These individuals must demonstrate an exceptional ability, a clear interest in, and a commitment to a career in the analysis and management of public policies and programs.

(b) Nomination procedure. (1) The college or university making nominations for the Program shall establish a competitive nomination process to ensure that all eligible students are aware of the PMI Program and how to apply for nomination. The process will also ensure that applicants receive careful and thorough review, and that all receive equal opportunity for nomination.

(2) Students must be nominated by the dean, chairperson, or academic program director.

(3) Students who apply to be nominated must be rated qualified or not qualified for nomination. Nominations are made by school officials through completion of the PMI application form.

(4) Students eligible for veterans' preference who apply for nomination and are found qualified must be nominated. Based on the documentation provided by the student, the college or university must determine preliminary eligibility for veterans' preference.
§ 362.204 Resignation, termination, and reduction in force.

(a) Resignation. An employee who resigns during the internship does not have reinstatement eligibility for competitive service positions and cannot be re-interned to the PMI Program.
§ 362.205 Termination. The appointment of a Presidential Management Intern expires at the end of the 2-year internship period. At that time, the employing agency may, with no break in service, convert the intern to a career or career-conditional appointment in accordance with 5 CFR 315.708, or extend the internship in accordance with §362.202(b). If neither action is taken, the PMI appointment terminates.

(a) Termination. The appointment of a Presidential Management Intern expires at the end of the 2-year internship period. At that time, the employing agency may, with no break in service, convert the intern to a career or career-conditional appointment in accordance with 5 CFR 315.708, or extend the internship in accordance with §362.202(b). If neither action is taken, the PMI appointment terminates.

(c) Reduction in force. Presidential Management Interns are in the excepted service Tenure Group II for purposes of §351.502 of this chapter.

§ 362.206 Movement of interns between departments or agencies.

To move from one agency to another during the internship, the intern must separate from the current agency and be reappointed under PMI appointment by the new employing agency without a break in service. The intern does not begin a new 2-year internship period; the time previously served under the PMI Program counts toward the completion of the 2-year period. The new employing agency must notify the OPM PMI Program office of the action.

§ 362.206 Career development.

(a) OPM responsibilities. OPM will:
(1) Provide orientation and graduation programs for each intern class; and
(2) Serve as a clearinghouse of available training opportunities.
(b) Agency responsibilities. Each agency will:
(1) Work with the intern to develop a written outline of core competencies and technical skills (called an individual development plan) the intern must gain before conversion to a target position;
(2) Provide at least 80 hours of formal training a year, including training in core competencies targeted to a functional area into which the intern will most likely be converted; and
(3) Provide at least one rotational assignment to another functional area, made at the discretion of the agency.
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Subpart G—Reports

§ 410.701 Reports.


SOURCE: 61 FR 66193, Dec. 17, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 410.101 Definitions.

In this part:
(a) Agency, employee, Government, Government facility, and non-Government facility have the meanings given these terms in section 4101 of title 5, United States Code.
(b) Exceptions to organizations and employees covered by this subpart include:
(1) Those named in section 4102 of title 5, United States Code, and
(2) The U.S. Postal Service and Postal Rate Commission and their employees, as provided in Pub. L. 91±375, enacted August 12, 1970.
(c) Training has the meaning given to the term in section 4101 of title 5, United States Code.
(d) Mission-related training is training that supports agency goals by improving organizational performance at any appropriate level in the agency, as determined by the head of the agency. This includes training that:
(1) Supports the agency’s strategic plan and performance objectives;
(2) Improves an employee’s current job performance;
(3) Allows for expansion or enhancement of an employee’s current job;
(4) Enables an employee to perform needed or potentially needed duties outside the current job at the same level of responsibility; or
(5) Meets organizational needs in response to human resource plans and reengineering, downsizing, restructuring, and/or program changes.
(e) Retraining means training and development provided to address an individual’s skills obsolescence in the current position and/or training and development to prepare an individual for a different occupation, in the same agency, in another Government agency, or in the private sector.
(f) Continued service agreement has the meaning given to service agreements in section 4108 of title 5, United States Code.
(g) Interagency training means training provided by one agency for other agencies or shared by two or more agencies.
(h) State and local government have the meanings given to these terms by section 4762 of title 42, United States Code.

Subpart B—Planning for Training

§ 410.201 Responsibilities of the head of an agency.

As stated in section 4103 of title 5, United States Code, and in Executive Order 11348, the head of each agency shall:
(a) Establish, budget for, operate, maintain, and evaluate a program or programs, and a plan or plans thereunder, for training agency employees by, in, and through Government and non-Government facilities;
(b) Determine policies governing employee training, including a statement of broad purposes for agency training, the assignment of responsibility for seeing that these purposes are achieved, and the delegation of training approval authority to the lowest possible level; and
(c) Establish priorities for training employees and provide for funds and staff according to these priorities.

§ 410.202 Integrating employee training and development with agency strategic plans.

(a) Agencies shall include mission-related training and development in agency strategic planning to ensure that:
(1) Agency training strategies and activities contribute to mission accomplishment; and
(2) Organizational performance goals are met.
(b) Agency human resource development programs and plans should:
(1) Improve employee and organizational performance; and
(2) Build and support an agency workforce capable of achieving agency mission and performance goals.
§ 410.203 Assessing organizational, occupational, and individual needs.

(a) Assessment. Section 303 of Executive Order 11348 specifies the responsibility of heads of agencies to assess agency training needs annually.

(b) Method. The method an agency uses to conduct training needs assessment shall meet the requirements of chapter 41 of title 5, United States Code, Executive Order 11348, and this subpart.

§ 410.204 Options for developing employees.

Agencies may use a full range of options to meet their mission-related organizational and employee development needs, such as classroom training, on-the-job training, technology-based training, satellite training, employees’ self-development activities, coaching, mentoring, career development counseling, details, rotational assignments, cross training, and developmental activities at retreats and conferences.

Subpart C—Establishing and Implementing Training Programs

§ 410.301 Scope and general conduct of training programs.

(a) Authority. The requirements for establishing training programs and plans are found in section 4103(a) of title 5, United States Code, and Executive Order 11348.

(b) Alignment with other human resource functions. Training programs established by agencies under chapter 41 of title 5, United States Code, should be integrated with other personnel management and operating activities, under administrative agreements as appropriate, to the maximum possible extent.

§ 410.302 Responsibilities of the head of an agency.

(a) Specific responsibilities. (1) The head of each agency shall prescribe procedures as are necessary to ensure that the selection of employees for training is made without regard to political preference, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights as provided by merit system principles set forth in 5 U.S.C. 2301(b)(2).

(2) The head of each agency shall prescribe procedures as are necessary to ensure that the training facility and curriculum are accessible to employees with disabilities.

(3) The head of each agency shall not allow training in a facility that discriminates in the admission or treatment of students.

(b)(1) Training of Presidential appointees. The Office of Personnel Management delegates to the head of each agency authority to authorize training for officials appointed by the President. In exercising this authority, the head of an agency must ensure that the training is in compliance with chapter 41 of title 5, United States Code, and with this part. This authority may not be delegated to a subordinate.

(2) Records. When exercising this delegation of authority, the head of an agency must maintain records that include:

(i) The name and position title of the official;

(ii) A description of the training, its location, vendor, cost, and duration; and

(iii) A statement justifying the training and describing how the official will apply it during his or her term of office.

(3) Review of delegation. Exercise of this authority is subject to U.S. Office of Personnel Management review.

(c) Training for the head of an agency. Since self-review constitutes a conflict of interest, heads of agencies must submit their own requests for training to the U.S. Office of Personnel Management for approval.

(d) The head of the agency shall establish the form and manner of maintaining agency records related to training plans, expenditures, and activities.

(e) The head of the agency shall establish written procedures which cover the minimum requirements for continued service agreements. (See also 5 CFR 410.310.)

(f) The head of each agency shall prescribe procedures, as authorized by section 402 of Executive Order No. 11348, for obtaining U.S. Department of State advice before assigning an employee
§ 410.303 Employee responsibilities.

Employees are responsible for self-development, for successfully completing and applying authorized training, and for fulfilling continued service agreements in addition, they share with their agencies the responsibility to identify training needed to improve individual and organizational performance and identify methods to meet those needs, effectively and efficiently.

§ 410.304 Funding training programs.

Section 4112 of title 5, United States Code, provides for agencies paying the costs of their training programs and plans from applicable appropriations or from other funds available. Training costs associated with program accomplishment may be funded by appropriations applicable to that program area.

In addition, section 4109(a)(1) of title 5, United States Code, provides authority for agencies and employees to share the expenses of training.

§ 410.305 Establishing and using interagency training.

Executive departments, independent establishments, Government corporations subject to chapter 91 of title 31, the Library of Congress, and the Government Printing office may provide or share training programs developed for its employees of other agencies under section 4120 of title 5, United States Code, when this would result in better training, improved service, or savings to the Government.

Section 302(d) of Executive Order 11348 allows agencies excepted from section 4102(a) of Title 5, United States Code.

§ 410.306 Selecting and assigning employees to training.

(a) Each agency shall establish criteria for the fair and equitable selection and assignment of employees to training consistent with merit system principles specified in 5 U.S.C. 2301(b)(1) and (2).

(b) Persons on Intergovernmental Personnel Act mobility assignments may be assigned to training if that training is in the interest of the Government.

(1) A State or local government employee given an appointment in a Federal agency under the authority of section 3374(b) of title 5 of the United States Code, is deemed an employee of the Federal agency. The agency may provide training for the State or local government employee as it does for other agency employees.

(2) A State or local government employee on detail to a Federal agency under the authority of section 3374(c) of title 5 of the United States Code, is not deemed an employee of the Federal agency. However, the detailed State or local government employee may be admitted to training programs the agency has established for Federal personnel and may be trained in the rules, practices, procedures and/or systems pertaining to the Federal government.

(c) Subject to the prohibitions of §410.308(a) of this part, an agency may pay all or part of the training expenses of students hired under the Student Career Experience Program (see 5 CFR 213.3202(d)(10)).

§ 410.307 Training for promotion or placement in other positions.

(a) General. In determining whether to provide training under this section, agencies should take into account:

(1) Agency authority to modify qualification requirements in certain situations as provided in the OPM Operating Manual for Qualification Standards for General Schedule Positions;

(2) Agency authority to establish training programs that provide intensive and directly job-related training...
§ 410.308 Training to obtain an academic degree.

(a) Prohibition. (1) Under 5 U.S.C. 4107(a), an agency may not authorize training for an employee to obtain an academic degree, except for shortage occupations as defined in §410.308(b).

(2)(i) The prohibition on academic degree in 5 U.S.C. 4107(a)(2) is not to be construed as limiting the authority of agencies to approve and pay for training expenses to develop knowledge, skills, and abilities directly related to improved individual performance. If, in the accomplishment of such training, an employee receives an academic degree, the degree is an incidental byproduct of the training.
(ii) Paying an additional rate of tuition because a student is a degree candidate is prohibited. An agency is only authorized to pay the tuition and fees charged for a nondegree student, even though the employee is enrolled as a degree candidate. If it is not possible to distinguish between costs associated with the acquisition of knowledge and skills and the costs associated with the acquisition of an academic degree at an institution, an agency is authorized to pay in full the tuition of an employee participating in an authorized program of training at that institution.

(b) Academic degree training to relieve recruitment and retention problems. (1) 5 U.S.C. 4107(b) allows an agency to authorize academic degree training if the training:
   (i) Is necessary to assist in recruiting or retaining employees in occupations in which the agency has or anticipates a shortage of qualified personnel, especially in occupations which it has determined involve skills critical to its mission, and
   (ii) Meets the conditions of this section.
(2) In reviewing the need to provide training under this section, an agency shall give appropriate consideration to any special salary rate, student loan repayment, retention allowance, or other monetary inducement authorized by law already provided or being provided which contributes to the alleviation of the staffing problem in the occupation targeted by that training.

(c) Determining recruitment and retention problems. For the purposes of this section, a recruitment or retention problem exists if the criteria for a recruitment bonus under 5 CFR 575.104(c)(2) or for a retention allowance under 5 CFR 575.305(c)(3) applies.
   (1) Recruitment problem. Before determining that an agency has or anticipates a problem in the recruitment of qualified personnel for a particular position, an agency shall make a reasonable recruitment effort, including factors in 5 CFR 575.104(c)(2). In making a reasonable recruitment effort, an agency will consider the following:
      (i) For a position in the competitive service, the results of requests for referral of eligibles from the appropriate competitive examination. For a position in the excepted service, the agency’s objectives and staffing procedures.
      (ii) Contacts with State Employment Service office(s) serving the locality concerned.
      (iii) Contacts with academic institutions, professional organizations, and other organizations likely to produce qualified candidates for the position, including women’s and minority-group organizations.
      (iv) The possibility of relieving the shortage through broader publicity and recruitment.
(2) Retention problem. Before determining that an agency has or anticipates a problem in the retention of qualified personnel in a particular occupation, an agency shall consider the factors in 5 CFR 575.305(c)(3) and:
      (i) The ease with which an agency could replace the employee with someone of comparable background;
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(ii) The current and projected vacancy rates in the occupation; (iii) The rate of turnover in the occupation; and (iv) Technological changes affecting the occupation and long-range predictions affecting staffing for the occupation.

(d) Assessing continuing problems. A re-assessment of a “continuing” recruitment or retention problem shall be made periodically.

(e) Authorizing training. (1) An agency may authorize full or part-time training to address a recruitment problem if— (i) The training qualifies an employee for a shortage position identified under paragraph (c)(1) of this section; and (ii) The agency expects to place the employee in the shortage position after the training.

(2) Training may be authorized under this section for the purpose of retaining an employee in a shortage occupation identified under paragraph (c)(2) of this section, if it involves a course of study selected mainly for its potential contribution to effective performance in that occupation.

(3) Agencies shall select employees for academic degree training according to competitive procedures as specified in § 410.306.

(f) Monitoring training. An agency shall assess the contribution of training assignments under this section to resolving recruitment or retention problems in its shortage occupations.

(g) Documentation. (1) In exercising the authority in this section, an agency shall retain for a reasonable period: (i) A record of employees assigned to training under this section; and (ii) A record of findings that the recruitment or retention problem is a continuing one.

(2) As a separate record, the servicing personnel office shall keep the following information for each employee assigned to training under this section: (i) Nature and justification for the shortage determination; (ii) Kind of training (e.g., career experience program, continuing professional and technical education, retraining for occupational change); a description of the field of study; and the nature of any degree pursued under the training program; and (iii) A written continued service agreement, if required.

§ 410.309 Agreements to continue in service.

(a) Authority. Continued service agreements are provided for in section 4108 of title 5, United States Code. Agencies have the authority to determine when such agreements will be required.

(b) Requirements. (1) The head of the agency shall establish written procedures which include the minimum requirements for continued service agreements. These requirements shall include procedures the agency considers necessary to protect the Government’s interest should the employee fail to successfully complete training.

(2) An employee selected for training subject to an agency continued service agreement must sign an agreement to continue in service after training prior to starting the training. The period of service will equal at least three times the length of the training.

(c) Failure to fulfill agreements. With a signed agreement, the agency has a right to recover training costs, except pay or other compensation, if the employee voluntarily separates from Government service. The agency shall provide procedures to enable the employee to obtain a reconsideration of the recovery amount or to appeal for a waiver of the agency’s right to recover.


§ 410.310 Computing time in training.

For the purpose of computing time in training for continued service agreements under section 4108 of title 5, United States Code:

(a) An employee on an 8-hour day work schedule assigned to training is counted as being in training for the same number of hours he or she is in pay status during the training assignment. If the employee is not in pay status during the training, the employee is counted as being in training for the number of hours he or she is granted leave without pay for the purpose of the training.
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(b) For an employee on an alternative work schedule, the agency is responsible for determining the number of hours the employee is in pay status during the training assignment. If the employee is not in pay status during the training, the employee is counted as being in training for the number of hours he or she is granted leave without pay for the purpose of the training.

(c) An employee on an 8-hour or an alternative work schedule assigned to training on less than a full-time basis is counted in training for the number of hours he or she spends in class, in formal computer-based training, in satellite training, in formal self-study programs, or with the training instructor, unless a different method is determined by the agency.

§ 410.311 Records.

Agencies shall retain, in such form and manner as the agency head considers appropriate, a record of training events authorized under this subpart for a reasonable period of time.

Subpart D—Paying for Training Expenses

§ 410.401 Determining necessary training expenses.

(a) The head of an agency determines which expenses constitute necessary training expenses under section 4109 of title 5, United States Code.

(b) An agency may pay, or reimburse an employee, for necessary expenses incurred in connection with approved training as provided in section 4109(a)(2) of title 5, United States Code. Necessary training expenses do not include an employee’s pay or other compensation.

§ 410.402 Paying premium pay.

(a) Prohibitions. Except as provided by paragraph (b) of this section, an agency may not use its funds, appropriated or otherwise available, to pay premium pay to an employee engaged in training by, in, or through Government or non-government facilities.

(b) Exceptions. The following are excepted form the provision in paragraph (a) of this section prohibiting the payment of premium pay:

(1) Continuation of premium pay. An employee given training during a period of duty for which he or she is already receiving premium pay for overtime, night, holiday, or Sunday work shall continue to receive that premium pay. This exception does not apply to an employee assigned to full-time training at institutions of higher learning.

(2) Training at night. An employee given training at night because situations that he or she must learn to handle occur only at night shall be paid by the applicable premium pay.

(3) Cost savings. An employee given training on overtime, on a holiday, or on a Sunday because the costs of the training, premium pay included, are less than the costs of the same training confined to regular work hours shall be paid the applicable premium pay.

(4) Availability pay. An agency shall continue to pay availability pay during agency-sanctioned training to a criminal investigator who is eligible for it under 5 U.S.C. 5545a and implementing regulations. Agencies may, at their discretion, provide availability pay to investigators during periods of initial, basic training. (See 5 CFR 550.185(b) and (c).)

(5) Standby and administratively uncontrollable duty. An agency may continue to pay annual premium pay for regularly scheduled standby duty or administratively uncontrollable overtime work, during periods of temporary assignment for training as provided by 5 CFR 550.162(c).

(6) Firefighter overtime pay. A firefighter compensated under part 550, subpart M, of this chapter must be paid basic pay and overtime pay for the firefighter’s regular tour of duty (as defined in §550.1302 of this chapter) in any week in which attendance at agency-sanctioned training reduces the hours in the firefighter’s regular tour of duty. This special pay protection does not apply to firefighters who voluntarily participate in training during non-duty hours, leave hours, or periods of excused absence.

(7) Agency exemption. An employee given training during a period not otherwise covered by a provision of this paragraph may be paid premium pay when the employing agency has been
§ 410.403 Payments for temporary duty training assignments.

Section 410(a)(2) of title 5, United States Code, provides that an agency may pay, or reimburse an employee for, all or a part of the necessary expenses of training, including the necessary costs of travel; per diem expenses; or limited relocation expenses including transportation of the immediate family, household goods and personal effects:

(a) If an agency chooses to pay per diem, or in unusual circumstances the actual subsistence, expenses for an employee on a temporary duty training assignment, payment must be in accordance with 41 CFR part 301-7 or 41 CFR part 301-8 (or, for commissioned officers of the National Oceanic and Atmospheric Administration, in accordance with sections 404 and 405 of title 37, United States Code, and the Joint Federal Travel Regulations for the Uniformed Services).

(b) An agency may pay a reduced per diem rate, such as a standardized payment less than the maximum per diem rate for a geographical area. If a reduced or standardized per diem rate was not authorized in advance of the travel and the fees paid to a training institution include lodging or meal costs, an appropriate deduction shall be made from the total per diem rate payable on the travel voucher (see 41 CFR 301-7.12).

(c) An agency may pay limited relocation expenses for the transportation of the employee's immediate family, household goods and personal effects, including packing, crating, temporarily storing, draying, and unpacking the household goods in accordance with section 5724 of title 5, United States Code (or, for commissioned officers of the National Oceanic and Atmospheric Administration, in accordance with sections 406 and 409 of title 37, United States Code, and the Joint Federal Travel Regulations for the Uniformed Services). Limited relocation expenses are payable only when the estimated costs of transportation and related services are less than the estimated aggregate per diem or actual subsistence expense payments for the period of training. An employee selected for temporary duty training may receive travel and per
§ 410.404 Determining if a conference is a training activity.

Agencies may sponsor an employee's attendance at a conference as a developmental assignment under section 4110 of title 5, United States Code, when—

(a) The announced purpose of the conference is educational or instructional;

(b) More than half of the time is scheduled for a planned, organized exchange of information between presenters and audience which meets the definition of training in section 4101 of title 5, United States Code;

(c) The content of the conference is germane to improving individual and/or organizational performance, and

(d) Development benefits will be derived through the employee's attendance.

§ 410.405 Protection of Government interest.

The head of an agency shall establish such procedures as he or she considers necessary to protect the Government's interest when employees fail to complete, or to successfully complete, training for which the agency pays the expenses.

§ 410.406 Records of training expenses.

Agencies shall retain, in such form and manner as the agency head considers appropriate, a record of payments made for travel, tuition, fees and other necessary training expenses for a reasonable period of time.

Subpart E—Accepting Contributions, Awards, and Payments From Non-Government Organizations

§ 410.501 Scope.

(a) Section 4111 of title 5, United States Code, describes conditions for employee acceptance of contributions, awards, and payments made in connection with non-Government sponsored training or meetings which an employee attends while on duty or when the agency pays the training or meeting attendance expenses, in whole or in part.

(b) This subpart does not limit the authority of an agency head to establish procedures on the acceptance of contributions, awards, and payments in connection with any training and meetings that are outside the scope of this subpart in accordance with laws and regulations governing Government ethics and governing acceptance of travel reimbursements from non-Federal sources.

§ 410.502 Authority of the head of an agency.

(a) In writing, the head of an agency may authorize an agency employee to accept a contribution or award (in cash or in kind) incident to training or to accept payment (in cash or in kind) of travel, subsistence, and other expenses incident to attendance at meetings if

(1) The conditions specified in section 4111 of title 5, United States Code, are met; and

(2) In the judgment of the agency head, the following two conditions are met:

(i) The contribution, award, or payment is not a reward for services to the organization prior to the training or meeting; and

(ii) Acceptance of the contribution, award, or payment:

(A) Would not reflect unfavorably on the employee's ability to carry out official duties in a fair and objective manner;

(B) Would not compromise the honesty and integrity of Government programs or of Government employees and their official actions or decisions;

(C) Would be compatible with the Ethics in Government Act of 1978, as amended; and

(D) Would otherwise be proper and ethical for the employee concerned given the circumstances of the particular case.
§ 410.503
(b) Delegation of authority. An agency head may delegate authority to authorize the acceptance of contributions, awards, and payments under this section. The designated official must ensure that—
(1) The policies of the agency head are reflected in each decision; and
(2) The circumstances of each case are fully evaluated under conditions set forth in § 410.502(a).
(c) Acceptance of contributions, awards, and payments. An employee may accept a contribution, award, or payment (whether made in cash or in kind) that falls within the scope of this section only when he or she has specific written authorization.
(d) When more than one non-Government organization participates in making a single contribution, award, or payment, the “organization” referred to in this subsection is the one that:
(1) Selects the recipient; and
(2) Administers the funds from which the contribution, award, or payment is made.

§ 410.503 Records.
An agency shall maintain, in such form and manner as the agency head considers appropriate, the following records in connection with each contribution, award, or payment made and accepted under authority of this section: The recipient’s name; the organization’s name; the amount and nature of the contribution, award, or payment and the purpose for which it is to be used; and a copy of the written authorization required by § 410.502(a).

Subpart F—Evaluating Training
§ 410.601 Responsibility of the head of an agency.
Under provisions of chapter 41 of title 5, United States Code, and Executive Order 11348, the agency head shall evaluate training to determine how well it meets short and long-range program needs by occupations, organizations, or other appropriate groups. The agency head may conduct the evaluation in the manner and frequency he or she considers appropriate.
§ 412.102 Purpose.
(a) This subpart implements for supervisors, managers, and executives the provisions of chapter 41 of title 5 of the United States Code related to training and section 3396 of title 5 related to the criteria for programs of systematic development of candidates for the SES and the continuing development of SES members.
(b) The subpart identifies a continuum of preparation starting with supervisory positions and proceeding through management and executive positions Governmentwide. For this reason, the subpart establishes a comprehensive system that is intended to:
   (1) Provide the competencies needed by supervisors, managers, and executives to perform their current functions at the mastery level of proficiency; and
   (2) Provide learning through development and training in the context of succession planning and corporate perspective to prepare individuals for advancement, thus supplying the agency and the government with an adequate number of well prepared and qualified candidates to fill supervisory, managerial, and executive positions Governmentwide.

§ 412.103 Criteria for programs for the systematic training and development of executives, managers, supervisors, and candidates.
Each agency must provide for the initial and continuing development of individuals in executive, managerial, and supervisory positions, and candidates for those positions. The agency must issue a written policy to assure that their development programs:
   (a) Are designed as part of the agency’s strategic plan and foster a corporate perspective.
   (b) Make assignments to training and development consistent with the merit system principles set forth in 5 U.S.C. 2301(b)(1) and (2).
   (c) Provide for:
      (1) Initial training as an individual makes critical career transitions to become a new supervisor, a new manager, or a new executive consistent with the results of needs assessments;
      (2) Continuing learning experiences, both short- and long-term, throughout an individual’s career in order for the individual to achieve the mastery level of proficiency for his or her current management level and position; and
   (3) Systematic development of candidates for advancement to a higher management level. Formal candidate development programs leading to non-competitive placement eligibility represent one, but not the only, type of systematic development.

§ 412.104 Formal candidate development programs for Senior Executive Service positions.
Formal SES candidate development programs permit the certification of the executive qualifications of graduates by a Qualifications Review Board under the criterion of 5 U.S.C. 3393(c)(2)(B) and selection for the SES without further competition. The agency must have a written policy describing how the program will operate. The agency must obtain OPM approval of the program before it is conducted for the first time under these regulations and whenever there are substantive changes to the program. Agency programs must meet the following criteria.
(a) Recruitment. (1) Recruitment for the program is from all groups of qualified individuals within the civil service, or all groups of qualified individuals whether or not within the civil service.
   (2) Agencies may request an exception to the provision in paragraph (a) of this section if they can show that during the 5-year period prior to the announcement of a program they have made at least 15% of their career SES appointments from sources outside the agency. Notwithstanding this exception recruitment must be competitive and be announced at least agencywide. Graduates of these programs who have been certified by a QRB must then compete Governmentwide for entry to the SES, but do not have to obtain a second QRB certification before appointment.
(b) In recruiting, the agency, consistent with the merit system principles in 5 U.S.C. 2301(b)(1) and (2), takes into consideration the goal of achieving a diversified workforce.
(c) All candidates are selected through SES merit staffing procedures. The number selected shall be consistent with the number of expected vacancies.

(d) Each candidate has an SES development plan covering the period of the program. The plan is prepared from a competency-based needs determination. It is approved by the Executive Resources Board.

(e) The minimum program requirements, unless an exception is obtained in advance of the beginning of the candidate's program, for an SES development plan are as follows:

1. There is a formal training experience that addresses the executive core qualifications and their application to SES positions Governmentwide. The training experience must include interaction with a wide mix of Federal employees outside the candidate's department or agency to foster a corporate perspective but may include managers from the private sector and state and local governments. The nature and scope of the training must have Governmentwide or multi-agency applicability. If formal interagency training is used to meet this requirement, it must total at least 80 hours. If an interagency work experience is used, it must be of significantly longer duration than 80 hours.

2. There are developmental assignments that total at least 4 months of full-time service outside the candidate's position of record. The purpose of the assignments is to broaden the candidate's experience and/or increase knowledge of the overall functioning of the agency so that the candidate is prepared for a range of agency positions.

3. There is a member of the Senior Executive Service as a mentor.

(f) Each candidate's performance in the program is evaluated periodically, and there is a written policy for discontinuing a candidate's participation in the program. A candidate can be discontinued or may withdraw from the program without prejudice to his or her ability to apply directly for SES positions.

(g) Each candidate has a documented starting and finishing date in the program.
PART 430—PERFORMANCE MANAGEMENT

Subpart A—Performance Management

§ 430.101 Authority.
Chapter 43 of title 5, United States Code, provides for the performance appraisal of Federal employees. This subpart supplements and implements this portion of the law.

§ 430.102 Performance management.
(a) Performance management is the systematic process by which an agency involves its employees, as individuals and members of a group, in improving organizational effectiveness in the accomplishment of agency mission and goals.
(b) Performance management integrates the processes an agency uses to—
(1) Communicate and clarify organizational goals to employees;
(2) Identify individual and, where applicable, team accountability for accomplishing organizational goals;
(3) Identify and address developmental needs for individuals and, where applicable, teams;
(4) Assess and improve individual, team, and organizational performance;
(5) Use appropriate measures of performance as the basis for recognizing and rewarding accomplishments; and
(6) Use the results of performance appraisal as a basis for appropriate personnel actions.

Subpart B—Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees

§ 430.201 General.
(a) Statutory authority. Chapter 43 of title 5, United States Code, provides for the establishment of agency performance appraisal systems and requires the Office of Personnel Management (OPM) to prescribe regulations governing such systems. The regulations in this subpart in combination with statute set forth the requirements for agency performance appraisal system(s) and program(s) for employees covered by subchapter I of chapter 43.
(b) Savings provision. The performance appraisal system portion of an agency’s Performance Management Plan approved by OPM as of September 22, 1995 shall constitute an approved performance appraisal system under the regulations in this subpart until such time changes to the system are approved. No provision of the regulations in this subpart shall be applied in such a way as to affect any administrative proceeding related to any action taken under regulations in this chapter pending on September 22, 1995.
§ 430.202 Coverage.

(a) Employees and agencies covered by statute. (1) Section 4301(1) of title 5, United States Code, defines agencies covered by this subpart.

(2) Section 4301(2) of title 5, United States Code, defines employees covered by statute by this subpart. Besides General Schedule (GS/GM) and prevailing rate employees, coverage includes, but is not limited to, senior-level and scientific and professional employees paid under 5 U.S.C. 5376.

(b) Statutory exclusions. This subpart does not apply to agencies or employees excluded by 5 U.S.C. 4301(1) and (2), the United States Postal Service, or the Postal Rate Commission.

(c) Administrative exclusions. OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). The regulations in this subpart exclude excepted service positions for which employment is not reasonably expected to exceed the minimum period established under §430.207(a) in a consecutive 12-month period.

(d) Agency requests for exclusions. Heads of agencies or their designees may request the Director of OPM to exclude positions in the excepted service. The request must be in writing, explaining why the exclusion would be in the interest of good administration.

§ 430.203 Definitions.

In this subpart, terms are defined as follows:

Additional performance element means a dimension or aspect of individual, team, or organizational performance that is not a critical or non-critical element. Such elements are not used in assigning a summary level but, like critical and non-critical elements, are useful for purposes such as communicating performance expectations and serving as the basis for granting awards. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance.

Appraisal means the process under which performance is reviewed and evaluated.

Appraisal period means the established period of time for which performance will be reviewed and a rating of record will be prepared.

Appraisal program means the specific procedures and requirements established under the policies and parameters of an agency appraisal system.

Appraisal system means a framework of policies and parameters established by an agency as defined at 5 U.S.C. 4301(1) for the administration of performance appraisal programs under subchapter I of chapter 43 of title 5, United States Code, and this subpart.

Critical element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Such elements shall be used to measure performance only at the individual level.

Non-critical element means a dimension or aspect of individual, team, or organizational performance, exclusive
§ 430.204 Agency performance appraisal system(s).

(a) Each agency as defined at section 4301(1) of title 5, United States Code, shall develop one or more performance appraisal systems for employees covered by this subpart.

(b) An agency appraisal system shall establish agencywide policies and parameters for the application and operation of performance appraisal within the agency for the employees covered by the system. At a minimum, an agency system shall—

(1) Provide for—

(i) Establishing employee performance plans, including, but not limited to, critical elements and performance standards;

(ii) Communicating performance plans to employees at the beginning of an appraisal period;

(iii) Evaluating each employee during the appraisal period on the employee's elements and standards;

(iv) Recognizing and rewarding employees whose performance so warrants;

(v) Assisting employees in improving unacceptable performance; and

(vi) Reassigning, reducing in grade, or removing employees who continue to have unacceptable performance, but only after an opportunity to demonstrate acceptable performance.

(2) Identify employees covered by the system;

(3) Specify the flexibilities an agency program established under the system has for setting—

(i) The length of the appraisal period (as specified in § 430.206(a));

(ii) The length of the minimum period (as specified in § 430.207(a));

(iii) The number(s) of performance levels at which critical and non-critical elements may be appraised (as specified in § 430.206(b)(7)(i)(A) and (ii)(A)); and

(iv) The pattern of summary levels that may be assigned in a rating of record (as specified in § 430.208(d));

(4) Include, where applicable, criteria and procedures for establishing separate appraisal programs under an appraisal system; and

(5) Require that an appraisal program shall conform to statute, the regulations of this chapter, and the requirements established by the appraisal system.

(c) Agencies are encouraged to involve employees in developing and implementing their system(s).
§ 430.205 Agency performance appraisal program(s).

(a) Each agency shall establish at least one appraisal program of specific procedures and requirements to be implemented in accordance with the applicable agency appraisal system. At a minimum, each appraisal program shall specify the employees covered by the program and include the procedures and requirements for planning performance (as specified in §430.206), monitoring performance (as specified in §430.207), and rating performance (as specified in §430.208).

(b) An agency program shall establish criteria and procedures to address employee performance for employees who are on detail, who are transferred, and for other special circumstances as established by the agency.

(c) An agency may permit the development of separate appraisal programs under an appraisal system.

(d) Agencies are encouraged to involve employees in developing and implementing their program(s). When agencies involve employees, the method of involvement shall be in accordance with law.

§ 430.206 Planning performance.

(a) Appraisal period. (1) An appraisal program shall designate an official appraisal period for which a performance plan shall be prepared, during which performance shall be monitored, and for which a rating of record shall be prepared.

(2) Each program shall specify a single length of time as its appraisal period. The appraisal period generally shall be 12 months so that employees are provided a rating of record on an annual basis. A program's appraisal period may be longer when work assignments and responsibilities so warrant or performance management objectives can be achieved more effectively.

(b) Performance plan. (1) Agencies shall encourage employee participation in establishing performance plans.

(2) Performance plans shall be provided to employees at the beginning of each appraisal period (normally within 30 days).

(3) An appraisal program shall require that each employee be covered by an appropriate written, or otherwise recorded, performance plan based on work assignments and responsibilities.

(4) Each performance plan shall include all elements which are used in deriving and assigning a summary level, including at least one critical element and any non-critical element(s).

(5) Each performance plan may include one or more additional performance elements, which—

(i) Are not used in deriving and assigning a summary level, and

(ii) Are used to support performance management processes as described at §430.102(b).

(6) A performance plan established under an appraisal program that uses only two summary levels (pattern A as specified in §430.208(d)(1)) shall not include non-critical elements.

(7) An appraisal program shall establish how many and which performance levels may be used to appraise critical and non-critical elements.

(8) Elements and standards shall be established as follows—

(i) For a critical element—

(A) At least two levels for appraisal shall be used with one level being "Fully Successful" or its equivalent and another level being "Unacceptable," and

(B) A performance standard shall be established at the "Fully Successful" level and may be established at other levels.

(ii) For non-critical elements, when established,—

(A) At least two levels for appraisal shall be used, and

(B) A performance standard(s) shall be established at whatever level(s) is appropriate.

(iii) The absence of an established performance standard at a level specified in the program shall not preclude a determination that performance is at that level.

§ 430.207 Monitoring performance.

(a) Performance plan. (1) Agencies shall provide employees with performance feedback and opportunities for self-assessment.

(b) Performance measures. (1) Agencies shall establish performance measures that are closely tied to the critical and non-critical elements.

(2) A performance measure shall be used to provide feedback to each employee.

(3) Performance measures shall be time-bound and measurable.

(4) A performance measure shall be evaluated at least once during the appraisal period.

§ 430.208 Rating performance.

(a) Performance plan. (1) Agencies shall establish a rating of record based on performance measures.

(b) Performance standard. (1) Agencies shall establish a performance standard that performance levels are derived from.

(2) A performance standard shall be used to assign a summary level to each employee.

(3) A performance standard shall be established for each performance measure.

(4) A performance standard shall be used to determine the level to which an employee meets the performance measures.

(5) A performance standard shall be established for each critical and non-critical element.

(b) An agency may establish more than one performance standard for a critical element.

(c) Performance levels. (1) Agencies shall establish performance levels for each performance measure.

(2) A performance level shall be established for each performance measure.

(3) A performance level shall be established for each performance measure.

(4) A performance level shall be established for each performance measure.

(5) A performance level shall be established for each performance measure.
Office of Personnel Management

§ 430.207 Monitoring performance.

(a) Minimum period. An appraisal program shall establish a minimum period of performance that must be completed before a performance rating may be prepared.

(b) Ongoing appraisal. An appraisal program shall include methods for appraising each critical and non-critical element during the appraisal period. Performance on each critical and non-critical element shall be appraised against its performance standard(s). Ongoing appraisal methods shall include, but not be limited to, conducting one or more progress reviews during each appraisal period.

(c) Marginal performance. Appraisal programs should provide assistance whenever performance is determined to be below “Fully Successful” or equivalent but above “Unacceptable.”

(d) Unacceptable performance. An appraisal program shall provide for—

(1) Assisting employees in improving unacceptable performance at any time during the appraisal period that performance is determined to be unacceptable in one or more critical elements; and

(2) Taking action based on unacceptable performance.

§ 430.208 Rating performance.

(a) As soon as practicable after the end of the appraisal period, a written, or otherwise recorded, rating of record shall be given to each employee.

(1) A rating of record shall be based only on the evaluation of actual job performance for the designated appraisal period.

(2) An agency shall not issue a rating of record that assumes a level of performance by an employee without an actual evaluation of that employee’s performance.

(3) Except as provided in §430.208(1), a rating of record is final when it is issued to an employee with all appropriate reviews and signatures.

(b) Rating of record procedures for each appraisal program shall include a method for deriving and assigning a summary level as specified in paragraph (d) of this section based on appraisal of performance on critical elements and, as applicable, non-critical elements.

(1) A Level 1 summary (“Unacceptable”) shall be assigned if and only if performance on one or more critical elements is appraised as “Unacceptable.”

(2) Consideration of non-critical elements shall not result in assigning a Level 1 summary (“Unacceptable”).

(c) The method for deriving and assigning a summary level may not limit or require the use of particular summary levels (i.e., establish a forced distribution of summary levels). However, methods used to make distinctions among employees or groups of employees such as comparing, categorizing, and ranking employees or groups on the basis of their performance may be used for purposes other than assigning a summary level including, but not limited to, award determinations and promotion decisions.

(d) Summary levels. (1) An appraisal program shall use one of the following patterns of summary levels:

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<tr>
<th>Pattern</th>
<th>Summary level</th>
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<td>1 2 3 4 5</td>
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<tr>
<td>A</td>
<td>X</td>
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(2) Within any of the patterns shown in paragraph (d)(1) of this section, summary levels shall comply with the following requirements:

(i) Level 1 through Level 5 are ordered categories, with Level 1 as the lowest and Level 5 as the highest;

(ii) Level 1 is “Unacceptable”;

(iii) Level 3 is “Fully Successful” or equivalent; and

(iv) Level 5 is “Outstanding” or equivalent.

(3) The term “Outstanding” shall be used only to describe a Level 5 summary.

(4) The designation of a summary level and its pattern shall be used to provide consistency in describing ratings of record and as a reference point for applying other related regulations, including, but not limited to, assigning additional retention service credit under §351.504 of this chapter.
§ 430.209  Agency responsibilities.

An agency shall—

(a) Submit to OPM for approval a description of its appraisal system(s) as specified in §430.204(b) of this subpart, and any subsequent changes that modify any element of the agency's system(s) that is subject to a regulatory requirement in this part;

(b) Transfer the employee's most recent ratings of record, and any subsequent performance ratings, when an employee transfers to another agency or is assigned to another organization within the agency in compliance with part 293 of this chapter and instructions in the OPM Operating Manual, THE GUIDE TO PERSONNEL RECORDKEEPING, for sale by the U.S. Government Printing Office, Superintendent of Documents;

(c) Communicate with supervisors and employees (e.g., through formal training) about relevant parts of its performance appraisal system(s) and program(s);

(d) Evaluate the performance appraisal system(s) and performance appraisal program(s) in operation in the agency;

(e) Report ratings of record data to the Central Personnel Data File in compliance with instructions in the OPM Operating Manual, FEDERAL WORKFORCE REPORTING SYSTEMS, for sale by the U.S. Government Printing Office, Superintendent of Documents;

(f) Maintain and submit such records as OPM may require; and

(g) Take any action required by OPM to ensure conformance with applicable law, regulation, and OPM policy.

The provisions of §351.504(e) of this chapter, the number of years of additional retention service credit established for a summary level of a rating of record shall be applied in a uniform and consistent manner within a competitive area in any given reduction in force, but the number of years may vary:

(i) In different reductions in force;

(ii) In different competitive areas; and

(iii) In different summary level patterns within the same competitive area.

(e) A rating of record of "Unacceptable" (Level 1) shall be reviewed and approved by a higher level management official.

(f) The rating of record or performance rating for a disabled veteran shall not be lowered because the veteran has been absent from work to seek medical treatment as provided in Executive Order 5396.

§ 430.209 Agency responsibilities.

An agency shall—

(a) Submit to OPM for approval a description of its appraisal system(s) as specified in §430.204(b) of this subpart, and any subsequent changes that modify any element of the agency's system(s) that is subject to a regulatory requirement in this part;

(b) Transfer the employee's most recent ratings of record, and any subsequent performance ratings, when an employee transfers to another agency or is assigned to another organization within the agency in compliance with part 293 of this chapter and instructions in the OPM Operating Manual, THE GUIDE TO PERSONNEL RECORDKEEPING, for sale by the U.S. Government Printing Office, Superintendent of Documents;

(c) Communicate with supervisors and employees (e.g., through formal training) about relevant parts of its performance appraisal system(s) and program(s);

(d) Evaluate the performance appraisal system(s) and performance appraisal program(s) in operation in the agency;

(e) Report ratings of record data to the Central Personnel Data File in compliance with instructions in the OPM Operating Manual, FEDERAL WORKFORCE REPORTING SYSTEMS, for sale by the U.S. Government Printing Office, Superintendent of Documents;

(f) Maintain and submit such records as OPM may require; and

(g) Take any action required by OPM to ensure conformance with applicable law, regulation, and OPM policy.
§ 430.210  OPM responsibilities.
  (a) OPM shall review and approve an agency’s performance appraisal system(s).
  (b) OPM may evaluate the operation and application of an agency’s performance appraisal system(s) and program(s).
  (c) If OPM determines that an appraisal system or program does not meet the requirements of applicable law, regulation, or OPM policy, it shall direct the agency to implement an appropriate system or program or to take other corrective action.

Subpart C—Performance Appraisal for the Senior Executive Service (SES)

SOURCE: 51 FR 8414, Mar. 11, 1986, unless otherwise noted.

§ 430.301  General.
  (a) Statutory authority. Chapter 43 of title 5, U.S. Code (5 U.S.C. 4311-4314) provides for the establishment of Senior Executive Service (SES) performance appraisal systems, and for appraisal of the performance of senior executives (as defined in 5 U.S.C. 3132(a)). This subpart contains regulations which the Office of Personnel Management (OPM) has prescribed for performance appraisal in the SES, and supplements and implements the provisions of 5 U.S.C. 4311-4315.
  (b) Purpose. It is the purpose of this subpart to ensure that performance appraisal systems for employees are used as a tool for executing basic management and supervisory responsibilities by—
    (1) Communicating and clarifying organizational goals and objectives;
    (2) Identifying individual accountability for the accomplishment of agency goals and objectives;
    (3) Evaluating and improving individual and organizational accomplishments; and
    (4) Using the results of performance appraisal as a basis for adjusting base pay, training, rewarding, reassigning, retaining, and removing employees.

§ 430.302  Coverage.
  (a) All senior executives covered by subchapter II of chapter 31 of title 5, United States Code, are covered by this part.
  (b) Section 3132(a)(1) of title 5, United States Code identifies agencies covered by this subpart.

§ 430.303  Definitions.
  In this subpart, terms are defined as follows:
    Appointing authority means the agency or department head or his or her designee.
    Appraisal means the act or process of reviewing and evaluating the performance of the executive against the described performance standard(s).
    Appraisal period means the period of time established by an appraisal system for which the senior executive’s performance will be reviewed.
    Appraisal system means a performance appraisal system established by an agency or component of an agency under subchapter II of chapter 43 of title 5, U.S.C. and this subpart which provides for identification of critical and noncritical elements, establishment of performance standards, communication of elements and standards to senior executives, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.
    Critical element means a component of a position consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that unsatisfactory performance on the element would result in unsatisfactory performance in the position.
    Final rating means the rating of record assigned by an appointing authority after considering the recommendations of a Performance Review Board.
    Initial rating means the summary rating made by the senior executive’s supervising official and provided to the Performance Review Board.
    Non-critical element means a component of an executive’s position which
§ 430.304 SES performance appraisal systems.
(a) Each agency shall develop one or more performance appraisal systems for executives covered by this subpart.
(b) Under each SES appraisal system, critical elements must be included and non-critical elements may be included in individual performance plans. An executive must be appraised on each critical and non-critical element in the executive’s performance plan, unless the executive has had insufficient opportunity to demonstrate performance on the element. A summary rating level, as specified in paragraph (g) of this section, must be assigned.
(c) Each SES appraisal system shall require establishing performance plans in consultation with the senior executive. Final authority for establishing such plans rests with the supervising officials.
(d) (1) Each SES appraisal system shall provide for establishing performance elements and standards based on the requirements of senior executives’ positions, communicating those elements and standards to senior executives at or before the beginning of each appraisal period, providing written performance plans normally within 30 days of the beginning of the appraisal period, and appraising senior executives at least annually based on a comparison of performance with the standards established for the appraisal period.
(2) Accomplishment of organizational objectives must be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results.
(e) Each SES appraisal system shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the “Fully Successful” level for all critical and non-critical elements and may be written at other levels. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level.
(f) Each SES appraisal system shall include a method for deriving a summary rating level from performance appraisals of critical elements and, at agency discretion, appraisals of non-

§ 430.304 SES performance appraisal systems.
(a) Each agency shall develop one or more performance appraisal systems for executives covered by this subpart.
(b) Under each SES appraisal system, critical elements must be included and non-critical elements may be included in individual performance plans. An executive must be appraised on each critical and non-critical element in the executive’s performance plan, unless the executive has had insufficient opportunity to demonstrate performance on the element. A summary rating level, as specified in paragraph (g) of this section, must be assigned.
(c) Each SES appraisal system shall require establishing performance plans in consultation with the senior executive. Final authority for establishing such plans rests with the supervising officials.
(d) (1) Each SES appraisal system shall provide for establishing performance elements and standards based on the requirements of senior executives’ positions, communicating those elements and standards to senior executives at or before the beginning of each appraisal period, providing written performance plans normally within 30 days of the beginning of the appraisal period, and appraising senior executives at least annually based on a comparison of performance with the standards established for the appraisal period.
(2) Accomplishment of organizational objectives must be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results.
(e) Each SES appraisal system shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the “Fully Successful” level for all critical and non-critical elements and may be written at other levels. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level.
(f) Each SES appraisal system shall include a method for deriving a summary rating level from performance appraisals of critical elements and, at agency discretion, appraisals of non-

§ 430.304 SES performance appraisal systems.
(a) Each agency shall develop one or more performance appraisal systems for executives covered by this subpart.
(b) Under each SES appraisal system, critical elements must be included and non-critical elements may be included in individual performance plans. An executive must be appraised on each critical and non-critical element in the executive’s performance plan, unless the executive has had insufficient opportunity to demonstrate performance on the element. A summary rating level, as specified in paragraph (g) of this section, must be assigned.
(c) Each SES appraisal system shall require establishing performance plans in consultation with the senior executive. Final authority for establishing such plans rests with the supervising officials.
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(f) Each SES appraisal system shall include a method for deriving a summary rating level from performance appraisals of critical elements and, at agency discretion, appraisals of non-
§ 430.305 Appraisal of performance.

(a) Appraisal period. (1) Each agency appraisal system shall establish an official appraisal period for which a rating of record shall be prepared. Employees shall be given a rating of record at least annually. Systems shall provide for preparing a summary rating when an executive changes positions during the appraisal period, if the executive has served for the minimum appraisal period in the position from which he/she has changed; agency SES Performance Management Plan(s) must describe how these ratings will be taken into consideration in deriving the next rating of record. A summary rating prepared when an executive changes positions during the appraisal period shall not be considered an initial rating.

(2) Except as provided in paragraph (b) of this section, a performance appraisal period may be terminated in any case in which the agency making an appraisal determines that an adequate basis exists on which to appraise and rate the senior executive's performance.

(b) Minimum appraisal period. Agency appraisal systems shall establish a minimum appraisal period of at least 90 days and not more than 120 days, except as provided in paragraph (a)(3) of this section.

(c) Appraisal of each element. An executive must be appraised on each critical and non-critical element in the executive's performance plan, unless the executive has had insufficient opportunity to demonstrate performance on the element.

(d) Appraisal of performance on details. (1) When senior executives are detailed or temporarily reassigned within the same agency, and the detail or temporary assignment is expected to last 120 days or longer, agencies shall provide written critical elements and performance standards to the executives as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary assignment. Ratings on critical elements must be prepared for these details and temporary assignments and must be considered in deriving a senior executive's next rating of record.
(2) When senior executives are detailed outside of the agency, the employing agency must make a reasonable effort to obtain appraisal information from the outside organization, which shall be considered in deriving the executive's next rating of record.

(i) If an executive has served in the employing agency for the minimum appraisal period, the executive must be rated. The rating shall take into consideration appraisal information obtained from the borrowing organization.

(ii) If an executive has not served in the agency for the established minimum appraisal period, but has served for the minimum appraisal period outside the employing agency, the employing agency must make a reasonable effort to prepare a rating using appraisal information obtained from the borrowing organization.

(e) Progress review. A progress review shall be held for each executive at least once during the appraisal period. At a minimum, executives shall be informed of their level of performance by comparison with the performance elements and standards established for their positions.

§ 430.306 Ratings.

(a) Initial rating. Appraisal systems shall provide for:

(1) A written initial rating of the executive's performance made by the executive's supervising official, and provided to the senior executive;

(2) An opportunity for the senior executive to respond in writing to an initial rating;

(3) An opportunity for review of the rating by an employee in a higher executive level than that of the supervisor, unless there is no one at a higher level, before review by the PRB as provided in § 430.307(e) and (g);

(4) Provision of the senior executive's response to both the official making the higher level review and to the PRB; and

(5) Provision of copies of the reviewer's comments and recommendations to the senior executive, the supervising official, and the PRB.

(b) Higher level review. (1) Agency performance appraisal systems may provide for a mandatory second level review of all initial ratings.

(2) A senior executive is entitled to only one higher level review unless the agency provides otherwise.

(c) Final rating. A written rating of record of the executive's performance shall be made on an annual basis by the appointing authority only after considering the recommendations by the PRB with respect to the performance of the senior executive as provided in § 430.307.

(d) Forced distribution. An agency may not prescribe a distribution of levels of ratings for employees covered by this subpart. However, agencies must establish procedures, such as reviews of standards and ratings for difficulty and strictness of application, to ensure that only those employees whose performance exceeds normal expectations are rated at levels above "fully successful". These procedures must be described in the agency's Performance Management Plan.

(e) Inability to rate. When an agency cannot prepare a rating of record at the time specified in the plan, the executive's appraisal period shall be extended for the amount of time necessary to meet the minimum appraisal period at which time a rating of record shall be prepared.

(f) Transfer of rating. If an executive moves to a new agency or new organization in the employing agency at any time during the appraisal period, the current performance ratings of record must be transferred, as required by § 293.404(b)(2) of this chapter. A summary rating must be prepared as required in § 430.305(a) which must be taken into consideration by the gaining agency when deriving the next rating of record.

(g) Documentation. Agencies shall provide to each senior executive a copy of the following documents at the time they are prepared: The initial rating, along with notification of the right to respond in writing and to request a higher level review before the rating becomes final; any comments and recommended changes by a higher level executive; and the final rating. As required in § 293.404(b)(1) of this chapter,
§ 432.101 Statutory authority.

This part applies to reduction in grade and removal of employees covered by the provisions of this part based solely on performance at the unacceptable level. 5 U.S.C. 4305 authorizes the Office of Personnel Management to prescribe regulations to carry out the purposes of title 5, chapter 43, United States Code, including 5 U.S.C. 4303, which covers agency actions to reduce in grade or remove employees for unacceptable performance. (The provisions of 5 U.S.C. 7501 et seq., may also

§ 432.102 Coverage.

Coverage.

§ 432.103 Definitions.

Definitions.

§ 432.104 Addressing unacceptable performance.

Addressing unacceptable performance.

§ 432.105 Proposing and taking action based on unacceptable performance.

Proposing and taking action based on unacceptable performance.

§ 432.106 Appeal and grievance rights.

Appeal and grievance rights.

§ 432.107 Agency records.

Agency records.

§ 430.309 OPM review of SES appraisal systems.

(a) OPM will review performance appraisal systems to determine if they conform to requirements of law, OPM regulations, and OPM performance management policy.

(b) If OPM determines that an appraisal system does not meet the requirements and intent of subchapter II of chapter 43 of title 5, United States Code, or of this subpart, it shall direct the agency to implement an appropriate system or to correct operations under the system. The agency shall take any action so required.

§ 430.310 SES performance appraisal systems.

Agencies must submit proposed SES performance appraisal plans to OPM for approval as part of Performance Management Plans in accordance with provisions of this subpart.

[60 FR 43946, Aug. 23, 1995]
be used to reduce in grade or remove employees. See part 752 of this chapter.
[58 FR 65533, Dec. 15, 1993]
§ 432.102 Coverage.
(a) Actions covered. This part covers reduction in grade and removal of employees based on unacceptable performance.
(b) Actions excluded. This part does not apply to:
(1) The reduction in grade of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2) if such a reduction is based on supervisory or managerial performance and the reduction is to the grade held immediately before becoming a supervisor or manager in accordance with 5 U.S.C. 3321(b);
(2) The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment;
(3) The reduction in grade or removal of an employee in the competitive service serving in an appointment that requires no probationary or trial period who has not completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less;
(4) The reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar position;
(5) An action imposed by the Merit Systems Protection Board under the authority of 5 U.S.C. 1206;
(6) An action taken under 5 U.S.C. 7521 against an administrative law judge;
(7) An action taken under 5 U.S.C. 7532 in the interest of national security;
(8) An action taken under a provision of statute, other than one codified in title 5 of the U.S. Code, which excepts the action from the provisions of title 5 of the U.S. Code;
(9) A removal from the Senior Executive Service to a civil service position outside the Senior Executive Service under part 359 of this chapter;
(10) A reduction-in-force governed by part 351 of this chapter;
(11) A voluntary action by the employee;
(12) A performance-based action taken under part 752 of this chapter;
(13) An action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay if the agency informed the employee that it was to be of limited duration;
(14) A termination in accordance with terms specified as conditions of employment at the time the appointment was made; and
(15) An involuntary retirement because of disability under part 831 of this chapter.
(c) Agencies covered. This part applies to:
(1) The executive departments listed at 5 U.S.C. 101;
(2) The military departments listed at 5 U.S.C. 102;
(3) Independent establishments in the executive branch as described at 5 U.S.C. 104, except for a Government corporation; and
(d) Agencies excluded. This part does not apply to:
(1) A Government corporation;
(2) The Central Intelligence Agency;
(3) The Defense Intelligence Agency;
(4) The National Security Agency;
(5) Any executive agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities;
(6) The General Accounting Office;
(7) The U.S. Postal Service; and
(8) The Postal Rate Commission.
(e) Employees covered. This part applies to individuals employed in or under a covered agency as specified at §432.102(c) except as listed in §432.102(f).
(f) Employees excluded. This part does not apply to:
(1) An employee in the competitive service who is serving a probationary or trial period under an initial appointment;
(2) An employee in the competitive service serving in an appointment that
requires no probationary or trial period, who has not completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;

(4) An employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;

(5) An individual in the Foreign Service of the United States;

(6) An employee who holds a position with the Veterans Health Administration which has been excluded from the competitive service by or under a provision of title 38, United States Code, unless such employee was appointed to such a position under section 7401(3) of title 38;

(7) An administrative law judge appointed under 5 U.S.C. 3105;

(8) An individual in the Senior Executive Service;

(9) An individual appointed by the President;

(10) An employee occupying a position in Schedule C as authorized under part 213 of this chapter;

(11) A reemployed annuitant;

(12) A technician in the National Guard described in 5 U.S.C. 8337(h)(1), employed under section 709(b) of title 32;

(13) An individual occupying a position in the excepted service for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12 month period; and

(14) A manager or supervisor returned to his or her previously held grade pursuant to 5 U.S.C. 3321 (a)(2) and (b).


§ 432.104 Addressing unacceptable performance.

At any time during the performance appraisal cycle that an employee's performance is determined to be unacceptable in one or more critical elements, the agency shall notify the employee of the critical element(s) for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must

“unacceptable” in the critical element(s) at issue.

(b) Critical element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable.

(c) Current continuous employment means a period of employment or service immediately preceding an action under this part in the same or similar positions without a break in Federal civilian employment of a workday.

(d) Opportunity to demonstrate acceptable performance means a reasonable chance for the employee whose performance has been determined to be unacceptable in one or more critical elements to demonstrate acceptable performance in the critical element(s) at issue.

(e) Reduction in grade means the involuntary assignment of an employee to a position at a lower classification or job grading level.

(f) Removal means the involuntary separation of an employee from employment with an agency.

(g) Similar positions mean positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbents could be interchanged without significant training or undue interruption to the work.

(h) Unacceptable performance means performance of an employee that fails to meet established performance standards in one or more critical elements of such employee's position.


§ 432.103 Definitions.

For the purpose of this part—

(a) Acceptable performance means performance that meets an employee's performance requirement(s) or standard(s) at a level of performance above
§ 432.105 Proposing and taking action based on unacceptable performance.

(a) Proposing action based on unacceptable performance. (1) Once an employee has been afforded a reasonable opportunity to demonstrate acceptable performance pursuant to §432.104, an agency may propose a reduction-in-grade or removal action if the employee's performance during or following the opportunity to demonstrate acceptable performance is unacceptable in 1 or more of the critical elements for which the employee was afforded an opportunity to demonstrate acceptable performance.

(2) If an employee has performed acceptably for 1 year from the beginning of an opportunity to demonstrate acceptable performance (in the critical element(s) for which the employee was afforded an opportunity to demonstrate acceptable performance), and the employee's performance again becomes unacceptable, the agency shall afford the employee an additional opportunity to demonstrate acceptable performance before determining whether to propose a reduction in grade or removal under this part.

(3) A proposed action may be based on instances of unacceptable performance which occur within a 1 year period ending on the date of the notice of proposed action.

(4) An employee whose reduction in grade or removal is proposed under this part is entitled to:

(i) Advance notice. (A) The agency shall afford the employee a 30 day advance notice of the proposed action that identifies both the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of unacceptable performance.

(B) An agency may extend this advance notice period for a period not to exceed 30 days under regulations prescribed by the head of the agency. An agency may extend this notice period further without prior OPM approval for the following reasons:

(1) To obtain and/or evaluate medical information when the employee has raised a medical issue in the answer to a proposed reduction in grade or removal;

(2) To arrange for the employee's travel to make an oral reply to an appropriate agency official, or the travel of an agency official to hear the employee's oral reply;

(3) To consider the employee's answer if an extension to the period for an answer has been granted (e.g., because of the employee's illness or incapacitation);

(4) To consider reasonable accommodation of a handicapping condition;

(5) If agency procedures so require, to consider positions to which the employee might be reassigned or reduced in grade; or

(6) To comply with a stay ordered by a member of the Merit Systems Protection Board under 5 U.S.C. 1208(b).

(C) If an agency believes that an extension of the advance notice period is necessary for another reason, it may request prior approval for such extension from the Chief, Family Programs and Employee Relations Division, Office of Labor Relations and Workforce Performance, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(ii) Opportunity to answer. The agency shall afford the employee a reasonable time to answer the agency's notice of proposed action orally and in writing.
(iii) Representation. The agency shall allow the employee to be represented by an attorney or other representative. An agency may disallow as an employee’s representative an individual whose activities as a representative would cause a conflict of interest or position or an employee whose release from his or her official position would give rise to unreasonable costs to the Government or whose priority work assignment precludes his or her release from official duties.

(b) Consideration of medical conditions. The agency shall allow an employee who wishes to raise a medical condition which may have contributed to his or her unacceptable performance to furnish medical documentation (as defined in §339.102 of this chapter) for the agency’s consideration. Whenever possible, the employee shall supply this documentation following the agency’s notification of unacceptable performance under §432.104. If the employee offers such documentation after the agency has proposed a reduction in grade or removal, he or she shall supply this information in accordance with §432.105(a)(4)(ii). In considering documentation submitted in connection with the employee’s claim of a medical condition, the agency may require or offer a medical examination in accordance with the criteria and procedures of part 339 of this chapter, and shall be aware of the affirmative obligations of 29 CFR 1613.704. If the employee who raises a medical condition has the requisite years of service under the Civil Service Retirement System or the Federal Employees Retirement System, the agency shall provide information concerning application for disability retirement. As provided at §831.501(d) of this chapter, an employee’s application for disability retirement shall not preclude or delay any other appropriate agency decision or personnel action.

(b) Final written decision. The agency shall make its final decision within 30 days after expiration of the advance notice period. Unless proposed by the head of the agency, such written decision shall be concurred in by an employee who is in a higher position than the person who proposed the action. In arriving at its decision, the agency shall consider any answer of the employee and/or his or her representative furnished in response to the agency’s proposal. A decision to reduce in grade or remove an employee for unacceptable performance may be based only on those instances of unacceptable performance that occurred during the 1 year period ending on the date of issuance of the advance notice of proposed action under §432.105(a)(4)(i). The agency shall issue written notice of its decision to the employee at or before the time the action will be effective. Such notice shall specify the instances of unacceptable performance by the employee on which the action is based and shall inform the employee of any applicable appeal and/or grievance rights.

§432.106 Appeal and grievance rights.

(a) Appeal rights. An employee covered under §432.102(e) who has been removed or reduced in grade under this part may appeal to the Merit Systems Protection Board if the employee is:

(1) In the competitive service and has completed a probationary or trial period;

(2) In the competitive service serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position(s) under other than a temporary appointment limited to 1 year or less;

(3) A preference eligible in the excepted service who has completed 1 year of current continuous employment in the same or similar position(s); or

(4) A nonpreference eligible in the excepted service who is covered by subparts C and D of part 752 of this chapter.

(b) Grievance rights. (1) A bargaining unit employee covered under §432.102(e) who has been removed or reduced in grade under this part may file a grievance under an applicable negotiated grievance procedure if the removal or reduction in grade action falls within its coverage (i.e., is not excluded by the
§ 432.107 Agency records.

(a) When the action is effected. The agency shall preserve all relevant documentation concerning a reduction in grade or removal which is based on unacceptable performance and make it available for review by the affected employee or his or her representative. At a minimum, the agency's records shall consist of a copy of the notice of proposed action, the answer of the employee when it is in writing, a summary thereof when the employee makes an oral reply, the written notice of decision and the reasons therefor, and any supporting material including documentation regarding the opportunity afforded the employee to demonstrate acceptable performance.

(b) When the action is not affected. As provided at 5 U.S.C. 4303(d), if, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advanced written notice provided in accordance with §432.105(a)(4)(i), any entry or other notation of the unacceptable performance for which the action was proposed shall be removed from any agency record relating to the employee.

Management to prescribe regulations governing such authority. Chapter 43 of title 5, United States Code, provides for recognizing and rewarding employees whose performance so warrants. The regulations in this subpart, in combination with chapters 43 and 45 of title 5, United States Code, and any other applicable law, establish the requirements for agency award programs.

(b) Section 4 of E.O. 11438 (Prescribing Procedures Governing Interdepartmental Cash Awards to the Members of the Armed Forces, December 3, 1968) requires the Office of Personnel Management to prescribe procedures for covering the cost of a cash award recommended by more than one agency for a member of the armed forces for the adoption or use of a suggestion, invention, or scientific achievement. Section 1 of E.O. 12828 (Delegation of Certain Personnel Management Authorities, January 5, 1993) delegates to the Office of Personnel Management the authority of the President to permit performance-based cash awards under 5 U.S.C. 4505a to be paid to categories of employees who would not be eligible otherwise.

(c) This subpart applies to employees as defined by section 2105 and agencies as defined by section 4501 of title 5, United States Code, except as provided in §§ 451.105 and 451.201(b).

(d) For the regulatory requirements for granting performance awards to Senior Executive Service (SES) employees under 5 U.S.C. 5384, refer to §534.403 of this chapter.

[60 FR 43946, Aug. 23, 1995; 60 FR 47646, Sept. 13, 1995]

§ 451.102 Definitions.

Award means something bestowed or an action taken to recognize and reward individual or team achievement that contributes to meeting organizational goals or improving the efficiency, effectiveness, and economy of the Government or is otherwise in the public interest. Such awards include, but are not limited to, employee incentives which are based on predetermined criteria such as productivity standards, performance goals, measurement systems, award formulas, or payout schedules.

Award program means the specific procedures and requirements established by an agency or a component of an agency for granting awards under subchapter I of chapter 43 and subchapter I of chapter 45 of title 5, United States Code, and this subpart.

§ 451.103 Agency award program(s).

(a) Agencies shall develop one or more award programs for employees covered by this subpart.

(b) Agencies are encouraged to involve employees in developing such programs. When agencies involve employees, the method of involvement shall be in accordance with law.

(c) An agency award program shall provide for—

(1) Obligating funds consistent with applicable agency financial management controls and delegations of authority; and

(2) Documenting justification for awards that are not based on a rating of record (as defined in §430.203 of this chapter).

[60 FR 43946, Aug. 23, 1995; 60 FR 47646, Sept. 13, 1995]

§ 451.104 Awards.

(a) An agency may grant a cash, honorary, or informal recognition award, or grant time-off without charge to leave or loss of pay consistent with chapter 45 of title 5, United States Code, and this part to an employee, as an individual or member of a group, on the basis of—

(1) A suggestion, invention, superior accomplishment, productivity gain, or other personal effort that contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork;

(2) A special act or service in the public interest in connection with or related to official employment; or

(3) Performance as reflected in the employee’s most recent rating of record (as defined in §430.203 of this chapter), except that performance awards may be paid to SES employees only under §534.403 of this chapter and not on the basis of this subpart.

(b) A cash award under this subpart is a lump sum payment and is not basic pay for any purpose.
§ 451.105 Award restrictions.

(a) In accordance with 5 U.S.C. 4508, agencies shall not grant awards under this subpart during a Presidential election period to employees who are—

(1) In a Senior Executive Service position and not a career appointee as defined under 5 U.S.C. 3132(a)(4); or

(2) In an excepted service position of a confidential or policy-determining character (schedule C).

(b) In accordance with 5 U.S.C. 4509, agencies shall not grant cash awards under this subpart to employees appointed by the President with Senate confirmation who serve in—

(1) An Executive Schedule position, or

(2) A position for which pay is set in statute by reference to a section or level of the Executive Schedule.

§ 451.106 Agency responsibilities.

(a) In establishing and operating its award program(s), an agency shall assure that a program does not conflict with or violate any other law or Governmentwide regulation.

(b) When a recommended award would grant more than $10,000 to an individual employee, the agency shall submit the recommendation to OPM for approval.

(c) Agencies shall provide for communicating with employees and supervisors (e.g., through formal training) about the relevant parts of their award program(s).

(d) Agencies shall evaluate their award program(s).


(g) Agencies shall report award data to the Central Personnel Data File in Compliance with instructions in the OPM Operating Manual, FEDERAL WORKFORCE REPORTING SYSTEMS, for sale by the U.S. Government Printing Office, Superintendent of Documents.

(h) Agencies shall maintain and submit to OPM such records as OPM may require.

(i) Agencies shall give due weight to an award granted under this part in qualifying and selecting an employee for promotion as provided in 5 U.S.C. 3362.

(j) Agencies shall take any corrective action required by OPM to ensure conformity with applicable law, regulation, and OPM policy.
§ 451.107 OPM responsibilities.

(a) OPM shall review and approve or disapprove each agency recommendation for an award that would grant more than $10,000 to an individual employee.

(b) When a recommended award would grant more than $25,000 to an individual employee, OPM shall review the recommendation and submit it (if approved) to the President for final approval.

(c) OPM shall review and approve or disapprove a request from the head of an Executive agency to extend the provisions of 5 U.S.C. 4505a to any category of employees within that agency that would not be covered otherwise.

(d) OPM may evaluate the operation and application of an agency’s award program(s).

Subpart B—Presidential Awards

Source: 51 FR 8419, Mar. 11, 1986, unless otherwise noted.

§ 451.201 Authority and coverage.

(a) Under chapter 45 of title 5, United States Code, the President may pay a cash award to and incur necessary expenses for the honorary recognition of an employee who:

(b) Awards granted under paragraph (a) of this section are subject to the restrictions as specified in §451.105.

(1) By his/her suggestion, invention or other personal effort contributes to the efficiency, economy, or other improvement of Government operations, or achieves a significant reduction in paperwork; or

(2) Performs an exceptionally meritorious special act or service in the public interest in connection with or related to official employment.

(c) During any fiscal year, the President may, subject to the provisions of 5 U.S.C. 4507, award to any Senior Executive career appointee recommended by OPM the rank of—

(1) Meritorious Executive, for sustained accomplishment, or

(2) Distinguished Executive, for sustained extraordinary accomplishment.

(d) Except as provided in paragraph (b) of this section, this subpart applies to employees as defined by section 2105 of title 5, United States Code.

(e) This subpart applies to agencies as defined in section 4501 of title 5, United States Code.


§ 451.202 Payment.

(a) A Presidential award is paid by the agency(ies) primarily benefiting from the employee contribution.

(b) A Presidential award may be in addition to an agency award under subpart A of this part.


(a) The Office of Personnel Management shall review annually agency recommendations for Presidential Rank Awards for career appointees of the Senior Executive Service under section 4507 of title 5, United States Code, and recommend to the President which of those career appointees should receive awards.

(b) The Office of Personnel Management, in accordance with Executive Order 10717, as amended, shall review agency recommendations for the President’s Award for Distinguished Federal Civilian Service and recommend to the President which career employees should receive this award.

(c) Under Executive Order 11228, section 2, the Office of Personnel Management has the authority to determine the activity or activities primarily benefiting from any suggestion, invention, or other contribution which forms the basis for a Presidential award under 5 U.S.C. 4504.

§ 470.101 Statutory authority.
   (a) Section 4702, title 5, United States Code, provides the Office of Personnel Management (OPM) with the authority to:
      (1) Establish and maintain, and assist in the establishment and maintenance of, research programs to study improved methods and technologies in Federal personnel management;
      (2) Evaluate the research programs established under paragraph (a)(1) of this section;
      (3) Establish and maintain a program for the collection and public dissemination of information relating to personnel management research, and for encouraging and facilitating the exchange of information among interested persons and entities; and
      (4) Carry out the preceding functions directly or through agreement or contract.
   (b) Section 4703, title 5, United States Code, provides OPM with the authority to conduct and evaluate demonstration projects to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management.
   (c) This part supplements and implements the provisions of chapter 47 of title 5, United States Code, relating to the conduct of personnel research programs and demonstration projects, and must be read together with those provisions of law.

§ 470.103 Definitions.
   In this part:
   Demonstration Project means a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management (5 U.S.C. 4703). The project must require the waiver of a provision of law, rule, or regulation which is eligible for waiver under the demonstration authority contained in 5 U.S.C. 4703. A project which can be undertaken under an agency’s own authority and does not require the waiver of a provision of law, rule, or regulation is not considered a “demonstration project” for purposes of this part.
   Research means systematic, intensive study directed toward fuller scientific knowledge or understanding of the subject studied. Activities classified as research are structured experimental or descriptive investigations conducted according to sound methodological principles.
   Research Program means a planned study of the manner in which public management policies and systems are operating or have operated, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.

Subpart B—Regulatory Requirements Pertaining to Research Programs

§ 470.201 Purposes of research programs.
   The purposes of research programs undertaken under this subpart are to stimulate and conduct personnel management research which:
   (a) Develops new knowledge, techniques, and materials about personnel management;
   (b) Seeks solutions to personnel management problems;
   (c) Provides a factual base to support existing or proposed changes in personnel management policies, techniques, and materials;
(d) Modifies or develops personnel management systems which improve the management of the Federal Government's human resources;

(e) Gathers, makes explicit, systematizes, and transmits the knowledge and techniques of practicing managers for the guidance of others and as a factual basis for research needs determination;

(f) Develops new methods or provides new standards for conducting personnel management research; or

(g) Designs systems for the assessment and transmittal of relevant personnel management strategies.

§ 470.203 Eligible parties.
Research may be conducted by the Office of Personnel Management, or under contract or agreement, as appropriate, by:

(a) Federal agencies;

(b) State and local governments;

(c) Institutions of higher education;

or

(d) Other public or private institutions or organizations, profit or non-profit.

§ 470.205 Initiation of research programs.
OPM will announce opportunities for research contracts by issuing Requests for Proposals (RFP’s) in accordance with Federal procurement regulations. Unsolicited proposals may be accepted; however the relevance of the proposed research to OPM research needs will determine the acceptability of the proposal.

Subpart C—Regulatory Requirements Pertaining to Demonstration Projects

§ 470.301 Program expectations.
(a) Demonstration projects permit the Office of Personnel Management and Federal agencies to test alternative personnel management concepts in controlled situations to determine the likely effects and ramifications of proposed changes before putting them into general effect. OPM will assist agencies, within available resources, in developing projects which demonstrate new or improved personnel methods.

(b) The demonstration project must be proposed in a research context. The project plan must include a research design which contains:

1. Measurable goals or objectives;

2. Acceptable expected results or outcomes;

3. A description of the procedures, methods and techniques to be demonstrated in achieving the desired goals or objectives;

4. An evaluation section describing the data collection and analysis procedures to be used to assess the success or failure of the project from a qualitative and quantitative standpoint; and

5. An itemization of all costs and benefits associated with the project, to the agency, the Government, and the community.

(c) OPM may establish and maintain activities which publish, exchange and apply the results of demonstration projects.

(d) OPM may seek legislation, or to the extent already authorized by law, make changes in regulation to implement permanently successful procedures, techniques, new management knowledge, and materials which improve personnel management programs or techniques.

§ 470.303 Eligible parties.
(a) Any Federal agency, or groups of two or more Federal agencies, eligible to propose demonstration projects under 5 U.S.C. 4701(a)(1) and 4701(b) may conduct demonstration projects after approval by the Office of Personnel Management and required Congressional and public review.

(b) While only a Federal agency may propose and conduct a demonstration project, the agency may be assisted in the development and evaluation of the project under contract or agreement with public or private institutions and organizations.

§ 470.305 Submission of proposals for demonstration projects.
(a) OPM will accept project proposals at any time. However, OPM may delay action for a reasonable amount of time on submitted proposals until comparisons can be made with other existing projects or with project proposals of a similar nature not yet received by OPM but known to be under development.
§ 470.307  
(b) Agencies must submit the project proposal in the form of a project plan to OPM for approval. OPM will prescribe the content of a project plan in its guidance and instructions, which at a minimum will contain the items identified in 5 U.S.C. 4703(b)(1) and 5 CFR 470.301(b).

(c) Agencies will outline, at the time proposed demonstration projects are submitted to OPM for approval, what discussions of the project have been held with labor organizations which have been accorded exclusive recognition for bargaining units containing employees involved in or affected by the proposed demonstration project.

(d) OPM may combine and evaluate similar project proposals received from different agencies as a single project, with the approval of the agencies involved.

§ 470.307  Notification responsibilities.

(a) 5 U.S.C. 4703 requires notification of tentatively approved demonstration project plans to Congress, employees, labor organizations, and the public.

(b) OPM shall:

(1) Notify each House of the Congress 180 days in advance of the beginning of each project; and

(2) Publish each tentatively approved project plan as a notice in the Federal Register.

(c) Each agency having a tentatively approved project plan shall:

(i) Notify and make available copies of the project plan to:

(ii) All employees who may be interested in or affected by the activities of the demonstration project; and

(iii) All labor organizations accorded exclusive recognition for bargaining units which include employees in or affected by the project plan.

(2) Certify to OPM in writing when and how the requirements of §470.307(c)(1) were carried out and document the manner in which it insured that all affected employees were notified.

(3) Observe the consultation and negotiation requirements of 5 U.S.C. 4703 (f) and (g).

§ 470.309  Public hearing.

(a) Notice of public hearing. OPM shall hold a public hearing no less than 30 days after the date of its notice in the Federal Register during which interested persons or organizations may present their written or oral views concerning the proposed demonstration project. The notice of public hearing shall be published in the Federal Register and shall:

(1) State the date, time, place and purpose of the hearing;

(2) Describe briefly the project;

(3) Indicate where more information and a copy of the project plan may be obtained;

(4) State the name and address of the person who will receive written comments from those unable to attend the hearing; and

(5) Indicate the date by which written comments must be received to be considered.

(b) Nature of public hearing. The hearing will be informal to encourage effective oral presentations by interested individuals and organizations. The presiding officer, designated by the Director, OPM, shall in his or her reasonable discretion regulate the course of the proceedings and the conduct of those present at the hearing by appropriate means.

(c) A written summary shall be made of the oral evidence.

(d) The record shall be left open for 2 weeks after the conclusion of the hearing to receive additional written data, views, and arguments from the parties participating in the hearing.

§ 470.311  Final project approval.

(a) The Office of Personnel Management will consider all timely relevant oral and written views, arguments, and data before final approval or disapproval of a project plan. OPM may request that the agency modify the tentatively approved project plan before final approval because of comments and data received from the Congress, the public, labor organizations, and affected employees. OPM will not permit the agency to implement the project until all required consultation or negotiation has been completed, including the conclusion of impasse resolution and negotiability disputes.

(b) The Office of Personnel Management shall provide a copy of the final version of the project plan to each
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House of the Congress at least 90 days in advance of the date the project is to take effect.

(c) Agencies involved in the project shall communicate the content of the final project plan to:

(1) Labor organizations and affected employees; and

(2) Individuals and groups known to be interested in the project’s activities.

§ 470.313 Project implementation regulations.

Agencies will prepare demonstration project implementing regulations, as appropriate, to replace Government-wide statutes and regulations waived for the project. Demonstration project implementing regulations issued pursuant to an OPM-approved demonstration project must be approved by OPM and shall have full force and authority pursuant to Title VI of the Civil Service Reform Act of 1978.

§ 470.315 Project modification and extension.

OPM-approved projects permit the testing of alternative personnel systems and procedures in accordance with the provisions of the project plan. The provisions of approved project plans will not be modified, duplicated in organizations not listed in the project plan, or extended by agencies to individuals or groups of employees not included in the project plan without the approval of the Office of Personnel Management. OPM will inform the agency of notification responsibilities under §470.307. The extent of notification requirements will depend on the nature and extent of the requested project modification.

§ 470.317 Project evaluation.

(a) Compliance evaluation. OPM will review the operation of the project periodically to determine its compliance with the requirements of this part and the approved project plan. If OPM determines that an agency is not meeting legal, regulatory, or project plan requirements, it may, as appropriate, direct the agency to take corrective action or terminate the project.

(b) Results evaluation. All approved project plans will contain an evaluation section to measure the impact of the project results in relation to its objectives and to determine whether or not permanent changes in law and/or regulation should be considered or proposed. Where the project plan provides for agency evaluation of project results, OPM will review those project evaluation efforts, may conduct evaluations of its own, on a sample basis, to verify results, and may report its own conclusions. If OPM or the agency determines that an experiment is creating a substantial hardship on, or is not in the best interest of, the public, the Federal Government, employees, or eligibles, even though the experiment is being conducted properly, OPM or the agency may jointly or unilaterally terminate the project.

PART 511—CLASSIFICATION UNDER THE GENERAL SCHEDULE

Subpart A—General Provisions

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511.101 Definitions.

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Subpart F—Classification Appeals

511.601 Applicability of regulations.
511.602 Notification of classification decision.
511.603 Right to appeal.
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Subpart G—Effective Dates of Position Classification Actions or Decisions

511.701 Effective dates generally.
511.702 Agency or Office classification appeal decisions.
§ 511.101 Definitions.

In this part:

(a) Agency and employee have the meanings given them by section 5102 of title 5, United States Code.

(b) Class means all positions which are sufficiently similar as to (1) kind or subject-matter of work, (2) level of difficulty and responsibility, and (3) the qualification requirements of the work, to warrant similar treatment in personnel and pay administration.

(c) Classification means the analysis and identification of a position and placing it in a class under the position-classification plan established by OPM under chapter 51 of title 5, United States Code.

(d) Grade means all classes of positions which (although different with respect to kind or subject-matter of work) are sufficiently equivalent as to (1) level of difficulty and responsibility, and (2) level of qualification requirements of the work, to warrant their inclusion within one range of rates of basic pay.

(e) Position means the work, consisting of the duties and responsibilities, assigned by competent authority for performance by an employee.

Subpart F—Classification Appeals

§ 511.601 Applicability of regulations.

This subpart applies to a request from an employee or an agency for the Office to review the classification of a position subject to chapter 51 of title 5, United States Code, or for the Office to determine whether a position is subject to that chapter.

§ 511.602 Notification of classification decision.

An employee whose position is reclassified to a lower grade which is based in whole or in part on a classification decision is entitled to a prompt written notice from the agency. This includes employees who are eligible for retained grade or pay. If the reclassification is due to an Office classification certificate issued under the authority of 5 U.S.C. 5110, the agency will also explain the reasons for the reclassification action to the employee. This notice shall inform the employee:

(a) Of his or her right to appeal the classification decision to the agency (if the agency has an established appeal system and it has the authority to review the classification decision), or to the Office as provided in this subpart if such an appeal has not already been made;

(b) Of the time limits within which the employee’s appeal must be filed in order to preserve any retroactive benefits under § 511.703; and

(c) Any other appeal or grievance rights available under applicable law, rule, regulation or negotiated agreement.
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§ 511.603 Right to appeal.

(a) Employee appeal. An employee, or the employee’s designated representative acting on behalf of an employee, may request an Office decision as to:

(1) The appropriate occupational series or grade of the employee’s official position.
(2) The inclusion under or exclusion from chapter 51 of title 5, United States Code, of the official position by the employee’s agency or the Office, except in the case of a position located in the Office of the Architect of the Capitol.

(b) Agency appeal. The head of an agency, or an authorized representative, may appeal any classification certificate issued by the Office under sections 5103 or 5110 of title 5, U.S.C., with respect to any position in the agency.

§ 511.604 Filing an appeal.

(a) Employee. An employee may appeal by writing to the Office directly, or by forwarding the appeal through the employing agency.

(b) Referral of an employee appeal to the Office. An agency shall forward, within 60 calendar days of its receipt in the agency, and employee’s appeal filed through the agency to the Office when:

(1) The employee has directed the appeal to the Office and the agency’s written decision is not favorable; or
(2) The agency is not authorized to act on the employee’s appeal; or
(3) The agency has not decided the appeal within the established time period.

§ 511.605 Time limits.

(a) Employees. (1) An employee may submit an appeal of his or her official position at any time. If the employee has suffered a loss in grade or pay, is not entitled to retained grade or pay, and desires retroactive adjustments, the time limits in §511.703 must be observed.

(2) If the employee is appealing an agency decision or an Office classification certificate issued under 5 U.S.C. 5103 or 5110, the employee shall promptly appeal if he or she disagrees with the classification certificate. Employees must meet the time limits provided in §511.703 in order to preserve the right to retroactive adjustment.

(b) Agency. An agency may appeal an Office classification certificate issued under authority of section 5103 or 5110 of title 5, United States Code, at any time. Heads of agencies should appeal prior to the implementation date of the certificate if they disagree with the classification rationale.

(c) Reconsideration. An employee or agency may request reconsideration of an Office appellate decision. The request must be in writing, and filed not later than 45 calendar days after the decision is issued. This time limit may be waived under exceptional circumstances by either the Classification Appeals Office or the Director.

§ 511.606 Form and content of an appeal.

(a) Employee appeal. An employee’s appeal shall be in writing, and shall contain the reasons why the employee believes his or her position is erroneously classified, or should be brought under or excluded from chapter 51 of title 5, United States Code. The agency, when forwarding the employee’s appeal or when requested by the Office, shall furnish all relevant facts concerning the position and the agency’s justification for its classification decision. The agency shall also comment on the information submitted by the employee if requested to do so by the Office. Either the employee or agency may submit relevant information to the Office at any time following the initial filing of an appeal.

(b) Agency appeal. An agency’s appeal shall be in writing, and shall contain its reasons and justification for requesting a review of the Office’s certificate.

(c) Inspection of the Office’s appellate record. The employee, an employee’s representative and the agency will be permitted to inspect the Office’s appellate record on request. Agencies will make available to appellants copies of any and all information submitted by the agency to the Office with respect to the appellant’s individual appeal.

§ 511.607 Nonappealable issues.

(a) The following issues are not appealable to the Office under this subpart. Such issues may be reviewed
under administrative or negotiated grievance procedures if applicable:

1. The accuracy of the official position description including the inclusion or exclusion of a major duty in the official position description. When the accuracy of the official position description is questioned by the employee, the employee will be directed to review this matter with his or her supervisor. If management and the employee cannot resolve their differences informally, the accuracy of the position description should be reviewed in accordance with administrative or negotiated grievance procedures. If the accuracy of the position description cannot be resolved in this manner, the Office will decide the appeal on the basis of the actual duties and responsibilities assigned by management and performed by the employee;

2. An assignment or detail out of the scope of normally performed duties as outlined in the official position description;

3. The accuracy, consistency or use of agency supplemental classification guides; or,

4. The title of the position unless a specific title is authorized in a published Office classification standard or guide, or the title reflects a qualification requirement or authorized area of specialization.

The following issues are neither appealable nor reviewable:

1. The class, grade, or pay system of a position to which the employee is not officially assigned by an official personnel action;

2. An agency’s proposed classification decision;

3. The class, grade, or pay system of a position to which the employee is detailed or promoted on a time-limited basis, except that employees serving under time-limited promotion for 2 years or more may appeal the classification of their positions to the Office under these procedures;

4. The classification of the employee’s position based on position-to-position comparisons and not standards;

5. The accuracy of grade level criteria contained in an Office classification guide or standard; or

6. A classification decision that has been issued by the Office under this subpart when there has been no change in the governing classification standard(s) or the major duties of the position.


§511.608 Employee representatives.

An employee may select a representative of his or her choice to assist in the preparation and presentation of an appeal. An agency may disallow an employee’s representative when the individual’s activities as a representative would cause a conflict of interest or position; an employee who cannot be released from his or her official duties because of the priority needs of the Government; or an employee whose release would give rise to unreasonable costs to the Government.

§511.609 Ascertainment of facts.

The employee, a designated representative, and the agency shall furnish such facts as may be requested by the Office within the time frames specified. The facts shall be in writing when so requested. The Office, in its discretion, may investigate or audit the position. A representative may not participate in OPM on-site audits unless specifically requested to do so by the Office.

§511.610 Notification.

The Office shall notify the employee, or a representative if one is designated, and the agency in writing of its decision.

§511.611 Cancellation of an employee appeal.

An employee’s appeal shall be cancelled and the employee so notified in writing in the following circumstances:

(a) On receipt of the employee’s written request for cancellation.

(b) On failure to prosecute, when the employee or the designated representative does not furnish requested information, or proceed with the advancement of the appeal.

The Office may at its discretion reopen a cancelled appeal on a showing that circumstances beyond the control of the employee prevented pursuing the appeal.
§ 511.612 Finality of decision.

An appellate decision made by the Office is final unless reconsidered by the Office. There is no further right of appeal. The Office may reconsider a decision at its discretion. The decision shall constitute a certificate which is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Agencies shall review their own classification decisions for identical, similar, or related positions to insure consistency with the Office's certificate.

§ 511.613 Classification Appeals Office.

The Office's Classification Appeals Office may, at its discretion, reopen and reconsider a certificate issued under this subpart.

(a) The Classification Appeals Office may remand to the respective region of the Office any request for reconsideration which requires extensive fact-finding or investigation. Requests which contain new and material information, or disagreements over the significance of information, will be remanded to the regional deciding official for a decision.

(b) The Classification Appeals Office may reopen and reconsider a decision only when written argument or evidence is presented which establishes a reasonable doubt concerning the technical accuracy of the decision.

§ 511.614 Review by the Director.

The Director may, at his or her discretion, reopen and reconsider any decision when written argument or evidence is submitted which tends to establish that:

(a) The previous decision involves an erroneous interpretation of law or regulation, or a misapplication of established policy;

(b) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Director.

§ 511.615 Temporary compliance authority.

Agencies may use temporary or conditional compliance action, e.g., a temporary promotion or a temporary reassignment when available, if:

(a) A position has been certified by the Office under either section 5110 or 5112 of title 5, United States Code;

(b) The certificate has not been suspended; and,

(c) The agency or employee has requested reconsideration.

This authority will not be used if the position has been downgraded and the employee is entitled to retained grade under section 5362 of title 5, United States Code.

§ 511.616 Availability of information.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the appeal;

(3) The results of the appeal (i.e., proper title, pay plan, series, and grade);

(4) the classification requested (i.e., title, pay plan, series, and grade); and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(b) The Office will disclose to the parties concerned the information contained in an appeal file in proceedings under this part. For the purposes of this section, the parties concerned means the Government employee or former Government employee involved in the proceedings, his or her representative designated in writing, and the representative of the agency or the Office involved in the proceeding.


[50 FR 3313, Jan. 24, 1985]
§ 511.701  Effective dates generally.

(a) Agency classification actions. (1) A classification action is a determination to establish or change the title, series, grade or pay system of a position based on application of published position classification standards or guides. This is a position action.

(i) The effective date of a position action taken by an agency shall be the date an official with properly delegated authority approves (certifies) the proposed classification. This is accomplished when the authorized official(s) signs the allocation of the position.

(ii) The effective date of a position action may be extended to correspond with the effective date of the personnel action when:

(A) The position is being changed to lower grade or pay; and

(B) The employee occupying the position is eligible for retained grade or pay under 5 U.S.C. 5362-5363.

(2) A position action is implemented by a personnel action. The personnel action must occur within a reasonable period of time following the date of the position action.

(3) If the position action requires a personnel action which will result in a loss of grade or pay to the occupant of the position, the agency must advise the employee, in writing, of the position action and the proposed date of the personnel action. This notice shall be issued prior to taking a personnel action.

(4) Except as provided in §511.703, classification actions may not be made retroactive.

(b) Office of Personnel Management's classification decisions.

(1) The effective date of a classification decision made by means of a certificate issued under the authority of section 5110, title 5, United States Code is not earlier than the date of the certificate, and not later than the beginning of the fourth pay period following the date of the certificate, unless a subsequent date is specifically stated in the certificate. Except as otherwise provided by this paragraph the filing of an appeal of such a certificate does not delay its effective date.

(2) The implementation of the certificate may be suspended when it is determined before its effective date that a review of the classification decision is warranted and suspension is desirable. The determination to suspend implementation may be made by:

(i) A regional director, or a designee, when the decision is made by the regional office; or

(ii) The Assistant Director, Agency Compliance and Evaluation, or a designee, when the decision is made within the central office or by a region, or

(iii) The Director with respect to any classification decision.

SUSpending the implementation of a certificate does not automatically change the effective date except when the certificate requires that the grade or pay of the position be reduced and the employee is not entitled to retained grade or pay.

(3) When the original decision requires that the grade or pay of the position be reduced and the employee is not entitled to retained grade or pay the reviewing authority shall issue a new certificate if it sustains the original decision. Since demotions cannot be made retroactive, the effective date of the new certificate shall be not earlier than the date of the certificate, and not later than the beginning of the fourth pay period after the date of the certificate unless a subsequent date is specifically stated in the certificate.

§ 511.702  Agency or Office classification appeal decisions.

(a) Subject to §511.703, the effective date of a change in the classification of a position resulting from a classification appeal decision by either an agency or the Office is not earlier than the date of the decision and not later than the beginning of the fourth pay period following the date of the decision, except when a subsequent date is specifically provided in the decision.

(b) The implementation of the decision may be suspended by the Office when it determines before the effective
date that a review of the decision is warranted. The determination to suspend implementation may be made by:

(1) The regional director, or a designee, when the appellate decision is made by an agency under the jurisdiction of the region; or

(2) The Assistant Director, Agency Compliance and Evaluation, or the Chief, Classification Appeals Office when the appellate decision is made within the central office, by a region or by an agency; or

(3) The Director with respect to any appellate decision.

Suspending the implementation does not change the effective date of the decision except when the original decision requires that the grade or pay of the position be reduced and the employee is not entitled to grade or pay retention.

(c) When the original decision requires that the grade or pay position be reduced and the employee is not entitled to grade or pay retention, the reviewing authority, if sustaining the original decision, shall issue a new certificate and the effective date of the new certificate shall be not earlier than the date of the new decision and not later than the beginning of the fourth pay period following the date of the new decision, unless a subsequent date is specifically stated in the new decision.

§ 511.703 Retroactive effective date.

(a) Applicability. A retroactive effective date may be required only if the employee is wrongfully demoted.

(b) Downgrading. (1) The effective date of a classification appellate certificate or agency appellate decision can be retroactive only if it corrects a classification action which resulted in a loss of grade or pay. In order for the decision to be made retroactive, the employee must file the initial request for review with either the agency or the Office not later than 15 calendar days after the effective date of the reclassification action.

(2) However, if the appellate decision raises the grade of the position above the original grade, retroactivity will apply only to the extent of restoration to the original grade.

(3) The right to a retroactive effective date provided by this section is preserved on subsequent appeals from an agency or Office classification decision when the subsequent appeal is filed not later than 15 calendar days following receipt of written notification of a final agency administrative decision or 15 calendar days after the effective date of the action taken as a result of the classification decision, whichever is later.

(c) Grade change based on new duties and responsibilities. Retroactivity may be based only on duties and responsibilities existing at the time of demotion and cannot be based on duties and responsibilities assigned later.

(d) Retroactivity when time limits are extended. The right to a retroactive effective date provided by this section may be preserved at the discretion of the Office, on a showing by the employee that he or she was not notified of the applicable time limit and was not otherwise aware of it, or that circumstances beyond his or her control prevented filing an appeal within the prescribed time limit.

PART 530—PAY RATES AND SYSTEMS (GENERAL)

Subpart A [Reserved]

Subpart B—Aggregate Limitation on Pay

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530.306 Determining employee rates.

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§ 530.201 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5307, which limits an employee's aggregate compensation to the rate payable for level I of the Executive Schedule at the end of the calendar year.

§ 530.202 Definitions.

In this subpart: Agency means an Executive agency, as defined in 5 U.S.C. 105.

Aggregate compensation means the total of:
(1) Basic pay received as an employee of the executive branch or as an employee outside the executive branch to whom chapter 51 of title 5, United States Code, applies;
(2) Locality-based comparability payments under 5 U.S.C. 5304; continued rate adjustments under subpart G of part 531 of this chapter; or special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509);
(3) Premium pay established by or under subchapter IV of chapter 53 of title 5, United States Code;
(4) Premium pay under subchapter V of chapter 55 of title 5;
(5) Incentive awards and performance-based cash awards under chapters 45, 53, and 54 of title 5, United States Code;
(6) Recruitment and relocation bonuses under 5 U.S.C. 5753;
(7) Retention allowances under 5 U.S.C. 5754;
(8) Supervisory differentials under 5 U.S.C. 5755;
(9) Post differentials under 5 U.S.C. 5925;
(10) Danger pay allowances under 5 U.S.C. 5928;
(11) Allowances based on environmental conditions for employees stationed outside the continental United States or in Alaska under 5 U.S.C. 5941(a)(2);
(12) Physicians comparability allowances under 5 U.S.C. 5948;
(13) Continuation of pay under 5 U.S.C. 8118; and
(14) Other similar payments authorized under title 5, United States Code, excluding back pay due to an unjustified personnel action under 5 U.S.C. 5596; overtime pay under the Fair Labor Standards Act of 1938, as amended, and part 551 of this chapter; severance pay under 5 U.S.C. 5595; and lump-sum payments for accumulated and accrued annual leave on separation under 5 U.S.C. 5551 or 5552.

Basic pay means the total amount of pay received during any 1 calendar year at the rate fixed by law or administrative action for the position held by an employee, including night and environmental differentials for prevailing rate employees under 5 U.S.C. 5343(f) and § 532.511 of this part, respectively, but before any deductions and exclusive of additional pay of any other kind.

Discretionary payment means a payment included in an employee's aggregate compensation whose amount is not fixed in advance by law or regulation by virtue of the geographic location and/or pay system of the position held by an employee, or by the nature of work assigned to an employee, and which an agency has discretion to pay or not to pay to a particular employee.

Employee has the meaning given that term in 5 U.S.C. 2105.

Estimated aggregate compensation means the agency's projection of the aggregate compensation an employee actually will receive during a calendar year based upon known factors—i.e., the total amount of basic pay the employee will be paid, plus any lump-sum payment of excess amounts from a previous calendar year; the total amount of nondiscretionary payments to which the employee is entitled; and the total...
§ 530.203 Administration of aggregate limitation on pay.

(a) No executive branch employee (or General Schedule employee in the legislative or judicial branch) may receive any allowance, differential, bonus, award, or other similar cash payment under title 5, United States Code, in any calendar year to the extent such payment, in combination with the employee's basic pay (whether received under title 5 or otherwise), would cause the employee's aggregate compensation to exceed the rate payable for level I of the Executive Schedule on the last day of that calendar year.

(b) The limitation described in paragraph (a) of this section applies to the total amount of aggregate compensation actually received by an employee during the calendar year without regard to the period of service for which such compensation is received.

(c) Except in the case of a retention allowance, at the time a discretionary payment is authorized for an employee, the employee may not receive any portion of such payment that, when added to the estimated aggregate compensation the employee is projected to receive, would cause the aggregate compensation actually received by the employee during the calendar year to exceed the rate payable for level I of the Executive Schedule at the end of the calendar year. Any portion of a discretionary payment deferred under this paragraph shall become available for payment as provided in § 530.204.

(d) Nondiscretionary payments may not be deferred or discontinued for any period of time in order to make a discretionary payment that would otherwise cause an employee's pay to exceed any limitation described in or established by this section.

(e) If the estimated aggregate compensation to which an employee is entitled, after deferral of discretionary payments as required by paragraph (c) of this section, exceeds the rate in effect for level I of the Executive Schedule at the end of the calendar year, the agency shall defer all nondiscretionary payments (other than basic pay) at the time when otherwise continuing such payments would cause the aggregate compensation actually received by the employee during the calendar year to exceed the rate payable for level I of the Executive Schedule at the end of the calendar year. Any portion of a nondiscretionary payment deferred under this paragraph shall become available for payment as provided in § 530.204.

§ 530.204 Payment of excess amounts.

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

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

(c) If an employee transfers to another agency or leaves the Federal service, the agency responsible for making the payment is the agency that employed the individual when the excess amount was created.
§ 530.205  The following conditions permit payment of excess aggregate compensation without regard to the calendar year limitation:

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

(2) If an employee separates from the Federal service, the entire excess amount is payable following a 30-day break in service. If the individual is reemployed in the Federal service in the same calendar year as separation, any previous payment of an excess amount shall be considered part of that year’s aggregate compensation for the purpose of applying the limitations described in §530.203 of this part for the remainder of the calendar year.


§ 530.205  Records.

Each agency shall maintain appropriate records to administer this subpart and shall transfer such records to any agency to which an employee may transfer and make such records available to any agency in which an employee may be reemployed during the same calendar year.

Subpart C—Special Salary Rate Schedules for Recruitment and Retention

SOURCE: 50 FR 32841, Aug. 15, 1985, unless otherwise noted.

§ 530.301  Applicability.

This subpart applies to agencies having positions paid under—

(a) A statutory pay system; or

(b) Any other pay system established by or under Federal statute for civilian positions within the executive branch.

[56 FR 20335, May 3, 1991]

§ 530.302  Authority.

In lieu of the pay schedules identified in §530.301 of this part, the Office of Personnel Management (OPM) may establish, and agencies shall pay, special salary rates under section 5305 of title 5, United States Code, Executive Order 12748, and this subpart.

[56 FR 20335, May 3, 1991]

§ 530.303  Establishing and adjusting special salary rate schedules.

(a) OPM may increase the minimum rates otherwise payable under the pay schedules identified in §530.301 of this part in one or more areas or locations to the extent it considers necessary to overcome existing or likely significant handicaps in the recruitment or retention of well-qualified personnel when these handicaps are due to any of the circumstances described in paragraph (b) of this section. When a minimum rate is increased under this authority, increases may also be made in one or more of the remaining rates of the affected grade or level. In no event may an increased minimum rate exceed the maximum rate prescribed by law for the grade or level by more than 30 percent, and no rate may be established under this section in excess of the rate of basic pay payable for level V of the Executive Schedule.

(1) Rates of pay offered by non-Federal employers are significantly higher than those payable by the Government within the area, location, occupational group, or other class of positions under the pay system involved;

(2) The remoteness of the area or location involved;

(3) The undesirability of the working conditions or the nature of the work involved (including exposure to toxic substances or other occupational hazards); or

(4) Any other circumstances OPM considers appropriate.

(b) The circumstances referred to in paragraph (a) of this section are the following:

(1) Rates of pay offered by non-Federal employers are significantly higher than those payable by the Government within the area, location, occupational group, or other class of positions under the pay system involved;

(2) The remoteness of the area or location involved;

(3) The undesirability of the working conditions or the nature of the work involved (including exposure to toxic substances or other occupational hazards); or

(4) Any other circumstances OPM considers appropriate.

(c) An agency may propose to OPM that special salary rates be established or adjusted. The agency initiating such a request and all other agencies wishing to be included are responsible for submitting complete supporting data as specified by OPM, including, after consulting with OPM, a survey of prevailing non-Federal pay rates in the relevant labor market.

(d) All requests to establish or adjust special salary rate schedules must be transmitted directly to OPM’s central
office by the agency’s headquarters. Each request must include a certification by the head of the agency that special salary rates are necessary to ensure staffing adequate to the accomplishment of the agency’s mission and that funds are available to cover the increased expenditures for salaries and benefits that would result from the approval of the request. If the special salary rate request covers fewer than 1,000 employees or would increase annual salary costs by less than $4 million, this certification may be provided by a headquarters official designated to act on behalf of the head of the agency.

(e) In establishing or adjusting special salary rate schedules, OPM shall consider—

(1) The number of existing or likely vacant positions and the length of time they have been vacant, including evidence to support the likelihood that a recruiting problem will develop if one does not already exist;

(2) The number of employees who have or are likely to quit for comparable positions, including the number quitting for higher paying non-Federal positions and evidence to support the likelihood that employees will quit;

(3) The number of vacancies the agency tried to fill, compared with the number of hires and offers made;

(4) The nature of the existing labor market;

(5) The degree to which the agency has considered and used other pay flexibilities available to the agency to alleviate its staffing problems, including above-minimum entry rates, recruitment and relocation bonuses, and retention allowances;

(6) The degree to which the agency has considered relevant non-pay solutions to the staffing problems, such as conducting an aggressive recruiting program, using appropriate appointment authorities, redesigning jobs, establishing training programs, and improving working conditions;

(7) The impact of the staffing problem on the agency’s mission; and

(8) The level of non-Federal rates paid for comparable positions. (Data on non-Federal salary rates may be supplemented, if appropriate, by data on Federal salary rates for comparable positions established under independent statutory authority.)

(f) In determining at which level to set special salary rates, OPM shall consider—

(1) The level of rates it believes necessary to recruit or retain an adequate number of well-qualified employees;

(2) The dollar costs that will be incurred if special salary rate schedules are not authorized; and

(3) The level of pay for comparable positions.

(g) No one factor or combination of factors specified in paragraph (e) or (f) of this section requires special salary rate schedules to be established at or adjusted to any given level. Each agency request to establish or adjust special salary rate schedules shall be judged on its own merits based on the extent to which it meets these criteria.

(h) For newly established or existing special salary rate authorizations, OPM may establish GS-10 special salary rates for the purpose of computing overtime pay and annual premium pay for standby duty and for the purpose of applying the provisions of 5 U.S.C. 5543 governing compensatory time off. In determining the minimum special rate for grade GS-10 to be established for these purposes, OPM shall consider the following factors, as appropriate in each situation:

(1) The need to provide for a reasonable progression in basic pay rates from lower grade levels to higher grade levels; and

(2) The need to avoid pay alignment problems that would result from applying the two-step promotion rule in 5 U.S.C. 5334(b).

(i) The determination regarding whether an employee is covered by a special salary rate schedule is based on the employee’s position of record and the official duty station for that position. For purposes of this subpart, the employee’s position of record and corresponding official duty station are the position and station documented on the employee’s most recent notification of personnel action. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the position and duty station associated with that assignment are the
§ 530.304 Annual review.

(a) Prior to an adjustment in the scheduled rates of pay for one or more grades or levels for which special rates have been authorized under 5 U.S.C. 5305, but at least annually, OPM shall review special salary rate schedules to determine whether the factors in § 530.303 of this part and paragraph (b) of this section require those schedules to continue, and, if they are to continue, the extent to which they are to be adjusted, if at all.

(b) In addition to the factors in § 530.303 of this part, OPM shall consider, for the purpose of making the determination required by paragraph (a) of this section—

(1) The former non-special pay rates of the special rate employees to ensure that any adjustment in the special rates of pay would not cause those rates to fall below the non-special rates of pay to which the special rate employees would otherwise have been entitled;

(2) The likelihood that the factors leading to a statutory adjustment in pay will affect special rate employees as well; and

(3) Other special rate pay adjustments that occurred prior to the date of the anticipated statutory pay adjustment.

(c) Any adjustment in the special rates of pay shall be based on the factors in paragraphs (a) and (b) of this section and shall not be made solely for mechanical reasons or for the purposes of providing automatic adjustments. Any adjustment must be based on the pay OPM determines is necessary in a given occupation and area to recruit or retain the special rate employees.

(d) In conducting the annual review, OPM shall designate lead agencies for assistance in coordinating the collection of relevant data. All agencies are responsible for submitting complete supporting data upon request to OPM or the lead agency, as appropriate.

(e) When special rates are adjusted as a result of this review, an employee's pay shall be fixed in the same manner as provided in § 530.307 of this part.

§ 530.305 Revising or discontinuing special salary rate schedules.

OPM and agencies shall initiate action to discontinue or revise special salary rate schedules when it is determined that these schedules are no longer needed, or no longer needed at existing levels, to ensure satisfactory recruitment or retention. No employee's pay shall be reduced because of such discontinuation or revision.

§ 530.306 Determining employee rates.

(a) Initial establishment and increases.

(1) Except as otherwise provided in this section, when an employee is in a position to which a special rate schedule becomes initially applicable or for which the special salary rate schedule is increased, the agency shall fix the employee's rate of basic pay at the step in the new or increased special salary rate schedule that corresponds to the employee's existing numerical step or rate of the grade or level.

(2) When a special salary rate schedule becomes initially applicable to, or increased for, a position occupied by an employee who is receiving basic pay at a rate in excess of the maximum rate of the applicable rate schedule, the agency shall increase the employee's rate of basic pay by an amount equal to 50 percent of the increase in the maximum rate of the applicable rate range, except as provided in § 536.205(d).

(3) If the employee is retaining a rate under part 536 of this chapter or section 3594 of Title 5, United States Code, the agency shall increase the employee's rate of basic pay by an amount equal to 50 percent of the increase in the maximum rate of the applicable rate range, except as provided in § 536.208(d).

(ii) If the employee is retaining a rate under an authority other than part 536 of this chapter (including a retained special rate resulting from the reduction or termination of a special salary rate schedule before the first day of the first pay period beginning on or after January 11, 1979), or section 3594 of Title 5, United States Code, the...
agency shall increase the employee's rate of basic pay by the amount of the increase in the maximum rate of the applicable rate range.

(3) When a special salary rate schedule becomes initially applicable to, or increased for, a position occupied by a GM employee (as defined in §531.202 of this chapter), the employee's rate of basic pay shall be determined under §531.205(a)(2) of this chapter.

(b) Decreased and discontinued rates.

(1) Except as provided in paragraph (b)(2) of this section, when the special salary rate schedule for a position is discontinued or decreased, the agency shall determine the rate of basic pay for an employee in the position as follows:

(i) If the employee is receiving a rate of basic pay equal to one of the rates in the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at that rate.

(ii) If the employee is receiving a rate of basic pay at a rate between two rates in the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at the higher of the two rates.

(iii) If the employee is receiving a rate of basic pay at a rate in excess of the maximum rate for the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at his or her existing rate, and the employee shall be entitled to this rate as provided in §536.104(a)(3).

(2) If the employee is receiving a rate of basic pay applicable to a GM employee (as defined in §531.202 of this chapter) and the employee shall receive his or her existing rate. This rate may be lower than the minimum rate for the regular schedule, as permitted by section 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103-89). If the employee's existing rate exceeds the maximum rate for the regular or decreased special salary rate schedule, the employee shall be entitled to the existing rate, as provided in §536.104(a)(3) of this chapter.

(c) Initial appointments.

(1) The agency shall determine the rate of basic pay for an individual receiving an initial appointment (including an appointment after a break in service of at least 1 workday) to a position to which a special salary rate schedule applies under the regulations governing the pay system under which the employee is appointed without regard to the special salary rate schedule, and shall use the step or rate thus determined to fix the employee's rate at the corresponding step or rate in the special salary rate schedule.

(2) A special salary rate may not be considered an employee's highest previous rate, except as provided in §531.203(d)(2)(vi).

(d) General exception. Except as provided in paragraphs (e), (f), and (g) of this section, all other actions of promotion, reduction in grade, transfer, or reassignment are governed by the pay-fixing rules established for the appropriate pay system to which, or in which, the personnel action is taken.

(e) Reassignments and transfers. When an employee is reassigned or transferred within the same pay system to a position to which a special salary rate schedule applies, the agency shall fix the employee's rate in the special salary rate schedule at the step or rate in the special salary rate schedule for the employee's grade or level which corresponds to the employee's existing numerical step or rate in the salary rate schedule for the employee's grade or level.

(f) Promotions. When an employee in a position to which a special salary rate schedule does not apply is promoted to a position to which a special salary rate schedule applies, the agency shall first determine the employee's step or rate in the higher grade or level without regard to the special salary rate schedule, and then shall fix the employee's rate at the corresponding numerical step or rate in the special salary rate schedule for the grade to which promoted.

(g) Reductions in grade. When an employee not entitled to a retained grade or rate under appropriate authority is reduced in grade to a position to which a special salary rate schedule applies, the agency shall first determine the employee's step or rate in the lower
§ 530.307 Effect of an adjustment in scheduled rates of pay.

(a) Except as provided in paragraphs (b) and (c) of this section, when an employee was receiving a special rate immediately before the effective date of an adjustment in scheduled rates of pay, the employee shall receive on that effective date the rate of basic pay for the numerical rank in the new special rate range established under §530.304 of this part for the employee's grade or level that corresponds to the numerical rank of the special rate the employee was receiving immediately before that effective date. However, in the case of an employee who becomes eligible for pay retention because a special rate schedule has been reduced under §530.304 of this part, the employee shall receive a rate of basic pay determined under §536.205(b) of this chapter.

(b) If a special rate range is terminated under §530.304 of this part, an employee who was receiving a special rate immediately before the effective date of an adjustment in scheduled rates of pay shall receive on that effective date the numerical rank in the new statutory pay schedule for the employee's grade or level that corresponds to the numerical rank of the special rate the employee was receiving immediately before that effective date. However, in the case of an employee who becomes eligible for pay retention because the employee's pay would otherwise be reduced under §530.304, the employee shall receive a rate of basic pay determined under §536.205(b) of this chapter.

(c) A GM employee (as defined in §531.202 of this chapter) receiving a special salary rate immediately before the effective date of an adjustment in scheduled rates of pay shall receive on that effective date a rate of basic pay determined under §531.205(a)(2) of this chapter. However, in the case of an employee who becomes eligible for pay retention because the employee's pay would otherwise be reduced under §530.304, the employee shall receive a rate of basic pay determined under §536.205(b) of this chapter.

§ 531.202

Subpart B—Determining Rate of Basic Pay

SOURCE: 45 FR 65498, Oct. 3, 1980, unless otherwise noted.

§ 531.201 Applicability.

This subpart and sections 5333 and 5334 of title 5, United States Code, apply to employees and positions, other than Senior Executive Service positions, to which chapter 51 of title 5, United States Code, applies.

§ 531.202 Definitions.

In this subpart:

Agency means an agency to whom this subpart applies.

Demotion means a change of an employee, while continuously employed, from:

(1) One General Schedule grade to a lower General Schedule grade, with or without reduction in pay; or

(2) A higher rate paid under authority other than subchapter III of chapter 53 of title 5, United States Code, to a lower rate within a General Schedule grade.

Employee means an employee of an agency to whom this subpart applies.

Existing rate of basic pay means the rate received immediately before the effective date of a transfer, promotion, demotion, or within-grade increase.

GM employee means an employee who was covered by the Performance Management and Recognition System under chapter 54 of title 5, United States Code, on October 31, 1993 (and therefore became covered on November 1, 1993, by section 4 of Pub. L. 103-89, the Performance Management and Recognition System Termination Act of 1993), and who continues thereafter to occupy a position as a supervisor or management official (as defined in paragraphs (10) and (11) of section 7103(a) of title 5, United States Code) in the same grade of the General Schedule and in the same agency without a
break in service of more than 3 calendar days. Any reference to employees, grades, positions, or rates of basic pay under the General Schedule shall include GM employees for the purposes of subchapter I and III of chapter 53 of title 5, United States Code.

Higher grade means a General Schedule grade above the last previous General Schedule grade or its equivalent held by the employee.

Highest previous rate means—
(1) The highest actual rate of basic pay previously received by an individual while employed in a position in a branch of the Federal Government (executive, legislative, or judicial); a Government corporation, as defined in 5 U.S.C. 103; the United States Postal Service or the Postal Rate Commission; or the government of the District of Columbia (except as provided in §531.203(d)(2)(v) of this part); without regard to whether the position was subject to the General Schedule; or
(2) The actual rate of basic pay for the highest grade and step previously held by an individual while employed in a position subject to the General Schedule.

Moved involuntarily means the movement of the incumbent of a position in a nonappropriated fund instrumentality under the jurisdiction of the Department of Defense or the Coast Guard, as described in 5 U.S.C. 2102(c), with the position when it is moved to the civil service employment system of the Department of Defense or the Coast Guard, respectively.

New appointment means the first appointment, regardless of tenure, as an employee of the Federal Government or the Government of the District of Columbia.

Promotion means a change of an employee, while continuously employed, from:
(1) One General Schedule grade to a higher General Schedule grade; or
(2) A lower rate paid under authority other than subchapter III of chapter 53 of title 5, United States Code, to a higher rate within a General Schedule grade.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

Reassignment means a change of an employee, while serving continuously in the same agency, from one position to another without promotion or demotion.

Reemployment means an employment, including reinstatement or another type of appointment, after a break in service of at least 1 full workday.

Transfer means a change of an employee, without a break in service of 1 full workday, from one branch of the Federal Government (executive, legislative, or judicial) to another or from one agency to another.

§531.203 General provisions.

(a) New Appointments. Except as provided by section 5333(a) of title 5, United States Code, and paragraph (b) of this section, a new appointment is made at the minimum rate of the grade, or when the minimum rate of the grade of a position has been set under part 530 of this chapter, a new appointment is made at the minimum rate set under part 530 of this chapter.

(b) Superior qualifications appointments. (1) A “superior qualifications appointment” means an appointment made at a rate above the minimum rate of the appropriate General Schedule grade under authority of section 5333 of title 5, United States Code, because of the superior qualifications of the candidate or a special need of the agency for the candidate’s services.

(2) An agency may make a superior qualifications appointment by new appointment or by reappointment except that when made by reappointment, the candidate must have a break in service of at least 90 calendar days from his or her last period of Federal employment or employment with the District of Columbia (other than—
(i) Employment with the Government of the District of Columbia when the candidate was first appointed by the DC Government on or after October 1, 1987; or
(ii) Employment under an appointment as an expert or consultant under
section 3109 of title 5, United States Code:

(iii) Employment under a temporary appointment effected primarily in furtherance of a postdoctoral research program, or effected as part of a predoctoral or postdoctoral training program during which the employee receives a stipend, or employment under a temporary appointment of a graduate student when the work performed by the student is the basis for completing certain academic requirements for an advanced degree;

(iv) Employment in a cooperative work-study program under a Schedule B appointment made in accordance with section 213.3202 of this chapter;

(v) Employment as a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration or the Commissioned Corps of the Public Health Service;

(vi) Employment which is neither full-time employment nor the principal employment of the candidate; or

(vii) Employment under the Intergovernmental Personnel Act).

(3) In determining whether an employee should receive a superior qualifications appointment and, if so, at what level the employee's pay should be set, the agency must consider the possibility of authorizing a recruitment bonus as provided in part 575 of this chapter.

(4) Each agency that makes superior qualifications appointments must establish documentation and record-keeping procedures sufficient to allow reconstruction of the action taken in each case. Documentation must include:

(i) The superior qualifications of the individual or special need of the agency that justified use of this authority;

(ii) 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

(iii) The reasons for authorizing an advanced rate instead of or in addition to a recruitment bonus.

(5) Each agency using the superior qualifications authority must establish appropriate internal guidelines and evaluation procedures to ensure compliance with the law, these regulations, and agency policies.

(c) Maximum payable rate rules. In determining an employee's rate of basic pay upon reemployment, transfer, reassignment, promotion, demotion, or change in type of appointment, the following rules apply unless the employee is entitled to a higher rate under the promotion provisions of 5 U.S.C. 5334(b) and §531.204(a) of this part or the grade and pay retention provisions of 5 U.S.C. 5362 and 5363 and part 536 of this chapter:

(1) Except as provided in paragraph (c)(2) of this section, the maximum rate of basic pay that may be paid a General Schedule employee shall be determined as follows:

(i) Compare the employee's highest previous rate (expressed as an annual rate) with the rates of basic pay in effect at the time the highest previous rate was earned for the grade in which pay is currently being fixed.

(ii) Identify the lowest step of the grade in which pay is currently being fixed, for which the rate of basic pay was equal to or greater than the employee's highest previous rate at the time the highest previous rate was earned.

(iii) Identify the current rate of basic pay for the step identified under paragraph (c)(1)(ii) of this section. This rate is the maximum rate of basic pay that may be paid the employee.

(2) The maximum rate of basic pay that may be paid a GM employee (as defined in §531.202) shall be determined as follows: Compare the employee's highest previous rate (expressed as an annual rate) with the range of rates of basic pay in effect at the time the highest previous rate was earned for the grade in which pay is currently being fixed. If the employee's highest previous rate was less than or equal to the minimum rate for the grade in which pay is being fixed, the maximum rate of basic pay that may be paid the employee is the minimum rate for the grade in which pay is being fixed. If the employee's highest previous rate was equal to or greater than the maximum rate for the grade in which pay is being fixed, the maximum rate of basic pay that may be paid the employee is the maximum rate for that grade. If the employee's
highest previous rate was greater than the minimum rate, but less than the maximum rate for the grade in which pay is being fixed, the maximum payable rate shall be determined as follows:

(i) Using the pay rates in effect at the time the highest previous rate was earned for the grade in which pay is being fixed, find the difference between the employee's highest previous rate and the minimum rate for that grade—(a). Find the difference between the maximum rate and the minimum rate for the same grade—(b). Divide (a) by (b); carry the result to the seventh decimal place; and truncate, rather than round, the result. This quotient—(c)—is a factor representing the employee's relative position in the rate range.

(ii) Using current pay rates, find the difference between the maximum rate and the minimum rate for the grade in which pay is being fixed—(d). Multiply (d) times the factor (c). Add the product of this multiplication to the minimum rate for the grade in which pay is being fixed. This figure, rounded to the next higher whole dollar, is the maximum rate of basic pay that may be paid the employee.

(d) Basis for highest previous rate. (1) Except as otherwise provided in this paragraph, the highest previous rate may be based on a regular tour of duty at any rate of basic pay received by an individual while serving under an appointment not limited to 90 days or less, or for a continuous period of not less than 90 days under one or more appointments without a break in service.

(2) The highest previous rate may not be based on the following:

(i) A rate received under an appointment as an expert or consultant under 5 U.S.C. 3109;

(ii) A rate received in a position to which the employee was temporarily promoted for less than 1 year, except upon permanent placement in a position at the same or higher grade;

(iii) A rate received in a position from which the employee was reassigned or reduced in grade for failure to complete satisfactorily a probationary period as a supervisor or manager;

(iv) A rate received under a void appointment or a rate otherwise contrary to applicable law or regulation;

(v) A rate received by an employee of the government of the District of Columbia who was first employed by that government on or after October 1, 1987;

(vi) A rate received solely during a period of interim relief under the interim relief provisions of 5 U.S.C. 7701(b)(2)(A); or

(vii) A special rate established under 5 U.S.C. 5303 and part 530 of this chapter; §532.231 of this chapter; or other legal authority; unless, in a reassignment to another position in the same agency—

(A) The special rate of pay is the employee's current rate of basic pay; and

(B) An agency official specifically designated to make such determinations finds that the need for the services of the employee, and his or her contribution to the program of the agency, will be greater in the position to which he or she is being reassigned. Such determinations shall be made on a case-by-case basis, and in each case the agency shall make a written record of its positive determination to use the special rate as an employee's highest previous rate.

(3) In the case of an employee who has received or is receiving a special rate established under 5 U.S.C. 5303 and part 530 of this chapter, §532.231 of this chapter, or other legal authority; who is placed in a position in which a special rate does not apply; and for whom the special rate is not used as the highest previous rate under paragraph (d)(2)(vi) of this section; the highest previous rate may be based on the rate of basic pay for the step (or relative position) in the regular rate range that corresponds to the employee's existing step (or relative position) in the special rate range for the employee's current grade or pay level.

(e) Agency classification action. When an agency regrades a position to a grade higher than the one to which the position had been classified by Office action, and when subsequent to the regrading, the Office again classifies the position to the grade which it had originally assigned the position, the rate attained by the employee in the higher grade may not be used as his or her highest previous rate.
(f) Simultaneous actions. When a position or appointment change and entitlement to a higher rate of pay occur at the same time, the higher rate of pay is deemed an employee's existing rate of basic pay. If an employee is entitled to two pay benefits at the same time, the agency shall process the changes in the order which gives the employee the maximum benefit.

(g) Status as a GM employee. (1) An employee retains status as a GM employee (as defined in §531.202) when detailed to any position or when reassigned to another General Schedule position in which the employee continues to be a supervisor or management official (as defined in paragraphs (10) and (11) of section 7103(a) of title 5, United States Code).

(2) An employee permanently loses status as a GM employee if the employee is promoted (including a temporary or term promotion), transferred, reduced in grade, reassigned to a position in which the employee will no longer be a supervisor or management official, or has a break in service of more than 3 calendar days.

§531.204 Special provisions.

(a) Promotions and transfers. (1) The requirements of section 5334(b) of title 5, United States Code, apply only to an employee who is promoted or transferred from a position in one grade of the General Schedule to a position in a higher grade of the General Schedule.

(2) For the purpose of section 5334(b) of title 5, United States Code, an employee's “existing rate of basic pay” includes a special rate established under section 5303 of title 5, United States Code.

(3) When an employee at grade GS-1 or grade GS-2 is promoted or transferred to a higher grade, the amount of a step increase above step 10 of the employee's grade equals the amount of the increment between step 9 and step 10 of the grade from which promoted.

(b) Classification decisions. When a classification decision is made effective retroactively under part 511 of this chapter, the agency shall treat the corrective personnel action affecting the employee concerned as a cancellation or correction, as the case may be, of the original action of demotion, and the employee is entitled to retroactive pay in accordance with the terms of the corrective action.

(c) Expiration or termination of temporary promotions. (1) On expiration or termination of a temporary promotion when an employee is returned to the lower grade, an agency must recompute the employee's rate of basic pay for the lower grade as if the employee had not been temporarily promoted unless the agency sets pay at a higher rate under §531.203(d).

(2) In the case of an employee whose rate of basic pay would otherwise fall between two steps of General Schedule grade or applicable special rate range, the rate of basic pay of the employee must be increased to the rate for the next higher step of the grade or special rate range.

(d) Rate of basic pay on acquiring status as a GM employee. On acquiring status as a GM employee (as defined in §531.202) on November 1, 1993, an employee shall continue to receive the rate of basic pay that was payable on October 31, 1993.

(e) Rate of basic pay on loss of status as a GM employee. On loss of status as a GM employee (as defined in §531.202) under §531.203(g)(2), an employee shall receive (except as provided in paragraph (f) of this section) his or her existing rate of basic pay, plus any of the following adjustments that may be applicable, in the order specified:

(1) The amount of any annual adjustment under section 5303 of title 5, United States Code, to which the employee would otherwise be entitled on that date or, for an employee subject to special pay rates, the amount of any pay adjustment made on that date under section 5305 of title 5, United States Code, and part 530 of this chapter;

(2) The amount of any step increase under section 5335 of title 5, United States Code, and §531.404 to which the
employee otherwise would be entitled on that date:

(3) The amount resulting from a promotion effective on that date;

(4) In the case of an employee whose resulting rate of basic pay falls between two steps of a General Schedule grade (or, in the case of an employee whose position is subject to special pay rates, between the two steps of the applicable special rate range), the amount of any increase that may be necessary to pay the employee the rate for the next higher step of that grade (or special rate range); and

(5) In the case of an employee whose resulting rate of basic pay falls between two steps of a General Schedule grade (or, in the case of an employee whose position is subject to special pay rates, between the two steps of the applicable special rate range), the amount of any increase that may be necessary to pay the employee the rate for the next higher step of that grade (or special rate range).

(f) Special exceptions. Paragraphs (e)(1) through (4) of this section do not apply to any employee who loses status as a GM employee (as defined in §531.202) under §531.203(g)(2) as a result of—

(1) An action taken for disciplinary or performance related reasons;

(2) The expiration or termination of a temporary promotion; or

(3) A reduction in grade at the employee's request.


§531.205 Pay schedule conversion rules at the time of an annual pay adjustment under 5 U.S.C. 5303.

(a) On the effective date of a pay adjustment under 5 U.S.C. 5303, the rate of basic pay of an employee subject to the General Schedule shall be initially adjusted, except as provided in paragraph (b) of this section, as follows:

(1) If an employee is receiving basic pay immediately before the effective date of his pay adjustment at one of the rates of a grade in the General Schedule, he shall receive the rate of basic pay for the corresponding numerical rate of the grade in effect on and after such date.

(2)(i) Except as provided in paragraphs (a)(2)(ii) through (iv) of this section, an agency shall determine the annual pay adjustment under 5 U.S.C. 5303 for a GM employee (as defined in §531.202) as follows:

(A) Subtract the minimum rate of the range of the employee's position in effect on the day immediately preceding the pay adjustment from the employee's rate of basic pay on the day immediately preceding the pay adjustment;

(B) Subtract the minimum rate of the range in effect immediately preceding the pay adjustment from the maximum of that rate range;

(C) Divide the result of paragraph (a)(2)(i)(A) of this section by the result of paragraph (a)(2)(i)(B) of this section, carry the result to the seventh decimal place, and truncate, rather than round, the result;

(D) Subtract the minimum rate of the new rate range for the grade from the maximum rate of that range;

(E) Multiply the result of paragraph (a)(2)(i)(C) of this section by the result of paragraph (a)(2)(i)(D) of this section; and

(F) Add the result of paragraph (a)(2)(i)(E) of this section to the minimum of the new rate range and round to the next higher whole dollar amount.

(ii) The rate of basic pay of an employee which is at the minimum or maximum of the rate range in effect on the day preceding the pay adjustment shall be adjusted to the minimum or maximum of the new rate range, respectively.

(iii) The rate of basic pay of an employee which is less than the minimum rate of the rate range of the employee's position shall be increased by the full amount of the annual pay adjustment under 5 U.S.C. 5303 applicable to the rate range of the grade of the employee's position.

(iv) An employee who is receiving retained pay shall receive one-half of the annual pay adjustment under 5 U.S.C. 5303, as required by 5 U.S.C. 5363(a).
§ 531.206 Setting pay upon movement from nonappropriated fund instrumentalities.

(a) Unless the employee is eligible to receive a higher rate of basic pay under §531.203(c) of this part, the initial rate of basic pay under the General Schedule of an employee of the Department of Defense or the Coast Guard, respectively, may be set at any rate within the grade of the General Schedule position that does not exceed the highest previous rate of basic pay received by the employee during his or her service in a position in a nonappropriated fund instrumentality, as described in 5 U.S.C. 2105(c).

(b) Unless the employee is eligible to receive a higher rate of basic pay under paragraph (c) of this section, the initial rate of basic pay under the General Schedule of an employee of the Department of Defense or the Coast Guard who is moved involuntarily, without a break in service of more than 3 days, from a position with substantially the same duties in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, shall be set at the rate for the lowest step of the General Schedule grade in which pay is being set, for which the rate of basic pay is equal to or greater than the employee's rate of basic pay under the nonappropriated fund instrumentality immediately before the move.

(c) Unless an employee is entitled to receive a higher rate of basic pay under paragraph (b) of this section, the initial rate of basic pay of an employee who is moved involuntarily, without a break in service of more than 3 days, from a position under a non-appropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the civil service employment system of the Department of Defense or the Coast Guard, respectively, may be set—

(1) At any rate within the grade of the General Schedule position that does not exceed the highest previous
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rate of basic pay received by the employee during his or her service in a nonappropriated fund instrumentality, as described in 5 U.S.C. 2105(c); (2) Under the maximum payable rate rules in §531.203(c) of this part; or (3) Under the authority to grant pay retention in §536.104(c) of this part.

[57 FR 12404, Apr. 10, 1992]

Subpart C—Special Pay Adjustments for Law Enforcement Officers

SOURCE: 57 FR 2432, Jan. 22, 1992, unless otherwise noted.

§ 531.301 Definitions.

In this subpart:

Law enforcement officer means a law enforcement officer as defined in §550.103 of this part with respect to whom the provisions of chapter 51 of title 5, United States Code, apply, including members of the Senior Executive Service.

Official duty station means the duty station for the law enforcement officer’s position of record as indicated on his or her most recent notification of personnel action. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the temporary duty station associated with that assignment is the employee’s official duty station.

Scheduled annual rate of pay means—(1) The General Schedule rate of basic pay for the employee’s grade and step (or relative position in the rate range), including a special rate for law enforcement officers under section 403 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) (Pub. L. 101-509), but exclusive of a special salary rate established under 5 U.S.C. 5305 or similar provision of law (other than section 403 of FEPCA), a continued rate of pay under part 536 of this chapter, 5 CFR 359.705, or 5 U.S.C. 5334(b)(2), if applicable.

(i) Using the special salary rate schedule established under 5 U.S.C. 5305 or similar provision of law, subtract the dollar amount for step 1 of the employee’s grade on the special salary rate schedule from the dollar amount for the employee’s special salary rate; and

(ii) Add the result of paragraph (2)(i) of this definition to the dollar amount for step 1 of the employee’s grade on the General Schedule; or

(3) A retained rate of pay under part 536 of this chapter, 5 CFR 359.705, or 5 U.S.C. 5334(b)(2), if applicable.

Special law enforcement adjusted rate of pay means an employee’s scheduled annual rate of pay multiplied by the factor listed in §531.302(a) of this part for the special pay adjustment area in which the employee’s official duty station is located, subject to the limitation described in §531.302(b) or (c) of this part, if applicable.

Special pay adjustment area means any of the following Consolidated Metropolitan Statistical Areas (CMSA’s), Primary Metropolitan Statistical Areas (PMSA’s), or Metropolitan Statistical Areas (MSA’s), as defined by the Office of Management and Budget (OMB): (a) Boston-Worcester-Lawrence, MA-NH-ME-CTCMSA; (b) Chicago-Gary-Kenosha, IL-IN-WI CMSA; (c) Los Angeles-Riverside-Orange County, CA CMSA; (d) New York-Northern New Jersey-Long Island, NY-NJ-CT-PA CMSA; (e) Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD CMSA; (f) San Francisco-Oakland-San Jose, CA CMSA; (g) San Diego, CA MSA; or (h) Washington-Baltimore, DC-MD-VA-WV CMSA.


§ 531.302 Determining special law enforcement adjusted rates of pay.

(a) To determine the special law enforcement adjusted rate of pay, the
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scheduled annual rate or pay for a law enforcement officer whose official duty station is in one of the special pay adjustment areas listed below shall be multiplied by the factor shown for that area:

<table>
<thead>
<tr>
<th>Special pay adjustment area</th>
<th>Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boston-Worcester-Lawrence, MA-NH-ME-CT</td>
<td>1.16</td>
</tr>
<tr>
<td>Chicago-Gary-Kenosha, IL-IN-WI CMSA</td>
<td>1.04</td>
</tr>
<tr>
<td>Los Angeles-Riverside-Orange County, CA CMSA</td>
<td>1.16</td>
</tr>
<tr>
<td>New York-Northern New Jersey-Long Island, NY-NJ-CT-PA CMSA</td>
<td>1.16</td>
</tr>
<tr>
<td>Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD CMSA</td>
<td>1.04</td>
</tr>
<tr>
<td>San Francisco-Oakland-San Jose, CA CMSA</td>
<td>1.16</td>
</tr>
<tr>
<td>San Diego, CA CMSA</td>
<td>1.08</td>
</tr>
<tr>
<td>Washington-Baltimore, DC-MD-VA-WV CMSA</td>
<td>1.04</td>
</tr>
</tbody>
</table>

(b) Except as provided in paragraph (c) of this section, the special law enforcement adjusted rate of pay may not exceed the rate of basic pay payable for level IV of the Executive Schedule.

(c) The special law enforcement adjusted rate of pay for an employee in a position described in 5 U.S.C. 5304(h)(1)(A)–(E), including members of the Senior Executive Service, may not exceed the rate of basic pay payable for level III of the Executive Schedule.


§ 531.303 Computation of hourly, daily, weekly, and biweekly adjusted rates of pay.

When it is necessary to convert the special law enforcement adjusted rate of pay to an hourly, daily, weekly, or biweekly rate, the following methods apply:

(a) To derive an hourly rate, divide the adjusted annual rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as a whole cent;

(b) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the employee’s basic daily tour of duty;

(c) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

§ 531.304 Administration of special law enforcement adjusted rates of pay.

(a) A law enforcement officer shall receive the greatest of—

(1) His or her rate of basic pay, including any applicable special salary rate established under 5 U.S.C. 5305 or similar provision of law or special rate for law enforcement officers under section 403 of FEPAct;

(2) A continued rate of pay under subpart G of this part;

(3) A special law enforcement adjusted rate of pay under this subpart, where applicable, including a special law enforcement adjusted rate of pay continued under § 531.307;

(4) A “locality rate of pay” under subpart F of this part, where applicable.

(b) A special law enforcement adjusted rate of pay and a special law enforcement adjusted rate of pay that is continued under § 531.307(a) are considered basic pay for the purpose of computing—

(1) Retirement deductions and benefits under chapters 83 or 84 of title 5, United States Code;

(2) Life insurance premiums and benefits under parts 870, 871, 872, and 873 of this chapter;

(3) Premium pay under subparts A and I of part 550 of this chapter (including the computation of limitations on premium pay under 5 U.S.C. 5547, overtime pay under 5 U.S.C. 5542(a), and compensatory time off under 5 U.S.C. 5543);

(4) Severance pay under subpart G of part 550 of this chapter; and

(5) Advances in pay under subpart B of part 550 of this chapter.

(c) When an employee’s official duty station is changed from a location not in a special pay adjustment area to a location in a special pay adjustment area, payment of the special law enforcement adjusted rate of pay begins on the effective date of the change in official duty station.

(d) A special law enforcement adjusted rate of pay is paid only for those hours for which a law enforcement officer is in a pay status, except that a special law enforcement adjusted rate of pay shall be included in a lump-sum payment for annual leave under 5 U.S.C. 5551 or 5552.

(e) A special law enforcement adjusted rate of pay shall be adjusted as of the effective date of any change in
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the applicable scheduled annual rate of pay.

(f) Except as provided in paragraph (g) of this section, entitlement to a special law enforcement adjusted rate of pay under this subpart terminates on the date—

(1) An employee’s official duty station is no longer located in a special pay adjustment area;

(2) An employee is no longer in a position covered by this subpart;

(3) An employee separates from Federal service;

(4) An employee’s special salary rate under 5 U.S.C. 5305 or similar provision of law (other than section 403 of FEPCA) exceeds his or her special law enforcement adjusted rate of pay under this subpart; or

(5) An employee’s “locality rate of pay” under subpart F of this subpart exceeds his or her special law enforcement adjusted rate of pay under this subpart.

(g) In the event of a change in the geographic area covered by a CMSA, PMSA, or MSA described in § 531.301 of this chapter, the effective date of a change in an employee’s entitlement to a special law enforcement adjusted rate of pay under this subpart shall be the first day of the first pay period beginning on or after the date on which a change in the definition of the CMSA, PMSA, or MSA is made effective.

(h) Payment of, or an increase in, a special law enforcement adjusted rate of pay is not an equivalent increase in pay within the meaning of 5 U.S.C. 5335.

(i) A special law enforcement adjusted rate of pay is included in an employee’s “total remuneration,” as defined in § 551.511(b) of this chapter, and “straight time rate of pay,” as defined in § 551.512(b) of this chapter, for the purpose of computations under the Fair Labor Standards Act of 1938, as amended.

(j) Termination of a special law enforcement adjusted rate of pay under paragraph (f) of this section is not an adverse action for the purpose of subpart D of part 752 of this chapter.

(k) When an employee’s special law enforcement adjusted rate of pay under this subpart is greater than any applicable locality rate of pay under subpart F of this part, a continued rate of pay under subpart G of this part, or special salary rate under 5 U.S.C. 5305 or similar provision of law (other than section 403 of FEPCA), the payment of the rate resulting from the comparison required by paragraph (a) of this section shall be deemed to have reduced the special pay adjustment for law enforcement officers payable under section 404 of FEPCA, as authorized by section 404(a) of FEPCA.


§ 531.305 Reports.

The Office of Personnel Management may require agencies to report pertinent information concerning the administration of payments under this subpart.

§ 531.306 Effect of special pay adjustments for law enforcement officers on retention payments under FBI demonstration project.

As required by section 406 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), a retention payment payable to an employee of the New York Field Division of the Federal Bureau of Investigation under section 601(a)(2) of Public Law 100-453, as amended, shall be reduced by the amount of any special any adjustment for law enforcement officers payable to that employee under this subpart. For the purpose of applying this section, the amount of the special pay adjustment for law enforcement officers shall be determined by subtracting the employee’s scheduled annual rate of pay from his or her special law enforcement adjusted rate of pay.

[61 FR 3540, Feb. 1, 1996]

§ 531.307 Continuation of a special law enforcement adjusted rate of pay.

(a) Except as provided in paragraphs (c) and (d) of this section, the dollar amount of a special law enforcement adjusted rate of pay that was calculated under regulations which included nationwide or worldwide special salary rates established under 5 U.S.C. 5305 in the definition of “scheduled annual rate of pay” shall not be reduced.
(b) At the time of an adjustment in pay under 5 U.S.C. 5303, a special law enforcement adjusted rate of pay continued under paragraph (a) of this section shall be increased by the lesser of—

(1) The dollar amount of the adjustment (including a zero adjustment) made under 5 U.S.C. 5303 in the General Schedule rate of basic pay for the employee’s grade and step (or relative position in the rate range); or

(2) The dollar amount of the adjustment (including a zero adjustment) in the special salary rate applicable to the employee as a result of the annual review of special rates required by 5 CFR 530.304.

(c) When an employee who is receiving a special law enforcement adjusted rate of pay continued under paragraph (a) of this section moves to a position in another special pay adjustment area to which a lesser special pay adjustment factor is applicable under §531.302(a), the continued rate shall be reduced. The reduced continued rate shall be derived by—

(1) Determining the special law enforcement adjusted rate of pay to which the employee would have been entitled immediately before the employee’s continued rate was first established if the special pay adjustment factor for the new area had been applicable; and

(2) Adjusting that rate as required under paragraph (b) of this section during the intervening period.

(d) A special law enforcement adjusted rate of pay that is continued under this section terminates on the date any of the conditions specified in §531.304(f) is satisfied or on the date an employee is reduced in grade or is no longer in a position covered by a nationwide or worldwide special rate authorization (or, in the event of the conversion of a nationwide or worldwide special rate authorization to a local special rate authorization, a position covered by the new local special rate authorization).

§ 531.402 Employee coverage.

(a) Except as provided in paragraph (b) of this section, this subpart applies to employees who occupy permanent positions classified and paid under the General Schedule and who are paid less than the maximum rate of their grades.

(b) This subpart does not apply to:

(1) Members of the Senior Executive Service established under subchapter II of chapter 31 of title 5, United States Code;

(2) Individuals appointed by the President, by and with the advice and consent of the Senate; and
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(3) Employees of the government of the District of Columbia.


§ 531.403 Definitions.

In this subpart:

Acceptable level of competence means performance by an employee that warrants advancement of the employee's rate of basic pay to the next higher step of the grade or the next higher rate within the grade (as defined in this section) of his or her position, subject to the requirements of § 531.404 of this subpart, as determined by the head of the agency.

Agency means an agency defined in section 5102 of title 5, United States Code.

Calendar week means a period of any seven consecutive calendar days.

Critical element has the meaning given that term in § 430.203 of this chapter.

Employee means an employee of an agency.

Equivalent increase means an increase or increases in an employee's rate of basic pay equal to or greater than the difference between the employee's rate of basic pay and the rate of pay for the next higher step of that grade or the next higher rate within the grade (as defined in this section).

Next higher rate within the grade for a GM employee (as defined in § 531.202) means the rate of basic pay which exceeds an employee's existing rate of basic pay by one-ninth of the difference between the minimum and maximum rates of pay for the applicable General Schedule grade or special salary rate schedule established under section 5305 of title 5, United States Code, not to exceed the maximum rate for the grade.

Permanent position means a position filled by an employee whose appointment is not designated as temporary by law and does not have a definite time limitation of one year or less. "Permanent position" includes a position to which an employee is promoted on a temporary or term basis for at least one year.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

Scheduled tour of duty means any work schedule established for an employee in accordance with the regular procedures for the establishment of work weeks in § 610.111 of this chapter. For a full-time employee this includes the basic 40-hour work week. For a part-time employee this is any regularly scheduled work of less than 40 hours during the administrative work week.

Waiting period means the minimum time requirement of creditable service to become eligible for consideration for a within-grade increase.

Within-grade increase is synonymous with the term "step increase" used in section 5335 of title 5, United States Code, and means—

(1) A periodic increase in an employee's rate of basic pay from one step of the grade of his or her position to the next higher step of that grade in accordance with section 5335 of title 5, United States Code, and this subpart; or

(2) For a GM employee (as defined in § 531.202), a periodic increase in an employee's rate of basic pay from his or her current rate to the next higher rate within the grade (as defined in this section) in accordance with section 4 of Pub. L. 103-89.


§ 531.404 Earning within-grade increase.

An employee paid at less than the maximum rate of the grade of his or her position shall earn advancement in pay to the next higher step of the grade or the next higher rate within the grade (as defined in § 531.403) upon meeting the following three requirements established by law:

(a) The employee's performance must be at an acceptable level of competence, as defined in this subpart. To be determined at an acceptable level of competence, the employee's most recent rating of record (as defined in § 430.203 of this chapter) shall be at
least Level 3 ("Fully Successful" or equivalent).

(1) When a within-grade increase decision is not consistent with the employee's most recent rating of record a more current rating of record must be prepared.

(2) The rating of record used as the basis for an acceptable level of competence determination for a within-grade increase must have been assigned no earlier than the most recently completed appraisal period.

(b) The employee must have completed the required waiting period for advancement to the next higher step of the grade of his or her position.

(c) The employee must not have received an equivalent increase during the waiting period.


§ 531.405 Waiting periods for within-grade increase.

(a) Length of waiting period. (1) For an employee with a scheduled tour of duty, the waiting periods for advancement to the next higher step in all General Schedule grades (or the next higher rate within the grade, as defined in §531.403) are:

(i) Rate of basic pay less than the rate of basic pay at step 4 - 52 calendar weeks of creditable service;

(ii) Rate of basic pay equal to or greater than the rate of basic pay at step 4 and less than the rate of basic pay at step 7 - 104 calendar weeks of creditable service; and

(iii) Rate of basic pay equal to or greater than the rate of basic pay at step 7 - 156 calendar weeks of creditable service.

(2) For an employee without a scheduled tour of duty, the waiting periods for advancement to the next higher step of all General Schedule grades (or the next higher rate within the grade, as defined in §531.403) are:

(i) Rate of basic pay less than the rate of basic pay at step 4 - 260 days of creditable service in a pay status over a period of not less than 52 calendar weeks;

(ii) Rate of basic pay equal to or greater than the rate of basic pay at step 4 and less than the rate of basic pay at step 7 - 520 days of creditable service in a pay status over a period of not less than 104 calendar weeks; and

(iii) Rate of basic pay equal to or greater than the rate of basic pay at step 7 - 780 days of creditable service in a pay status over a period of not less than 156 calendar weeks.

(b) Commencement of a waiting period. A waiting period begins:

(1) On the first appointment as an employee of the Federal Government, regardless of tenure;

(2) On receiving an equivalent increase; or

(3) After a period of nonpay status or a break in service (alone or in combination) in excess of 52 calendar weeks, unless the nonpay status or break in service is creditable service under §531.406 of this subpart.

(c) A waiting period is not interrupted by non-workdays intervening between an employee's last scheduled workday in one position and his or her first scheduled workday in a new position.


§ 531.406 Creditable service.

(a) General. Civilian employment in any branch of the Federal Government (executive, legislative, or judicial) or with a Government corporation as defined in section 103 of title 5, United States Code, is creditable service in the computation of a waiting period. Service credit is given during this employment for periods of annual, sick, and other leave with pay; advanced annual and sick leave; service under a temporary or term appointment; and service under an interim appointment made under §772.102 of this chapter. Depending on the specific provision of law or regulation, service may be creditable for the completion of one waiting period or for the completion of successive waiting periods. Paragraph (b) of this section identifies service which is creditable in the computation of a single waiting period. Paragraph (c) identifies service which is creditable in the computation of successive waiting periods.

(b) Service creditable for one within-grade increase. (1) Military service as defined in section 8331(13) of title 5,
§ 531.407 Equivalent increase determinations.

(a) Multiple increases. When an employee receives more than one increase in his or her rate of basic pay during a year, the following rules apply:

(1) The employee is considered to be on leave without pay or to be on furlough, and his or her service is creditable in the computation of waiting periods for successive within-grade increases when:
   (i) The employee is absent for the purpose of engaging in military service as defined in section 8331(13) of title 5, United States Code, and returns to a pay status through the exercise of a restoration right provided by law, Executive order, or regulation;
   (ii) The employee is receiving injury compensation under subchapter I of chapter 81 of title 5, United States Code;
   (iii) The employee is performing service that is creditable under section 8332(b)(5) or (7) of title 5, United States Code;
   (iv) The employee is temporarily employed by another agency in a position covered by this subpart; or
   (v) The employee is assigned to a State or local government or institution of higher education under sections 3371-3376 of title 5, United States Code.

(2) The period from the date of an employee's separation from Federal service with a restoration or reemployment right granted by law, Executive order, or regulation to the date of restoration or reemployment with the Federal Government through the exercise of that right is creditable service in the computation of waiting periods for successive within-grade increases.

(3) The period during which a separated employee is in receipt of injury compensation under subchapter I of chapter 81 of title 5, United States Code, as a result of an injury incurred by the employee in the performance of duty is creditable service in the computation of waiting periods for successive within-grade increases when the employee is reemployed with the Federal Government.

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§ 531.409 Acceptable level of competence determinations.

(a) Responsibility. The head of the agency or other agency official to whom such authority is delegated shall determine which employees are performing at an acceptable level of competence.

(b) Basis for determination. When applicable, an acceptable level of competence determination shall be based on a current rating of record made under part 430, subpart B, of this chapter. For those agencies not covered by chapter 43 of title 5, United States Code, and for employees in positions excluded from 5 U.S.C. 4301, an acceptable level of competence determination shall be based on performance appraisal requirements established by the agency. If an employee has been reduced in grade because of unacceptable performance and has served in one position at the lower grade for at least the minimum period established by the agency, a rating of record at the lower grade shall be used as the basis for an acceptable level of competence determination.

(c) Delay in determination. (1) An acceptable level of competence determination shall be delayed when, and only when, either of the following applies:

(1) An employee has not had the minimum period of time established at §430.207(a) of this chapter to demonstrate acceptable performance because he or she has not been informed of the specific requirements for performance at an acceptable level of competence in his or her current position, and the employee has not been
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given a performance rating in any position within the minimum period of time (as established at §430.207(a) of this chapter) before the end of the waiting period; or

(ii) An employee is reduced in grade because of unacceptable performance to a position in which he or she is eligible for a within-grade increase or will become eligible within the minimum period as established at §430.207(a) of this chapter.

(2) When an acceptable level of competence determination has been delayed under this subpart:

(i) The employee shall be informed that his or her determination is postponed and the appraisal period extended and shall be told of the specific requirements for performance at an acceptable level of competence.

(ii) An acceptable level of competence determination shall then be made based on the employee's rating of record completed at the end of the extended appraisal period.

(iii) If, following the delay, the employee's performance is determined to be at an acceptable level of competence, the within-grade increase will be granted retroactively to the beginning of the pay period following completion of the applicable waiting period.

(d) Waiver of requirement for determination. (1) An acceptable level of competence determination shall be waived and a within-grade increase granted under paragraph (d)(1) of this section, there shall be a presumption that the employee would have performed at an acceptable level of competence had the employee performed the duties of his or her position of record for the minimum period under the applicable agency performance appraisal program.

(e) Notice of determination. (1) A level of competence determination shall be communicated to an employee in writing as soon as possible after completion of the waiting period or other period upon which it was based.

(2) When the head of an agency or his or her designee determines that an employee's performance is not at an acceptable level of competence, the negative determination shall be communicated to the employee in writing and shall:

(i) Set forth the reasons for any negative determination and the respects in which the employee must improve his or her performance in order to be granted a within-grade increase under §531.411 of this subpart.

(ii) Inform the employee of his or her right to request that the appropriately designated agency official reconsider the determination.


§ 531.410 Reconsideration of a negative determination.

(a) When an agency head, or his or her designee, issues a negative determination the following procedures are established in accordance with section 5335(c) of title 5, United States Code for reconsideration of the negative determination:
§ 531.412 Effective date of a within-grade increase.

(a) Except as provided in paragraph (b) of this section, a within-grade increase shall be effective on the first day of the first pay period following completion of the required waiting period and in compliance with the conditions of eligibility. Interim within-
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grade increases shall become effective as provided in § 541.414(b).
(b) When an acceptable level of competence is achieved at some time after a negative determination, the effective date is the first day of the first pay period after the acceptable determination has been made.

§ 531.414 Interim within-grade increase.
(a) An interim within-grade increase shall be granted to an employee who has:
(1) Appealed a negative within-grade increase determination to the Merit Systems Protection Board under 5 U.S.C. 5335(c); and
(2) Been granted a favorable within-grade increase determination under the interim relief provisions of 5 U.S.C. 7701(b)(2).
(b) An interim within-grade increase granted under paragraph (a) of this section shall become effective on the date of the appellate decision ordering interim relief under 5 U.S.C. 7701(b)(2)(A).
(c) If the final decision of the Merit Systems Protection Board upholds the negative within-grade increase determination, an interim within-grade increase granted under this section shall be terminated on the date of the Board’s final decision.
(d) If the final decision of the Merit Systems Protection Board overturns the negative within-grade increase determination, an interim within-grade increase granted under this section shall be made permanent and shall be granted retroactively to the first day of the first pay period beginning on or after completion of the applicable waiting period.
(e) An employee may not appeal the termination of an interim within-grade increase under paragraph (c) of this section.

Subpart E—Quality Step Increases

SOURCE: 33 FR 12448, Sept. 4, 1968, unless otherwise noted.

§ 531.501 Applicability.
This subpart contains regulations of the Office of Personnel Management to carry out section 5336 of title 5, United States Code, which authorizes the head of an agency, or another official to whom such authority is delegated, to grant quality step increases.
[60 FR 43948, Aug. 23, 1995]

§ 531.502 Definitions.
Agency means an agency defined in section 5102 of title 5, United States Code.
Employee means an employee of an agency.
Quality step increase is synonymous with the term “step increase” used in section 5336 of title 5, United States Code, and means an increase in an employee’s rate of basic pay from one step or rate of the grade of his or her position to the next higher step of that grade or next higher rate within the grade (as defined in § 531.403) in accordance with section 5336 of title 5, United States Code, section 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103–89), and this subpart.

§ 531.503 Purpose of quality step increases.
The purpose of quality step increases is to provide appropriate incentives and recognition for excellence in performance by granting faster than normal step increases.
[60 FR 43948, Aug. 23, 1995]
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§ 531.504 Level of performance required for quality step increase.

A quality step increase shall not be required but may be granted only to—
(a) An employee who receives a rating of record at Level 5 ("Outstanding" or equivalent), as defined in part 430, subpart B, of this chapter; or
(b) An employee who, when covered by a performance appraisal program that does not use a Level 5 summary—
(1) Receives a rating of record at the highest summary level used by the program; and
(2) Demonstrates sustained performance of high quality significantly above that expected at the "Fully Successful" level in the type of position concerned, as determined under performance-related criteria established by the agency.

[60 FR 43948, Aug. 23, 1995]

§ 531.505 Restrictions on granting quality step increases.

As provided by 5 U.S.C. 5336, a quality step increase may not be granted to an employee who has received a quality step increase within the preceding 52 consecutive calendar weeks.

[51 FR 8421, Mar. 11, 1986]

§ 531.506 Effective date of a quality step increase.

The quality step increase should be made effective as soon as practicable after it is approved.

[60 FR 43948, Aug. 23, 1995]

§ 531.507 Agency responsibilities.

(a) Agencies shall maintain and submit to OPM such records as OPM may require.


[60 FR 43948, Aug. 23, 1995]

§ 531.508 Evaluation of quality step increase authority.

The Office of Personnel Management may evaluate an agency’s use of the authority to grant quality step increases. The agency shall take any corrective action required by the Office.

[60 FR 43948, Aug. 23, 1995]

Subpart F—Locality-Based Comparability Payments

§ 531.601 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5304, which authorizes locality-based comparability payments to reduce pay disparities with non-Federal workers within each locality when the locality is determined to have a pay disparity of greater than 5 percent. These regulations must be read together with 5 U.S.C. 5304.

§ 531.602 Definitions.

In this subpart:

CMSA means a Consolidated Metropolitan Statistical Area, as defined by the Office of Management and Budget (OMB).

Continental United States means the several States and the District of Columbia, but does not include Alaska or Hawaii.

Employee means—
(1) An employee in a position to which subchapter III of chapter 53 of title 5, United States Code, applies and whose official duty station is located in a locality pay area within the continental United States, including a GM employee (as defined in §531.202) and an employee in a position authorized by 5 CFR 213.3102(w) whose rate of basic pay is established under the General Schedule; and
(2) An employee in a category of positions described in 5 U.S.C. 5304(h)(1) (A), (B), (D), or (E) for which the President (or his designee) has authorized locality-based comparability payments under 5 U.S.C. 5304(h)(2) and whose official duty station is located in a locality pay area.

Employee means—

General Schedule means the basic pay schedule established under 5 U.S.C. 5332, as adjusted by the President under 5 U.S.C. 5303.

Locality pay area means an area listed in §531.603 of this part, as established
§ 531.603 Locality rates of pay.

(a) Locality rates of pay under this subpart shall be payable to employees whose official duty stations are located in the locality pay areas listed in paragraph (b) of this section.

(b) The following are locality pay areas for the purpose of this subpart:

1. Atlanta, GA—consisting of the Atlanta, GA MSA;
3. Chicago-Gary-Kenosha, IL-IN-WI—consisting of the Chicago-Gary-Kenosha, IL-IN-WI CMSA;
5. Cleveland-Akron, OH—consisting of the Cleveland-Akron, OH CMSA;
6. Columbus, OH—consisting of the Columbus, OH MSA;
7. Dallas-Fort Worth, TX—consisting of the Dallas-Fort Worth, TX CMSA;
8. Dayton-Springfield, OH—consisting of the Dayton-Springfield, OH MSA;
10. Detroit-Ann Arbor-Flint, MI—consisting of the Detroit-Ann Arbor-Flint, MI CMSA;
11. Hartford, CT—consisting of the Hartford, CT MSA, plus that portion of New London County, CT, not located within the Hartford, CT MSA;
12. Houston-Galveston-Brazoria, TX—consisting of the Houston-Galveston-Brazoria, TX CMSA;
13. Huntsville, AL—consisting of the Huntsville, AL MSA;
§ 531.606 Determining locality rates of pay.

(a) To determine the locality rate of pay payable to an employee, the applicable scheduled annual rate of pay shall be increased by the percentage authorized by the President for the locality pay area in which the employee's official duty station is located.

(b) Except as provided in paragraph (c) of this section, locality rates of pay may not exceed the rate of basic pay payable for level IV of the Executive Schedule.

(c) The locality rates of pay approved by the President for an employee in a position described in 5 U.S.C. 5304(h)(1)(A)–(E), or in a position under 5 U.S.C. 5304(h)(1)(F) which the President or his designee may determine, may not exceed the rate of basic pay payable for level III of the Executive Schedule.

§ 531.605 Computation of hourly, daily, weekly, and biweekly locality rates of pay.

When it is necessary to convert an annual locality rate of pay to an hourly, daily, weekly, or biweekly rate, the following methods apply:

(a) To derive an hourly rate, divide the annual locality rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as the next higher cent;

(b) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the employee's basic daily tour of duty;

(c) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

§ 531.606 Administration of locality rates of pay.

(a) An employee shall receive the greatest of—

(1) His or her rate of basic pay, including any applicable special salary rate established under 5 U.S.C. 5305 or similar provision of law or special rate not located in another locality pay area.

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for law enforcement officers under section 403 of FEPCA;

(2) A continued rate of pay under subpart G of this part;

(3) A “special law enforcement adjusted rate of pay” under subpart C of this part, where applicable, including a “special law enforcement adjusted rate of pay” continued under §531.307; or

(4) A locality rate of pay under this subpart, where applicable.

(b) A locality rate of pay is considered basic pay for the purpose of computing—

(1) Retirement deductions and benefits under chapters 83 or 84 of title 5, U.S. Code;

(2) Life insurance premiums and benefits under parts 870, 871, 872, and 873 of this chapter;

(3) Premium pay under subparts A and I of part 550 of this chapter (including the computation of limitations on premium pay under 5 U.S.C. 5547, overtime pay under 5 U.S.C. 5542(a), compensatory time off under 5 U.S.C. 5543, and standby duty pay under 5 U.S.C. 5545(c)(1));

(4) Severance pay under subpart G of part 550 of this chapter; and

(5) Advances in pay under subpart B of part 550 of this chapter.

(c) When an employee's official duty station is changed to a different locality pay area, the employee's entitlement to the locality rate of pay for the new locality pay area begins on the effective date of the change in official duty station.

(d) A locality rate of pay is paid only for those hours for which an employee is in a pay status, except that a locality rate of pay must be included in a lump-sum payment for annual leave under 5 U.S.C. 5551 or 5552.

(e) A locality rate of pay shall be adjusted as of the effective date of any change in the applicable scheduled annual rate of pay.

(f) Except as provided in paragraph (g) of this section, entitlement to a locality rate of pay established for a locality pay area under this subpart terminates on the date—

(1) An employee's official duty station is no longer in the locality pay area;

(2) An employee is no longer in a position covered by this subpart;

(3) An employee separates from Federal service; or

(4) An employee's special salary rate under 5 U.S.C. 5305 or similar provision of law (other than section 403 of FEPCA) exceeds his or her locality rate of pay.

(g) In the event of a change in the geographic coverage of a locality pay area (as a result of a change made by OMB in the definition of an MSA or CMSA or as a result of a change made by the President's Pay Agent in the definition of a locality pay area), the effective date of the change in an employee's entitlement to a locality rate of pay under this subpart shall be the first day of the first applicable pay period beginning on or after the date on which the change in geographic coverage is made effective.

(h) Payment of, or an increase in, a locality rate of pay is not an equivalent increase in pay within the meaning of section 5335 of title 5, United States Code.

(i) A locality rate of pay is included in an employee's “total remuneration,” as defined in 5 CFR 551.511(b), and “straight time rate of pay,” as defined in 5 CFR 551.512(b), for the purpose of computations under the Fair Labor Standards Act of 1938, as amended.

(j) Reduction or termination of a locality rate of pay under paragraph (f) of this section is not an adverse action for the purpose of subpart D of part 752 of this chapter or an action under 5 CFR 930.214.

(k) When an employee's locality rate of pay under this subpart is greater than any applicable special salary rate under 5 U.S.C. 5305 or similar provision of law (other than section 403 of FEPCA), the payment of the rate resulting from the comparison required by paragraph (a) of this section is deemed to have reduced the locality rate of pay payable under 5 U.S.C. 5304, as authorized by 5 U.S.C. 5305(g)(1).

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§ 531.607 Reports.

The Office of Personnel Management may require agencies to report pertinent information concerning the administration of payments under this subpart.

Subpart G—Continued Rates of Pay

SOURCE: 61 FR 3541, Feb. 1, 1996, unless otherwise noted.

§ 531.701 Definitions.

In this subpart:
Continued rate of pay means a rate of pay first established in January 1994 for an employee who previously received an interim geographic adjustment on top of a worldwide or nationwide special rate authorized under 5 U.S.C. 5305.
Employee means an employee in a position in whom subchapter III of chapter 53 of title 5, United States Code applies, whose official duty station is located in an interim geographic adjustment area and who is receiving a continued rate of pay.
General Schedule means the basic pay schedule established under 5 U.S.C. 5332.
Interim geographic adjustment area means one of the following Consolidated Metropolitan Statistical Areas (CMSA’s), as defined by the Office of Management and Budget (OMB), that was an interim geographic adjustment area when continued rates of pay first became applicable in January 1994:
(1) New York-Northern New Jersey-Long Island, NY-NJ-CT-PA;
(2) Los Angeles-Riverside-Orange County, CA; or
(3) San Francisco-Oakland-San Jose, CA.
Official duty station means the duty station for an employee’s position of record as indicated on his or her most recent notification of personnel action.

§ 531.702 Computation of hourly, daily, weekly, and biweekly continued rates of pay.

When it is necessary to convert a continued rate of pay from an annual rate to an hourly, daily, weekly, or bi-weekly rate, the following methods apply:
(a) To derive an hourly rate, divided the continued rate by 2,087 and round to the nearest cent, counting one-half cent and over as a whole cent;
(b) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the employee’s basic daily tour of duty;
(c) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

§ 531.703 Administration of continued rates of pay.

(a) An employee shall receive the greatest of—
(1) His or her rate of basic pay, including any applicable special salary rate established under 5 U.S.C. 5305 or similar provision of law or special rate for law enforcement officers under section 403 of FEPCA;
(2) A continued rate of pay under this subpart;
(3) A special law enforcement officer adjusted rate of pay under subpart C of this part, where applicable, including a special law enforcement adjusted rate of pay continued under §531.307;
(4) A locality rate of pay under subpart F of this part, where applicable.
(b) A continued rate of pay is considered basic pay for the same purposes as described in §531.606(b), as applicable.
(c) A continued rate of pay is paid only for those hours for which an employee is in a pay status, except that it shall be included in a lump-sum payment for annual leave under 5 U.S.C. 5551 or 5552.
(d) A continued rate of pay is included in an employee’s “total remuneration,” as defined in §551.511(b) of this chapter, and “straight time rate of pay,” as defined in §551.512(b) of this chapter, for the purpose of computations under the Fair Labor Standards Act of 1938, as amended.
(e) At the time of an adjustment in pay under 5 U.S.C. 5303, a continued rate of pay shall be increased by the lesser of—
(1) The dollar amount of the adjustment (including a zero adjustment) made under 5 U.S.C. 5303 in the General
§ 531.704 Effect of continued rates of pay on retention payments under FBI demonstration project.

As required by section 406 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), a retention payment payable to an employee of the New York Field Division of the Federal Bureau of Investigation under section 601(a)(2) of Public Law 100–453, as amended, shall be reduced by the amount of any continued rate adjustment payable to that employee under this subpart. For the purpose of applying this section, the amount of any continued rate adjustment shall be determined by subtracting the employee’s scheduled annual rate of pay (as defined in § 531.602 of this part) from his or her continued rate of pay.

§ 531.705 Reports.

The Office of Personnel Management may require agencies to report pertinent information concerning the administration of payments under this subpart.

PART 532—PREVAILING RATE SYSTEMS

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Subpart H—Payment of Unrestricted Rates
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532.801 Payment of unrestricted rates for re-
cruitment or retention purposes.

AUTHORITY: 5 U.S.C. 5343, 5346; § 532.707 also
issued under 5 U.S.C. 552.

SOURCE: 46 FR 21344, Apr. 10, 1981, unless
otherwise noted.

Subpart A—General Provisions

§ 532.101 Scope.

This part provides common policies, systems, and practices for uniform application by all agencies subject to section 5342 of title 5, United States Code, in fixing pay for prevailing rate employees as nearly as is consistent with the public interest in accordance with prevailing rates.

§ 532.103 Coverage.

The provisions of this part shall apply to prevailing rate employees and agencies covered by section 5342 of title 5, United States Code.

§ 532.105 Pay-fixing authority.

The head of each agency shall authorize application of the rates established by the lead agency or the Office of Personnel Management (OPM) to prevailing rate employees within the appropriate wage area, in accordance with the provisions of this part.
(b) Each supervisory regular wage schedule shall have 19 grades, which shall be designated as follows:
   (1) WS means an appropriated fund supervisory grade; and
   (2) NS means a nonappropriated fund supervisory grade.

(c) The step 2 or payline rate for each grade of a leader regular wage schedule shall be equal to 110 percent of the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area.

(d) The step 2 or payline rate for each grade of an appropriated fund supervisory regular wage schedule shall be:
   (1) For grades WS±1 through WS±10, equal to the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area, plus 30 percent of the rate for step 2 of WG±10;
   (2) For grades WS±11 through WS±18, the second rate of WS±10, plus 5, 11.5, 19.6, 29.2, 40.3, 52.9, 67.1, and 82.8 percent, respectively, of the difference between the step 2 rates of WS±10 and WS±19; and
   (3) For grade WS±19, the third rate in effect for General Schedule grade GS±14 at the time of the area wage schedule adjustment. The WS±19 rate shall include any cost of living allowance payable for the area under 5 U.S.C. 5941.

(e) The step 2 or payline rate for each grade of a nonappropriated fund supervisory regular wage schedule shall be:
   (1) For grades NS±1 through NS±8, equal to the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area, plus 20 percent of the rate for step 2 of NA±8;
   (2) For grades NS±9 through NS±15, equal to 120 percent of the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area;
   (3) For grades NS±16 through NS±19, the rates will be 25, 30, 35 and 40 percent, respectively, above the step 2 rate of NA±15;
   (f) The number of within-grade steps and the differentials between steps for each nonsupervisory grade on a regular wage schedule shall be established in accordance with 5 U.S.C. 5338(e)(1).

Each grade on a leader and supervisory regular wage schedule shall have 5 within-grade steps with step 2 set according to paragraphs (c), (d), or (e) of this section, as appropriate, and—
   (1) Step 1 set at 96 percent of the step 2 rate;
   (2) Step 3 set at 104 percent of the step 2 rate;
   (3) Step 4 set at 108 percent of the step 2 rate; and
   (4) Step 5 set at 112 percent of the step 2 rate.

§ 532.205 The use of Federal, State, and local minimum wage requirements in determining prevailing rates.

(a) Wage schedules, including special schedules, shall not include any rates of pay less than the higher of:
   (1) The minimum rate prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, or
   (2) The highest State or local minimum wage rate in the local wage area which is applicable to the private industry counterparts of the single largest Federal industry/occupation in the wage area.

(b) Wage data below the minimum wage rates prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, shall not be used in determining prevailing rates.

(c) Adjustments to regular wage schedules to comply with the minimum wage rate determined to be applicable under paragraph (a) of this section shall be computed as follows:
   (1) The step 2 rate of grade 1 of the nonsupervisory wage schedule shall be set at a rate which, upon application of the 4 percent step-rate differential, provides a step 1 rate which is equal to the applicable minimum wage rate.
   (2) An intergrade differential shall be determined as 5 percent of the rate established as the step 2 rate of grade 1, rounded to the nearest whole cent. This intergrade differential shall be added to the step 2 rate of each grade, beginning with grade 1, to determine the step 2 rate for the succeeding grade until the grade is reached at which the step 2 rate established through the wage survey process equals or exceeds...
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the rate determined under this procedure. Rates of all grades above that point shall be computed in accordance with §532.221(b) of this subpart.

(3) Steps 1, 3, 4, and 5 of each grade adjusted under paragraph (c) of this section shall be set at 96, 104, 108, and 112 percent of the step 2 rate, respectively.

(4) The leader and supervisory wage schedule grades corresponding to each nonsupervisory grade adjusted under paragraph (c) of this section shall be constructed in accordance with the procedures of §532.203 of this subpart, on the basis of the step 2 rates established under this paragraph for the nonsupervisory wage schedule grades.

(d) All wage schedule adjustments made under this section shall be effective on the effective date of the applicable minimum wage rate.

§ 532.207 Time schedule for wage surveys.

(a) Wage surveys shall be conducted on a 2-year cycle at annual intervals.

(b) A full-scale survey shall be made in the first year of the 2-year cycle and shall include development of a current sample of establishments and the collection of wage data by visits to establishments.

(c) A wage-change survey shall be made every other year using only the same employers, occupations, survey jobs, and establishment weights used in the preceding full-scale survey. Data may be collected by telephone, mail, or personal contact.

(d) Scheduling of surveys shall take into consideration the following criteria:

(1) The best timing in relation to wage adjustments in the principal local private enterprise establishments;

(2) Reasonable distribution of workload of the lead agency;

(3) The timing of surveys for nearby or selected wage areas; and

(4) Scheduling relationships with other pay surveys.

(e) The Office of Personnel Management may authorize adjustments in the normal cycle as requested by the lead agency and based on the criteria in paragraph (d) of this section or to accommodate special studies or adjustments consistent with determining local prevailing rates.

(f) The beginning month of appropriated and nonappropriated fund wage surveys and the fiscal year during which full-scale surveys will be conducted are set out as appendices A and B to this subpart and are incorporated in and made part of this section.

[55 FR 46141, Nov. 1, 1990]

§ 532.209 Lead agency.

(a) The Office of Personnel Management shall select a lead agency for each appropriated and nonappropriated fund wage area based on the number of agency employees covered by the regular wage schedule for that area and the capability of the agency in providing administrative and clerical support at the local level necessary to conduct a wage survey.

(b) OPM may authorize exceptions to these criteria where this will improve the administration of the local wage survey.

(c) The listing in appendix A to this subpart shows the lead agency for each appropriated fund wage area. The Department of Defense is the lead agency for each nonappropriated fund wage area.

[55 FR 46141, Nov. 1, 1990]

§ 532.211 Criteria for establishing appropriated fund wage areas.

(a) Each wage area shall consist of one or more survey areas along with nonsurvey areas, if any.

(1) Survey area: A survey area is composed of the counties, parishes, cities, or townships in which survey data are collected. Except in very unusual circumstances, a wage area that includes a Metropolitan Statistical Area shall have the Metropolitan Statistical Area as the survey area or part of the survey area.

(2) Nonsurvey area: Nonsurvey counties, parishes, cities, or townships may be combined with the survey area(s) to form the wage area through consideration of the criteria in paragraph (d)(1) of this section.

(b) Wage areas shall include wherever possible a recognized economic community such as a Metropolitan Statistical...
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Industries included in regular appropriated fund wage surveys.

(a) Industries in the following Standard Industrial Classifications (SIC) shall be included in all wage surveys for regular wage schedules:

Manufacturing
SIC 20 through 26 and 28 through 38

Transportation, Communications, Electric, Gas, and Sanitary Services
SIC 40 ................. Railroad transportation
SIC 41 (except 412) Local and suburban transit and interurban highway passenger transportation except taxicabs (SIC 412).
SIC 42 .................... Motor freight transportation and warehousing.
SIC 45 .................... Transportation by air.
SIC 48 .................... Communication.
SIC 49 .................... Electric, gas, and sanitary services.

Wholesale Trade
SIC 50 ................. Wholesale trade—durables.
SIC 51 ................. Wholesale trade—non-durables.

(b) A lead agency may add other industry classes to a regular survey in an area where these industries account for significant proportions of local private employment of the kinds and levels found in local Federal employment.

(c) Specifically excluded from all wage surveys for regular wage schedules are food service and laundry establishments and industries having peculiar employment conditions that directly affect the wage rates paid and
§ 532.215 Establishments included in regular appropriated fund surveys.

(a) All establishments having a total employment of 50 or more employees in the prescribed industries within a survey area shall be included within the survey universe. On rare occasions and as an exception to the rule, OPM may authorize lower minimum size levels based on a recommendation of the lead agency for the wage area.

(b) Establishments to be covered in surveys shall be selected under standard probability sample selection procedures. In areas with relatively few establishments, surveys shall cover all establishments within the prescribed industry and size groups.

(c) A lead agency may not delete from a survey an establishment properly included in an establishment list drawn under statistical sampling procedures.

[55 FR 46142, Nov. 1, 1990]

§ 532.217 Appropriated fund survey jobs.

(a) A lead agency shall survey the following required jobs:

<table>
<thead>
<tr>
<th>Job title</th>
<th>Job grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Janitor (Light)</td>
<td>1</td>
</tr>
<tr>
<td>Janitor</td>
<td>2</td>
</tr>
<tr>
<td>Material Handler</td>
<td>2</td>
</tr>
<tr>
<td>Maintenance Laborer</td>
<td>3</td>
</tr>
<tr>
<td>Packer</td>
<td>4</td>
</tr>
<tr>
<td>Helper (Trades)</td>
<td></td>
</tr>
<tr>
<td>Warehouseman</td>
<td>5</td>
</tr>
<tr>
<td>Forklift Operator</td>
<td>5</td>
</tr>
<tr>
<td>Material Handling Equipment Operator</td>
<td>5</td>
</tr>
<tr>
<td>Truckdriver (Medium)</td>
<td>6</td>
</tr>
<tr>
<td>Truckdriver (Heavy)</td>
<td>7</td>
</tr>
<tr>
<td>Machine Tool Operator II</td>
<td>8</td>
</tr>
<tr>
<td>Machine Tool Operator I</td>
<td>9</td>
</tr>
<tr>
<td>Carpenter</td>
<td>9</td>
</tr>
<tr>
<td>Electrician</td>
<td>10</td>
</tr>
<tr>
<td>Automotive Mechanic</td>
<td>10</td>
</tr>
<tr>
<td>Sheet Metal Mechanic</td>
<td>10</td>
</tr>
<tr>
<td>Pipefitter</td>
<td>10</td>
</tr>
<tr>
<td>Welder</td>
<td>10</td>
</tr>
<tr>
<td>Machinist</td>
<td>10</td>
</tr>
<tr>
<td>Electronics Mechanic</td>
<td>11</td>
</tr>
<tr>
<td>Toolmaker</td>
<td>13</td>
</tr>
</tbody>
</table>

(b) A lead agency may not omit a required survey job from a regular schedule wage survey.

(c) A lead agency may survey the following jobs on an optional basis:

<table>
<thead>
<tr>
<th>Job title</th>
<th>Job grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aircraft Structures Assembler B</td>
<td>7</td>
</tr>
<tr>
<td>Aircraft Structures Assembler A</td>
<td>9</td>
</tr>
<tr>
<td>Aircraft Mechanic</td>
<td>9</td>
</tr>
<tr>
<td>Electrician</td>
<td>10</td>
</tr>
<tr>
<td>Pipefitter</td>
<td>10</td>
</tr>
<tr>
<td>Shipfitter</td>
<td>10</td>
</tr>
<tr>
<td>Shipwright</td>
<td>10</td>
</tr>
<tr>
<td>Machinist, Marine</td>
<td>10</td>
</tr>
<tr>
<td>Cable Splicer (Electric)</td>
<td>10</td>
</tr>
<tr>
<td>Electrical Lineman</td>
<td>10</td>
</tr>
<tr>
<td>Electrician (Powerplant)</td>
<td>10</td>
</tr>
<tr>
<td>Central Office Repairer</td>
<td>11</td>
</tr>
<tr>
<td>Heavy Mobile Equipment Mechanic</td>
<td>10</td>
</tr>
<tr>
<td>Heavy Mobile Equipment Operator</td>
<td>10</td>
</tr>
<tr>
<td>Air Conditioning Mechanic</td>
<td>10</td>
</tr>
<tr>
<td>Rigger</td>
<td>10</td>
</tr>
<tr>
<td>Trailer Truck Driver</td>
<td>8</td>
</tr>
<tr>
<td>Tool Crib Attendant</td>
<td>6</td>
</tr>
<tr>
<td>Painter (Finish)</td>
<td>9</td>
</tr>
<tr>
<td>Light Vehicle Operator</td>
<td>5</td>
</tr>
<tr>
<td>Boiler Plant Operator</td>
<td>9</td>
</tr>
<tr>
<td>Boiler Plant Operator</td>
<td>9</td>
</tr>
<tr>
<td>Meat Cutter</td>
<td>8</td>
</tr>
<tr>
<td>Equipment Mechanic</td>
<td>10</td>
</tr>
<tr>
<td>Boom Crane Operator</td>
<td>9</td>
</tr>
<tr>
<td>Boom Crane Operator (Precision)</td>
<td>11</td>
</tr>
<tr>
<td>Tool and Parts Attendant</td>
<td>4</td>
</tr>
<tr>
<td>Painter (Rough)</td>
<td>7</td>
</tr>
<tr>
<td>Industrial Electronic Controls Repairer</td>
<td>10</td>
</tr>
<tr>
<td>Electronic Test Equipment Repairer</td>
<td>11</td>
</tr>
<tr>
<td>Electronic Computer Mechanic</td>
<td>11</td>
</tr>
<tr>
<td>Television Station Mechanic</td>
<td>11</td>
</tr>
</tbody>
</table>

(d) A lead agency may add the following survey jobs to the survey when the Hospital industry is included in the survey:

<table>
<thead>
<tr>
<th>Job title</th>
<th>Job grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Laundry Worker</td>
<td>1</td>
</tr>
<tr>
<td>Food Service Worker</td>
<td>2</td>
</tr>
<tr>
<td>Cook</td>
<td>8</td>
</tr>
</tbody>
</table>

(e) A lead agency must obtain prior approval of OPM to add a job not authorized under paragraph (a), (c), or (d) of this section.

[55 FR 46142, Nov. 1, 1990]

§ 532.219 Criteria for establishing non-appropriated fund wage areas.

(a) Each wage area shall consist of one or more survey areas along with nonsurvey areas, if any, having non-appropriated fund employees.

(1) Survey area: A survey area is composed of the counties, parishes, cities, or townships in which survey data are collected.

(2) Nonsurvey area: Nonsurvey counties, parishes, or townships may be combined with the survey area to form the wage area through consideration of
Office of Personnel Management

§ 532.223

the criteria in paragraph (c) of this section.

(b) Wage areas shall be established when:

(1) There is a minimum of 26 NAF wage employees in the survey area and local activities have the capability to do the survey; and

(2) There is within the survey area a minimum of 1,800 private enterprise employees in establishments within survey specifications.

(c)(1) Two or more counties may be combined to constitute a single wage area through consideration of:

(i) Proximity of largest activity in each county;

(ii) Transportation facilities and commuting patterns; and

(iii) Similarities of the counties in:

(A) Overall population;

(B) Private employment in major industry categories; and

(C) Kinds and sizes of private industrial establishments.

(2) Generally, the criteria listed in paragraph (c)(1) of this section are considered in the order listed.

(d) The nonappropriated fund wage and survey area definitions are set out as appendix D to this subpart and are incorporated in and made part of this section.


§ 532.221 Industries included in regular nonappropriated fund surveys.

(a) Industries in the following Standard Industrial Classifications (SIC) shall be included in all wage surveys for regular wage schedules:

<table>
<thead>
<tr>
<th>SIC</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>5172</td>
<td>Petroleum and petroleum products wholesalers, except bulk stations and terminals.</td>
</tr>
<tr>
<td>5194</td>
<td>Tobacco and tobacco products.</td>
</tr>
<tr>
<td>5111</td>
<td>Printing and writing paper.</td>
</tr>
<tr>
<td>5112</td>
<td>Stationery supplies.</td>
</tr>
<tr>
<td>5113</td>
<td>Industrial and personal service paper.</td>
</tr>
<tr>
<td>5021</td>
<td>Furniture.</td>
</tr>
<tr>
<td>5023</td>
<td>Home furnishings.</td>
</tr>
<tr>
<td>5091</td>
<td>Sporting and recreational goods and supplies.</td>
</tr>
<tr>
<td>5082</td>
<td>Toys and hobby goods and supplies.</td>
</tr>
<tr>
<td>5043</td>
<td>Photographic equipment and supplies.</td>
</tr>
<tr>
<td>5094</td>
<td>Jewelry, watches, diamonds, and other precious stones.</td>
</tr>
<tr>
<td>5099</td>
<td>Durable goods not elsewhere classified.</td>
</tr>
<tr>
<td>5159</td>
<td>Farm product raw materials not elsewhere classified.</td>
</tr>
<tr>
<td>5191</td>
<td>Farm supplies.</td>
</tr>
<tr>
<td>5192</td>
<td>Books, periodicals, and newspapers.</td>
</tr>
<tr>
<td>5193</td>
<td>Flowers and florists’ supplies.</td>
</tr>
<tr>
<td>5199</td>
<td>Nondurable goods not elsewhere classified.</td>
</tr>
<tr>
<td>5211</td>
<td>Department stores.</td>
</tr>
<tr>
<td>5313</td>
<td>Variety stores.</td>
</tr>
<tr>
<td>5962</td>
<td>Automatic merchandising machine operators.</td>
</tr>
<tr>
<td>5541</td>
<td>Gasoline service stations.</td>
</tr>
<tr>
<td>5812</td>
<td>Eating places.</td>
</tr>
<tr>
<td>5813</td>
<td>Drinking places (alcoholic beverages).</td>
</tr>
<tr>
<td>7011</td>
<td>Hotels, motels, and tourist courts.</td>
</tr>
<tr>
<td>7033</td>
<td>Bowling centers.</td>
</tr>
<tr>
<td>7997</td>
<td>Membership sports and recreation clubs (golf and country clubs only).</td>
</tr>
</tbody>
</table>

(b) A lead agency may add other industry classes from within the wholesale, retail, and service industry divisions in an area where these industries account for significant proportions of local private employment of the kinds and levels found in local NAF employment.

(c) Additional industries shall be defined in terms of entire industry classes (fourth digit breakdown).

[55 FR 46143, Nov. 1, 1990]

§ 532.223 Establishments included in regular nonappropriated fund surveys.

(a) All establishments having 20 or more employees in the prescribed industries within a survey area shall be included in the survey universe. Establishments in SIC 5962, SIC 5541, SIC 7933, and SIC 7997 shall be included in the survey universe if they have eight or more employees.
§ 532.225 Nonappropriated fund survey jobs.

(a) A lead agency shall survey the following required jobs:

<table>
<thead>
<tr>
<th>Job title</th>
<th>Job grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Janitor (Light)</td>
<td>1</td>
</tr>
<tr>
<td>Food Service Worker</td>
<td>1</td>
</tr>
<tr>
<td>Fast Food Worker</td>
<td>2</td>
</tr>
<tr>
<td>Janitor</td>
<td>2</td>
</tr>
<tr>
<td>Laborer (Light)</td>
<td>2</td>
</tr>
<tr>
<td>Laborer (Heavy)</td>
<td>3</td>
</tr>
<tr>
<td>Service Station Attendant</td>
<td>3</td>
</tr>
<tr>
<td>Stock Handler</td>
<td>4</td>
</tr>
<tr>
<td>Short Order Cook</td>
<td>5</td>
</tr>
<tr>
<td>Materials Handling Equipment Operator</td>
<td>5</td>
</tr>
<tr>
<td>Warehouseman</td>
<td>5</td>
</tr>
<tr>
<td>Service Station Attendant</td>
<td>5</td>
</tr>
<tr>
<td>Truck Driver (Light)</td>
<td>5</td>
</tr>
<tr>
<td>Truck Driver (Medium)</td>
<td>6</td>
</tr>
<tr>
<td>Truck Driver (Heavy)</td>
<td>7</td>
</tr>
<tr>
<td>Cook</td>
<td>8</td>
</tr>
<tr>
<td>Carpenter</td>
<td>9</td>
</tr>
<tr>
<td>Painter</td>
<td>9</td>
</tr>
<tr>
<td>Automotive Mechanic</td>
<td>10</td>
</tr>
<tr>
<td>Electrician</td>
<td>10</td>
</tr>
</tbody>
</table>

(b) A lead agency may not omit a required survey job from a regular schedule wage survey.

(c) A lead agency may survey the following jobs on an optional basis:

<table>
<thead>
<tr>
<th>Job title</th>
<th>Job grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Station Attendant</td>
<td>1</td>
</tr>
<tr>
<td>Groundskeeper</td>
<td>4</td>
</tr>
<tr>
<td>Grill Attendant</td>
<td>4</td>
</tr>
<tr>
<td>Tractor Operator</td>
<td>5</td>
</tr>
<tr>
<td>Bowling Equipment Mechanic</td>
<td>6</td>
</tr>
<tr>
<td>Building Maintenance Worker</td>
<td>7</td>
</tr>
<tr>
<td>Vending Machine Mechanic</td>
<td>8</td>
</tr>
<tr>
<td>Building Maintenance Worker</td>
<td>8</td>
</tr>
<tr>
<td>Air Conditioning Equipment Mechanic</td>
<td>8</td>
</tr>
<tr>
<td>Truck Driver (Trailer)</td>
<td>8</td>
</tr>
<tr>
<td>Air Conditioning Equipment Mechanic</td>
<td>10</td>
</tr>
</tbody>
</table>

(d) A lead agency must obtain prior approval of OPM to add a job not listed under paragraph (a) or (c) of this section.

[55 FR 46143, Nov. 1, 1990]

§ 532.229 Local wage survey committee.

(a)(1) A lead agency shall establish a local wage survey committee in each wage area for which it has lead agency responsibility and in which a labor organization represents, by exclusive recognition, wage employees subject to the wage schedules for which the survey is conducted.

(2) The local wage survey committee shall assist the lead agency in the conduct of wage surveys and make recommendations to the lead agency thereon.

(b)(1) Local wage survey committees shall consist of three members, with the chairperson and one member recommended by Federal agencies and designated by the lead agency, and one member recommended by the labor organization having the largest number of wage employees under the regular wage schedule who are under exclusive recognition in the wage area.
(2) All members of local wage survey committees for appropriated fund surveys shall be Federal employees appointed by their employing agencies.

(3) Members for nonappropriated fund surveys shall be nonappropriated fund employees appointed by their employing agencies.

(4) The member recommended by the labor organization must be an employee of a Federal activity for appropriated fund surveys or nonappropriated fund surveys who is covered by one of the regular wage schedules in the wage area in which the activity is located.

(5) In selecting and appointing employees recommended by labor organizations and by Federal agencies to serve as committee members, consideration shall be given to the requirement in the prevailing rate law for labor and agency representatives to participate in the wage survey process, the qualifications of the recommended employees, the need of the employees’ work units for their presence on the job, and the prudent management of available financial and human resources. Employing agencies and activities shall cooperate and appoint the recommended employees unless exceptional circumstances prohibit their consideration. When the recommended employees cannot be appointed to serve as local wage survey committee members, the responsible lead agency or labor organization shall provide additional recommendations expeditiously to avoid any delay in the survey process.

(6) Employers shall cooperate and release appointed employees for committee proceedings unless the employers can demonstrate that exceptional circumstances directly related to the accomplishment of the work units’ missions require their presence on their regular jobs. Employees serving as committee members are considered to be on official assignment to an interagency function, rather than on leave.

(c) A local wage survey committee shall be established before each full-scale wage survey. Responsibility for providing members shall remain with the same agency and the same labor organization until the next full-scale survey.

(d) Recommendations of local wage survey committees shall be developed by majority vote. Any member of a local wage survey committee may submit a minority report to the lead agency relating to any local wage survey committee majority recommendation.

(e) The lead agency shall establish the type of local wage survey organization it considers appropriate in a wage area which does not qualify for a local wage survey committee under paragraph (a) of this section.

§ 532.231 Responsibilities of participating organizations.

(a) The Office of Personnel Management:

(1) Defines the boundaries of wage and survey areas;

(2) Prescribes the required industries to be surveyed;

(3) Prescribes the required job coverage for surveys;

(4) Designates a lead agency for each wage area;

(5) Establishes, jointly with lead agencies, a nationwide schedule of wage surveys;

(6) Arranges for technical services with other Government agencies;

(7) Considers recommendations of the national headquarters of any agency or labor organization relating to the Office of Personnel Management’s responsibilities for the Federal Wage System; and

(8) Establishes wage schedules and rates for prevailing rate employees who are United States citizens outside of the United States, District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the Territories and Possessions of the United States, and the Trust Territory of the Pacific Islands.

(b) Federal Prevailing Rate Advisory Committee. This committee functions in accordance with the requirements set forth under section 5347 of title 5, United States Code.
§ 532.233 Preparation for full-scale wage surveys.

(a) The local wage survey committee, prior to each full-scale survey:

(1) Shall hold a public hearing to receive recommendations from interested parties concerning the area, industries, establishments and jobs to be covered in the wage survey.

(2) Shall prepare a summary of the hearings and submit it to the lead agency together with the committees' recommendations concerning the survey specifications prescribed in paragraph (c) of this section.

(3) May make any other recommendations concerning the local wage survey which it considers appropriate.

(b) The lead agency shall consider the local wage survey committee's report if:

(1) The lead agency proposes not to accept the recommendations of the local wage survey committee concerning the specifications of the local wage survey; or

(2) The local wage survey committee's report is accompanied by a minority report.

(c) The lead agency shall develop survey specifications after taking into consideration the reports and recommendations received from the local wage survey committee and, if applicable, the agency wage committee. The survey specifications shall include:

(1) The counties to be surveyed;

(2) The industries to be surveyed;

(3) The standard minimum size of establishments to be surveyed;

(4) Establishments to be surveyed with certainty; and

(5) The survey jobs.

(d) A list of establishments to be surveyed shall be prepared through use of statistical sampling techniques in accordance with the specifications developed by the lead agency. A copy of this list shall be forwarded to the local wage survey committee.

(e) Selection and appointment of data collectors. (1) The local wage survey committee, after consultation with the lead agency, shall determine the number of regular and alternate data collectors needed for the survey based upon the estimated number and location of establishments to be surveyed.

(2) Wage data for appropriated fund surveys shall be collected by teams consisting of one local Federal Wage System employee recommended by the committee member representing the qualifying labor organization and one Federal employee recommended by
Federal agencies. The data collectors shall be selected and appointed by their employing agency.

(3) Wage data for nonappropriated fund surveys shall be collected by teams, each consisting of one local nonappropriated fund employee recommended by the committee member representing the qualifying labor organization and one nonappropriated fund employee recommended by nonappropriated fund activities. The data collectors shall be selected and appointed by their employing agency.

(4) The local wage survey committee shall provide employers with the names of employees recommended by labor organizations and by Federal agencies to serve as data collectors and shall indicate the number of regular and alternate data collectors to be selected and appointed by the employers.

(5) In selecting and appointing employees recommended by labor organizations and by Federal agencies to serve as data collectors, consideration shall be given to the requirement in the prevailing rate law for labor and agency representatives to participate in the wage survey process, the qualifications of the recommended employees, the need of the employees' work units for their presence on the job, and the prudent management of available financial and human resources. Employing agencies and activities shall cooperate and appoint the recommended employees unless exceptional circumstances prevent their consideration. When the required number of employees cannot be appointed to serve as data collectors from among those recommended, the local wage survey committee shall obtain additional recommendations expeditiously to avoid any delay in the survey process.

(6) Employers shall cooperate and release appointed employees to serve as data collectors throughout the duration of the data collection period unless the employers can demonstrate that exceptional circumstances directly related to the accomplishment of the work units' missions require their presence on their regular jobs. Employees serving as data collectors are considered to be on official assignment to an interagency function, rather than on leave.

(f)(1) Each member of a local wage survey committee, each data collector, and any other person having access to data collected must retain this information in confidence, and is subject to disciplinary action by the employing agency or activity if the employee violates the confidence of data secured from private employers.

(2) Any violation of the above provision by a Federal employee must be reported to the employing agency and, in the case of a participant designated by a labor organization, to the recognized labor organization and its headquarters, and shall be cause for the lead agency immediately to remove the offending person from participation in the wage survey function.

§ 532.235 Conduct of full-scale wage survey.

(a) Wage survey data shall not be collected before the date the survey is ordered by the lead agency.

(b) Data collection for a full-scale wage survey shall be accomplished by personal visit to the establishment. The following required data shall be collected:

(1) General information about the size, location, and type of product or service of the establishment sufficient to determine whether the establishment is within the scope of the survey and properly weighted, if the survey is a sample survey;

(2) Specific information about each job within the establishment that is similar to one of the jobs covered by the survey, including a brief description of the establishment job, the number of employees in the job, and their rate(s) of pay to the nearest mill (including any cost-of-living adjustments required by contract or that are regular and customary and monetary bonuses that are regular and customary); and

(3) Any other information the lead agency believes is appropriate and useful in determining local prevailing rates.
§ 532.237 Review by the local wage survey committee.

(a) The local wage survey committee shall review all establishment information and survey job data collected in the wage survey for completeness and accuracy and forward all of the data collected to the lead agency together with a report of its recommendations concerning the use of the data. The local wage survey committee may make any other recommendations concerning the wage survey which it considers appropriate.

(b) The data collectors shall submit the data they collect to the local wage survey committee together with their recommendations about the use of the data.


§ 532.239 Review by the lead agency.

(a) The lead agency shall review all material and wage survey data forwarded by the local wage survey committee to:

(1) Assure that the survey was conducted within the prescribed procedures and specifications;

(2) Consider matters included in the local wage survey committee report and recommendations;

(3) Exclude unusable data;

(4) Resolve questionable job matching and wage rate data; and

(5) Verify all computations reported on wage data collection forms.

(b) The lead agency shall determine whether the usable data collected in the wage survey are adequate for computing paylines, according to the following criteria:

(1) The wage survey data collected in an appropriated fund wage survey are adequate if the unweighted job matches include at least two survey jobs in the NA-01 through 04 range providing 10 samples each, one survey job in the NA-01 through 04 range and three survey jobs in the NA-05 through 15 range providing five samples each; two other survey jobs, each providing at least five samples, and at least 100 unweighted samples for all survey jobs combined are used in the computation of the final payline.

(c) If the wage survey data do not meet the adequacy criteria in paragraph (b) of this section, the lead agency shall analyze the data, construct lines and wage schedules, submit them to the agency wage committee for its review and recommendations and issue wage schedules, in accordance with the requirements of this subpart, as if the adequacy criteria were met.

(2) The lead area may determine such a wage area to be adequate if the quantity of data obtained is large enough to construct paylines even though it was obtained for fewer than the prescribed number of jobs, or at different grade levels, or in different combinations than prescribed in paragraph (b) of this section.

(3) The lead agency may not determine a nonappropriated fund wage area to be adequate if fewer than 100 usable unweighted job matches were used in the final payline computation.

(d) If the lead agency determines a wage area to be inadequate under paragraph (c) of this section, it shall promptly refer the problem to OPM for resolution. OPM shall:

(1) Authorize the lead agency to continue to survey the area if the lead agency believes the survey is likely to be adequate in the next full-scale survey;

(2) Authorize the lead agency to expand the scope of the survey; or

(3) Abolish the wage area and establish it as part of one or more other wage areas.

§ 532.241 Analysis of usable wage survey data.

(a)(1) The lead agency shall compute a weighted average rate for each appropriated fund survey job having at least 10 unweighed matches and for each nonappropriated fund job having at least 5 unweighed matches. The weighted average rates shall be computed using the survey job data collected in accordance with §§ 532.235 and 532.247 and the establishment weight.

(2)(i) Incentive and piece-work rates shall be excluded when computing weighted average rates if, after establishment weights have been applied, 90 percent or more of the total usable wage survey data reflect rates paid on a straight-time basis only.

(ii) When sufficient incentive and piece-work rate data are obtained, the full incentive rate shall be used in computing the job weighted average rate when it is equal to or less than the average nonincentive rate. If the full incentive rate is greater than the average nonincentive rate, the incentive rate shall be discounted by 15 percent. The discounted incentive rate shall be compared with the guaranteed minimum rate and the average nonincentive rate, and the highest rate shall be used in computing the job weighted average rate.

(b) The lead agency shall compute paylines using the weighted average rates computed under paragraph (a) of this section.

(1) The lead agency shall compute unit and frequency paylines using the straight-line, least squares regression formula: \( Y = a + bx \), where \( Y \) is the hourly rate, \( x \) is the grade, \( a \) is the intercept of the unit payline, \( a_f \) is the intercept of the frequency payline, \( b_u \) is the slope of the unit payline, and \( b_f \) is the slope of the frequency payline. A midpoint line may be computed using the paylines based on all of the usable survey job data as described in paragraph (b)(1) of this section, and a second midpoint line may be computed using the paylines based on limited survey job data authorized in paragraph (b)(2) of this section.

(2) Either or both of the lines computed according to paragraph (b)(1) of this section may be recomputed after eliminating survey job data that cause distortion in the lines.

(c) Usable data obtained from a particular establishment may not be modified or deleted in order to reduce the effect of an establishment's rates on survey findings, i.e., data will not be deleted or modified to avoid establishment domination.

§ 532.243 Consultation with the agency wage committee.

(a) The lead agency shall submit to the agency wage committee:

(1) The data collected in the wage survey;

(2) The report and recommendations of the local wage survey committee concerning the use of data;

(3) The lead agency's analysis of the data; and

(4) The lines computed from the data.

(b) After considering the information available to it, the agency wage committee shall report to the lead agency its recommendation for a proposed wage schedule derived from the data.
§ 532.245 Selection of payline and issuance of wage schedules.

(a) The lead agency shall select a payline and construct wage schedules therefrom for issuance as the regular wage schedules for the wage area, after considering all of the information, analysis, and recommendations made available to it pursuant to this subpart.

(b)(1) The lead agency shall prepare and maintain a record of all of the analysis and deliberations made under this subpart, documenting fully the basis for its determination under paragraph (a) of this section.

(2) The lead agency shall include in the record all of the wage survey data obtained and the recommendations and reports received from the local wage survey committee and the agency wage committee.

(c)(1) The lead agency shall issue the nonsupervisory, leader, and supervisory regular wage schedules for the local wage area, showing the rates of pay for all grades and steps.

(2) The wage schedules shall have a single effective date for all employees in the wage area, determined by the lead agency in accordance with 5 U.S.C. 5344.

(d) The head of each agency having employees in the local wage area to whom the regular wage schedules apply shall authorize the application of the wage schedules issued under paragraph (c) of this section to those employees, effective on the date specified by the lead agency.


§ 532.247 Wage change surveys.

(a) Wage change surveys shall be conducted in each wage area in years during which full-scale wage surveys are not conducted.

(b) Data shall be collected in wage change surveys only from establishments which participated in the preceding full-scale survey. Information concerning pay adjustments of general application in effect for jobs matched in each establishment which participated in the preceding full-scale survey shall be obtained.

(c) Data may be obtained in wage change surveys by telephone, mail, or personal visit. The chairperson of the local wage survey committee shall determine the manner in which establishments will be contacted for collection of data. Data may be collected by the local wage survey committee members or by data collectors appointed and assigned to two member teams in accordance with §532.233(e) of this subpart.

(d) Wage change survey data may not be collected before the date ordered by the lead agency.

(e) The local wage survey committee shall review all wage change survey data collected and forward the data to the lead agency. Where appropriate, the committee shall also forward to the lead agency a report of unusual circumstances surrounding the survey.

(f) The lead agency shall review the wage change survey data and, if applicable, the report filed by the local wage survey committee.

(g)(1) The lead agency shall recompute the line selected under §532.245(a) of this subpart in the preceding full-scale survey using the wage change survey data and shall construct wage schedules therefrom in accordance with §532.203 and, if appropriate, §532.205 of this subpart.

(2) The lead agency shall consult with the agency wage committee in accordance with §532.243 of this subpart.

(3) Records of this process shall be maintained in accordance with §532.245(b) of this subpart.

(h) The wage schedules shall be issued and authorized in accordance with §532.245 (c) and (d) of this subpart.


§ 532.249 Minimum rates for hard-to-fill positions.

(a) The lead agency for a wage area may establish the rate of the second, third, fourth, or fifth step of one or more grades of an occupation as the mandatory minimum rate or rates payable by any agency for the occupation at one or more locations within a wage area based on findings that:

(1) The hiring rates prevailing for an occupation in private sector establishments in the wage area are higher than
Office of Personnel Management

§ 532.251 Special rates.

(a) A lead agency, with the approval of OPM, may establish special rates for use within all or part of a wage area for a designated occupation or occupational specialization and grade, in lieu of rates on the regular schedule. OPM may authorize special rates to the extent it considers necessary to overcome existing or likely significant handicaps in the recruitment or retention of well-qualified personnel when these handicaps are due to any of the following circumstances:

(1) Rates of pay offered by private sector employers for an occupation or occupational specialization and grade are significantly higher than those paid by the Federal Government within the competitive labor market;

(2) The remoteness of the area or location involved; or

(3) Any other circumstances that OPM considers appropriate.

(b) In authorizing special rates, OPM shall consider—

(1) The number of existing or likely vacant positions and the length of time they have been vacant, including evidence to support the likelihood that a recruitment problem will develop if one does not already exist;

(2) The number of employees who have or are likely to quit, including the number quitting for higher pay positions and evidence to support the likelihood that employees will quit;

(3) The number of vacancies employing agencies have tried to fill and the number of hires and offers made;

(4) The nature of the existing labor market;

(5) The degree to which employing agencies have considered or used increased minimum rates for hard-to-fill positions;

(6) The degree to which employing agencies have considered relevant non-pay solutions to the staffing problem, such as conducting an aggressive recruiting program, using appropriate appointment authorities, redesigning jobs, establishing training programs, and improving working conditions;

(7) The impact of the staffing problem on employers' missions;

(8) The level of private sector rates paid for comparable positions; and

(9) As appropriate, the extent to which the use of unrestricted rates authorized under § 532.801 of this part was considered.

(c) In determining at what level to set special rates, OPM shall consider—

(1) The level of rates it believes necessary to recruit or retain an adequate number of well-qualified persons;

(2) The offsetting costs that will be incurred if special rates are not authorized; and

(3) The level of private sector rates paid for comparable positions.

(d) No one factor or combination of factors specified in paragraphs (b) or (c) of this section requires special rates to be established or to be adjusted to any given level. Each request to establish special rates shall be judged on its own merits, based on the extent to
§ 532.253 Special rates or rate ranges for leader, supervisory, and production facilitating positions.

(a) When special rates or rate ranges are established for nonsupervisory positions, a lead agency also shall establish special rates for leader, supervisory, and production facilitating positions, classified to the same occupational series and title, that lead, supervise, or perform production facilitating work directly relating to the nonsupervisory jobs covered by the special rates.

(b) The step rate structure shall be the same as that of the related nonsupervisory special rate or rate range.

(c) The following formulas shall be used to establish a special rate or rate range:

(1) A single rate shall equal the top step of the appropriate leader, supervisory, or production facilitating grade on the regular schedule, plus the cents per hour difference between the top step of the appropriate nonsupervisory grade on the regular schedule and the special nonsupervisory rate.

(2) For a multiple rate range, the step 2 rate shall equal the step 2 rate of the appropriate leader, supervisory, or production facilitating grade on the regular schedule, plus the cents per hour difference between the top step of the appropriate nonsupervisory grade on the regular schedule and the special nonsupervisory rate.

(j) Employers using special rates shall maintain current recruitment and retention data for all authorized special rates. Such data shall be made available to the lead agency prior to the wage area regular schedule adjustment date for the purpose of determining whether there is a continuing need for special rates and the amount of special rate adjustment necessary to recruit or retain well-qualified employees.

57 FR 57875, Dec. 8, 1992
§ 532.254 Special schedules.  
(a) A lead agency, with the approval of OPM, may establish special schedules for use within an area for specific occupations that are critical to the mission of a Federal activity based on findings that—

(1) Unusual prevailing pay practices exist in the private sector that are incompatible with regular schedule practices, and serious recruitment or retention problems exist or will likely develop if employees are paid from the authorized regular schedule; or

(2) Administrative considerations require the establishment of special schedules to address unique agency missions or other unusual circumstances that OPM considers appropriate.

(b) An OPM authorization for a special schedule shall include instructions for its construction, application, and administration.

(c) Unless otherwise specified, positions covered by special schedules shall be subject to the general provisions of this part and to other applicable rules and regulations of OPM.

[57 FR 57876, Dec. 8, 1992]

§ 532.255 Regular appropriated fund wage schedules in foreign areas.

(a) The Department of Defense shall establish and issue regular appropriated fund wage schedules for U.S. citizens who are employees in foreign areas. These schedules shall provide rates of pay for nonsupervisory, leader, supervisory, and production facilitating employees.

(b) Schedules shall be—

(1) Computed on the basis of a simple average of all regular appropriated fund wage area schedules in effect on December 31; and

(2) Effective on the first Sunday in January of each year.

(c) Step 2 rates for each nonsupervisory grade shall be derived by computing a simple average of each step 2 rate for each of the 15 grades of all nonsupervisory wage rate schedules designated in paragraph (b) of this section.

(d) Through the use of the step 2 rates derived under the schedule averaging process, the step rates for each of the 15 grades of the nonsupervisory schedule and all scheduled pay rates for leaders and supervisors shall be developed by using the standard formulas established in 5 CFR 532.203, Structure of regular wage schedules.

(e) Pay schedules for production facilitating positions shall be established in accordance with the table in §532.263(c) of this subpart.


§ 532.257 Regular nonappropriated fund wage schedules in foreign areas.

(a) The Department of Defense shall establish and issue regular nonappropriated fund wage schedules for U.S. citizens who are wage employees in foreign areas. These schedules will provide rates of pay for nonsupervisory, leader, and supervisory employees.

(b) Schedules will be—

(1) Computed on the basis of a simple average of all regular nonappropriated fund wage area schedules defined for the 48 contiguous states and the District of Columbia in effect on the first Sunday in January; and

(2) Effective on the first Sunday in January of each year.

(c) Step 2 rates for each nonsupervisory grade will be derived by computing a simple average of each step 2 rate for each of the 15 grades of all nonsupervisory wage rate schedules designated in paragraph (b) of this section.

(d) Through the use of the step 2 rates derived under the schedule averaging process, the step rates for each of the 15 grades of the nonsupervisory schedule and all scheduled pay rates for leaders and supervisors will be developed by using the standard formulas established in 5 CFR 532.203, Structure of regular wage schedules.

§ 532.259 Special appropriated fund wage schedules for U.S. insular areas.

(a) Lead agencies shall establish and issue special wage schedules for U.S. civil service wage employees in certain U.S. insular areas. The Department of Defense is the lead agency for Guam, Midway, and the U.S. Virgin Islands. The Department of Transportation is the lead agency for American Samoa. The Department of the Interior is the lead agency for the Commonwealth of the Northern Mariana Islands. These schedules shall provide rates of pay for nonsupervisory, leader, supervisory, and production facilitating employees.

(b) Special schedules shall be established at the same time and with rates identical to the foreign area appropriated fund wage schedules established under §532.255 of this subpart.

(c) Wage employees recruited from outside the insular area where employed, who meet the same eligibility requirements as those specified for General Schedule employees in §591.209 of subpart B of part 591, are also paid as a part of basic pay a differential for recruitment and retention purposes. The differential rate shall be that established for General Schedule employees in appendix B of subpart B of part 591 and shall be adjusted effective concurrently with the special schedules.

[58 FR 13194, Mar. 10, 1993]

§ 532.261 Special wage schedules for leader and supervisory schedules for leader and supervisory wage employees in the Puerto Rico wage area.

(a) The Department of Defense shall establish special wage schedules for leader and supervisory wage employees in the Puerto Rico wage area.

(b) The step 2 rate for each grade of the leader wage schedule shall be equal to 120 percent of the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the Puerto Rico wage area.

(c) The step 2 rate for the supervisory wage schedule shall be:

(1) For grades WS-1 through WS-10, equal to the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the Puerto Rico wage area, plus 60 percent of the rate for step 2 of WG-10.

(2) For grades WS-11 through WS-18, the second rate of WS-10 plus 5, 11.5, 19.6, 29.2, 40.3, 52.9, 67.1, and 82.8 percent, respectively, of the difference between the step 2 rates of WS-10 and WS-19.

(3) For grade WS-19, the third rate in effect for General Schedule grade GS-14 at the time of the area wage schedule adjustment. The WS-19 rate shall include any cost of living allowance payable for the area under 5 U.S.C. 5941.

(d) Step rates shall be developed by using the formula established in §532.203 of this subpart.

[55 FR 46144, Nov. 1, 1990]

§ 532.263 Special wage schedules for production facilitating positions.

(a) The lead agency in each FWS wage area shall establish special nonsupervisory and supervisory production facilitating wage schedules for employees properly allocable to production facilitating positions under applicable Federal Wage System job grading standards.

(b) Nonsupervisory schedules shall have 11 pay levels, and supervisory schedules shall have 9 pay levels.

(c) Pay levels and rates of pay for nonsupervisory (WD) schedules and supervisory (WN) schedules shall be identical to the pay levels and rates of pay for the corresponding grades on the local FWS regular supervisory wage schedule. Pay levels shall be determined in accordance with the following table:

<table>
<thead>
<tr>
<th>WD nonsupervisory Level</th>
<th>WN supervisory level</th>
<th>WS grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>3</td>
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<td>11</td>
<td>13</td>
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<tr>
<td>12</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>15</td>
<td></td>
</tr>
</tbody>
</table>
(d) Special production facilitating wage schedules shall be effective on the same date as the regular wage schedules in the FWS wage area.

§ 532.265 Special wage schedules for apprentices and shop trainees.

(a) Agencies may establish special wage schedules for apprentices and shop trainees who are included in:

(1) Formal apprenticeship programs involving training for journeyman level duties in occupations that are recognized as apprenticeable by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or

(2) Formal shop trainee programs involving training for journeyman level duties in nonapprenticeable occupations that require specialized trade or craft skill and knowledge.

(b) Special schedules shall consist of a single wage rate for each training period. Wage rates shall be determined as follows:

(1) Rates shall be based on the current second step rate of the target journeyman grade level on the regular nonsupervisory wage schedule for the area where the apprentice or trainee is employed.

(2) The entrance rate shall be computed at 65 percent of the journeyman level, step 2, rate, or the WG±1, step 1, rate, whichever is greater.

(3) When the WG±1, step 1, rate is used, the apprentice rate shall be increased by a minimum of 5 cents per hour for each succeeding increment interval until the rate obtained by this method equals the rate computed under the formula. No increase shall be less than 5 cents per hour.

(c) Advancement to higher increments shall be at 26-week intervals, regardless of the total length of the training period. Intermediate rates shall be established by subtracting the entrance rate from the journeyman level, step 2 rate, and dividing the difference by the number of 26-week periods of the particular training term. The resulting quotient equals the increment for each succeeding rate.

(d) Agencies may hire at advanced rates or accelerate progression through scheduled wage rates if prescribed by approved agency training standards or programs.

(e) If the employee is promoted to the target job or to a job at the same grade level, the promotion shall be to the second step rate. If the employee is assigned to a job at a grade level that is less than the grade level of the target job, existing pay fixing rules shall be followed.

§ 532.267 Special wage schedules for aircraft, electronic, and optical instrument overhaul and repair positions in Puerto Rico.

(a) The Department of Defense shall conduct special industry surveys and establish special wage schedules for wage employees in Puerto Rico whose primary duties involve the performance of work related to aircraft, electronic equipment, and optical instrument overhaul and repair.

(b) Except as provided in this section, regular appropriated fund wage survey and wage-setting procedures are applicable.

(c) Special survey specifications are as follows:

(1) Surveys shall, at a minimum, include the air transportation and electronics industries in SIC's 3571, 3572, 3575, 3577, 3663, 3669, 3672, 3674, 3679, 3695, 3812, 4512, 4513, 4522, 4581, 5044, and 5045.

(2) Surveys shall cover all establishments in the surveyed industries.

(3) Surveys shall, as a minimum, include all the following jobs:

<table>
<thead>
<tr>
<th>Job titles</th>
<th>Job grades</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aircraft Cleaner</td>
<td>3</td>
</tr>
<tr>
<td>Fleet Service Worker</td>
<td>5</td>
</tr>
<tr>
<td>Aircraft Mechanic</td>
<td>10</td>
</tr>
<tr>
<td>Industrial Electronic Controls Repairer</td>
<td>10</td>
</tr>
<tr>
<td>Air Craft Instrument Mechanic</td>
<td>11</td>
</tr>
<tr>
<td>Electronic Test Equipment Repairer</td>
<td>11</td>
</tr>
<tr>
<td>Electronics Mechanic</td>
<td>11</td>
</tr>
<tr>
<td>Electronic Computer Mechanic</td>
<td>11</td>
</tr>
<tr>
<td>Television Station Mechanic</td>
<td>11</td>
</tr>
</tbody>
</table>

(d) The data collected in a special wage survey shall be considered adequate if there are as many weighted matches used in computing the nonsupervisory payline as there are employees covered by the special wage rate schedules.

(e) Each survey job used in computing the nonsupervisory payline must
include a minimum of three unweighted matches.

(f) Special schedules shall have three step rates with the payline fixed at step 2. Step 1 shall be set at 96 percent of the payline rate, and step 3 shall be set at 104 percent of the payline rate.

(g) The waiting period for within-grade increases shall be 26 weeks between steps 1 and 2 and 78 weeks between steps 2 and 3.

(h) Special wage schedules shall be effective on the same date as the regular wage schedules for the Puerto Rico wage area.


§ 532.269 Special wage schedules for Corps of Engineers, U.S. Army navigation lock and dam employees.

(a) The Department of Defense shall establish special wage schedules for nonsupervisory, leader, and supervisory wage employees of the Corps of Engineers, U.S. Army, who are engaged in operating lock and dam equipment or who repair and maintain navigation lock and dam operating machinery and equipment.

(b) Employees shall be subject to one of the following pay provisions:

(1) If all navigation lock and dam installations under a District headquarters office are located within a single wage area, the employees shall be paid from special wage schedules having rates identical to the regular wage schedule applicable to that wage area.

(2) If navigation lock and dam installations under a District headquarters office are located in more than one wage area, employees shall be paid from a special wage schedule having rates identical to the regular wage schedule authorized for the headquarters office.

(c) Each special wage schedule shall be effective on the same date as the regular schedule on which it is based.

[55 FR 46145, Nov. 1, 1990]

§ 532.271 Special wage schedules for National Park Service positions in overlap areas.

(a)(1) The Department of the Interior shall establish special schedules for wage employees of the National Park Service whose duty station is located in one of the following NPS jurisdictions:

(i) Blue Ridge Parkway;

(ii) Natchez Trace Parkway; and

(iii) Great Smoky Mountains National Park.

(2) Each of these NPS jurisdictions is located in (i.e., overlaps) more than one FWS wage area.

(b) The special overlap wage schedules in each of the NPS jurisdictions shall be based on a determination concerning which regular nonsupervisory wage schedule in the overlapped FWS wage areas provides the most favorable payline for the employees.

(c) The most favorable payline shall be determined by computing a simple average of the 15 nonsupervisory second step rates on each one of the regular schedules authorized for each wage area overlapped. The highest average obtained by this method will identify the regular schedule that produces the most favorable payline.

(d) Each special schedule shall be effective on the same date as the regular schedule on which it is based.

(e) If there is a change in the identification of the most favorable payline, the special schedule for the current year shall be issued on its normal effective date. The next special schedule shall be issued on the effective date of the next regular schedule that produced the most favorable payline for the NPS jurisdiction in the previous year.

[55 FR 46145, Nov. 1, 1990]

§ 532.273 Special wage schedules for United States Information Agency Radio Antenna Rigger positions.

(a) The United States Information Agency shall establish special wage schedules for Radio Antenna Riggers employed at transmitting and relay stations in the United States.

(b) The wage rate shall be the regular wage rate for the appropriate grade for Radio Antenna Rigger for the wage area in which the station is located, plus 25 percent of that rate.

(c) The 25 percent differential shall be in lieu of any environmental differential that would otherwise be payable.

(d) The special schedules shall be effective on the same date as the regular schedule.

[55 FR 46145, Nov. 1, 1990]
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wage schedules for the wage area in which the positions are located.
[55 FR 46145, Nov. 1, 1990]

§ 532.275 Special wage schedules for ship surveyors in Puerto Rico.
(a) The Department of Defense shall establish special wage schedules for nonsupervisory ship surveyors and supervisory ship surveyors in Puerto Rico.
(b) Rates shall be computed as follows:
   (1) The step 2 rate for nonsupervisory ship surveyors shall be set at 149.5 percent of the WG±10, step 2, rate on the overseas schedule.
   (2) The step 2 rate of supervisory ship surveyors shall be set at 166.75 percent of the WG±10, step 2, rate on the overseas schedule.
   (3) Step rates shall be developed by using the standard formulas established in §532.203 of this part.
(c) The special wage schedules shall be effective on the same date as the regular wage schedules applicable to the Puerto Rico wage area.
[55 FR 46145, Nov. 1, 1990]

§ 532.277 Special wage schedules for U.S. Navy positions in Bridgeport, California.
(a) The Department of Defense shall establish special wage schedules for prevailing rate employees at the United States Marine Corps Mountain Warfare Training Center in Bridgeport, California.
(b) Schedules shall be established by increasing the step 2 rates on the Reno, Nevada, regular wage schedule by 10 percent.
(c) Step rates shall be developed by using the standard formulas established in §532.203 of this subpart.
(d) The special wage schedules shall be effective on the same date as the regular wage schedules applicable to the Reno, Nevada, wage area.
[55 FR 46146, Nov. 1, 1990]

§ 532.279 Special wage schedules for printing positions.
(a) The lead agency in a special printing schedule area listed in paragraph (j) of this section shall conduct special printing surveys and establish special printing schedules for positions properly allocable to the 4400 printing job family or the 5330 printing equipment repairing job series under FWS job grading standards.
(b) Except as provided in this section, regular appropriated fund wage survey and wage-setting procedures established in §§532.213 through 532.245 of this subpart shall be applicable to printing surveys and schedules.
(c) Specifications for printing surveys shall be as follows:
   (1) Standard industrial code 2752 shall be included in the printing survey. A lead agency may also add other SICs in Major Group 27 to the survey in light of survey experience.
   (2) Surveys shall cover establishments with a total employment of 20 or more.
   (3) A lead agency shall survey the following jobs:

<table>
<thead>
<tr>
<th>Job title</th>
<th>Job grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opaque ..................................................................</td>
<td>4</td>
</tr>
<tr>
<td>Offset Press Helper ........................................</td>
<td>5</td>
</tr>
<tr>
<td>Bindery Machine Operator (Helper)</td>
<td>5</td>
</tr>
<tr>
<td>Film Assembler-Stripper (Single Flat-Single Color)</td>
<td>5</td>
</tr>
<tr>
<td>Platemaker (Single Color)</td>
<td>5</td>
</tr>
<tr>
<td>Film Assembler-Stripper (Partial and Composite Flats)</td>
<td>7</td>
</tr>
<tr>
<td>Platemaker (Double Exposure and Multicolor Line)</td>
<td>7</td>
</tr>
<tr>
<td>Offset Press Operator</td>
<td>8</td>
</tr>
<tr>
<td>Bindery Machine Operator (Paper Cutter)</td>
<td>8</td>
</tr>
<tr>
<td>Bindery Machine Operator (Power Folder)</td>
<td>8</td>
</tr>
<tr>
<td>Film Assembler-Stripper (Multiple Flat-Multiple Color)</td>
<td>8</td>
</tr>
<tr>
<td>Platemaker (Multicolor Halftones and Screen Tints)</td>
<td>8</td>
</tr>
<tr>
<td>Bindery Machine Operator</td>
<td>9</td>
</tr>
<tr>
<td>Offset Operator (15–18 Thru 14–20)</td>
<td>9</td>
</tr>
<tr>
<td>Offset Operator (17–22 Thru 19–25)</td>
<td>9</td>
</tr>
<tr>
<td>Offset Operator (22–29 Thru 35–39)</td>
<td>9</td>
</tr>
<tr>
<td>Offset Operator (35–45 and Larger)</td>
<td>10</td>
</tr>
<tr>
<td>Offset Photographer (Halftone)</td>
<td>10</td>
</tr>
<tr>
<td>Negative Engraver</td>
<td>10</td>
</tr>
<tr>
<td>Bookbinder</td>
<td>10</td>
</tr>
<tr>
<td>Lithographic Pressman Multicolor (17–22 Thru 25–39)</td>
<td>10</td>
</tr>
<tr>
<td>Lithographic Pressman Multicolor (34–44 and Larger)</td>
<td>11</td>
</tr>
<tr>
<td>Offset Photographer (Process Color)</td>
<td>11</td>
</tr>
</tbody>
</table>

(d) The data collected in a special printing survey shall be considered adequate for computing paylines if the unweighted job matches for nonsupervisory jobs include at least 20 matches in the grade 1 through 5 range, 20 matches in the grade 6 through 8 range, 40 matches in the grade 9 and above range, and 60 additional matches at any grade.
§ 532.281 Special wage schedules for divers and tenders.

(e) Each survey job used in computing printing schedule paylines must include a minimum of three unweighted matches.

(f) Special printing schedules shall have three step rates with the payline fixed at step 2. Step 1 shall be set at 96 percent of the payline rate, and step 3 shall be set at 104 percent of the payline rate.

(g) No step 3 rate on a special printing schedule shall be less than the maximum rate of the corresponding grade on the regular wage schedule for the wage area. If an adjustment is required under this provision, the payline rate of the special schedule shall be adjusted so as to provide a step 3 special schedule rate equal to the maximum rate of the corresponding regular schedule grade when the formula in paragraph (f) of this section is applied. Step 1 shall be set at 96 percent of the adjustment payline rate.

(h) The waiting period for within-grade increases under special printing schedules is 26 weeks between steps 1 and 2 and 78 weeks between steps 2 and 3.

(i) Special printing schedules shall be effective on the same date as the regular wage schedules for the authorized wage areas.

(j) Special printing schedules are authorized in the following wage areas:

1. Washington, DC.
2. St. Louis, Missouri.


§ 532.283 Special wage schedules for nonappropriated fund tipped employees classified as waiter/waitress.

(a) Tipped employees shall be paid from the regular nonappropriated fund (NAF) schedule applicable to the employee’s duty station.

(b) A tip offset may be authorized for employees classified as Waiter/Waitress. For purposes of this section, a tipped employee is one who is engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips, and a tip offset is the amount of money by which an employer, in meeting legal minimum wage standards, may reduce a tipped employee’s cash wage in consideration of the receipt of tips.

(c) A tip offset may be established, abolished, or adjusted by NAF instrumentalities on an annual basis and at such additional times as new or revised minimum wage statutes require. The amount of any tip offset may vary within a single instrumentality based on location, type of service, or time of service.

(d) If tipped employees are represented by a labor organization holding exclusive recognition, the employing NAF instrumentality shall negotiate with such organization to arrive at a determination as to whether, when, and how much tip offset shall be applied. Changes in tip offset practices may be made more frequently than annually as a result of collective bargaining agreement.

(e) Tip offset practices shall be governed by the Fair Labor Standards Act, as amended, or the applicable statutes of the State, possession or territory.
where an employee works, whichever provides the greater benefit to the employee. In locations where tip offset is prohibited by law, the requirements of paragraphs (c) and (d) of this section do not apply.

[55 FR 46146, Nov. 1, 1990]

§ 532.285 Special wage schedules for supervisors of negotiated rate Bureau of Reclamation employees.

(a) The Department of the Interior shall establish and issue special wage schedules for wage supervisors of negotiated rate wage employees in the Bureau of Reclamation. These schedules shall be based on annual special wage surveys conducted by the Bureau of Reclamation in each special wage area. Survey jobs representing Bureau of Reclamation positions at up to four levels will be matched to private industry jobs in each special wage area. Special schedule rates for each position will be based on prevailing rates for that particular job in private industry.

(b) Each supervisory job shall be described at one of four levels corresponding to the four supervisory situations described in Factor I and four levels of Subfactor IIIA of the FWS Job Grading Standard for Supervisors. They shall be titled in accordance with regular FWS practices, with the added designation of level I, II, III, or IV. The special survey and wage schedule for a given special wage area includes only those occupations and levels having employees in that area. For each position on the special schedule, there shall be three step rates. Step 2 is the prevailing rate as determined by the survey; step 1 is 96 percent of the prevailing rate; and step 3 is 104 percent of the prevailing rate.

(c) For each special wage area, the Bureau of Reclamation shall designate and appoint a special wage survey committee, including a chairperson and two other members (at least one of whom shall be a supervisor paid from the special wage schedule), and one or more two-person data collection teams (each of which shall include at least one supervisor paid from the special wage schedule). The local wage survey committee shall determine the prevailing rate for each survey job as a weighted average. Survey specifications are as follows for all surveys:

(1) Tailored to the Bureau of Reclamation activities and types of supervisory positions in the special wage area, private industry companies to be surveyed shall be selected from among the following Standard Industrial Classification Major Groups: 12 coal mining; 13 oil and gas extraction; 14 mining and quarrying of nonmetallic minerals, except fuels; 35 manufacturing industrial and commercial machinery and computer equipment; 36 manufacturing electronic and other electrical equipment and components, except computer equipment; 42 motor freight transportation and warehousing; 48 communications; 49 electric, gas, and sanitary services; and 76 miscellaneous repair services. No minimum employment size is required for surveyed establishments.

(2) Each local wage survey committee shall compile lists of all companies in the survey area known to have potential job matches. For the first survey, all companies on the list will be surveyed. Subsequently, companies shall be removed from the survey list if they prove not to have job matches, and new companies will be added if they are expected to have job matches. Survey data will be shared with other local wage survey committees when the data from any one company is applicable to more than one special wage area.

(3) For each area, survey job descriptions shall be tailored to correspond to the position of each covered supervisor in that area. They will be described at one of four levels (I, II, III, or IV) corresponding to the definitions of the four supervisory situations described in Factor I and four levels of Subfactor IIIA of the FWS Job Grading Standard for Supervisors. A description of the craft, trade, or labor work supervised will be included in each supervisory survey job description.

(d) Special wage area boundaries shall be identical to the survey areas covered by the special wage surveys. The areas of application in which the special schedules will be paid are generally smaller than the survey areas, reflecting actual Bureau of Reclamation worksites and the often scattered
§ 532.285

location of surveyable private sector jobs. Special wage schedules shall be established in the following areas:

THE GREAT PLAINS REGION

Special Wage Survey Area (Counties)
Montana: All counties except Lincoln, Sanders, Lake, Flathead, Mineral, Missoula, Powell, Granite, and Ravalli
Wyoming: All counties except Lincoln, Teton, Sublette, Uinta, and Sweetwater
Colorado: All counties except Moffat, Rio Blanco, Garfield, Mesa, Delta, Montrose, San Miguel, Ouray, Delores, San Juan, Montezuma, La Plata, and Archuleta
North Dakota: All counties
South Dakota: All counties

Special Wage Area of Application (Counties)
Montana: Broadwater, Jefferson, Lewis and Clark, Yellowstone, and Bighorn Counties
Wyoming: All counties except Lincoln, Teton, Sublette, Uinta, and Sweetwater
Colorado: Boulder, Chaffee, Clear Creek, Eagle, Fremont, Gilpin, Grand, Lake, Larimer, Park, Pitkin, Pueblo, and Summit

Beginning month of survey: August

THE MID-PACIFIC REGION

Special Wage Survey Area (Counties)
California: Shasta, Sacramento, Butte, San Francisco, Merced, Stanislaus

Special Wage Area of Application (Counties)
California: Shasta, Sacramento, Fresno, Alameda, Tehama, Tuolumne, Merced

Beginning month of survey: October

GREEN SPRINGS POWER FIELD STATION

Special Wage Survey Area (Counties)
Oregon: Jackson

Special Wage Area of Application (Counties)
Oregon: Jackson

Beginning month of survey: April

PACIFIC NW. REGION DRILL CREW

Special Wage Survey Area (Counties)
Montana: Flathead, Missoula
Oregon: Lane, Bend, Medford, Umatilla, Multnomah
Utah: Salt Lake
Idaho: Ada, Canyon, Adams
Washington: Spokane, Grant, Lincoln, Okanogan

Special Wage Area of Application (Counties)
Oregon: Deschutes, Jackson, Umatilla
Montana: Missoula
Idaho: Ada

Washington: Grant, Lincoln, Douglas, Okanogan, Yakima
Beginning month of survey: April

SNAKE RIVER AREA OFFICE (CENTRAL SNAKE/ MINIDOKA)

Special Wage Survey Area (Counties)
Idaho: Ada, Caribou, Bingham, Bannock

Special Wage Area of Application (Counties)
Idaho: Gem, Elmore, Bonneville, Minidoka, Boise, Valley, Power
Beginning month of survey: April

HUNGRY HORSE PROJECT OFFICE

Special Wage Survey Area (Counties)
Montana: Flathead, Missoula, Cascade, Sanders, Lake
Idaho: Bonner
Washington: Pend Oreille

Special Wage Area of Application (Counties)
Montana: Flathead
Beginning month of survey: March

GRAND COULEE POWER OFFICE (GRAND COULEE PROJECT OFFICE)

Special Wage Survey Area (Counties)
Oregon: Multnomah
Washington: Spokane, King

Special Wage Area of Application (Counties)
Washington: Grant, Douglas, Lincoln, Okanogan
Beginning month of survey: April

UPPER COLUMBIA AREA OFFICE (YAKIMA)

Special Wage Survey Area (Counties)
Washington: King, Yakima
Oregon: Multnomah

Special Wage Area of Application (Counties)
Washington: Yakima
Oregon: Umatilla

Beginning Month of Survey: September

COLORADO RIVER STORAGE PROJECT AREA

Special Wage Survey Area (Counties)
Arizona: Apache, Coconino, Navajo
Colorado: Moffat, Montrose, Routt, Gunnison, Rio Blanco, Mesa, Garfield, Eagle, Delta, Pitkin, San Miguel, Delores, Montezuma, La Plata, San Juan, Ouray, Archuleta, Hindale, Mineral
Wyoming: Uinta, Sweetwater, Carbon, Albany, Laramie, Goshen, Platte, Niobrara, Converse, Natrona, Fremont, Sublette, Lincoln
Utah: Beaver, Box Elder, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard
Office of Personnel Management


Special Survey Area of Application (Counties)
Arizona: Coconino
Colorado: Montrose, Gunnison, Mesa
Wyoming: Lincoln
Utah: Daggett
Beginning month of survey: March

ELEPHANT BUTTE AREA
Special Wage Survey Area (Counties)

New Mexico: Grant, Hidalgo, Luna, Doña Ana, Otero, Eddy, Lea, Roosevelt, Chaves, Lincoln, Sierra, Socorro, Catron, Cibola, Valencia, Bernalillo, Torrance, Guadalupe, De Baca, Curry, Quay
Texas: El Paso, Hudspeth, Culberson, Jeff Davis, Presidio, Brewster, Pecos, Reeves, Loving, Ward, Winkler
Arizona: Apache, Greenlee, Graham, Cochise
Beginning month of survey: June

LOWER COLORADO DAMS AREA
Special Wage Survey Area (Counties)

New Mexico: Sierra
Beginning month of survey: June

YUMA PROJECTS AREA
Special Wage Survey Area (Counties)

California: San Diego
Arizona: Maricopa, Yuma

NOTE: Bureau of Reclamation may add other survey counties for dredge operator supervisors because of the uniqueness of the occupation and difficulty in finding job matches.

Special Wage Area of Application (Counties)
Arizona: Yuma
Beginning month of survey: November (Maintenance) and April (Dredging)

BUREAU OF RECLAMATION, DENVER, CO, AREA
Special Wage Survey Area (Counties)
Colorado: Jefferson, Denver, Adams, Arapahoe, Boulder, Larimer
Beginning month of survey: February

(e) These special schedule positions will be identified by pay plan code XE, grade 00, and the Federal Wage System occupational codes will be used. New employees shall be hired at step 1 of the position. With satisfactory or higher performance, advancement between steps shall be automatic after 52 weeks of service.

(f) (1) In the first year of implementation, all special areas will have full-scale surveys.

(2) Current employees shall be placed in step 2 of the new special schedule, or, if their current rate of pay exceeds the rate for step 2, they shall be placed in step 3. Pay retention shall apply to any employee whose rate of basic pay would otherwise be reduced as a result of placement in these new special wage schedules.

(3) The waiting period for within-grade increases shall begin on the employee’s first day under the new special schedule.

[60 FR 5310, Jan. 27, 1995]

APPENDIX A TO SUBPART B OF PART 532—NATIONWIDE SCHEDULE OF APPROPRIATED FUND REGULAR WAGE SURVEYS

This appendix shows the annual schedule of wage surveys. It lists all States alphabetically, each State being followed by an alphabetical listing of all wage areas in the State. Information given for each wage area includes—

(1) The lead agency responsible for conducting the survey;

(2) The month in which the survey will begin; and

(3) Whether full-scale surveys will be done in odd or even numbered fiscal years.

<table>
<thead>
<tr>
<th>State</th>
<th>Lead agency</th>
<th>Beginning month of survey</th>
<th>Fiscal year of full-scale survey odd or even</th>
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<table>
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<th>State</th>
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1 The revised fiscal year entries are scheduled to begin for Augusta, Maine, in fiscal year 1996; for Buffalo, New York, and Southwestern Michigan in fiscal year 1997; and for Eastern South Dakota in fiscal year 1998.

**EDITORIAL NOTE:** For Federal Register citations affecting appendix A to subpart B of part 532, see the List of CFR Sections Affected in the Finding Aids section of this volume.
### APPENDIX B TO SUBPART B OF PART 532—NATIONWIDE SCHEDULE OF NON-APPROPRIATED FUND REGULAR WAGE SURVEYS

This appendix shows the annual schedule of NAF wage surveys. It lists all States alphabetically, each State being followed by an alphabetical listing of all wage areas in the State. Information given for each wage area includes—

1. The lead agency responsible for conducting the survey;
2. The month in which the survey will begin; and
3. Whether full-scale surveys will be conducted in odd or even numbered fiscal years.

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<td>Odd</td>
</tr>
<tr>
<td></td>
<td>Nueces</td>
<td>June</td>
<td>Even</td>
</tr>
<tr>
<td></td>
<td>Tarrant</td>
<td>November</td>
<td>Odd</td>
</tr>
<tr>
<td></td>
<td>Taylor</td>
<td>June</td>
<td>Odd</td>
</tr>
<tr>
<td></td>
<td>Tom Green</td>
<td>June</td>
<td>Odd</td>
</tr>
<tr>
<td></td>
<td>Wichita</td>
<td>August</td>
<td>Even</td>
</tr>
<tr>
<td></td>
<td>Davis-Salt Lake-Weber</td>
<td>March</td>
<td>Odd</td>
</tr>
<tr>
<td></td>
<td>Alexandria-Arlington-Fairfax</td>
<td>August</td>
<td>Even</td>
</tr>
<tr>
<td></td>
<td>Chesterfield-Richmond</td>
<td>November</td>
<td>Even</td>
</tr>
<tr>
<td></td>
<td>Hampton-Newport News</td>
<td>May</td>
<td>Even</td>
</tr>
<tr>
<td></td>
<td>Norfolk-Portsmouth-Virginia Beach</td>
<td>May</td>
<td>Even</td>
</tr>
<tr>
<td></td>
<td>Prince William</td>
<td>August</td>
<td>Even</td>
</tr>
<tr>
<td></td>
<td>King</td>
<td>July</td>
<td>Even</td>
</tr>
<tr>
<td></td>
<td>Kitsap</td>
<td>September</td>
<td>Even</td>
</tr>
<tr>
<td></td>
<td>Pierce</td>
<td>August</td>
<td>Odd</td>
</tr>
<tr>
<td></td>
<td>Spokane</td>
<td>July</td>
<td>Odd</td>
</tr>
<tr>
<td></td>
<td>Laramie</td>
<td>January</td>
<td>Even</td>
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**EDITORIAL NOTE:** For Federal Register citations affecting appendix B to subpart B of part 532, see the List of CFR Sections Affected in the Finding Aids section of this volume.
APPENDIX C TO SUBPART B OF PART 532—APPROPRIATED FUND WAGE AND SURVEY AREAS

This appendix lists the wage area definitions for appropriated fund employees. With a few exceptions, each area is defined in terms of county units, independent cities, or, in the New England States, of entire township or city units. Each wage area definition consists of:

(1) Wage area title. Wage areas usually carry the title of the principal city in the area. Sometimes, however, the area title reflects a broader geographic area, such as Wyoming or Eastern Tennessee.

(2) Survey area definition. Lists each county, independent city, or township in the survey area.

(3) Area of application definition. Lists each county, independent city, or township which, in addition to the survey area, is in the area of application.

DEFINITIONS OF WAGE AND WAGE SURVEY AREAS

ALABAMA

ANNISTON-GADSDEN

Survey Area

Alabama:
Calhoun
Etowah
Talladega

Area of Application. Survey area plus:

Alabama:
Cherokee
Clay
Cleburne
De Kalb
Randolph

BIRMINGHAM

Survey area

Alabama:
Jefferson
St. Clair
Shelby
Tuscaloosa
Walker

Area of Application. Survey area plus:

Alabama:
Bibb
Blount
Cullman
Fayette
Greene
Hale
Lamar
Marengo
Perry
Pickens

DOTHAN

Survey area

Alabama:
Dale
Houston

Georgia:
Early

Area of Application. Survey area plus:

Alabama:
Barbour
Coffee
Geneva
Henry
Georgia:
Clay
Miller
Seminole

HUNTSVILLE

Survey area

Alabama:
Limestone
Madison
Marshall
Morgan

Area of Application. Survey area plus:

Alabama:
Colbert
Franklin
Jackson
Lauderdale
Lawrence
Marion
Winston
Tennessee:
Franklin
Giles
Lawrence
Lincoln
Moore
Wayne

ALASKA

Survey area

Alaska:
Anchorage
Fairbanks
Juneau (and the areas within a 24-kilometer (15-mile) radius of their corporate city limits)

Area of Application. State of Alaska (except special area schedules).

ARIZONA

NORTHEASTERN ARIZONA

Survey Area

Arizona:
Apache
Coconino
Navajo
New Mexico:
McKinley
San Juan

Area of Application. Survey area plus:

Colorado:
La Plata
Montezuma

Utah:
Kane
San Juan (Does not include the Canyonlands National Park portion.)

PHOENIX
Survey area

Arizona:
Gila
Maricopa

Area of Application. Survey area plus:

Arizona:
Pinal
Yavapai

TUCSON
Survey area

Arizona:
Pima

Area of Application. Survey area plus:

Arizona:
Cochise
Graham
Greenlee
Santa Cruz

ARKANSAS
LITTLE ROCK
Survey Area
Arkansas:
Jefferson
Pulaski
Saline

Area of Application. Survey area plus:

Arkansas:
Arkansas
Ashley
Baxter
Boone
Bradley
Calhoun
Chicot
Clay
Clark
Cleburne
Cleveland
Conway
Crawford
Dallas
Desha
Drew

Faulkner
Franklin
Fulton
Garland
Grant
Greene
Hot Spring
Independence
Izard
Jackson
Johnson
Lawrence
Lincoln
Logan
Lonoke
Madison
Marion
Monroe
Montgomery
Newton
Ouachita
Perry
Phillips
Pike
Polk
Pope
Prairie
Randolph
Scott
Searcy
Sebastian
Sharp
Stone
Union
Van Buren
White
Woodruff
Yell

CALIFORNIA:
FRESNO
Survey area

California:
Fresno
Kings
Tulare

Area of Application. Survey area plus:

California:
Kern (Does not include China Lake Naval Weapons Center, Edwards Air Force Base and portions occupied by Federal activities at Boron (City).)
Madera (Does not include Devils Postpile National Monument portion.)
Mariposa
Merced
Tuolumne (Only includes Yosemite National Park portion.)

LOS ANGELES
Survey area

California:
Los Angeles
Pt. 532, Subpt. B, App. C

Area of Application. Survey area plus:

**California:**
- Inyo
- Kern (Only includes the China Lake Naval Weapons Center, Edwards Air Force Base and portions occupied by Federal activities at Boron (City).)
- Orange
- Riverside (only includes the Joshua Tree National Monument portion.)
- San Bernardino (All of San Bernardino County except that portion occupied by, and south and west of the Angeles and San Bernardino National Forests.)
- Ventura

SACRAMENTO

Survey area

**California:**
- Placer
- Sacramento
- Sutter
- Yolo
- Yuba

Area of Application. Survey area plus:

**California:**
- Alpine
- Amador
- Butte
- Colusa
- Del Norte
- El Dorado
- Glenn
- Humboldt
- Lake
- Modoc
- Nevada
- Plumas
- Shasta
- Sierra
- Siskiyou
- Tehama
- Trinity

SALINAS-MONTEREY

Survey area

**California:**
- Monterey

Area of Application. Survey area plus:

**California:**
- San Benito

SAN BERNARDINO-RIVERSIDE-ONTARIO

Survey area

**California:**
- Riverside (Does not include the Joshua Tree National Monument portion.)
- San Bernardino (Only that portion occupied by, and south and west of the Angeles and San Bernardino National Forests.)

COLORADO

DENVER

Survey area

**Colorado:**
- Adams
- Arapahoe
- Boulder

Area of Application. Survey area.

**San Diego**

Survey area

**California:**
- San Diego

Area of Application. Survey area plus:

**California:**
- Imperial
- Arizona:
  - La Paz
  - Yuma

SAN FRANCISCO

Survey area

**California:**
- Alpine
- Amador
- Butte
- Colusa
- Del Norte
- El Dorado
- Glenn
- Humboldt
- Lake
- Modoc
- Nevada
- Plumas
- Shasta
- Sierra
- Siskiyou
- Tehama
- Trinity

SANTA BARBARA

Survey area

**California:**
- San Luis Obispo

STOCKTON

Survey area

**California:**
- San Joaquin

Area of Application. Survey area plus:

**California:**
- Calaveras
- Stanislaus
- Tuolumne (Does not include the Yosemite National Park portion.)

Area of Application. Survey area.
Office of Personnel Management

Pt. 532, Subpt. B, App. C

Denver
Douglas
Gilpin
Jefferson

Area of Application. Survey area plus:

Colorado:
Clear Creek
Elbert
Grand
Jackson
Larimer
Logan
Morgan
Park
Phelps
Sedgwick
Summit
Washington
Weld
Yuma

Southern and Western Colorado
Survey area

Colorado:
El Paso
Pueblo
Teller

Area of Application. Survey area plus:

Colorado:
Alamosa
Archuleta
Baca
Bent
Chaffee
Cheyenne
Conejos
Costilla
Crawley
Custer
Delta
Dolores
Eagle
Fremont
Garfield
Gunnison
Hinsdale
Huerfano
Kiowa
Kit Carson
Lake
Las Animas
Lincoln
Mesa
Mineral
Montrose
Otero
Ouray
Pitkin
Prowers
Rio Blanco
Rio Grande
Routt
Saguache
San Juan
San Miguel

Connecticut

New Haven—Hartford
Survey Area

Connecticut:
The following cities and towns in:
Fairfield County
Stratford
Hartford County
Bloomfield
East Granby
East Hartford
East Windsor
Enfield
Glastonbury
Hartford
Manchester
Newington
Rocky Hill
 Suffield
West Hartford
Wethersfield
Windsor
Windsor Locks
Middlesex County
Cromwell
Middlefield
New Haven County
Branford
East Haven
Hamden
Meriden
Milford
New Haven
North Branford
North Haven
Orange
Wallingford
West Haven

Area of application. Survey area plus:

Connecticut:
Fairfield County (nonsurvey area part)
Hartford County (nonsurvey area part)
Litchfield County
Middlesex County (nonsurvey area part except Old Saybrook)
New Haven County (nonsurvey area part)
Tolland County (except Somers and Somersville)

New London
Survey Area

Connecticut:
The following cities and towns in:
Middlesex County
Old Saybrook
New London County
Baltic
Bozrah
East Lyme
Gales Ferry
Groton
Hanover
Jewett City
Ledyard
Lisbon
Lyme
Montville
Mystic
New London
Noank
Norwich
Oakdale
Old Mystic
Old Lyme
Pawcatuck
Poquonnock Bridge
Preston
Quaker Hill
Stonington
Submarine Base
Uncasville
Versailles
Waterford
West Mystic
Rhode Island:
The following cities and towns in:
Washington County
Hopkinton
Westerly
Area of application. Survey area plus:
Connecticut:
New London (nonsurvey area part)
Windham

DELAWARE
WILMINGTON
Survey Area

Delaware:
Kent
New Castle
Maryland:
Cecil
New Jersey:
Salem

Area of Application. Survey area plus:
Delaware:
Sussex
Maryland:
Caroline
Dorchester
Kent
Queen Anne's
Somerset
Talbot
Wicomico
Worcester (Does not include the Assateague Island portion.)

DISTRICT OF COLUMBIA, WASHINGTON, DC
Survey Area

District of Columbia:
Washington, D.C.

Maryland:
Charles
Frederick
Montgomery
Prince George's
Virginia (cities):
Alexandria
Fairfax
Falls Church
Manassas
Manassas Park
Virginia (counties):
Arlington
Fairfax
Loudoun
Prince William

Area of Application. Survey area plus:
Maryland:
Calvert
St. Mary's
Virginia:
Fauquier
King George
Stafford

FLORIDA
COCOA BEACH-MELBOURNE
Survey Area

Florida:
Brevard

Area of Application. Survey area plus:
Florida:
Alachua
Baker
Clay
Duval
Nassau
St. Johns

Area of Application. Survey Area Plus

Florida:
Bradford
Citrus
Columbia
Dixie
Flagler
Gilchrist
Hamilton
Lafayette
Lake
Levy
Madison
Marion
Orange
Osceola
Putnam
Office of Personnel Management

Seminole
Sumter
Suwanee
Taylor
Union
Volusia
Georgia:
Brantley
Camden
Chariton
Glynn
Pierce

MIAMI
Survey Area

Florida:
Dade

Area of Application. Survey area plus:

Florida:
Broward
Collier
Glades
Hendry
Highlands
Martin
Monroe
Okeechobee
Palm Beach
St. Lucie

PANAMA CITY
Survey Area

Florida:
Bay
Gulf

Area of Application. Survey area plus:

Florida:
Calhoun
Franklin
Gadsden
Holmes
Jackson
Jefferson
Leon
Liberty
Wakulla
Washington

PENSACOLA
Survey Area

Florida:
Escambia
Santa Rosa

Area of Application. Survey area plus:

Florida
Okaloosa
Walton
Alabama:
Baldwin
Clarke

Concuh
Covington
Escambia
Mobile
Monroe
Washington

TAMPA-ST. PETERSBURG
Survey Area

Florida:
Hillsborough
Pasco
Pinellas

Area of Application. Survey area plus:

Florida:
Charlotte
De Soto
Hardee
Hernando
Lee
Manatee
Polk
Sarasota

GEORGIA

ALBANY
Survey Area

Georgia:
Colquitt
Dougherty
Lee
Mitchell
Worth

Area of Application. Survey area plus:

GEORGIA:

Atkinson
Baker
Ben Hill
Berrien
Brooks
Calhoun
Clinch
Coffee
Cook
Decatur
Echols
Grady
Irwin
Lanier
Lowndes
Randolph
Sumter
Terrell
Thomas
Tift
Turner
Ware
### ATLANTA

**Survey Area**

**Georgia:**
- Butts
- Cherokee
- Clayton
- Cobb
- DeKalb
- Douglas
- Fayette
- Forsyth
- Fulton
- Gwinnett
- Henry
- Newton
- Paulding
- Rockdale
- Walton

**Area of Application. Survey area plus:**

**Georgia:**
- Banks
- Barrow
- Bartow
- Carroll
- Chattooga
- Clarke
- Coweta
- Dawson
- Fannin
- Floyd
- Franklin
- Gilmer
- Gordon
- Greene
- Habersham
- Hall
- Haralson
- Heard
- Jackson
- Lumpkin
- Madison
- Morgan
- Murray
- Oconee
- Oglethorpe
- Pickens
- Pike
- Polk
- Rabun
- Spalding
- Stephens
- Towns
- Union
- White
- Whitfield

### AUGUSTA

**Survey Area**

**Georgia:**
- Columbia
- McDuffie
- Richmond
- South Carolina:
  - Aiken
  - Burke
  - Elbert
  - Emanucl
  - Glascock
  - Hart
  - Jefferson
  - Jenkins
  - Lincoln
  - Taliaferro
  - Warren
  - Wilkes

**Area of Application. Survey area plus:**

**Georgia:**
- Banks
- Barrow
- Bartow
- Carroll
- Chattooga
- Clarke
- Coweta
- Dawson
- Fannin
- Floyd
- Franklin
- Gilmer
- Gordon
- Greene
- Habersham
- Hall
- Haralson
- Heard
- Jackson
- Lumpkin
- Madison
- Morgan
- Murray
- Oconee
- Oglethorpe
- Pickens
- Pike
- Polk
- Rabun
- Spalding
- Stephens
- Towns
- Union
- White
- Whitfield

### MACON

**Survey area**

**Georgia:**
- Columbia
- McDuffie
- Richmond
- South Carolina:
  - Aiken
  - Burke
  - Elbert
  - Emanucl
  - Glascock
  - Hart
  - Jefferson
  - Jenkins
  - Lincoln
  - Taliaferro
  - Warren
  - Wilkes

**Area of Application. Survey area plus:**

**Georgia:**
- Banks
- Barrow
- Bartow
- Carroll
- Chattooga
- Clarke
- Coweta
- Dawson
- Fannin
- Floyd
- Franklin
- Gilmer
- Gordon
- Greene
- Habersham
- Hall
- Haralson
- Heard
- Jackson
- Lumpkin
- Madison
- Morgan
- Murray
- Oconee
- Oglethorpe
- Pickens
- Pike
- Polk
- Rabun
- Spalding
- Stephens
- Towns
- Union
- White
- Whitfield

### COLUMBUS

**Survey Area**

**Georgia (Counties):**
- Chattahoochee

**Georgia (Consolidated government):**
- Columbus

**Alabama:**
- Autauga
- Elmore
- Lee
- Montgomery
- Russell

**Area of Application. Survey area plus:**

**Georgia:**
- Banks
- Barrow
- Bartow
- Carroll
- Chattooga
- Clarke
- Coweta
- Dawson
- Fannin
- Floyd
- Franklin
- Gilmer
- Gordon
- Greene
- Habersham
- Hall
- Haralson
- Heard
- Jackson
- Lumpkin
- Madison
- Morgan
- Murray
- Oconee
- Oglethorpe
- Pickens
- Pike
- Polk
- Rabun
- Spalding
- Stephens
- Towns
- Union
- White
- Whitfield

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Office of Personnel Management

Georgia:
Bibb
Houston
Jones
Laurens
Twiggs
Wilkinson

Area of Application. Survey area plus:

Hawaii:
Kauai (Kauai county includes the islands of Kauai and Niihau.)
Maui (Maui county includes the islands of Maui, Molokai, Lanai and Kohoolawe.)

Idaho:
Boise

Idaho:
Survey Area

Georgia:
Baldwin
Bleckley
Crawford
Crisp
Dodge
Dooley
Hancock
Jasper
Johnson
Lamar
Macon
Monroe
Montgomery
Peach
Pulaski
Putnam
Telfair
Treutlen
Upson
Washington
Wheeler
Wilcox

SAVANNAH

Survey Area

Georgia:
Bryan
Chatham
Effingham
Liberty

Area of Application. Survey area plus:

Georgia:
Appling
Bacon
Bulloch
Candler
Evans
Jeff Davis
Long
McIntosh
Screen
Tattnall
Toombs
Wayne

South Carolina:
Beaufort (The portion south of Broad River.)
Hampton
Jasper

Hawaii:
Honolulu

Idaho:
Ada
Boise
Canyon
Elmore
Gem

Idaho:
Survey Area

Idaho:
Adams
Bannock
Bear Lake
Bingham
Blaine
Bonneville
Butte
Camas
Caribou
Cassia
Clark
Custer
Franklin
Fremont
Gooding
Jefferson
Jerome
Lemhi
Lincoln
Madison
Minidoka
Oneida
Owyhee
Payette
Power
Teton
Twin Falls
Valley
Washington

Idaho:
Survey Area

Illinois:
Champaign-Urbana

Illinois:
Survey area

Illinois:
Area of Application. Survey area plus:

HAWAI'I

Survey area

Hawaii:

Illinois:
Christian
Clark
Coles
Crawford
Cumberland
De Witt
Douglas
Edgar
Ford
Jasper
Logan
Mclean
Moultrie
Piatt
Shelby

CHICAGO
Survey area

Illinois:
Cook
Du Page
Kane
Lake
McHenry
Will

Area of Application. Survey area plus:

Illinois:
Boone
De Kalb
Grundy
Iroquois
Kankakee
Kendall
La Salle
Lee
Livingston
Ogle
Stephenson
Winnebago

Indiana:
Benton
Jasper
Lake
La Porte
Newton
Porter
Pulaski
Starke

INDIANA
BLOOMINGTON-BEDFORD-WASHINGTON
Survey area

Indiana:
Daviess
Greene
Knox
Lawrence
Martin
Monroe
Orange

Area of Application. Survey area plus:

Indiana:
Blackford
Carroll
Cass
Elkhart
Fulton
Howard
Jay
Kosciusko
Lagrange
Marshall
Miami
Noble
St. Joseph
Steuben
Wabash
White
Whitley

Ohio:
Allen
Defiance
Fulton
Henry

CHICAGO
Survey area

Illinois:
Edwards
Gallatin
Hardin
Lawrence
Richland
Wabash
White
Kentucky:
Crittenden
Daviess
Hancock
Henderson
Livingston
McLean
Ohio
Union
Webster

FT. WAYNE-MARION
Survey area

Indiana:
Adams
Allen
DeKalb
Grant
Huntington
Wells

Area of Application. Survey area plus:

Indiana:
Blackford
Carroll
Cass
Elkhart
Fulton
Howard
Jay
Kosciusko
Lagrange
Marshall
Miami
Noble
St. Joseph
Steuben
Wabash
White
Whitley

Ohio:
Allen
Defiance
Fulton
Henry
Office of Personnel Management

Mercer
Paulding
Putnam
Van Wert
Williams

INDIANAPOLIS
Survey area

Indiana:
Boone
Hamilton
Hancock
Hendricks
Johnson
Marion
Morgan
Shelby

Area of Application. Survey area plus:

Indiana:
Bartholomew
Clinton
Decatur
Delaware
Fayette
Fountain
Henry
Madison
Montgomery
Parke
Putnam
Rush
Sullivan
Tippecanoe
Tipton
Vermillion
Vigo
Warren

IOWA
CEDAR RAPIDS-IOWA CITY
Survey area

Iowa:
Benton
Black Hawk
Johnson
Linn

Area of Application. Survey area plus:

Iowa:
Allamakee
Bremer
Buchanan
Butler
Cedar
Chickasaw
Clayton
Davis
Delaware
Fayette
Floyd
Grundy
Henry
Howard
Iowa
Jefferson
Jones
Keokuk
Mitchell
Tama
Van Buren
Wapello
Washington
Winnebago

DAVENPORT-ROCK ISLAND-MOLINE
Survey area

Illinois:
Adams
Brown
Bureau
Cass
Calhoun
Clark
Cumberland
De Kalb
Delaware
De Witt
Douglas
Hancock
Henderson
Knox
McDonough
Marshall
Mason
Mercer
Peoria
Putnam
Schuyler
Stark
Tazewell
Warren
Woodford

DE S M O I N E S
Survey area

Iowa:
Polk
Story
Warren

Area of Application. Survey area plus:

Iowa:
Adair
Appanoose
Boone
Calhoun
Carroll
Cerro Gordo
Clarke
Dallas

Decatur  Webaunsee
Franklin  Washington
Greene  
Guthrie  
Hamilton  
Hancock  
Hardin  Kansas:
Humboldt  Butler
Jasper  Sedgwick
Kossuth  
Lucas  

Madison  Area of Application. Survey area plus:
Mahaska  Kansas:
Marion  Barber
Marshall  Barton
Monroe  Chase
Poweshiek  Chautauqua
Ringgold  Cheyenne
Union  Clark
Wayne  Comanche
Webster  Cowley
Winnebago  Decatur
Worth  Edwards
Wright  Elk

Iowa:

Dubuque  Ellis
Survey area  Ellsworth
Iowa:  Finney

Clinton  Ford
Dubuque  Gove
Jackson  Graham
Illinois:
Carroll  Grant
Jo Daviess  Gray
Whiteside  Greeley

Area of Application. Survey area plus:

Kansas:
Area of Application. Survey area plus:

Geary  Hodgeman
Jefferson  Jewell
Osage  Kearny
Shawnee  Kingman

Kansas:

Brown  Kiowa
Clay  Labette
Cloud  Lane
Coffey  Pottawatomie
Dickinson  Republic
Jackson  Riley
Lyon  Saline
Marshall  Scott
Morris  Seward
Nemaha  
Ottawa  
Pottawatomie  

Rush  
Russell  

Survey area  

Wichita  Survey area
Office of Personnel Management  
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Sheridan  
Sherman  
Smith  
Stafford  
Stanton  
Stevens  
Sumner  
Thomas  
Trego  
Wallace  
Wichita  
Wilson  
Woodson  

Wayne  
Whitley  
Wolfe  

LOUISVILLE  
Survey area

Kentucky:  
Bullitt  
Hardin  
Jefferson  
Oldham  

Indiana:  
Clark  
Floyd  
Jefferson  

Area of Application. Survey area plus:

Kentucky:  
Breckinridge  
Grayson  
Henry  
Larue  
Meade  
Nelson  
Shelby  
Spencer  
Trimble  

Indiana:  
Harrison  
Jennings  
Scott  

LOUISIANA  
LAKE CHARLES-ALEXANDRIA  
Survey area

Louisiana:  
Allen  
Beauregard  
Calcasieu  
Grant  
Rapides  
Sabine  
Vernon  

Area of Application. Survey area plus:

Louisiana:  
Acadia  
Avoyelles  
Caldwell  
Cameron  
Catahoula  
Concordia  
Evangeline  
Franklin  
Jefferson Davis  
Lafayette  
La Salle  
Madison  
Natchitoches  
St. Landry  
Tensas  
Vermilion  
Winn  

Survey area

Kentucky:
Bourbon
Clark
Fayette
Jessamine
Madison
Scott
Woodford

Area of Application. Survey area plus:

Kentucky:
Anderson
Bath
Bell
Boyle
Breckinridge
Breathitt
Casey
Clay
Jefferson
Estill
Franklin
Garrard
Green
Harrison
Jackson
Kenton
Laurel
Lee
Leslie
Lincoln
McCreary
Marion
Menifee
Mercer
Montgomery
Morgan
Nicholas
Owen
Owsley
Perry
Powell
Pulaski
Robertson
Rockcastle
Rowan
Taylor
Washington

LEXINGTON

KENTUCKY

Survey area

Kentucky:
Bourbon
Clark
Fayette
Jessamine
Madison
Scott
Woodford

Area of Application. Survey area plus:

Kentucky:
Anderson
Bath
Bell
Boyle
Breckinridge
Breathitt
Casey
Clay
Jefferson
Estill
Franklin
Garrard
Green
Harrison
Jackson
Kenton
Laurel
Lee
Leslie
Lincoln
McCreary
Marion
Menifee
Mercer
Montgomery
Morgan
Nicholas
Owen
Owsley
Perry
Powell
Pulaski
Robertson
Rockcastle
Rowan
Taylor
Washington

IAIR  
Survey area

Kentucky:
Bullitt
Hardin
Jefferson
Oldham

Indiana:
Clark
Floyd
Jefferson

Area of Application. Survey area plus:

Kentucky:
Breckinridge
Grayson
Henry
Larue
Meade
Nelson
Shelby
Spencer
Trimble

Indiana:
Harrison
Jennings
Scott

LOUISIANA  
LAKE CHARLES-ALEXANDRIA  
Survey area

Louisiana:
Allen
Beauregard
Calcasieu
Grant
Rapides
Sabine
Vernon

Area of Application. Survey area plus:

Louisiana:
Acadia
Avoyelles
Caldwell
Cameron
Catahoula
Concordia
Evangeline
Franklin
Jefferson Davis
Lafayette
La Salle
Madison
Natchitoches
St. Landry
Tensas
Vermilion
Winn
NEW ORLEANS
Survey area

Louisiana:
  Jefferson
  Orleans
  Plaquemines
  St. Bernard
  St. Tammany

Area of Application. Survey area plus:

Louisiana:
  Ascension
  Assumption
  East Baton Rouge
  East Feliciana
  Iberia
  Lafourche
  Livingston
  Pointe Coupee
  St. Charles
  St. Helena
  St. James
  St. John the Baptist
  St. Martin
  St. Mary
  Tangipahoa
  Terrebonne
  Washington
  West Baton Rouge
  West Feliciana

SHREVEPORT
Survey area

Louisiana:
  Bossier
  Caddo
  Webster

Area of Application. Survey area plus:

Louisiana:
  Bienville
  Claiborne
  De Soto
  East Carroll
  Jackson
  Lincoln
  Morehouse
  Ouachita
  Red River
  Richland
  Union
  West Carroll
  Texas:
    Cherokee
    Gregg
    Harrison
    Panola
    Rusk

MAINE

AUGUSTA
Survey area

Maine:
  Aroostook
  Penobscot

Area of Application. Survey area plus:

CENTRAL AND NORTHERN MAINE
Survey area

Maine:
  Hancock
  Piscataquis
  Somerset
  Waldo
  Washington

PORTLAND
Survey area

Maine:
  Androscoggin
  Cumberland
  Sagadahoc

Area of Application. Survey area plus:

Maine:
  Franklin
  Oxford

New Hampshire:
  Coos

MARYLAND

BALTIMORE
Survey area

Maryland:
  Baltimore City
  Anne Arundel
  Baltimore
  Carroll
  Harford
  Howard

Area of Application. Survey area

HAGERSTOWN-MARTINSBURG-CHAMBERSBURG
Survey Area

Maryland:
  Washington

Pennsylvania:
  Franklin
  West Virginia:
  Berkeley
Office of Personnel Management

Area of Application—Survey Area Plus

Maryland:
  Allegany
  Garrett
Pennsylvania:
  Fulton (Effective as of April 17, 1996.)
  Allegany
Virginia (cities):
  Harrisonburg
  Winchester
Virginia (counties):
  Clarke
  Culpeper
  Frederick
  Greene
  Madison
  Page
  Rappahannock
  Rockingham
  Shenandoah
  Warren
West Virginia:
  Hampshire
  Hardy
  Jefferson
  Mineral
  Morgan

MASSACHUSETTS

BOSTON

Survey Area

Massachusetts:
The following cities and towns in:
  Essex County
  Beverly
  Danvers
  Hamilton
  Lynn
  Lynnfield
  Manchester
  Marblehead
  Middleton
  Nahant
  Peabody
  Salem
  Saugus
  South Hamilton
  Swampscott
  Topsfield
  Wenham
  Middlesex County
  Acton
  Arlington
  Ashland
  Bedford
  Belmont
  Boxborough
  Burlington
  Cambridge
  Carlisle
  Concord
  Everett
  Framingham
  Holliston
  Lexington

Lincoln
Malden
Medford
Melrose
Natick
Newton
North Reading
North Wilmington
Reading
Sherborn
Somerville
Stoneham
Sudbury
Wakefield
Waltham
Watertown
Wayland
West Concord
Weston
Wilmington
Winchester
Woburn
Norfolk County
Bellingham
Braintree
Brookline
Canton
Cohasset
Dedham
Dover
East Walpole
Foxborough
Franklin
Harding
Holbrook
Islington
Medfield
Medway
Mills
Milton
Needham
Norfolk
North Cohasset
Norwood
Quincy
Randolph
Sharon
South Walpole
Stoughton
Walpole
Wellesley
Westwood
Weymouth
Wrentham
Plymouth County
Abington
Duxbury
Hanover
Hanson
Hingham
Hull
Kingston
Marshfield
Marshfield Hills
North Scituate
Norwell
Oceanbluff
Pembroke
Rockland
Scituate
Shore Acres
South Duxbury
South Hingham
West Hanover
Suffolk County

Area of Application. Survey area plus:

Massachusetts:
Barnstable
Dukes
Nantucket
Plymouth (non-survey area part)
The following cities and towns in:
Bristol County
Easton
Essex County
Andover
Essex
Gloucester
Ipswich
Lawrence
Methuen
Rockport
Rowley
Middlesex County
Ayer
Billerica
Chelmsford
Dracut
Dunstable
Groton
Hopkinton
Hudson
Littleton
Lowell
Marlborough
Maynard
Pepperell
Stow
Tewksbury
Tyngsborough
Westford
Norfolk County
Avon

CENTRAL AND WESTERN MASSACHUSETTS

Survey area

Massachusetts:
The following cities and towns in:
Hampden County
Agawam
Chicopee
East Longmeadow
Feeding Hills
Hampden
Holyoke
Longmeadow
Ludlow
Monson
Palmer
Southwick
Springfield
Three Rivers

Westfield
West Springfield
Wilbraham
Hampshire County
Easthampton
Granby
Hadley
Northampton
South Hadley
Worcester County
Warren
West Warren
Connecticut:
Tolland County
Somers
Somersville

Area of Application. Survey area plus:

Massachusetts:
Berkshire
Franklin
Worcester (except Blackstone and Millville)
The following towns and cities in:
Hampshire County
Amherst
Belchertown
Chesterfield
Cummington
Goshen
Hatfield
Huntington
Middlefield
Pelham
Plainfield
Southampton
Ware
Westhampton
Williamsburg
Worthington
Hampden County
Blandford
Brimfield
Chester
Granville
Holland
Montgomery
Russell
Tolland
Wales
Middlesex County
Ashby
Shirley
Townsend

New Hampshire:
Belknap
Carroll
Cheshire
Grafton
Hillsborough
Merrimack
Sullivan
Vermont:
Addison
Bennington
Caledonia
Essex
Office of Personnel Management  
Pt. 532, Subpt. B, App. C

Lamoille
Orange
Orleans
Rutland
Washington
Windham
Windsor

MICHIGAN

DETOIT

Survey area

Michigan:
Lapeer
Livingston
Macomb
Oakland
St. Clair
Wayne

Area of Application. Survey area plus:

Michigan:
Arenac
Bay
Clare
Clinton
Eaton
Genesee
Gladwin
Gratiot
Huron
Ingham
Isabella
Lenawee
Midland
Monroe
Saginaw
Sanilac
Shiawassee
Tuscola
Washtenaw

Ohio:
Lucas
Wood

NORTHWESTERN MICHIGAN

Survey area

Michigan:
Delta
Dickinson
Marquette

Area of Application. Survey area plus:

Michigan:
Alcona (Effective date January 1, 1994.)
Alger
Alpena (Effective date January 1, 1994.)
Antrim (Effective date January 1, 1994.)
Baraga
Benzie (Effective date January 1, 1994.)
Charlevoix (Effective date January 1, 1994.)
Cheboygan (Effective date January 1, 1994.)
Chippewa
Crawford (Effective date January 1, 1994.)
Emmet (Effective date January 1, 1994.)
Gogebic
Grand Traverse (Effective date January 1, 1994.)
Houghton
Iosco (Effective date January 1, 1994.)
Iron
Kalkaska (Effective date January 1, 1994.)
Keweenaw
Leelanau (Effective date January 1, 1994.)
Luce
Mackinac
Manistee (Effective date January 1, 1994.)
Menominee
Missaukee (Effective date January 1, 1994.)
Montmorency (Effective date January 1, 1994.)
Ogemaw (Effective date January 1, 1994.)
Ontonagon
Oscoda (Effective date January 1, 1994.)
Otsego (Effective date January 1, 1994.)
Presque Isle (Effective date January 1, 1994.)
Roscommon (Effective date January 1, 1994.)
Schoolcraft
Wexford (Effective date January 1, 1994.)

SOUTHWESTERN MICHIGAN

Survey area

Michigan:
Barry
Calhoun
Kalamazoo
Van Buren

Area of Application. Survey area plus:

Michigan:
Allegan
Berrien
Branch
Cass
Hillsdale
Ionia
Jackson
Kent
Lake
Mason
Mecosta
Montcalm
Muskegon
Newaygo
Oceana
Osceola
Ottawa
St. Joseph

MINNESOTA

DULUTH

Survey area

Minnesota:
Carlton
St. Louis

Wisconsin:
Douglas
Area of Application. Survey area plus:

Minnesota:
- Aitkin
- Beltrami
- Cass
- Cook
- Crow Wing
- Hubbard
- Itasca
- Koochiching
- Lake
- Lake of the Woods
- Pine

Wisconsin:
- Ashland
- Bayfield
- Burnett
- Iron
- Sawyer
- Washburn

MINNEAPOLIS-ST. PAUL
Survey area

Minnesota:
- Anoka
- Carver
- Chisago
- Dakota
- Hennepin
- Ramsey
- Scott
- Washington
- Wright

Wisconsin:
- St. Croix

Area of Application. Survey area plus:

Minnesota:
- Benton
- Big Stone
- Blue Earth
- Brown
- Chippewa
- Cottonwood
- Dodge
- Douglas
- Faribault
- Freeborn
- Goodhue
- Grant
- Isanti
- Kanabec
- Kandiyohi
- Lac Qui Parle
- Le Sueur
- McLeod
- Martin
- Meeker
- Mille Lacs
- Morrison
- Mower
- Nicollet
- Olmsted
- Pope
- Redwood

Renville
- Rice
- Sherburne
- Sibley
- Stearns
- Steele
- Stevens
- Swift
- Todd
- Traverse
- Wadena
- Waseca
- Watonwan
- Yellow Medicine

Wisconsin:
- Pierce
- Polk

MISSISSIPPI
BILoxI
Survey Area

Mississippi:
- Hancock
- Harrison
- Jackson

Area of Application—Survey Area Plus

Mississippi:
- George
- Pearl River
- Stone (Effective as of November 1, 1997.)

JACKSON
Survey area

Mississippi:
- Hinds
- Rankin
- Warren

Area of Application—Survey Area Plus

Mississippi:
- Adams (Effective as of February 1, 1997.)
- Amite
- Attala
- Claiborne (Effective as of February 1, 1997.)
- Copiah
- Covington
- Franklin
- Holmes
- Humphreys
- Issaquena
- Jefferson (Effective as of February 1, 1997.)
- Jones
- Lawrence
- Lincoln
- Madison
- Marion
- Pike
- Scott
- Sharkey
- Simpson
- Smith
- Tishomingo
- Warren
- Washington
- Wayne
- Webster
- Walthall
- Wilkinson
- Wesson
- Yazoo

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Office of Personnel Management

Yazoo

MERIDIAN

Survey Area

Mississippi:
Forest
Lamar (Effective as of February 1, 1997.)
Lauderdale
Alabama:
Choctaw

Area of Application—Survey Area Plus

Mississippi:
Clarke
Greene
Jasper
Jones
Kemper
Leake
Neshoba
Newton
Perry
Wayne
Alabama:
Sumter

NORTHERN MISSISSIPPI

Survey Area

Mississippi:
Clay
Grenada
Lee
Lowndes
Monroe
Oktibbeha

Area of Application—Survey Area Plus

Mississippi:
Alcorn
Bolivar
Calhoun
Carroll
Chickasaw
Choctaw
Coahoma
Itawamba
Lafayette (Excluding Holly Springs National Forest.)
Montgomery
Noxubee
Panola
Pontotoc (Excluding Holly Springs National Forest.)
Prentiss
Quitman
Sunflower
Tallahatchie
Tishomingo
Union (Excluding Holly Springs National Forest.)
Washington
Webster
Winston

Yalobusha

MISSOURI

KANSAS CITY

Survey area

Missouri:
Cass
Clay
Jackson
Platte
Ray
Kansas:
Johnson
Leavenworth
Wyandotte

Area of Application—Survey Area Plus

Missouri:
Adair
Andrew
Atchison
Bates
Buchanan
Caldwell
Carroll
Chariton
Clinton
Cooper
Daviess
De Kalb
Gentry
Grundy
Harrison
Henry
Holt
Howard
Johnson
Lafayette
Linn
Livingston
Macon
Mercer
Nodaway
Petts
Putnam
Saline
Schuyler
Sullivan
Worth
Kansas:
Allen
Anderson
Atchison
Bourbon
Doniphan
Douglas
Franklin
Linn
Miami
St. Louis

Survey area
<table>
<thead>
<tr>
<th>Jefferson</th>
<th>Illinios:</th>
</tr>
</thead>
<tbody>
<tr>
<td>St. Charles</td>
<td>Clinton</td>
</tr>
<tr>
<td>St. Louis</td>
<td>Madison</td>
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<tr>
<td></td>
<td>Monroe</td>
</tr>
<tr>
<td></td>
<td>St. Clair</td>
</tr>
</tbody>
</table>

**Area of Application. Survey area plus:**

<table>
<thead>
<tr>
<th>Missouri:</th>
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</thead>
<tbody>
<tr>
<td>Audrain</td>
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<tr>
<td>Boone</td>
</tr>
<tr>
<td>Callaway</td>
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<tr>
<td>Clark</td>
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<td>Cole</td>
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<td>Knox</td>
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<td>Lewis</td>
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<td>Osage</td>
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<tr>
<td>St. Francois</td>
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<td>Ste. Genevieve</td>
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<tr>
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</tr>
<tr>
<td>Shelby</td>
</tr>
<tr>
<td>Warren</td>
</tr>
<tr>
<td>Washington</td>
</tr>
</tbody>
</table>

**Illinios: |

| Alexander |
| Bond |
| Calhoun |
| Clay |
| Effingham |
| Fayette |
| Franklin |
| Greene |
| Hamilton |
| Jackson |
| Jefferson |
| Jersey |
| Johnson |
| Macoupin |
| Marion |
| Massac |
| Montgomery |
| Morgan |
| Perry |
| Pike |
| Pope |
| Pulaski |
| Randolph |
| Saline |
| Scott |
| Union |
| Washington |
| Wayne |
| Williamson |

**Southern Missouri**

**Survey area**

<table>
<thead>
<tr>
<th>Missouri:</th>
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<tbody>
<tr>
<td>Christian</td>
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<td>Greene</td>
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<tr>
<td>Phelps</td>
</tr>
<tr>
<td>Pulaski</td>
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<tr>
<td>Webster</td>
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**Area of Application. Survey area plus:**

<table>
<thead>
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<th>Missouri:</th>
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<td>Barry</td>
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<td>Camden</td>
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<tr>
<td>Cape Girardeau</td>
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<td>Kansas:</td>
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<td>Cherokee</td>
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**Montana**

**Survey Area**

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<tbody>
<tr>
<td>Cascade</td>
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<tr>
<td>Lewis and Clark</td>
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</tbody>
</table>
Yellowstone Area of Application—Survey Area Plus

Montana:
- Beaverhead
- Big Horn
- Blaine
- Broadwater
- Carbon
- Carter
- Chouteau
- Custer
- Daniels
- Dawson
- Deer Lodge
- Fallon
- Fergus
- Flathead
- Gallatin
- Garfield
- Glacier
- Golden Valley
- Granite
- Hill
- Jefferson
- Judith Basin
- Lake
- Liberty
- Lincoln
- McConaughy
- Madison
- Meagher
- Mineral
- Missoula
- Musselshell
- Park
- Petroleum
- Phillips
- Pondera
- Powder River
- Powell
- Prairie
- Ravalli
- Richland
- Roosevelt
- Rosebud
- Sanders
- Sheridan
- Silver Bow
- Stillwater
- Sweet Grass
- Teton
- Toole
- Treasure
- Valley
- Wheatland
- Wilcox
- Wyoming:
  - Big Horn
  - Park

<table>
<thead>
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<th>Nebraska</th>
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<tbody>
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<td>Area of Application. Survey area plus:</td>
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<td></td>
<td>Nevada (cities):  Carson City</td>
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<td>Nevada (counties): Churchill</td>
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<td>Pershing</td>
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<td>California:</td>
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<td>Lassen</td>
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<td></td>
<td>Madera (Includes only the Devils Postpile National Monument portion.)</td>
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<tr>
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<td>Mono (Does not cover locations to which Bridgeport, Calif, special schedule applies.)</td>
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<td>New Hampshire:</td>
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<tr>
<td></td>
<td>Portsmouth</td>
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<td>Survey area</td>
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<td>New Hampshire:</td>
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<tr>
<td></td>
<td>Rockingham (except the following cities and towns: Newton; Plaistow; Salem; and Westville)</td>
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<tr>
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<td>Stafford</td>
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<td>Maine:</td>
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<td>York</td>
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<td>The following cities and towns in:</td>
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<td>Essex County</td>
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<td>Amesbury</td>
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<td>Salisbury</td>
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<td>South Byfield</td>
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<td>West Newbury</td>
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<td>Area of Application. Survey area plus:</td>
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<td>New Hampshire:</td>
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<td>The following towns in:</td>
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<td>Rockingham County</td>
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<td>Newton</td>
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<td>Salem</td>
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<td>New Mexico:</td>
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<td>New Mexico:</td>
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<td>Nevada (cities):  Carson City</td>
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<td>Nevada (counties): Churchill</td>
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<td>Pershing</td>
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<td></td>
<td>White Pine</td>
</tr>
</tbody>
</table>
**Office of Personnel Management**

Area of Application. Survey area plus:

**New Mexico:**
- Catron
- Cibola
- Colfax
- Curry
- De Baca
- Guadalupe
- Harding
- Lincoln (Does not include White Sands Proving Ground portion.)
- Los Alamos
- Mora
- Quay
- Rio Arriba
- Roosevelt
- San Miguel
- Santa Fe
- Socorro (Does not include White Sands Proving Ground portion.)
- Taos
- Torrance
- Union
- Valencia

**NEW YORK:**

**ALBANY-SCHENECTADY-TROY**

Survey area

**New York:**
- Albany
- Montgomery
- Rensselaer
- Saratoga
- Schenectady

Area of Application. Survey area plus:

**New York:**
- Columbia
- Fulton
- Greene
- Schoharie
- Warren
- Washington

**BUFFALO**

Survey area

**New York:**
- Erie
- Niagara

Area of Application. Survey area plus:

**New York:**
- Cattaraugus
- Chautauqua

**NEWBURGH**

Survey area

**New York:**
- Dutchess
- Orange
- Ulster

**NEW YORK:**

**NORTHERN NEW YORK**

Survey area

**New York:**
- Clinton
- Franklin
- Jefferson
- St. Lawrence

**Vermont:**
- Chittenden
- Franklin
- Grand Isle

Area of Application. Survey area plus:

**New York:**
- Essex
- Lewis

**ROCHESTER**

Survey area

**New York:**
- Livingston
- Monroe
- Ontario
- Orleans
- Steuben

---
Wayne

Area of Application. Survey area plus:

New York:
Allegany
Chemung
Genesee
Schuyler
Seneca
Wyoming
Yates

Syracuse-Utica-Rome

Survey area

New York:
Herkimer
Madison
Oneida
Onondaga
Oswego

Area of Application. Survey area plus:

New York:
Broome
Cayuga
Chenango
Cortland
Hamilton
Otsego
Tioga
Tomkins

North Carolina

Asheville

Survey area

North Carolina:
Buncombe
Haywood
Henderson
Madison
Transylvania

Area of Application. Survey area plus:

North Carolina:
Avery
Burke
Caldwell
Cherokee
Clay
Graham
Jackson
McDowell
Macon
Mitchell
Polk
Rutherford
Swain
Yancey

Central North Carolina

Survey area

North Carolina:

Cumberland
Durham
Edgecombe
Harnett
Johnston
Orange
Wake
Wayne
Wilson

Area of Application. Survey area plus:

North Carolina:
African American
Bladen
Caswell
Chatham
Davidson
Davie
Forsyth
Franklin
Granville
Guilford
Halifax
Hoke
Lee
Montgomery
Moore
Nash
Northampton
Person
Randolph
Richmond
Robeson
Rockingham
Sampson
Scotland
Stokes
Surry
Vance
Warren
Yadkin
South Carolina:
Dillon
Marion
Marlboro

Charlotte

Survey area

North Carolina:
Cabarrus
Gaston
Mecklenburg
Rowan
Union

Area of Application. Survey area plus:

North Carolina:
Alexander
Anson
Catawba
Cleveland
Iredell
Lincoln
Stanly
Wilkes
Office of Personnel Management
Pt. 532, Subpt. B, App. C

South Carolina:
Chesterfield
Lancaster
York

SOUTHEASTERN NORTH CAROLINA
Survey Area

North Carolina:
Brunswick
Carteret
Columbus
Craven
Jones
Lenoir
New Hanover
Onslow
Pamlico
Pender

Area of Application. Survey area plus:

North Carolina:
Beaufort
Bertie
Dare
Duplin
Greene
Hertford
Hyde
Martin
Pitt
Tyrrell
Washington
South Carolina:
Horry

NORTH DAKOTA
Survey area

North Dakota:
Burleigh
Cass
Grand Forks
McLean
Mercer
Morton
Oliver
Tirail
Ward

Minnesota:
Clay
Polk

Area of Application. Survey area plus:

North Dakota:
Adams
Barnes
Benson
Billings
Bottineau
Bowman
Burke
Cavalier
Dickey
Divide
Dunn

Eddy
Emmons
Foster
Golden Valley
Grant
Griggs
Hettinger
Kidder
La Moure
Logan
McHenry
McIntosh
McKenzie
Mountrail
Nelson
Pembina
Pierce
Ramsey
Ransom
Renville
Richland
Rolette
Sargent
Sheridan
Sioux
Slope
Stark
Steele
Stutsman
Towner
Walsh
Wells
Williams

MINNESOTA:
Becker
Clearwater
Kittson
Mahnomen
Marshall
Norman
Otter Tail
Pennington
Red Lake
Roseau
Wilkin

OHIO
CINCINNATI
Survey area

Ohio:
Clermont
Hamilton
Warren

Kentucky:
Boone
Campbell
Kenton

Indiana:
Dearborn

Area of Application: Survey area plus:

Ohio:
Adams
Brown
Butler
Highland
Indiana:
Franklin
Ohio
Ripley
Switzerland
Kentucky:
Bracken
Carroll
Gallatin
Grant
Mason
Pendleton

CLEVELAND
Survey area
Ohio:
Cuyahoga
Geauga
Lake
Medina

Area of Application. Survey area plus:
Ohio:
Ashland
Ashtabula
Columbiana
Erie
Huron
Lorain
Mahoning
Ottawa
Portage
Sandusky
Seneca
Stark
Summit
Trumbull
Wayne

COLUMBUS
Survey area
Ohio:
Delaware
Fairfield
Franklin
Licking
Madison
Pickaway

Area of Application. Survey area plus:
Ohio:
Coshocton
Crawford
Fayette
Guernsey
Hancock
Hardin
Hocking
Holmes
Knox
Marion
Morrow
 Muskingum

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Perry
Richland
Ross
Union
Wyandot

DAYTON
Survey area
Ohio:
Champaign
Clark
Greene
Miami
Montgomery
Preble

Area of Application. Survey area plus:
Ohio:
Auglaize
Clinton
Darke
Logan
Shelby
Indiana:
Randolph
Union
Wayne

OKLAHOMA
OKLAHOMA CITY
Survey area
Oklahoma:
Canadian
Cleveland
McCain
Oklahoma
Pottawatomie

Area of Application. Survey area plus:
Oklahoma:
Alfalfa
Atoka
Beckham
Blaine
Bryan
Caddo
Carter
Coal
Custer
Dewey
Ellis
Garfield
Garvin
Grady
Grant
Harper
Hughes
Johnson
Kingfisher
Lincoln
Logan
Love
Major
Marshall
Office of Personnel Management

Portland, Oregon: 423

Pt. 532, Subpt. B, App. C

Survey area

Office of Personnel Management

Murray
Noble
Payne
Pontotoc
Roger Mills
Seminole
Washita
Woods
Woodward

TULSA

Survey area

Oklahoma:
Creek
Mayes
Muskogee
Osage
Pittsburg
Rogers
Tulsa
Wagoner

Area of Application. Survey area plus:

Oklahoma:
Adaair
Cherokee
Choctaw
Craig
Delaware
Haskell
Kay
Latimer
LeFlore
McCourtain
McIntosh
Nowata
Oklfuskee
Okmulgee
Ottawa
Pawnee
Pushmataha
Sequoyah
Washington
Arkansas:
Benton
Carroll
Washington

OREGON

Survey area

Oregon:
Clackamas
Marion
Multnomah
Polk
Washington
Washington:
Clark

Area of Application. Survey area plus:

Oregon:
Clatsop
Columbia

SOUTHWESTERN OREGON

Survey area

Oregon:
Clackamas
Marion
Multnomah
Polk
Washington
Washington:
Clark

Area of Application. Survey area plus:

Oregon:
Clatsop
Columbia

PENNSYLVANIA

HARRISBURG

Survey area

Pennsylvania:
Adams
Berks
Juniata
Lancaster
Lycoming (Allenwood Federal Prison Camp portion only.)
Mifflin
Montour
Northumberland
Perry
Schuylkill
Snyder
Union

PHILADELPHIA

Survey area

Pennsylvania:
Bucks
Chester
Delaware
Montgomery
Philadelphia
New Jersey:
Burlington
Camden
Gloucester

Area of Application. Survey area plus:
Pennsylvania:
Lehigh
Northampton
New Jersey:
Atlantic
Cape May
Cumberland
Hunterdon
Mercer
Ocean (Fort Dix Military Reservation only)
Warren
Pennsylvania:
Bucks
Chester
Delaware
Montgomery
Philadelphia
New Jersey:
Burlington
Camden
Gloucester

Area of Application. Survey area plus:
Pennsylvania:
Lehigh
Northampton
New Jersey:
Atlantic
Cape May
Cumberland
Hunterdon
Mercer
Ocean
Warren

PITTSBURGH
Survey Area
Pennsylvania:
Allegheny
Beaver
Butler (Effective as of the first day of the month of the first full-scale wage survey in the Pittsburgh wage area following April 17, 1996.)
Washington
Westmoreland

Area of Application—Survey Area Plus
Pennsylvania:
Armstrong
Bedford
Blair
Cambria
Cameron

Centre
Clarion
Clearfield
Clinton
Crawford
Elk
Erie
Fayette
Forest
Greene
Huntingdon
Indiana
Jefferson
Lawrence
McKean
Mercer
Potter
Somerset
Venango
Warren

Ohio:
Belmont
Carroll
Harrison
Jefferson
Tuscarawas
West Virginia:
Brooke
Hancock
Marshall
Ohio

SCANTON-WILKES-BARRE
Survey Area
Pennsylvania:
Lackawanna
Luzerne
Monroe

Area of Application. Survey area plus:
Pennsylvania:
Bradford
Carbon
Columbia
Lycoming (Excluding Allenwood Federal Prison Camp.)
Pike
Sullivan
Susquehanna
Tioga
Wayne
Wyoming

PUERTO RICO
Survey Area
Puerto Rico (Municipios):
San Juan
Bayamón
Canovanas
Carolina
Catano
Guaynabo
Humacao
Loiza
Toa Baja
Area of Application: Puerto Rico

RHODE ISLAND

NARRAGANSETT BAY

Survey Area

Rhode Island:
Bristol
Newport
The following cities and towns in:
Kent County
Anthony
Coventry
East Greenwich
Greene
Warwick
West Warwick
Providence County
Ashon
Burrillville
Central Falls
Cranston
Cumberland
Cumberland Hill
East Providence
Esmont
Forestdale
Greenville
Harrissville
Johnston
Lincoln
Manville
Mapleville
North Providence
North Smithfield
Oakland
Pascoag
Pawtucket
Providence
Saylesville
Slatersville
Smithfield
Valley Falls
Wallum Lake
Woonsocket
Washington County
Daviusville
Galilee
La Fayette
Narragansett
North Kingstown
Point Judith
Quonset Point
Saunderstown
Slocum

Massachusetts:
The following cities and towns in:
Bristol County
Acushnet
Berkley
Dartmouth
Dighton
Fairhaven
Freetown
Mansfield
New Bedford
Norton
Raynhem
Taunton

SOUTH CAROLINA

CHARLESTON

Survey Area

South Carolina:
Berkley
Charleston
Dorchester

Area of Application. Survey area plus:

South Carolina:
Beaufort (The portion north of Broad River.)
Colleton
Georgetown
Williamsburg

COLUMBIA

Survey area

South Carolina:
Darlington
Florence
Kershaw
Lee
Lexington
### South Carolina

- Abbeville
- Anderson
- Calhoun
- Cherokee
- Chester
- Clarendon
- Fairfield
- Greenville
- Greenwood
- Laurens
- Newberry
- Oconee
- Orangeburg
- Pickens
- Saluda
- Spartanburg
- Union

### South Dakota

#### Eastern South Dakota

- Minnehaha

### Tennessee

#### Eastern Tennessee

- Carter
- Hawkins
- Sullivan
- Unicoi
- Washington
- Bristol
- Scott
- Washington

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**Area of Application—Survey Area Plus**

- Lake
- Lincoln
- Lyman
- McCook
- McPherson
- Marshall
- Mellette
- Miner
- Moody
- Potter
- Roberts
- Sanborn
- Spink
- Stanley
- Sully
- Todd
- Tripp
- Turner
- Union
- Walworth
- Washabaugh
- Yankton
- Ziebach

- Dickinson
- Emmet
- Lyon
- Osceola

- Jackson
- Lincoln
- Lyon
- Murray
- Nobles
- Pipestone
- Rock

- Tennessee:
Office of Personnel Management
Pt. 532, Subpt. B, App. C

North Carolina:
Alleghany
Ashe
Watauga
Kentucky:
Harlan
Letcher

MEMPHIS
Survey area

Tennessee:
Shelby
Tipton
Arkansas:
Crittenden
Mississippi:
De Soto

Area of Application. Survey area plus:

Tennessee:
Carroll
Chester
Crockett
Dyer
Fayette
Gibson
Hardeman
Hardin
Haywood
Lake
Lauderdale
Madison
McNairy
Obion
Arkansas:
Craighead
Cross
Lee
Poinsett
St. Francis
Mississippi:
Benton
Lafayette (Holly Springs National Forest portion only.)
Marshall
Pontotoc (Holly Springs National Forest portion only.)
Tate
Tippah
Tunica
Union (Holly Springs National Forest portion only.)
Missouri:
Dunklin
Pemiscot

NASHVILLE
Survey area

Tennessee:
Cheatham
Davidson
Dickson
Montgomery
Robertson

Kentucky:
Christian

Area of Application. Survey area plus:

Tennessee:
Anderson
Bedford
Benton
Bledsoe
Blount
Bradley
Campbell
Cannon
Claiborne
Clay
Coffee
Cumberland
Decatur
DeKalb
Fentress
Grainger
Grundy
Hamblen
Hamilton
Henderson
Henry
Hickman
Houston
Humphreys
Jackson
Jefferson
Knox
Laws
Loudon
McMinn
McLean
Marion
Macon
Marshall
Macon
Maury
Meigs
Monroe
Morgan
Overton
Perry
Pickett
Polk
Putnam
Rhea
Roane
Scott
Sequatchie
Sevier
Smith
Stewart
Trousdale
Union
Van Buren
Warren
Weakley
White
Adair
Allen
Ballard
Barren
Butler
Caldwell
Calloway
Carlisle
Clinton
Cumberland
Edmonson
Fulton
Graves
Hickman
Hopkins
Logan
Lyon
McCrae
Marshall
Metcalf
Monroe
Muhlenberg
Russell
Simpson
Todd
Trigg
Warren

**Georgia:**
Catossa
Dade
Walker

**Texas:**
AUSTIN
Survey area

**Texas:**
Hays
Milaam
Travis
Williamson

Area of Application. Survey area plus:

**Texas:**
Bastrop
Blanco
Burleson
Burnet
Caldwell
Fayette
Lampasas
Lee
Llano
Mason
San Saba

**CORPUS CHRISTI**
Survey Area

**Texas:**
Nueces
San Patricio

Area of Application—Survey Area Plus

**Texas:**
Aransas
Bee

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Brooks (Effective as of the first day of the first applicable pay period beginning on or after April 17, 1996.

Cameron (Effective as of the first day of the first applicable pay period beginning on or after April 17, 1996.

Goliad (Effective as of the first day of the first applicable pay period beginning on or after April 17, 1996.

Hidalgo (Effective as of the first day of the first applicable pay period beginning on or after April 17, 1996.

Jim Wells (Effective as of the first day of the first applicable pay period beginning on or after April 17, 1996.

Kenedy (Effective as of the first day of the first applicable pay period beginning on or after April 17, 1996.

Kieberg
Live Oak
Refugio
Starr (Effective as of the first day of the first applicable pay period beginning on or after April 17, 1996.

Victoria (Effective as of the first day of the first applicable pay period beginning on or after April 17, 1996.

**DALLAS-FORT WORTH**

Survey area

**Texas:**
Collin
Dallas
Denton
Ellis
Grayson
Hood
Johnson
Kaufman
Parker
Refugio
Somervell
Travis
Wilson

Area of Application. Survey area plus:

**Texas:**
Cooke
Delta
Erath
Fannin
Henderson
Hopkins
Hunt
Jack
Lamar
Lindale
Montague
Navarro
Palo Pinto
Rains
Smith
Somervell
Van Zandt
Wood

**EL PASO**

Survey area

**Texas:**
Office of Personnel Management

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El Paso
New Mexico:
Dona Ana
Otero

Area of Application. Survey area plus:

New Mexico:
Chaves
Eddy
Grant
Hidalgo
Lincoln (Only White Sands Proving Ground portions.)
Luna
Sierra
Socorro (Only White Sands Proving Ground portions.)

Texas:
Culberson
Hudspeth

HOUSTON-GALVESTON-Texas City

Survey area

Texas:
Brazoria
Fort Bend
Galveston
Harris
Liberty
Montgomery
Waller

Area of Application. Survey area plus:

Texas:
Angelina
Austin
Chambers
Colorado
Grimes
Hardin
Houston
Jackson
Jefferson
Lavaca
Madison
Matagorda
Nacogdoches
Newton
Orange
Polk
Sabine
San Augustine
San Jacinto
Shelby
Trinity
Tyler
Walker
Washington
Wharton

San Antonio
Survey Area

Texas:

TEXARKANA

Survey area

Texas:
Angelina
Austin
Chambers
Colorado
Grimes
Hardin
Houston
Jackson
Jefferson
Lavaca
Madison
Matagorda
Nacogdoches
Newton
Orange
Polk
Sabine
San Augustine
San Jacinto
Shelby
Trinity
Tyler
Walker
Washington
Wharton

San Antonio
Survey Area

Texas:

WACO

Survey Area

Texas:

429
### Western Texas Survey Area

- Anderson
- Bosque
- Brazos Falls
- Freestone
- Hamilton
- Hill
- Leon
- Limestone
- Mills
- Robertson

### Texas:
- Callahan
- Ector
- Howard
- Jones
- Lubbock
- Midland
- Nolan
- Taylor
- Tom Green

### Area of Application. Survey area plus:
- Haskell
- Hemphill
- Hockley
- Hutchinson
- Irion
- Jeff Davis
- Kent
- Kimble
- King
- Lamb
- Lipscomb
- Loving
- Lynn
- McCulloch
- Martin
- Menard
- Mitchell
- Moore
- Motley
- Ochiltree
- Oldham
- Parmer
- Pecos
- Potter
- Presidio
- Randall
- Reagan
- Reeves
- Roberts
- Runnels
- Schleicher
- Scurry
- Shackelford
- Sherman
- Stephens
- Sterling
- Stonewall
- Sutton
- Swisher
- Terrell
- Terry
- Throckmorton
- Upton
- Ward
- Wheeler
- Winkler
- Yoakum

### Oklahoma:
- Beaver
- Cimarron
- Texas
- New Mexico:
  - Lea

### Wichita Falls, Texas—Southwestern Oklahoma Survey Area

- Texas:
  - Archer
  - Clay
  - Wichita

- Oklahoma:
  - Comanche
  - Cotton
  - Stephens
  - Tillman

---

**Pt. 532, Subpt. B, App. C**

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### Texas:
- Baylor
- Foard
- Hardeman
- Knox
- Wilbarger
- Young

### Oklahoma:
- Greer
- Harmon
- Jackson
- Jefferson
- Kiowa

### Utah:
- Box Elder
- Davis
- Salt Lake
- Tooele
- Utah
- Weber

### Virginia:
- Chesapeake
- Hampton
- Newport News
- Norfolk
- Poquoson
- Portsmouth
- Suffolk
- Virginia Beach
- Williamsburg

### Virginia (counties):
- Gloucester
- James City
- York
- North Carolina:
  - Currituck

### Virginia (cities):
- Franklin

### Virginia (counties):
- Accomack
- Isle of Wight
- Mathews
- Northampton
- Southampton
- Surry
- North Carolina:
  - Camden
  - Chowan
  - Gates
  - Pasquotank
  - Perquimans

### North Carolina:
- Camden
- Chowan
- Gates
- Pasquotank
- Perquimans

### Maryland:
- Assateague Island part of Worcester
  - RICHMOND

### Virginia (cities):
- Colonial Heights
- Hopewell
- Petersburg
- Richmond

### Virginia (counties):
- Charles City
- Chesterfield
- Dinwiddie
- Goochland
- Hanover
- Henrico
- New Kent
- Powhatan
- Prince George

### North Carolina:
- Camden
- Chowan
- Gates
- Pasquotank
- Perquimans

### Maryland:
- Assateague Island part of Worcester
  - RICHMOND

### Virginia (cities):
- Charlottesville
- Emporia
- Fredericksburg

### Virginia (counties):
- Albemarle
- Amelia
- Brunswick
- Buckingham
- Caroline
- Charlotte
- Cumberland
- Essex
- Fluvanna
- Greensville
- King and Queen
King William
Lancaster
Louisa
Lunenburg
Mecklenburg
Middlesex
Northumberland
Nottoway
Orange
Prince Edward
Richmond
Spotsylvania
Sussex
Westmoreland

ROANOKE

Survey area

Virginia (cities):
   Radford
   Roanoke
   Salem

Virginia (counties):
   Botetourt
   Craig
   Montgomery
   Roanoke

   Area of Application. Survey area plus:

Virginia (cities):
   Bedford
   Buena Vista
   Clifton Forge
   Covington
   Danville
   Galax
   Lexington
   Lynchburg
   Martinsville
   South Boston
   Staunton
   Waynesboro

Virginia (counties):
   Alleghany
   Amherst
   Appomattox
   Augusta
   Bath
   Bedford
   Bland
   Campbell
   Carroll
   Floyd
   Franklin
   Giles
   Halifax
   Henry
   Highland
   Nelson
   Patrick
   Pittsylvania
   Pulaski
   Rockbridge
   Wythe

WASHINGTON

SEATTLE-EVERETT-TACOMA

Survey area

Washington:
   King
   Kitsap
   Pierce
   Snohomish

   Area of Application. Survey area plus:

Washington:
   Chelan (North Cascades Park section only.)
   Clallam
   Grays Harbor
   Island
   Jefferson
   Lewis
   Mason
   San Juan
   Skagit
   Thurston
   Whatcom

SOUTHEASTERN WASHINGTON-EASTERN OREGON

Survey area

Washington:
   Benton
   Franklin
   Walla Walla
   Yakima

Oregon:
   Umatilla

   Area of Application. Survey area plus:

Oregon:
   Baker
   Grant
   Harney
   Malheur
   Morrow
   Union
   Wallowa
   Wheeler

Washington:
   Kittitas (Only includes the Yakima Firing
   Range portion.)

   SPOKANE

Survey area

Washington:
   Spokane

   Area of Application. Survey area plus:

Washington:
   Adams
   Asotin
   Chelan (Excluding North Cascades Park.)
   Columbia
   Douglas
   Ferry
   Garfield
   Grant
### Office of Personnel Management

| Kittitas (Does not include the Yakima Fir-ing Range portion.) |
| Lincoln |
| Okanogan |
| Pend Oreille |
| Stevens |
| Whitman |
| Idaho: |
| Benewah |
| Bonner |
| Boundary |
| Clearwater |
| Idaho |
| Kootenai |
| Latah |
| Lewis |
| Nez Perce |
| Shoshone |

#### WEST VIRGINIA

| Survey Area |
| West Virginia: |
| Cabell |
| Harrison |
| Kanawha |
| Marion |
| Monongalia |
| Putnam |
| Wayne |
| Ohio: |
| Lawrence |
| Kentucky: |
| Boyd |
| Greenup |

#### Area of Application—Survey Area Plus

| West Virginia: |
| Barbour |
| Boone |
| Braxton |
| Calhoun |
| Clay |
| Doddridge |
| Fayette |
| Gilmer |
| Grant |
| Greenbrier |
| Jackson |
| Lewis |
| Lincoln |
| Logan |
| McDowell |
| Mason |
| Mercer |
| Mingo |
| Monroe |
| Nicholas |
| Pendleton |
| Pleasants |
| Pocahontas |
| Preston |
| Raleigh |
| Randolph |
| Ritchie |
| Roane |
| Summers |

| Taylor |
| Tucker |
| Tyler |
| Upshur |
| Webster |
| Wetzel |
| Wirt |
| Wood |
| Wyoming |

| Ohio: |
| Athens |
| Gallia |
| Jackson |
| Meigs |
| Monroe |
| Morgan |
| Noble |
| Pike |
| Scioto |
| Vinton |
| Washington |

| Kentucky: |
| Carter |
| Elliott |
| Floyd |
| Johnson |
| Lawrence |
| Lewis |
| Magoffin |
| Martin |
| Pike |
| Virginia (city): |
| Norton (Effective as of April 17, 1996.) |

| Virginia (counties): |
| Dickenson |
| Wise |

#### WISCONSIN

| MADISON |
| Survey area |
| Dane |

| Area of Application. Survey area plus: |
| Columbia |
| Dodge |
| Grant |
| Green |
| Green Lake |
| Iowa |
| Jefferson |
| Lafayette |
| Marquette |
| Rock |
| Sauk |

| MILWAUKEE |
| Survey Area |
| Milwaukee |
| Ozaukee |
| Washington |
| Waukesha |
Area of Application. Survey area plus:

Wisconsin:
- Brown
- Calumet
- Door
- Fond du Lac
- Kenosha
- Kewaunee
- Manitowoc
- Outagamie
- Racine
- Sheboygan
- Walworth
- Winnebago

**SOUTHWESTERN WISCONSIN**

Survey area

Wisconsin:
- Chippewa
- Eau Claire
- La Crosse
- Monroe
- Trempealeau

Area of Application. Survey area plus:

Wisconsin:
- Adams
- Barron
- Buffalo
- Clark
- Crawford
- Dunn
- Florence
- Forest
- Jackson
- Juneau
- Langlade
- Lincoln
- Marathon
- Marinette
- Menominee
- Oconto
- Oneida
- Pepin
- Portage
- Price
- Richland
- Rusk
- Shawano
- Taylor
- Vernon
- Vilas
- Waupaca
- Waushara
- Wood

Minnesota:
- Fillmore
- Houston
- Wabasha
- Winona

**SOUTHWESTERN WISCONSIN**

Survey area

Wyoming:
- Albany
- Laramie
- Natrona

South Dakota:
- Pennington

Area of Application. Survey area plus:

Wyoming:
- Campbell
- Carbon
- Converse
- Crook
- Fremont
- Goshen
- Hot Springs
- Johnson
- Lincoln
- Niobrara
- Platte
- Sheridan
- Sublette
- Sweetwater
- Teton
- Uinta
- Washakie
- Weston

Nebraska:
- Banner
- Box Butte
- Cheyenne
- Dawes
- Deuel
- Garden
- Kimball
- Morrill
- Scotts Bluff
- Sheridan
- Sioux

South Dakota:
- Butte
- Custer
- Fall River
- Harding
- Lawrence
- Meade
- Perkins
- Shannon

*EDITORIAL NOTE: For Federal Register citations affecting Appendix C to subpart B of part 532, see the List of CFR Sections Affected in the Finding Aids section of this volume.*

**APPENDIX D TO SUBPART B OF PART 532—NONAPPROPRIATED FUND WAGE AND SURVEY AREAS**

This appendix lists the wage area definitions for NAF employees. With a few exceptions, each area is defined in terms of county units or independent cities. Each wage area definition consists of:

1. Wage area title. Wage areas usually carry the title of the county or counties surveyed.
2. Survey area definition. Lists each county or independent city in the survey area.
Office of Personnel Management

Pt. 532, Subpt. B, App. D

DEFINITIONS OF WAGE AND WAGE SURVEY AREAS

ALABAMA

Calhoun
Survey area

Alabama: Calhoun
Area of Application. Survey area plus:

Alabama: Jefferson
Madison
Survey area

Alabama: Madison
Area of Application. Survey area plus:

Tennessee: Coffee
Davidson
Hamilton
Rutherford

Montgomery
Survey area

Alabama: Montgomery
Area of Application Survey area plus:

Arkansas: Pulaski

Area of Application. Survey area plus:

Arkansas: Jefferson
Sebastian
Washington

CALIFORNIA

Alameda-Contra Costa
Survey area

California: Alameda
Contra Costa
Area of Application. Survey area plus:

California: Santa Clara
San Mateo (Effective date January 1, 1994)

Alameda-Contra Costa
Survey area

Alaska: (Borough)

Anchorage
Area of application. Survey area plus:

Alaska: (Boroughs and census areas)
Fairbanks North Star
J uneau
Kenai Peninsula
Ketchikan Gateway
Kodiak Island
Sitka
Southeast Fairbanks
Valdez-Cordova
Yukon-Koyukuk

Arizona:

Maricopa
Survey area

Arizona:

Coconino
Yavapai

Pima
Survey area

Arizona:
Pima
Area of Application. Survey area plus:

Arizona:
Coconino
Yuma
Area of Application. Survey area plus:

California:

Imperial
Area of Application. Survey area.

Arkansas:
Pulaski
Survey area

Arkansas:
Jefferson
Sebastian
Washington

Alameda-Contra Costa
Survey area

California:

Alameda
Contra Costa
Area of Application. Survey area plus:
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Area of Application. Survey area.

KERN
Survey Area

California: Kern

Area of Application. Survey Area Plus

California: Fresno
Kings

LOS ANGELES
Survey area

California: Los Angeles

Area of Application. Survey area.

California: Del Norte
Humboldt
Mendocino

MONTEREY
Survey area

California: Monterey

Area of Application. Survey area.

ORANGE
Survey area

California: Orange

Area of Application. Survey area.

RIVERSIDE
Survey area

California: Riverside

Area of Application. Survey area.

SACRAMENTO
Survey area

California: Sacramento

Area of Application. Survey area plus:

California: San Joaquin (Effective date April 19, 1997)
Yuba
Oregon:
Jackson
Klamath

SAN BERNARDINO
Survey area

California:
<table>
<thead>
<tr>
<th>State</th>
<th>Areas</th>
<th>Survey area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado</td>
<td>El Paso</td>
<td>Survey area</td>
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<tr>
<td></td>
<td>Area of Application. Survey area plus:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Colorado:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>El Paso</td>
<td></td>
</tr>
<tr>
<td>Connecticut</td>
<td>New London</td>
<td>Survey area</td>
</tr>
<tr>
<td></td>
<td>Area of Application. Survey area plus:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Connecticut:</td>
<td></td>
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<tr>
<td></td>
<td>New Haven</td>
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<td>Delaware</td>
<td>Kent</td>
<td>Survey area</td>
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<tr>
<td>District of Columbia</td>
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<td></td>
<td>District of Columbia:</td>
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<tr>
<td></td>
<td>Washington, DC</td>
<td></td>
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<tr>
<td>Florida</td>
<td>Bay</td>
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<td>Florida:</td>
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<td>Brevard</td>
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<td>Florida:</td>
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<td></td>
<td>Dade</td>
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<td>Florida:</td>
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<td>Palm Beach</td>
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<td>Duval</td>
<td>Survey area</td>
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<tr>
<td>Georgia</td>
<td>Camden</td>
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<td>Florida:</td>
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<td></td>
<td>Santa Rosa</td>
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<td>Hillsborough</td>
<td>Survey area</td>
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<td>Florida:</td>
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<td>Pinellas</td>
<td>Survey area</td>
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<td>Polk</td>
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<td>Okaloosa</td>
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<td></td>
<td>Walton</td>
<td>Survey area</td>
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<td>Orange</td>
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<td>Area of Application. Survey area.</td>
<td></td>
</tr>
</tbody>
</table>
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Area of Application. Survey area.

GEORGIA

CHATHAM

Survey area

Georgia:
Chatham

Area of Application. Survey area plus:

Georgia:
Glynn

Liberty

South Carolina:
Beaufort

CLAYTON-COBB-FULTON

Survey area

Georgia:
Clayton

Cobb

Fulton

Area of Application. Survey area plus:

Georgia:
Bartow

Clarke

De Kalb

COLUMBUS

Survey area

Georgia:
Columbus

Area of application: Survey area plus:

Georgia:
Chattahoochee

DOUGHERTY

Survey area

Georgia:
Dougherty

Area of application. Survey area.

HOUSTON

Survey area

Georgia:
Houston

Area of application. Survey area plus:

Georgia:
Laurens

LOWNDES

Survey area

Georgia:
Lowndes

Area of application. Survey area.

RICHMOND

Survey area

Georgia:
Richmond

Area of application: Survey area plus:

South Carolina:
Aiken

GUAM

Survey area

Guam

Area of application: Survey area.

HAWAII

HONOLULU

Survey area

Hawaii:
Honolulu

Area of application. Survey area plus:

Hawaii (counties):
Hawaii
Kauai
Maui
Pacific Islands
Midway Island
Johnston Island
American Samoa

IDAHO

ADA-ELMORE

Survey area

Idaho:
Ada
Elmore

Area of application. Survey area.

ILLINOIS

Illinois Lake Survey Area

Illinois:
Lake

Area of application. Survey area plus:

Illinois:
Cook

Vermilion (Effective date December 13, 1996)

Michigan:
Dickinson
Marquette
Wisconsin:
Dane
Milwaukee
Office of Personnel Management

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ROCK ISLAND
Survey area

Illinois:
Rock Island
Area of application. Survey area plus:
Illinois:
Carroll
Johnson

ST. CLAIR
Survey area

Illinois:
St. Clair
Area of application. Survey area plus:
Illinois:
Madison
Williamson
Missouri: (cities)
St. Louis
Missouri: (counties)
Jefferson
Pulaski

KANSAS
SEDGWICK
Survey area

Kansas:
Sedgwick
Area of application. Survey area plus:
Kansas:
Geary
Saline

LEAVENWORTH/JACKSON-JOHNSON
Survey area

Kansas:
Leavenworth
Missouri:
Jackson
Johnson
Area of application: Survey area plus:
Kansas:
Shawnee
Missouri:
Boone
Camden
Cass

KENTUCKY
CHRISTIAN-MONTGOMERY
Survey area

Kentucky:
Christian
Tennessee:

Louisiana
BOSSIER-CADDO
Survey area

Louisiana:
Bossier
Caddo
Area of application. Survey area plus:
Louisiana:
Orleans
Survey area

Louisiana:
Rapides
Survey area

Louisiana:
Vernon

MAINE
CUMBERLAND
Survey area

Maine:
Cumberland

Montgomery
Area of application. Survey area.

Hardin-Jefferson Survey Area

Kentucky:
Hardin
Jefferson
Area of application. Survey area plus:
Indiana:
Jefferson
Martin (Effective date December 13, 1996)
Kentucky:
Fayette
Madison
Warren

Louisiana
PLAQUEMINES
Survey area

Louisiana:
Plaquemines

RAPIDES
Survey area

Louisiana:
Rapides
Area of application. Survey area plus:

Maine:
Aroostook
Hancock
Kennebec
Knox

VerDate 12<Jan>99 17:55 Jan 21, 1999 Jkt 183007 PO 00000 Frm 00433 Fmt 8010 Sfmt 8002 Y:\SGML\183007T.XXX 183997t PsN: 183007T
Pt. 532, Subpt. B, App. D

Penobscot
Sagadahoc
Washington

York
Survey area

Maine:
York
Area of application. Survey area plus:
New Hampshire:
Rockingham
Vermont:
Windsor

Maryland
Anne Arundel
Survey area

Maryland:
Anne Arundel
Area of application. Survey area plus:
Maryland: (cities)
Baltimore
Maryland: (counties)
Baltimore

Charles-St. Marys
Survey area

Maryland:
Charles
St. Marys
Area of application. Survey area plus:
Maryland:
Calvert
Virginia:
King George

Harford
Survey area

Maryland:
Harford
Area of application. Survey area plus:
Maryland:
Cecil
Montgomery-Prince Georges
Survey area

Maryland:
Montgomery
Prince Georges
Area of application. Survey area.

Washington
Area of application. Survey area plus:
Maryland:
Frederick
West Virginia:
Berkeley

Massachusetts
Hampden
Survey area

Massachusetts:
Hampden
Area of application. Survey area plus:
Connecticut:
Hartford
Massachusetts:
Hampshire

Middlesex
Survey area

Massachusetts:
Middlesex
Area of application. Survey area plus:
Massachusetts:
Norfolk
Plymouth
Suffolk
New Hampshire:
Hillsborough

Michigan
Macomb
Survey area

Michigan:
Macomb
Area of application. Survey area plus:
Michigan:
Alpena
Calhoun
Crawford
Grand Traverse
Huron
Iosco
Leelanau
Ottawa
Saginaw
Washtenaw
Wayne
Ohio:
Ottawa

Minnesota
Hennepin
Survey area

Minnesota:
Hennepin
Office of Personnel Management

Pt. 532, Subpt. B, App. D

Area of application. Survey area plus:

Minnesota:
  Morrison
  Murray
  Ramsey
  Stearns
  St. Louis
Wisconsin:
  Jackson
  Monroe
  Polk

MISSISSIPPI
  Harrison

Survey area

Mississippi:
  Lauderdale

Area of application. Survey area plus:

Alabama:
  Mobile
Mississippi:
  Forest
  Jackson

LAUDERDALE

Survey area

Mississippi:
  Lauderdale

Area of application. Survey area plus:

Mississippi:
  Hinds
  Rankin
  Warren

LOWNDES

Survey area

Mississippi:
  Lowndes

Area of application area plus:

Alabama:
  Tuscaloosa

MONTANA

CASCADE

Survey area

Montana:
  Cascade

Area of application. Survey area plus:

Montana:
  Fergus
  Flathead
  Hill
  Lewis and Clark
  Valley
  Yellowstone

NEBRASKA
  Douglas-Sarpy

Survey area

Nebraska:
  Douglas
  Sarpy

Area of application. Survey area plus:

Iowa:
  Marion
  Polk
  Woodbury
Nebraska:
  Hall
  Lancaster
  Saunders
South Dakota:
  Minnehaha

NEVADA
  Churchill-Washoe

Survey area

Nevada:
  Churchill
  Washoe

Area of Application. Survey area plus:

California:
  Lassen
  Mono
  Nevada:
  Mineral

CLARK

Survey area

Nevada:
  Clark

Area of Application. Survey area.

New Jersey:
  Burlington
  Atlantic
  Ocean

MONMOUTH

Survey area

New Jersey:
  Monmouth
Area of Application. Survey area.

**MORRIS**

New Jersey:

Area of Application. Survey area plus:
New Jersey:

Pennsylvania:

**NEW MEXICO**

**BERNALILLO**

New Mexico:

Area of Application. Survey area plus:
New Mexico:

**NEW YORK**

Jefferson Survey Area

New York:

Area of Application. Survey Area Plus
New York:

**NORTH CAROLINA**

**CRAVEN**

North Carolina:

Area of Application. Survey area plus:
North Carolina:

**NIAGARA**

Survey area

**KINGS-QUEENS**

New York:

Survey area

**NEW MEXICO**

**CURRY**

New Mexico:

Survey area

**DONA ANA**

New Mexico:

Survey area

**NORTH CAROLINA**

**CUMBERLAND**

**ORANGE**

New York:

Survey area

**NEW YORK**

Jefferson Survey Area

New York:

Area of Application. Survey Area Plus
New York:

**CUMBERLAND**

Survey area

**NEW YORK**

New York:

Area of Application. Survey Area Plus
New York:

**NORTH CAROLINA**

**CRAVEN**

North Carolina:

Survey area

**NEW YORK**

Jefferson Survey Area

New York:

Area of Application. Survey Area Plus
New York:

**CUMBERLAND**

Survey area

**New York:**

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

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Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

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Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

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Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

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Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

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Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

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Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

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Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

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Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

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Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

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Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

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Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

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Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

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Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

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Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:

**KINGS-QUEENS**

Survey area

**NEW YORK**

New York:

Area of Application. Survey area plus:
New York:
Office of Personnel Management

Area of Application. Survey area plus:

North Carolina:
Durham
Rowan

ONSLow
Survey Area

North Carolina:
Onslow

Area of Application. Survey area plus:

North Carolina:
New Hanover (Effective date March 31, 1993)

WAYNE
Survey area

North Carolina:
Wayne

Area of Application. Survey area plus:

North Carolina:
Halifax

NORTH DAKOTA
GRAND FORKS
Survey area

North Dakota:
Grand Forks

Area of Application. Survey area plus:

North Dakota:
Cass
Cavalier
Pembina
Steele

WARD
Survey area

North Dakota:
Ward

Area of Application. Survey area plus:

North Dakota:
Divide

OHIO
Greene-Montgomery Survey Area

Ohio:
Greene
Montgomery

Area of application. Survey area plus:

Indiana:
Allen
Grant
Marion
Miami
Ohio:

Clinton
Franklin
Hamilton
Licking
Ross
West Virginia:
Raleigh
Wayne

OKLAHOMA
COMANCHE
Survey area

Oklahoma:
Comanche

Area of Application. Survey area plus:

Oklahoma:
Cotton
Jackson

OKLAHOMA
Survey area

Oklahoma:
Oklahoma

Area of Application. Survey area plus:

Oklahoma:
Garfield
Muskogee
Pittsburg

PENNSYLVANIA
ALLEGHENY
Survey area

Pennsylvania:
Allegheny

Area of Application. Survey area plus:

Ohio:
Cuyahoga
Trumbull
Pennsylvania:
Butler
Westmoreland
West Virginia:
Harrison

MONTGOMERY
Survey area

Pennsylvania:
Montgomery

Survey area

Pennsylvania:
Montgomery

Area of Application. Survey area plus:

Pennsylvania:
Bucks
Chester
Luzerne
Philadelphia
CUMBERLAND
Pennsylvania:
Survey area
Area of Application. Survey area.

FRANKLIN
Pennsylvania:
Survey area
Area of Application. Survey area.
Pennsylvania:
Franklin
Area of Application. Survey area plus:
Pennsylvania:
Blair
Area of Application. Survey area plus:
Pennsylvania:
Lebanon
Area of Application. Survey area plus:
Pennsylvania:
Columbia
Area of Application. Survey area.

YORK
Pennsylvania:
Survey area
Area of Application. Survey area.
Puerto Rico
Guaynabo-San Juan
Survey area
Puerto Rico: (municipalities)
Guaynabo
San Juan
Area of application. Survey area plus:
Puerto Rico: (municipalities)
Aguadilla
Isabela
Ponce
Salinas
Toa Baja
Ceiba
Vieques
U.S. Virgin Islands:
St. Croix
St. Thomas

RHODE ISLAND
Newport
Survey Area
Rhode Island:
Newport

Area of application. Survey area plus:
Massachusetts:
Barnstable
Nantucket
Rhode Island:
Providence
Washington

SOUTH CAROLINA
CHARLESTON
Survey Area
South Carolina:
Charleston
Area of Application. Survey area plus:
South Carolina:
Berkeley
Horry (Effective date March 31, 1993)
RICHLAND
Survey area
South Carolina:
Richland
Area of Application. Survey area plus:
North Carolina:
Buncombe
South Carolina:
Sumter
Tennessee:
Washington
SOUTH DAKOTA
PENNINGTON
Survey area
South Dakota:
Pennington
Area of Application. Survey area plus:
Montana:
Custer
South Dakota:
Fall River
Meade
Wyoming:
Sheridan
TENNESSEE
SHELBY
Survey area
Tennessee:
Shelby
Area of Application. Survey area plus:
Arkansas:
Mississippi
Missouri:
Butler
Office of Personnel Management

TEXAS

Bell
Survey area

Texas: Bell
Area of Application. Survey area plus:

Texas: Burnet (Effective date October 1, 1993.)
Coryell
Falls

BEXAR
Survey area

Texas: Bexar
Area of Application. Survey area plus:

Texas: Comal
Kerr
Travis (Effective date October 1, 1993.)
Val Verde

DALLAS
Survey area

Texas: Dallas
Area of Application. Survey area plus:

Texas: Fannin
Galveston
Harris

EL PASO
Survey area

Texas: El Paso
Area of Application. Survey area.

NUECES
Survey area

Texas: Nueces
Area of Application. Survey area plus:

Texas: Bee
Calhoun
Kleberg
San Patricio
Webb

TARRANT
Survey area

Texas: Tarrant

Pt. 532, Subpt. B, App. D

Area of Application. Survey area plus:

Texas: Cooke
Palo Pinto

TAYLOR
Survey area

Texas: Taylor

Area of Application. Survey area.

TOM GREEN
Survey area

Texas: Tom Green
Area of Application. Survey area plus:

Texas: Howard

WICHITA
Survey area

Texas: Wichita
Area of Application. Survey area.

UTAH

DAVIS-SALT LAKE-WEBER
Survey area

Utah: Davis
Salt Lake
Weber
Area of Application. Survey area plus:

Utah: Box Elder
Tooele
Uintah

VIRGINIA

ALEXANDRIA-ARLINGTON-FAIRFAX
Survey area

Virginia: (cities)
Alexandria

Virginia: (counties)
Arlington
Fairfax
Area of Application. Survey area.

CHESTERFIELD-RICHMOND
Survey area

Virginia: (cities)
Richmond
Virginia: (counties)—Chesterfield
§ 532.301

Area of Application. Survey area plus:

Virginia: (cities)
   Bedford
   Charlottesville
   Salem

Virginia: (counties)
   Caroline
   Nottoway
   Prince George
   West Virginia:
   Pendleton

HAMPTON-NEWPORT NEWS
   Survey area

Virginia: (cities)
   Hampton
   Newport News

   Area of Application. Survey area plus:

Virginia: (cities)
   Williamsburg
   York

NORFOLK-PORTSMOUTH-VIRGINIA BEACH
   Survey area

Virginia: (cities)
   Norfolk
   Portsmouth
   Virginia Beach

   Area of Application. Survey area plus:

North Carolina:
   Pasquotank

Virginia: (cities)
   Chesapeake
   Suffolk

Virginia: (counties)
   Accomack
   Northampton

PRINCE WILLIAM
   Survey area

Virginia:
   Prince William

   Area of Application. Survey area plus:

Virginia:
   Fauquier

WASHINGTON
   KING
   Survey area

Washington:
   King

   Area of Application. Survey area plus:

Washington:
   Island
   Snohomish
   Whatcom

WASHINGTON
   KITSAP
   Survey area

Washington:
   Kitsap

   Area of Application. Survey area plus:

Washington:
   Clallam
   PIERCE
   Survey area

Washington:
   Pierce

   Area of Application. Survey area plus:

Oregon:
   Clatsop
   Coos
   Douglas
   Multnomah
   Tillamook

Washington:
   Clark
   Grays Harbor
   SPokane
   Survey area

Washington:
   Spokane

   Area of Application. Survey area plus:

Washington:
   Adams
   Walla Walla

WYOMING
   LARAMIE
   Survey area

Wyoming:
   Laramie

   Area of Application. Survey area.

[46 FR 21344, Apr. 10, 1981]

EDITORIAL NOTE: For Federal Register citations affecting Appendix D to subpart B of part 532, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart C—Determining Rates for Principal Types of Positions

§ 532.301 Definitions.

For purposes of this subpart:

Nearest similar wage area means the nearest wage area which is most similar to the local wage area in terms of
Office of Personnel Management

§ 532.307 Determinating whether a dominant industry exists in a wage area.

(a) The chairperson of the local wage survey committee shall, before a full-scale wage survey is scheduled to begin, notify all appropriated or nonappropriated fund activities having employees subject to the wage schedules for which the survey is conducted so that organizations and individuals may submit written recommendations and supporting evidence to the local wage survey committee concerning principal types of appropriated or nonappropriated fund activities in the area. Each appropriated or nonappropriated fund activity shall publicize the opportunity to make such recommendations.

(b)(1) Before conducting a full-scale wage survey an occupational inventory of employees subject to the wage schedules for which the survey is conducted shall be obtained from each appropriated or nonappropriated fund activity in the area having such employees.

(2) After reviewing the occupational inventory and considering the recommendations received pursuant to paragraph (a) of this section, the local wage survey committee shall formulate its recommendations and prepare a written report concerning the existence of specialized industries within the wage area.

(3) The report of the recommendations, the occupational inventory, and the recommendations and supporting evidence received pursuant to paragraph (a) of this section shall be forwarded to the lead agency.

(c) The lead agency shall refer the occupational inventory and the reports
§ 532.309 Determining adequacy of specialized private industry.

(a) Specialized private industry comparable to an appropriated fund dominant industry is adequate when:

1. The survey area is one of the 25 largest Standard Metropolitan Statistical Areas, or the total number of employees of private industry establishments in the specialized private industry located in the survey area is at least equal to the number of appropriated fund wage employees in occupations which comprise the principal types of appropriated or nonappropriated fund positions in a local wage area comprise a dominant industry. The determination shall remain in effect until the next full-scale wage survey in the area.

(b) Specialized private industry comparable to a nonappropriated fund dominant industry is adequate when:

1. The total number of employees of private industry establishments similar to the dominant industry located in the survey are at least equal to the nonappropriated fund wage employees in positions which comprise the principal types of nonappropriated fund positions in the dominant industries who are subject to the wage schedules for which the survey is made; and

2. The job matches obtained from all industries surveyed for regular survey jobs related to the dominant industry include one regular survey job in the NA-01 through 04 range providing at least 10 samples; and one regular survey job in the NA-05 through 15 range and one other regular survey job, each providing at least five samples.

§ 532.311 Survey of specialized private industry related to a dominant industry.

If it is determined that there are one or more dominant industries within a wage area, the lead agency shall insure that the survey includes the industries and survey jobs related to the dominant industries. When the related industry within the local wage survey area fails to meet the criteria in §532.309 of this subpart, the lead agency shall obtain data related to the dominant industry from the survey area of the wage area which is determined to be the nearest similar area which will provide adequate data under the criteria in §532.309 of this subpart.

§ 532.313 Private sector industries.

(a) For appropriated fund surveys, a lead agency shall use the following private sector industries in making its determinations for each specialized industry:

Aircraft

SIC 3721 Aircraft
SIC 3724 Aircraft engines and engine parts
SIC 3728 Aircraft parts and auxiliary equipment
SIC 3764 Guided missile and space vehicle propulsion units and propulsion unit parts
SIC 3769 Guided missile and space vehicle parts and auxiliary equipment
SIC 4512 Air transportation, scheduled
SIC 4513 Air courier services
SIC 4522 Air transportation, nonscheduled carriers
SIC 4581 Airports, flying fields, and airport terminal services

Ammunition

SIC 2892 Explosives
SIC 3482 Small arms ammunition
SIC 3483 Ammunition, except for small arms

Artillery and combat vehicles

SIC 3273 Ready mixed concrete
SIC 3489 Ordnance and accessories
SIC 3511 Engines and turbines
SIC 3523 Farm machinery and equipment
SIC 3524 Lawn and garden tractors and home lawn and garden equipment
SIC 3531 Construction machinery and equipment
SIC 3536 Hoists, industrial cranes, and monorail systems
SIC 3537 Industrial trucks, tractors, trailers, and stackers
SIC 3711 Motor vehicles and passenger car bodies
SIC 3713 Truck and bus bodies
SIC 3714 Motor vehicle parts and accessories
SIC 3715 Truck trailers
SIC 3795 Tanks and tank components
SIC 4041 Railway express service
SIC 4211 Trucking, local and long distance
SIC 4812 Radiotelephone communications
SIC 4813 Telephone communication, except radiotelephone
SIC 4911 Electric services
SIC 4912 Gas production and distribution
SIC 4922 Combination electric and other utility services
SIC 5011 Motor vehicles and motor vehicle parts and supplies, except SIC 5015—motor vehicle parts, used
SIC 5082 Construction and mining machinery and equipment
SIC 5092 Farm and garden machinery and equipment

Communications

SIC 3622 Power, distribution, and specialty transformers
SIC 3663 Radio and TV broadcasting and communication equipment
SIC 3669 Communication equipment, not elsewhere classified
SIC 3812 Search, navigation, guidance, aeronautical, and nautical systems, instruments, and equipment
SIC 3825 Instruments for measuring and testing of electricity and electrical signals
SIC 4812 Radiotelephone communications
SIC 4813 Telephone communication, except radiotelephone
SIC 4832 Radio broadcasting
SIC 4833 Television broadcasting
SIC 4841 Cable and other pay TV services
SIC 4899 Communication services, NEC

Electronics

SIC 3571 Electronic computers
SIC 3572 Computer storage devices
SIC 3575 Computer terminals
SIC 3577 Computer peripheral equipment, not elsewhere classified
SIC 3663 Radio and TV broadcasting and communication equipment
SIC 3669 Communication equipment, not elsewhere classified
SIC 3672 Printed circuit boards
SIC 3674 Semiconductors and related devices
SIC 3675 Electronic capacitors
SIC 3676 Resistor, for electronic applications
SIC 3677 Electronic coils, transformers, and other inductors
SIC 3678 Connectors, for electronic applications
SIC 3679 Electronic components, not elsewhere classified
SIC 3695 Recording media
SIC 3812 Search, navigation, guidance, aeronautical, and nautical systems, instruments, and equipment
SIC 5044 Office equipment
SIC 5045 Computer and computer peripheral equipment and software

Guided missiles

SIC 3571 Electronic computers
SIC 3572 Computer storage devices
SIC 3575 Computer terminals
SIC 3577 Computer peripheral equipment, not elsewhere classified
SIC 3663 Radio and TV broadcasting and communication equipment
SIC 3669 Communication equipment, not elsewhere classified
SIC 3724 Aircraft engines and engine parts
SIC 3728 Aircraft parts and auxiliary equipment
SIC 3761 Guided missiles and space vehicles
§ 532.315 Additional survey jobs.

(a) For appropriated fund surveys, when the lead agency adds to the industries to be surveyed, it shall add to the required survey jobs the specialized survey jobs listed below opposite the industry added:

<table>
<thead>
<tr>
<th>Specialized industry</th>
<th>Specialized survey jobs</th>
<th>Grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aircraft ...........</td>
<td>Electronics Mechanic ....</td>
<td>WG-11</td>
</tr>
<tr>
<td>Aircraft Structures Assembler A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aircraft Structures Assembler B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aircraft Mechanic ....</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aircraft Mechanic includes ...........</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aircraft Electrician ........</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aircraft Welder ........</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aircraft Sheetmetal Worker ........</td>
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<td></td>
</tr>
<tr>
<td>Aircraft Hydromechanical Fuel Control Repairer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aircraft Engine Mechanic ....</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aircraft Jet Engine Mechanic ....</td>
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<td></td>
</tr>
<tr>
<td>Flight Line Mechanic ..........</td>
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<td></td>
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<tr>
<td>Aircraft Attendant (ground serv- ices).</td>
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<td></td>
</tr>
<tr>
<td>Ammunition ........</td>
<td>Munitions Handler .........</td>
<td>WG-4</td>
</tr>
<tr>
<td>Munitions Operator ...........</td>
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<tr>
<td>Munitions Operator ...........</td>
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<td>Munitions Operator ...........</td>
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<td>Munitions Operator ...........</td>
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<tr>
<td>Explosives Operator ...........</td>
<td></td>
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</tr>
<tr>
<td>Automotive Mechanic (limited to data obtained in special indus- tries).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Artillery and combat ve- hicles.</td>
<td>Heavy Mobile Equipment Me- chanic.</td>
<td>WG-10</td>
</tr>
<tr>
<td>Artillery Repairer ........</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Combat Vehicle Mechanic ....</td>
<td></td>
<td></td>
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<tr>
<td>Combat Vehicle Mechanic (En- gine).</td>
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<tr>
<td>Combat Vehicle Mechanic ....</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Diesel Engine Mechanic (limited to data obtained in special in- dustries).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Communications.</td>
<td>Telephone Installer-Repairer ......</td>
<td>WG-9</td>
</tr>
<tr>
<td>Electroni s Mechanic ....</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Industrial Electronic Controls Re- pairer.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Guided missiles.</td>
<td>Electroni c Control Mechanic ...</td>
<td>WG-11</td>
</tr>
<tr>
<td>Guided Missile Mechanical Re- pairer.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Heavy Mobile Equipment Me- chanic.</td>
<td></td>
<td></td>
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<tr>
<td>Electronics Mechanic ....</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electrician, Ship ..........</td>
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<td></td>
</tr>
<tr>
<td>Pipefitter, Ship .............</td>
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<tr>
<td>Shipfitter ..................</td>
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<tr>
<td>Shipwright ..................</td>
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<tr>
<td>MACHINIST (Marine) ..........</td>
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<tr>
<td>Electronic Computer Mechanic ..</td>
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<tr>
<td>Fire Control Instrument Repair- man.</td>
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<tr>
<td>Electronic Fire Control Systems Repeater.</td>
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<td>Electronic Fire Control Systems Repeater.</td>
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<td>Electronic Fire Control Systems Repeater.</td>
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</tbody>
</table>

(b) Industries in SICs 3273, 4041, 421, 4812, 4813, 4911, 492, and 493, listed in paragraph (a) of this section are limited in special job coverage to automotive mechanic, diesel engine mechanic, and heavy mobile equipment mechanic.

(c) For nonappropriated fund surveys, the lead agency shall use SIC 581 (eating and drinking places industry) in making its determination for a specialized industry.

(b) For nonappropriated fund surveys, a lead agency must obtain prior approval of OPM to add a job not listed in §532.223 of this subpart.

[55 FR 46180, Nov. 1, 1990]

§ 532.317 Use of data from the nearest similar area.

(a)(1) For prevailing rate employees other than those in the Department of Defense, the lead agency shall, in establishing the regular schedule under the provisions of this subpart, analyze and use the acceptable data from the nearest similar wage area together with the data obtained from inside the local wage survey area. The regular schedule for Department of Defense prevailing rate employees shall be based on local wage data only.

(2) The total number of job matches obtained from the nearest similar wage area shall be equal to the number required for adequacy in §532.309(a)(2) and (3) of this subpart for appropriated fund surveys and §532.309(b)(2) of this subpart for nonappropriated fund surveys.

(3) Data shall be selected for inclusion on the basis of the most populous survey jobs as determined by the weighted job matches found in the dominant industry in the selected reference area. In identifying survey jobs for which reference area samples will be included, the jobs required at limited grade ranges shall be selected before jobs in the unlimited grade range. When there is a tie in the selection procedure, the highest graded job shall be selected first.

(4) If there are two dominant industries for which data are obtained from nearest similar areas, the procedure described in paragraph (a)(2) of this section shall be applied independently for each of the specialized industries.

(b)(1) The wage rates established for a grade by using data from the nearest similar area may not exceed the wage rates for the same grade in the two nearest similar areas.

(c) The wage data obtained from the nearest similar area or areas may not be used to reduce the wage rates for any grade in the local area below the rates that would be established for that grade without the use of the data from the nearest similar area or areas.


Subpart D—Pay Administration

§ 532.401 Definitions.

In this subpart:

Change to lower grade means a change in the position of an employee who, while continuously employed—

(1) Moves from a position in one grade of a prevailing rate schedule established under this part to a position in a lower grade of the same type prevailing rate schedule, whether in the same or different wage area; or

(2) Moves from a position under a prevailing rate schedule established under this part to a position under a different prevailing rate schedule (e.g., WL to WG) with a lower representative rate; or

(3) Moves from a position not under a prevailing rate schedule to a position with a lower representative rate under a prevailing rate schedule.

Equivalent increase means an increase in an employee's rate of basic pay equal to or greater than the difference between the rate of pay for the grade and step occupied by the employee and the rate of pay for the next higher step of that grade, except in the situations specified in §532.417 of this subpart. In the case of a promotion, the grade and step occupied means the grade and step to which promoted.

Existing scheduled rate of pay means the scheduled rate of pay received immediately before the effective date of a transfer, reassignment, promotion, change to a lower grade, within-grade increase, or revision of a wage schedule.

Highest previous rate means the highest scheduled rate of pay previously paid to a person while employed in a
job in any branch of the Federal Government, a mixed-ownership corporation, or the government of the District of Columbia. It is based on a regular tour of duty under an appointment not limited to 90 days or less, or for a continuous period of no less than 90 days under one or more appointments without a break in service.

Promotion means a change in the position of an employee who, while continuously employed—

(1) Moves from a position in one grade of a prevailing rate schedule established under this part to a position in a higher grade of the same type prevailing rate schedule, whether in the same or different wage area;

(2) Moves from a position under a prevailing rate schedule established under this part to a position under a different prevailing rate schedule (e.g., WG to WL) with a higher representative rate; or

(3) Moves from a position not under a prevailing rate schedule to a position with a higher representative rate under a prevailing rate schedule.

Rate of basic pay means the scheduled rate of pay plus any night or environmental differential.

Reassignment means a change of an employee, while serving continuously in the same agency, from one job to another without promotion or change to a lower grade.

Representative rate means the going rate, i.e., the rate or step keyed to the prevailing rate determination. For example:

(1) The established rate on a single rate schedule;

(2) The second rate on a five-rate regular wage schedule;

(3) The fourth rate on the General Schedule; or

(4) The fourth rate of a class under the Foreign Service Officer and Foreign Service Staff schedule.

Retained rate means the rate of pay an employee is receiving which is higher than the maximum scheduled rate of pay of the Federal Wage System grade or pay level to which the employee is assigned.

Scheduled rate of pay means the rate of pay fixed by law or administrative action, including a retained rate of pay, for the job held by an employee before any deductions and exclusive of additional pay of any kind.

§ 532.403 New appointments.

(a) Except as provided in paragraphs (b) and (c) of this section, a new appointment to a position shall be made at the minimum rate of the appropriate grade.

(b) An agency may make a new appointment at a rate above the minimum rate of the appropriate grade in recognition of an appointee's special qualifications.

(c) An agency shall make a new appointment at a step-rate above the minimum rate of a grade if the lead agency for the wage area has designated, in accordance with §532.249, a step-rate above the first step-rate of a grade as the minimum step-rate at which a position may be filled.

§ 532.405 Use of highest previous rate.

(a)(1) Subject to the provisions of §532.407 of this subpart and part 536 of this chapter, when an employee is reemployed, reassigned, transferred, promoted, or changed to a lower grade, the agency may fix the pay at any rate of the new grade which does not exceed the employee's highest previous rate.

(2) However, if the employee's highest previous rate falls between two step-rates of the new grade, the agency may fix the pay at the higher of the two.

(b)(1) When an employee's type of appointment is changed in the same job, an agency may continue to pay the existing scheduled rate or may pay any higher rate of the grade which does not exceed the employee's highest previous rate.

(2) However, if the highest previous rate falls between two step rates of the grade, the agency may pay the higher rate.

(c)(1) The highest previous rate, if earned in a wage job, is the current rate of the grade and step-rate of the former job, the same type of wage schedule in the wage area in which the
employee is being employed, or the actual earned rate, whichever is higher.  
(2) If earned on a General Schedule or another pay system other than the Federal Wage System, it is the current rate for the same grade and rate of that schedule.  
(d) The highest previous rate may be based upon a rate of pay received during a temporary promotion, so long as the temporary promotion is for a period of not less than 1 year. This limitation does not apply upon permanent placement in a position at the same or higher grade.

§ 532.407 Promotion.  
(a) An employee who is promoted is entitled to be paid at the lowest scheduled rate of the grade to which promoted which exceeds the employee's existing scheduled rate of pay by at least four percent of the representative rate of the grade from which promoted.  
(b) If there is no rate in the grade to which an employee is promoted which meets the requirement of paragraph (a) of this section the employee shall be entitled to the higher of: (1) the existing scheduled rate of pay in accordance with part 536 of this chapter; or (2) the maximum scheduled rate of the grade to which promoted.  
(c) If the promotion is to a position in a different wage area, the agency shall determine the employee's pay entitlement as if there were two pay actions—a promotion and a reassignment—and shall process them in the order which gives the employee the maximum benefit.

§ 532.409 Grading or regrading of positions.  
Except as provided in §532.703(b)(10), a change in an employee's rate of basic pay as a result of the grading or regrading of the employee's position shall be effective on the date the grading or regrading action is finally approved by the agency or on a subsequent specifically stated date.

§ 532.411 Details.  
An appropriated fund employee detailed to a position other than the position to which appointed shall be paid at the rate of the position to which appointed.

§ 532.413 Simultaneous action.  
(a) If an employee becomes entitled to more than one pay change at the same time, the employing agency shall process the pay changes in the order which will provide the maximum benefit, except as required by paragraph (b) of this section.  
(b) If an employee becomes entitled to an increase in pay and subject to a personnel or appointment change at the same time, the increased rate of pay is deemed to be the employee's existing scheduled rate of pay when the personnel or appointment change is processed.

§ 532.415 Application of new or revised wage schedules.  
(a) The head of each installation or activity in a wage area shall place new or revised wage schedules into effect at the beginning of the first full shift on the date specified on the schedule by the lead agency.  
(b) No agency may retroactively change any personnel or pay actions taken between the effective date of a new or revised wage schedule and the date it is actually put into effect if the personnel or pay actions taken during this period of time are more advantageous to an employee than the same personnel or pay action would have been had the new or revised wage schedule been placed into effect on the date specified by the lead agency.  
(c) In applying a new or revised wage schedule, the scheduled rate of pay of an employee paid at one of the steps of the employee's grade on an old wage schedule shall be adjusted upward to the newly adjusted rate for the same numerical step of the grade whenever there is an increase in rates. Except when there is a decrease in wage rates because of a statutory reduction in scheduled rates, the employee is entitled to pay retention as provided in 5 CFR 536.104(a)(3).

§ 532.417 Within-grade increases.  
(a) An employee paid under a regular Federal Wage System schedule with a
§ 532.417

work performance rating of satisfactory or better shall advance automatically to the next higher step within the grade in accordance with section 5343(e)(2) of title 5, United States Code.

(b) Waiting periods for within-grade increases shall begin:

(1) On the first day of a new appointment as an employee subject to this part;
(2) On the first day of a period of service after a break in service or time in a nonpay status in excess of 52 weeks; or
(3) On receipt of an equivalent increase.

(c) Creditable service. The following periods of time shall be considered creditable service for purposes of waiting periods for within-grade increases:

(1) Time during which an employee is in receipt of pay, including periods of leave with pay;
(2) Time during which an employee with a prearranged regular scheduled tour of duty is in a nonpay status to the extent that the time in a nonpay status does not exceed, in the aggregate:
   (i) One workweek in the waiting period for step 2;
   (ii) Three workweeks in the waiting period for step 3; or
   (iii) Four workweeks in the waiting period for steps 4 and 5;
(3) Time during which an employee or former employee is on leave of absence or is separated from Federal service and is entitled to continuation of pay or compensation under subchapter I of chapter 81 of title 5, United States Code. This does not apply to prevailing rate employees within a Department of Defense or Coast Guard non-appropriated fund instrumentality;
(4) A period of military service when:
   (i) An employee is on leave of absence to perform such service and returns to pay status through the exercise of a restoration right provided by law, Executive order, or regulation; or
   (ii) A former employee is reemployed with the Federal Service not later than 52 calendar weeks after separation from such service or hospitalization continuing thereafter for a period of not more than one year. Military service means honorable active service in the Armed Forces, in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or as a commissioned officer of the Environmental Science Services Administration after June 30, 1961, but does not include service in the National Guard, except when ordered to active duty in the service of the United States.
(5) The time between an employee's separation from an earlier position and the date of the employee's return to a civilian position through the exercise of a reemployment right granted by law, Executive Order, or regulation;
(6) Time during which an employee is performing service, which is creditable under section 8332(b)(5) or (7) of title 5, United States Code;
(7) The time during which an employee is detailed to a non-Federal position under subchapter VI of chapter 33 of title 5, United States Code; and
(8) Nonworkdays intervening between an employee's last regularly scheduled workday in one position and the first regularly scheduled workday in a new position.

(d) Effective date. A within-grade increase shall be effective at the beginning of the first applicable pay period following the day an employee becomes eligible for the increase.

(e) Equivalent increase. The following shall not be counted as equivalent increases:

(1) Application of a new or revised wage schedule or application of a new pay or evaluation plan;
(2) Payment of additional compensation in the form of nonforeign or foreign post differentials or nonforeign cost-of-living allowances;
(3) Adjustment of the General Schedule;
(4) Premium payment for overtime and holiday duty;
(5) Payment of night shift differential;
(6) Hazard pay differentials;
(7) Payment of rates above the minimum rate of the grade in recognition of specific qualifications, or in jobs in specific hard-to-fill occupations;
(8) Correction of an error in a previous demotion or reduction in pay;
§ 532.503 Overtime pay.

(a)(1) Employees who are exempt from the overtime pay provisions of the Fair Labor Standards Act of 1938, as amended, shall be paid overtime pay in accordance with 5 U.S.C. 5544 and this section. Employees who are non-exempt shall be paid overtime pay in accordance with part 551 of this chapter.

(2) Hours of work in excess of eight in a day are not included in computing hours of work in excess of 40 hours in an administrative workweek.

(b) Effect of leave on overtime pay. (1) Hours during which an employee is absent from duty on paid leave during time when the employee otherwise would have been required to be on duty
§ 532.504  Compensatory time off.

(a) At the request of an employee, the head of an agency may grant compensatory time off from an employee’s tour of duty instead of payment under §532.503 or the Fair Labor Standards Act of 1938, as amended, for an equal amount of irregular or occasional overtime work.

(b) At the request of an employee, the head of an agency may grant compensatory time off from an employee’s basic work requirement under a flexible work schedule under 5 U.S.C. 6122 instead of payment under §532.503 or the Fair Labor Standards Act of 1938, as amended, for an equal amount of overtime work.

(c) An agency may not require that an employee be compensated for overtime work with an equal amount of compensatory time off from the employee’s tour of duty. An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with such employee’s rights to request or not to request compensatory time off in lieu of payment for overtime hours.

(d) The head of a department may fix a time limit for an employee to request or take compensatory time off and may provide that an employee who fails to take compensatory time earned under paragraph (a) or (b) of this section before the time limit fixed shall lose the right to compensatory time off and to overtime pay unless the failure is due to an exigency of the service beyond the employee’s control.

Office of Personnel Management

§ 532.505 Night shift differentials.

(a) Employees shall be entitled to receive night shift differentials in accordance with section 5343 of title 5, United States Code.

(b) Absence on holidays. An employee regularly assigned to a shift for which a night shift differential is payable shall be paid the night shift differential for a period of excused absence on a legal holiday or other day off from duty granted by Executive or administrative order.

(c) Travel status. An employee regularly assigned to a shift for which a night shift differential is payable shall be paid the night shift differential for hours of the employee's tour of duty while in official travel status, regardless of whether the employee is performing work.

(d) Temporary tour of duty. (1) An employee regularly assigned to a night shift who is temporarily assigned to a day shift or to a night shift having a lower night shift differential shall continue to receive the regular night shift differential, a temporary detail for training purposes is also included—see 5 CFR 410.602.

(2) An employee regularly assigned to a night shift, who is temporarily assigned to another night shift having a higher differential, shall be paid the higher differential if a majority of the employee's regularly scheduled non-overtime hours of work on the temporary shift fall within hours having the higher differential.

(e) Leave with pay. (1) An employee regularly assigned to a night shift shall be paid a night shift differential during a period of leave with pay.

(2) An employee regularly assigned to a day shift who is temporarily assigned to a night shift shall be paid a night shift differential for any leave with pay taken when scheduled to work night shifts.

(3) An employee assigned to a regular rotating schedule involving work on both day and night shifts shall be paid a night shift differential only for any leave with pay taken when scheduled to work night shifts.

(4) An employee who is not regularly assigned to a day shift or a night shift but whose shift is changed at irregular intervals shall be paid a night shift differential during leave with pay if the employee received a night shift differential for the last shift worked preceding leave with pay.

§ 532.507 Pay for holiday work.

(a) An employee who is entitled to holiday premium pay and who performs work on a holiday which is not overtime work shall be paid the employee's rate of basic pay plus premium pay at a rate equal to the rate of basic pay.

(b) An employee shall be paid for overtime work performed on a holiday at the same rate as for overtime on other workdays.

(c) An employee who is entitled to holiday premium pay and who is required to report for work on a holiday shall be paid at least two hours of holiday pay whether or not work is actually performed.

§ 532.509 Pay for Sunday work.

A wage employee whose regular work schedule includes an 8-hour period of service which is not overtime work, a part of which is on Sunday, is entitled to additional pay under the provisions of section 5544 of title 5, United States Code.

[46 FR 21344, Apr. 10, 1981, as amended by 58 FR 3201, Jan. 8, 1993]

§ 532.511 Environmental differentials.

(a) Entitlements to environmental differential pay.

(1) In accordance with section 5343(c)(4) of title 5, United States Code, an employee shall be paid an environmental differential when exposed to a working condition or hazard that falls within one of the categories approved by the Office of Personnel Management.

(2) Each installation or activity must evaluate its situations against the guidelines issued by the Office of Personnel Management to determine whether the local situation is covered by one or more of the defined categories.

(b) Amount of environmental differential payable.
§ 532.513 Flexible and compressed work schedules.

Federal Wage System employees who are authorized to work flexible and compressed work schedules under sections 6122 and 6127 of title 5, United States Code, shall be paid premium pay in accordance with subchapter II of chapter 61 of title 5, United States Code. Subpart D of part 610 of this chapter supplements subchapter II and must be read together with it.


APPENDIX A TO SUBPART E OF PART 532—SCHEDULE OF ENVIRONMENTAL DIFFERENTIALS PAID FOR EXPOSURE TO VARIOUS DEGREES OF HAZARDS, PHYSICAL HARDSHIPS, AND WORKING CONDITIONS OF AN UNUSUAL NATURE

This appendix lists the environmental differentials authorized for exposure to various degrees of hazards, physical hardships, and working conditions of an unusual nature.

PART I.—PAYMENT FOR ACTUAL EXPOSURE

<table>
<thead>
<tr>
<th>Differential rate (per cent)</th>
<th>Category for which payable</th>
<th>Effective date</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>Flying. Participating in flights under one or more types of the following conditions:</td>
<td>Nov. 1, 1970.</td>
</tr>
<tr>
<td></td>
<td>a. Test flights of a new or repaired plane or modified plane when the repair or modification may affect the flight characteristics of the plane;</td>
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<td>b. Flights for test performance of plane under adverse conditions such as in low altitude or severe weather conditions, maximum load limits, or overload;</td>
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<td></td>
<td>c. Test missions for the collection of measurement data where two or more aircraft are involved and flight procedures require formation flying and/or rendezvous at various altitudes and aspect angles;</td>
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</tbody>
</table>
### Category for which payable
- **Dirty work.** Working in locations where the employee is subjected to soil on the body or clothing.
- **Micro-soldering or wire welding and assembly.** Working with binocular-type microscopes under conditions which severely restrict the movement of the employee and impose a strain on the eyes, in the soldering or wire welding and assembly of miniature electronic components.
- **Heat work.** Working in confined spaces wherein the employee is subjected to temperatures at or below freezing (0 degrees Celsius (32 degrees Fahrenheit)) where such exposure is not practically eliminated by the mechanical equipment or protective devices being used.
- **Welding preheated metals.** Welding various metals or performing an integral part of the welding process when the employee must work in confined spaces in which large sections of metal have been preheated to 66 degrees Celsius (150 degrees Fahrenheit) or more, and the discomfort is not alleviated by protective devices or other means, or discomforting protective equipment must be worn.
- **Exposure to hazardous weather or terrain.** Exposure to dangerous conditions of terrain, temperature and/or wind velocity, while working or traveling when such exposure introduces risk of significant injury or death to employees; such as the following:

#### Examples:
- Working on cliffs, narrow ledges, or steep mountainous slopes, with or without mechanical work equipment, where a loss of footing would result in serious injury or death.
- Working in areas where there is a danger of rockfalls or avalanches.

<table>
<thead>
<tr>
<th>Differential rate (percent)</th>
<th>Category for which payable</th>
<th>Effective date</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>High work</td>
<td>Nov. 1, 1970</td>
</tr>
<tr>
<td>15</td>
<td>Floating targets</td>
<td>Nov. 1, 1970</td>
</tr>
<tr>
<td>4</td>
<td>Cold work</td>
<td>Nov. 1, 1970</td>
</tr>
<tr>
<td>4</td>
<td>Welding</td>
<td>Nov. 1, 1970</td>
</tr>
<tr>
<td>4</td>
<td>Micro-soldering or wire welding and assembly</td>
<td>Nov. 1, 1970</td>
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<tr>
<td>Differential rate (per cent)</td>
<td>Category for which payable</td>
<td>Effective date</td>
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<tr>
<td>15</td>
<td>Traveling in the secondary or unimproved roads to isolated mountaintop installations at night, or under adverse weather conditions (snow, rain, or fog) which limits visibility to less than 30 meters (100 feet), when there is danger of rock, mud, or snowslides</td>
<td>July 1, 1972.</td>
</tr>
<tr>
<td>14</td>
<td>Traveling in the wintertime, either on foot or by vehicle, over secondary or unimproved roads or snowtrails, in sparsely settled or isolated areas to isolated installations when there is danger of avalanches, or during &quot;whiteout&quot; phenomenon which limits visibility to less than 3 meters (10 feet)</td>
<td>July 1, 1972.</td>
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<tr>
<td>15</td>
<td>Working or traveling in sparsely settled or isolated areas with exposure to temperatures and/or wind velocity shown to be of considerable or very great danger on the windchill chart (Exhibit 1 of this appendix), and shelter (other than temporary shelter) or assistance is not readily available</td>
<td>July 1, 1972.</td>
</tr>
<tr>
<td>12</td>
<td>Hazardous boarding or leaving of surface craft. Boarding or leaving vessels or transferring equipment to or from a surface craft under adverse conditions of foul weather, ice, or night when sea state is high (0.9 meter (3 feet) and above), and deck conditions and/or wind velocity in relation to the size of the craft introduce unusual risks to employees. Examples:</td>
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<tr>
<td>25</td>
<td>Working adjacent to the walls of an unshored excavation at depths greater than 1.8 meters (6 feet) (except when the full depth of the excavation is in stable solid rock, hard slag, or hard shale, or the walls have been graded to the angle of repose; that is, where the danger of slides is practically eliminated), when work is performed at a distance from the wall which is less than the height of the wall</td>
<td>July 1, 1972.</td>
</tr>
<tr>
<td>11</td>
<td>Hazardous work beneath hovering helicopter. Participating in operation to attach or detach external load to helicopter hovering just overhead. Examples: Boarding or leaving vessels at sea. Boarding, or leaving, or transferring equipment between small boats or rafts and steep, rocky, or coral-surrounded shorelines. Transferring equipment between a small boat and a rudimentary dock by improvised or temporary facility such as an unfastened plank leading from boat to dock. Boarding or leaving, or transferring equipment from or to ice covered floats, rafts, or similar structures when there is danger of capsizing due to the added weight of the ice</td>
<td>July 1, 1972.</td>
</tr>
<tr>
<td>10</td>
<td>Traveling in excavation areas before the installation of proper shoring or other securing barriers, or in catastrophe areas, where there is a possibility of cave-in, building collapse or falling debris when such exposures introduce risk of significant injury or death to employees, such as the following:</td>
<td></td>
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<tr>
<td>15</td>
<td>Working on or immediately adjacent to a building or structure which has been severely damaged by earthquake, fire, tornado or similar cause</td>
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<tr>
<td>11</td>
<td>Working underground in the construction and/or inspection of tunnels and shafts before the necessary lining of the passageway have been installed</td>
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<tr>
<td>12</td>
<td>Duty underground in abandoned mines where lining of tunnels or shafts is in a deteriorated condition</td>
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<tr>
<td>8</td>
<td>Cargo handling during lightening operations. Off-loading of cargo and supplies from surface ships to Landing Craft-Medium (LCM) boats when swells or wave action are sufficiently severe as to cause sudden listing or pitching of the deck surface or shifting or falling of equipment, cargo, or supplies which could subject the employee to falls, crushing, ejection into the water or injury by swinging cargo hooks. Examples: Boarding or leaving vessels at sea. Boarding, or leaving, or transferring equipment between small boats or rafts and steep, rocky, or coral-surrounded shorelines. Transferring equipment between a small boat and a rudimentary dock by improvised or temporary facility such as an unfastened plank leading from boat to dock. Boarding or leaving, or transferring equipment from or to ice covered floats, rafts, or similar structures when there is danger of capsizing due to the added weight of the ice</td>
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<tr>
<td>15</td>
<td>Hazardous boarding or leaving of surface craft. Boarding or leaving vessels or transferring equipment to or from a surface craft under adverse conditions of foul weather, ice, or night when sea state is high (0.9 meter (3 feet) and above), and deck conditions and/or wind velocity in relation to the size of the craft introduce unusual risks to employees. Examples: Boarding or leaving vessels at sea. Boarding, or leaving, or transferring equipment between small boats or rafts and steep, rocky, or coral-surrounded shorelines. Transferring equipment between a small boat and a rudimentary dock by improvised or temporary facility such as an unfastened plank leading from boat to dock. Boarding or leaving, or transferring equipment from or to ice covered floats, rafts, or similar structures when there is danger of capsizing due to the added weight of the ice</td>
<td>July 30, 1972.</td>
</tr>
<tr>
<td>15</td>
<td>Duty aboard surface craft. Duty aboard a surface craft when the deck conditions or sea state and wind velocity in relation to the size of the craft introduces the risk of significant injury or death to employees, such as the following: Participating as a member of a water search and rescue team in adverse weather conditions when winds are blowing at 56 km/h (35 m.p.h.) (classified as gale winds) or in water search and rescue operations at night. Participating as a member of a weather projects team when work is performed under adverse weather conditions, when winds are blowing at 56 km/h (35 m.p.h.), and/or when seas are in excess of 4.3 meters (14 feet), or when working on outside decks when decks are slick and icy when swells are in excess of 0.9 meter (3 feet). When embarking, disembarking or traveling in small craft (boat) on Lake Ponchartrain when wind direction is from north northeast or northwest, and wind velocity is over 7.7 meters per second (15 knots); or when travel on Lake Ponchartrain is necessary in small craft, without radar equipment, due to emergency or unavoidable conditions and the trip is made in dense fog run procedures. Participating in deep research vessel sea duty wherein the team member is engaged in handling equipment on or over the side of the vessel when the sea state is high (6.2-meter-per-second (12-knot) winds and 0.9 meter (3-foot) waves) and the work is done on relatively unprotected deck areas.</td>
<td>July 1, 1972.</td>
</tr>
</tbody>
</table>
### PART I.—PAYMENT FOR ACTUAL EXPOSURE—Continued

<table>
<thead>
<tr>
<th>Differential rate (per cent)</th>
<th>Category for which payable</th>
<th>Effective date</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>—Transferring from a ship to another ship via a chair harness hanging from a highline between the ships when both vessels are under way. —Duty performed on floating platforms, camels, or rafts, using tools equipment or materials associated with ship repair or construction activities, where swells or wave action are sufficiently severe to cause sudden listing or pitching of the deck surface or dislodgement of equipment which could subject the employee to falls, crushing, or ejection into the water.</td>
<td>Oct. 22, 1972.</td>
</tr>
<tr>
<td>15</td>
<td>15. Work at extreme heights. Working at heights 30 meters (100 feet) or more above the ground, deck, floor or roof, or from the bottom of a tank or pit on such open structures as towers, girders, smokestacks and similar structures: (1) If the footing is unsure or the structure is unstable; or (2) If safe scaffolding, enclosed ladders or other similar protective facilities are not adequate (for example, working from a swinging stage, boatswain chair, or a similar support); or (3) If adverse conditions such as darkness, steady rain, high wind, icing, lightning, or similar environmental factors render working at such height hazardous.</td>
<td>Feb. 28, 1975.</td>
</tr>
<tr>
<td>6</td>
<td>16. Fibrous Glass Work. Working with or in close proximity to fibrous glass material which results in exposure of the skin, eyes or respiratory system to irritating fibrous glass particles or slivers where exposure is not practically eliminated by the mechanical equipment or protective devices being used.</td>
<td>Apr. 11, 1977.</td>
</tr>
<tr>
<td>6</td>
<td>17. High Voltage Electrical Energy. Working on energized electrical lines rated at 4,160 volts or more which are suspended from utility poles or towers, when adverse weather conditions such as steady rain, high winds, icing, lightning, or similar environmental factors make the work unusually hazardous.</td>
<td>Jan. 18, 1978.</td>
</tr>
</tbody>
</table>

### PART II.—PAYMENT ON BASIS OF HOURS IN PAY STATUS

<table>
<thead>
<tr>
<th>Differential rate (per cent)</th>
<th>Category for which payable</th>
<th>Effective date</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>1. Duty aboard submerged vessel. Duty aboard a submarine or other vessel such as a deep research vehicle while submerged.</td>
<td>Nov. 1, 1970.</td>
</tr>
<tr>
<td>8</td>
<td>2. Explosives and incendiary material—high degree hazard. Working with or in close proximity to explosives and incendiary material which involves potential personal injury such as permanent or temporary, partial or complete loss of sight or hearing, partial or complete loss of any or all extremities; other partial or total disabilities of equal severity; and/or loss of life resulting from work situations wherein protective devices and/or safety measures either do not exist or have been developed but have not practically eliminated the potential for such personal injury. Normally, such work situations would result in extensive property damage requiring complete replacement of equipment and rebuilding of the damaged area, and could result in personal injury to adjacent employees. Examples: —Working with, or in close proximity to operations involved in research, in testing, manufacturing, inspection, renovation, maintenance and disposal, such as: —Screening, blending, drying, mixing, and pressing of sensitive explosives and pyrotechnic compositions such as lead azide, black powder and photoflash powder —Manufacture and distribution of raw nitroglycerine —Nitration, neutralization, crystallization, purification, screening and drying of high explosives —Manufacture of propellants, high explosives and incendiary materials —Melting, cast loading, pellet loading, drilling, and thread cleaning of high explosives —Manufacture of primary or initiating explosives such as lead azide —Manufacture of primer or detonator mix —Loading and assembling high-energy output flare pellets —All dry house activities involving propellants or explosives —Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive explosives and incendiary materials —All operations involving fire fighting on an artillery range or at an ammunition manufacturing plant or storage area, including heavy duty equipment operators, truck drivers, etc. —All operations involving regrading and cleaning of artillery ranges</td>
<td>Nov. 1, 1970.</td>
</tr>
<tr>
<td>Differential rate (percent)</td>
<td>Category for which payable</td>
<td>Effective date</td>
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<tr>
<td>---------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td></td>
<td>At-sea shock and vibration tests. Arming explosive charges and/or working with, or in close proximity to, explosive-armed charges in connection with at-sea shock and vibration tests of naval vessels, machinery, equipment and supplies</td>
<td>Nov. 1, 1970.</td>
</tr>
<tr>
<td></td>
<td>Handling or engaging in destruction operations on an armed (or potentially armed) warhead</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>3. Explosives and incendiary material—low degree hazard. a. Working with or in close proximity to explosives and incendiary material which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation and possible adjacent employees; minor irritation of the skin; minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used.</td>
<td>Mar. 13, 1977.</td>
</tr>
<tr>
<td></td>
<td>b. Working with or in close proximity to explosives and incendiary material which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation and possible adjacent employees; minor irritation of the skin; minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used and wherein protective device and/or safety measures have not practically eliminated the potential for such injury</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Examples</td>
<td></td>
</tr>
<tr>
<td></td>
<td>All operations involving loading, unloading, storage and hauling of explosive and incendiary ordnance material other than small arms ammunition. (Distribution of raw nitroglycerine is covered under high degree hazard—see category 2 above.)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Duties such as weighing, scooping, consolidating and crimping operations incident to the manufacture of stab, percussion, and low energy electric detonators (initiators) utilizing sensitive primary explosives compositions where initiation would be kept to a low order of propagation due to the limited amounts permitted to be present or handled during the operations</td>
<td></td>
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<td></td>
<td>Load, assembly and packing of primers, fuses, propellant charges, lead cups, boosters, and time-train rings</td>
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<td></td>
<td>Weighing, scooping, loading in bags and sewing of ignitor charges and propellant zone charges</td>
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<tr>
<td></td>
<td>Loading, assembly, and packing of hand-held signals, smoke signals, and colored marker signals</td>
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<tr>
<td></td>
<td>Proof-testing weapons with a known overload of powder or charges</td>
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<tr>
<td></td>
<td>Arming/disarming or the installation/removal of any subq, explosive device, or component thereof, connected to or part of a solid propulsion system, including work situations involving removal, inspection, test and installation of aerospace vehicle egress and jettison systems and other cartridge actuated devices and rocket assisted systems or components thereof, when accidental or inadvertent operation of the system or a component might occur</td>
<td></td>
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<tr>
<td></td>
<td>Examples</td>
<td></td>
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<tr>
<td></td>
<td>Handling and storing toxic chemical agents including monitoring of areas to detect presence of vapor or liquid chemical agents; examining of material for signs of leakage or deteriorated material; decontaminating equipment and work sites; work relating to disposal of deteriorated material (exposure to conjunctivitis, pulmonary edema, blood infection, impairment of the nervous system, possible death)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Renovation, maintenance, and modification of toxic chemicals, guided missiles, and selected munitions</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Operating various types of chemical engineering equipment in a restricted area such as reactors, filters, stripping units, fractioning columns, blenders, mixers, pumps, and the like utilized in the development, manufacturing, and processing of toxic or experimental chemical warfare agents</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Demilitarizing and neutralizing toxic chemical munitions and chemical agents</td>
<td></td>
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<tr>
<td></td>
<td>Handling or working with toxic chemicals in restricted areas during production operations</td>
<td></td>
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<td></td>
<td>Preparing analytical reagents, carrying out colorimetric and photometric techniques, injecting laboratory animals with compounds having toxic, incapacitating or other effects</td>
<td></td>
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<td></td>
<td>Recording analytical and biological tests results where subject to above types of exposure</td>
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<tr>
<td></td>
<td>Visually examining chemical agents to determine conditions or detect leaks in storage containers</td>
<td></td>
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<tr>
<td></td>
<td>Salvaging and disposing of chemical agents</td>
<td></td>
</tr>
</tbody>
</table>
### Part II—Payment on Basis of Hours in Pay Status—Continued

<table>
<thead>
<tr>
<th>Differential rate (percent)</th>
<th>Category for which payable</th>
<th>Effective date</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Poisons (toxic chemicals)—low egress hazard. a. Working with or in close proximity to poisons (toxic chemicals other than tear gas or similar irritating substances) in situations for which the nature of the work does not require the individual to be in as direct contact with, or exposure to, the more toxic agents as in the case with the work described under high hazard for this class of hazardous agents.</td>
<td>Nov. 1, 1970.</td>
</tr>
<tr>
<td>5</td>
<td>Work in fuel storage tanks. When inspecting, cleaning or repairing fuel storage tanks where there is no ready access to an exit, under conditions requiring a breathing apparatus because all or part of the oxygen in the atmosphere has been displaced by toxic vapors or gas, and failure of the breathing apparatus would result in serious injury or death within the time required to leave the tank.</td>
<td>July 1, 1972.</td>
</tr>
<tr>
<td>5</td>
<td>Work in fuel storage tanks. When inspecting, cleaning or repairing fuel storage tanks where there is no ready access to an exit, under conditions requiring a breathing apparatus because all or part of the oxygen in the atmosphere has been displaced by toxic vapors or gas, and failure of the breathing apparatus would result in serious injury or death within the time required to leave the tank.</td>
<td>July 1, 1972.</td>
</tr>
<tr>
<td>5</td>
<td>Firefighting. Participating or assisting in firefighting operations on the immediate fire scene and in direct exposure to the hazards inherent in containing or extinguishing fires.</td>
<td>July 1, 1972.</td>
</tr>
</tbody>
</table>
### Part II.—Payment on Basis of Hours in Pay Status—Continued

<table>
<thead>
<tr>
<th>Differential rate (per cent)</th>
<th>Category for which payable</th>
<th>Effective date</th>
</tr>
</thead>
<tbody>
<tr>
<td>25 High degree</td>
<td>Low degree</td>
<td></td>
</tr>
<tr>
<td>— Fighting forest and range fires on the fireline</td>
<td>— All other firefighting</td>
<td></td>
</tr>
<tr>
<td>8 11. Experimental landing/recovery equipment tests</td>
<td>Participation in tests of experimental or prototype landing and recovery equipment where personnel are required to serve as test subjects in spacecraft being dropped into the sea or laboratory tanks</td>
<td>July 1, 1972.</td>
</tr>
<tr>
<td>8 12. Land impact or pad abort of space vehicle. Actual participation in dearming and safing explosive ordinance, toxic propellant, and high-pressure vessels on vehicles that have land impacted or on vehicles on the launch pad that have reached a point in the countdown where no remote means are available for returning the vehicle to a safe condition</td>
<td>July 1, 1972.</td>
<td></td>
</tr>
<tr>
<td>4 13. Mass explosives and/or incendiary material. Working within a controlled danger area in, on, or around wharves, transfer areas, or temporary holding areas in a transshipment facility when explosives are in the process of being shifted to or from a conveyance</td>
<td>Such an area shall include land and sea areas within which it has been determined that personnel are subject to an unusual degree of exposure or liability to serious injury or death from potential explosive effect</td>
<td>July 1, 1972.</td>
</tr>
<tr>
<td>4 14. Duty aboard aircraft carrier. Duty aboard an aircraft carrier when exposed to hazards connected with aircraft launch and recovery. Examples</td>
<td>Participating in carrier suitability trials aboard aircraft carriers when work is performed on the flight deck during launch, recovery and refueling operations</td>
<td>July 1, 1972.</td>
</tr>
<tr>
<td>— Operating or monitoring camera equipment adjacent to flight deck in the area of maximum hazard during landing sequence while conducting photographic surveys aboard aircraft carriers during periods of heavy aircraft operations</td>
<td>Mar. 4, 1974.</td>
<td></td>
</tr>
<tr>
<td>8 15. Participating in missile liquid propulsion or solid propulsion situations. Participating in research and development, or preoperational test and evaluation situation involving missile liquid or solid propulsion systems where mechanical, or other equipment malfunction, or accidental combination of certain fuels and/or chemicals, or transient voltage and current buildup on or within the system when the system is in a “go” condition on the test stand, or sled, can result in explosion, fire, premature ignition or firing</td>
<td>Examples</td>
<td>Mar. 9, 1975.</td>
</tr>
<tr>
<td>— Test stand or track tests, when adequate protective devices and/or safety measures either do not exist or have been developed but have not practically eliminated the potential for personal injury, under any of the following conditions:</td>
<td>a. Tanks are being pressurized above normal servicing pressure</td>
<td></td>
</tr>
<tr>
<td>b. Assembly, disassembly, or repair of contaminated plumbing containing inhibited red fuming nitric acid and unsymmetrical dimethylhydrazine or other hypergolic fuels is required</td>
<td></td>
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</tr>
<tr>
<td>c. Fueling and defueling</td>
<td>— Hoisting hypergolic liquid fueled systems into, or out of, a test stand, where the working area is confined, and external plumbing is present resulting in a situation where the plumbing may be damaged causing a leak</td>
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<tr>
<td>— Tests on foreign missiles where technical data is questionable or not available</td>
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<tr>
<td>— Manned test firings of small, close support missiles for which safety performance data are not yet available</td>
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<tr>
<td>— Removal of a missile, propulsion system or component thereof from a test stand, fixture, or environmental chamber where there is reason to believe that the item may be unusually hazardous due to damage resulting from the test</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8 16. Asbestos. Working in an area where airborne concentrations of asbestos fibers may expose employees to potential illness or injury and protective devices or safety measures have not practically eliminated the potential for such personal illness or injury</td>
<td>Mar. 9, 1975.</td>
<td></td>
</tr>
</tbody>
</table>
### Windchill Chart in Metric Units

<table>
<thead>
<tr>
<th>Local Temperature (°C)</th>
<th>0</th>
<th>-5</th>
<th>-10</th>
<th>-15</th>
<th>-20</th>
<th>-25</th>
<th>-30</th>
<th>-35</th>
<th>-40</th>
<th>-45</th>
<th>-50</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wind Speed (KPH)</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Calm</strong></td>
<td>0 C</td>
<td>-5</td>
<td>-10</td>
<td>-15</td>
<td>-20</td>
<td>-25</td>
<td>-30</td>
<td>-35</td>
<td>-40</td>
<td>-45</td>
<td>-50</td>
</tr>
<tr>
<td>8</td>
<td>-2</td>
<td>-7</td>
<td>-12</td>
<td>-17</td>
<td>-23</td>
<td>-28</td>
<td>-33</td>
<td>-38</td>
<td>-44</td>
<td>-49</td>
<td>-54</td>
</tr>
<tr>
<td>16</td>
<td>-8</td>
<td>-14</td>
<td>-20</td>
<td>-26</td>
<td>-32</td>
<td>-38</td>
<td>-44</td>
<td>-51</td>
<td>-57</td>
<td>-63</td>
<td>-69</td>
</tr>
<tr>
<td>32</td>
<td>-14</td>
<td>-21</td>
<td>-28</td>
<td>-36</td>
<td>-42</td>
<td>-49</td>
<td>-57</td>
<td>-64</td>
<td>-71</td>
<td>-78</td>
<td>-85</td>
</tr>
<tr>
<td>48</td>
<td>-17</td>
<td>-24</td>
<td>-33</td>
<td>-41</td>
<td>-48</td>
<td>-56</td>
<td>-63</td>
<td>-72</td>
<td>-78</td>
<td>-86</td>
<td>-94</td>
</tr>
<tr>
<td>80</td>
<td>-20</td>
<td>-28</td>
<td>-36</td>
<td>-44</td>
<td>-52</td>
<td>-60</td>
<td>-68</td>
<td>-76</td>
<td>-84</td>
<td>-92</td>
<td>-100</td>
</tr>
</tbody>
</table>

For properly clothed persons:  
- Little danger  
- Considerable danger  
- Very great danger

Danger of freezing of exposed flesh
Subpart F—Job Grading System

§ 532.601 General.

The Office of Personnel Management shall establish a job grading system in accordance with section 5346 of title 5, United States Code. Appropriate instructions to agencies on the application of the job grading system shall be published by the Office of Personnel Management. Agencies are required to grade all jobs subject to this part in accordance with such instructions.

Subpart G—Job Grading Reviews and Appeals

§ 532.701 General.

A prevailing rate employee may at any time appeal the occupational series, grade, or title to which the employee’s job is assigned, but may not appeal under this subpart the standards established for the job, nor other matters such as the accuracy of the job description, the rate of pay, or the propriety of a wage schedule rate. The filing of a job-grading appeal does not negate any other appeal or grievance rights which may be available under applicable law, rule, regulation, or negotiated agreement.

[51 FR 18561, May 21, 1986]

§ 532.703 Agency review.

(a) Each agency shall establish a system processing an employee’s application for review of the correctness of the series, grade or title of the employee’s job.

NOTE: Application for review will be hereafter referred to as an “application”.

(b) In establishing the system required by this subpart, an agency, as a minimum, shall provide that the following requisites be met.
Office of Personnel Management

§ 532.703

(1) The provisions of the system shall be published and the agency’s employees shall be informed where a published copy is available for review.

(2) An application shall be in writing and contain the reasons the employee believes the position is erroneously graded.

(3) An application may be filed at any time. However, when the application involves a downgrading or other job-grading action which resulted in a reduction in grade or loss of pay, in order to be entitled to retroactive corrective action, an employee must request a review under the provisions of this subpart within 15 calendar days of the effective date of the change to lower grade.

(4) An employee may select a representative, and the employee and the representative, when the representative is also employed by the same agency, shall be granted a reasonable time in presenting the application and shall be assured freedom from restraint, interference, coercion, or reprisal in presenting the application.

(5) An employee shall promptly furnish such facts as may be requested by the agency.

(6) An application shall be canceled and the employee so notified in the following circumstances:

(i) On receipt of a written request by the employee;

(ii) Failure of the employee to furnish required information or otherwise fail to proceed with the advancement of his application in a timely manner; however, instead of cancellation for failure by the employee to prosecute, the application may be adjudicated by the agency if the information is sufficient for that purpose; or

(iii) On notice that the employee has left the job, except when the employee would be entitled to the retroactive benefits including benefits allowable after the death of an employee appellant.

(7) The application shall be processed and decided promptly. No more than one level of review may be established within an agency before a final decision is issued, and that level of review, when possible, must be above the level of classification authority which classified the position.

(8) When an employee applies for a review of a downgrading or other job-grading action that resulted in a reduction of pay, and the decision of an agency reverses in whole or in part the downgrading or other job-grading action, the effective date of that decision shall be retroactive to the effective date of the action being reviewed when the initial application to the agency was submitted in accordance with paragraph (b)(3) of this section. However, when the agency decision raises the grade or level of the job above its grade or level immediately preceding the downgrading, retroactivity shall apply only to the extent of restoration to the grade or level immediately preceding the downgrading.

(9) The right to a retroactive effective date is preserved when an agency finds that an employee was not notified of the applicable time limit for review and was not otherwise aware of the limit or that circumstances beyond the employee’s control prevented filing the application within the prescribed time limit.

(10) The effective date of a change in the series, title or grade of a job shall be specified in the agency decision and, unless otherwise required by this subpart, may not be earlier than the date of the decision. However, in no case may it be later than the beginning of the first pay period which begins after the 60th calendar day from the date the application was filed. However, when the agency decision will result in a downgrading or other job-grading action that will reduce the pay of the incumbent of the job, the effective date may not be set earlier than the date on which the decision can be effected in accordance with procedures required by applicable law and regulation. The retroactive reclassification may be based only on duties and responsibilities existing at the time of downgrading or loss of pay and not on duties and responsibilities later assigned.

(11) When an application has been properly filed and the employee dies before the application has been processed, if a favorable decision would entitle the employee to retroactive corrective action, the application will be
§ 532.705 Appeal to the Office of Personnel Management.

(a)(1) An employee may appeal the occupation series, grade or title of the job to the appropriate office of the Office of Personnel Management only (i) after the agency has issued a decision under the system established under § 532.703; and (ii) if the employee files the appeal with the Office of Personnel Management within 15 calendar days after receipt of the decision of the agency.

(2) The Office of Personnel Management may extend this time limit if it is shown that the employee was not notified of the applicable time limit and was not otherwise aware of the limit, or that circumstances beyond the employee's control prevented filing an appeal within the prescribed time limit.

(b) An employee shall make the appeal in writing and shall identify specifically the portions of the decision or job analysis of the agency with which the employee disagrees.

(c) The Office of Personnel Management shall base its decision on the record established in the agency, except that when the Office of Personnel Management investigates or audits the job it may take the results of the investigation or audit into consideration. In the event the Office of Personnel Management audits the job, the employee's representative may not be present.

(d) The Office of Personnel Management shall notify the employee and the agency in writing of its decision. The effective date of a change in the series, title and grade of a job directed by the Office of Personnel Management shall be specified in the decision of the Office of Personnel Management, computed from the date the employee filed the application with the agency, and determined under § 532.703(b)(10). However, when the decision will result in a downgrading or other job-grading action that will reduce the pay of the incumbent of the job, the effective date may not be set earlier than the date on which the decision can be effected in accordance with procedures required by applicable law and regulation.

(e) The appeal of an employee shall be canceled and the employee so notified in the following circumstances:

(1) On receipt of the employee's written request;

(2) On failure to prosecute, when the employee does not furnish requested information and duly proceed with the advancement of the appeal; however, instead of cancellation for failure to prosecute, an appeal may be adjudicated if the information is sufficient for that purpose. The Office of Personnel Management may reopen a canceled appeal on a showing that circumstances beyond the control of the employee prevented the employee from prosecuting the appeal; or

(3) On notice that the employee has left the job, except when entitled to retroactive benefits, including benefits allowable after the death of an appellant.

(f) The Office of Personnel Management may, at its discretion, reopen and reconsider any job-grading decision made by a regional office when requested by an employee or an agency. This authority may be used under circumstances such as the following:

(1) An employee or an agency presents material facts not previously
considered by the regional office involved;

(2) There is room for reasonable doubt as to the appropriateness of a regional office decision; or

(3) The potential impact of a regional office decision on similar jobs under other regional offices is sufficiently significant to make central office review of the decision desirable.

(g) The Director of the Office of Personnel Management may, at his or her discretion, reopen and reconsider any previous decision when the party requesting reopening submits written argument or evidence which tends to establish that:

(1) New and material evidence is available that was not readily available when the previous decision was issued;

(2) The previous decision involves an erroneous interpretation of law or regulation or a misapplication of established policy; or

(3) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Director of the Office of Personnel Management.

(h) A final decision by the Office of Personnel Management constitutes a certificate which is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government.


Subpart H—Payment of Unrestricted Rates for Recruitment or Retention Purposes

§ 532.801 Payment of unrestricted rates for recruitment or retention purposes.

(a) When authorized by specific statutory authority providing for exceptions to pay limitations imposed by statute, the Office of Personnel Management (OPM) may approve exceptions to the pay limitations if OPM determines that such exceptions are necessary to ensure the recruitment or retention of qualified employees.

(b) Requests for payment of unrestricted rates under this subpart shall be submitted by employing agencies' headquarters to the appropriate lead agency. The lead agency shall coordinate each request with other agencies, as necessary, and submit a consolidated request to OPM. The consolidated request shall include any available supporting wage survey data and a formal recommendation by the lead agency to approve or disapprove the request.

(c) Rates authorized under paragraph (a) of this section shall be equal to the regular or special schedule unrestricted (uncapped) rates and may be authorized for use within all or part of a wage area for a designated occupation or occupational specialization and grade.

(d) In approving rates under this subpart, OPM shall consider the factors specified in § 532.251(b) of this part.
§ 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:

<table>
<thead>
<tr>
<th>Code symbol</th>
<th>Academic level of approved training program</th>
<th>Maximums by grade and step</th>
</tr>
</thead>
<tbody>
<tr>
<td>L-A</td>
<td>Below high school graduation</td>
<td>GS-11-1 (minus 3 steps).</td>
</tr>
<tr>
<td>L-1</td>
<td>First year college undergraduate</td>
<td>GS-11-1 (minus 3 steps).</td>
</tr>
<tr>
<td>L-2</td>
<td>Second year college undergraduate</td>
<td>GS-12-1 (minus 3 steps).</td>
</tr>
<tr>
<td>L-3</td>
<td>Third year college undergraduate</td>
<td>GS-12-1 (minus 3 steps).</td>
</tr>
<tr>
<td>L-4</td>
<td>Fourth year college undergraduate</td>
<td>GS-12-1 (minus 3 steps).</td>
</tr>
<tr>
<td>L-5</td>
<td>First year postgraduate predoctoral</td>
<td>GS-11-1 (minus 3 steps).</td>
</tr>
<tr>
<td>L-6</td>
<td>Second year postgraduate predoctoral</td>
<td>GS-11-1 (minus 3 steps).</td>
</tr>
<tr>
<td>L-7</td>
<td>Third year postgraduate predoctoral</td>
<td>GS-11-1 (minus 3 steps).</td>
</tr>
<tr>
<td>L-8</td>
<td>Fourth year postgraduate predoctoral</td>
<td>GS-11-1 (minus 3 steps).</td>
</tr>
<tr>
<td>L-9</td>
<td>Medical or dental internship</td>
<td>GS-10-1 (minus 3 steps).</td>
</tr>
<tr>
<td>L-10</td>
<td>Fifth year postgraduate w/o doctorate</td>
<td>GS-11-1 (minus 3 steps).</td>
</tr>
<tr>
<td>L-11</td>
<td>First year medical or dental residency</td>
<td>GS-11-1 (minus 3 steps).</td>
</tr>
<tr>
<td>L-12</td>
<td>Second year postgraduate (Ph. D.)</td>
<td>GS-12-1 (minus 3 steps).</td>
</tr>
<tr>
<td>L-13</td>
<td>Second year medical or dental residency</td>
<td>GS-12-1 (minus 3 steps).</td>
</tr>
<tr>
<td>L-14</td>
<td>Third year medical or dental residency</td>
<td>GS-12-1 (minus 3 steps).</td>
</tr>
<tr>
<td>L-15</td>
<td>Fourth year medical or dental residency</td>
<td>GS-13-1 (minus 3 steps).</td>
</tr>
<tr>
<td>L-16</td>
<td>Fifth year medical residency</td>
<td>GS-14-1 (minus 3 steps).</td>
</tr>
</tbody>
</table>

1. 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
§ 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.

(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
§ 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.
(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.

§ 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.

§ 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. chapter 45 and §451.104(a)(3) of this chapter.

§ 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

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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

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

Employee means an employee as defined in 5 U.S.C. 5361 and also an individual who is moved from a position which is not under a covered pay schedule to a position which is under a covered pay schedule provided that the individual's employment immediately prior to the move was on other than a temporary or term basis.

Employment on a temporary or term basis means employment under an appointment having a definite time limitation or designated as temporary or term.

Rate of basic pay means, for any pay system, the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay or any kind such as night or environmental differentials in the case of a prevailing rate employee.

Rate schedule means a specific set of rates within a pay schedule.

Reorganization means the planned elimination, addition or redistribution of functions or duties either wholly within an agency or between agencies.

Representative rate means:

(1) The fourth step of the grade in the case of a position under the General Schedule or the individual's rate under the Senior Executive Service or a position subject to the senior-level pay authority under 5 U.S.C. 5376;

(2) The second rate of the grade of a position under a regular prevailing rate schedule established under subchapter IV of chapter 53 of title 5, United States Code, or in the case of a position with a single rate, the single rate of that position; or

(3) The rate designated as representative of the position by the agency responsible for establishing and adjusting the schedule in the case of a position under a schedule different from those covered in paragraph (1) or (2) of this definition.

Temporary promotion means a promotion with a definite time limitation, and one which the individual is informed in advance is temporary and would normally require that the individual return to his or her permanent position at the expiration of that promotion.

Temporary reassignment means a reassignment with a definite time limitation, and one which the individual is informed in advance is temporary and would normally require that the individual return to his or her permanent position at the expiration of that reassignment.

§ 536.103 Coverage and applicability of grade retention.

(a) Grade retention shall apply to an employee who moves to a position in a covered pay schedule which is lower graded than the position held immediately prior to the demotion in the following circumstances:

(1) As a result of reduction-in-force procedures; or

(2) As a result of a reclassification process.

(b) Except as otherwise covered in paragraph (a) of this section, the head of the agency may offer grade retention to eligible employees who are or might be reduced in grade as the result of a reorganization or reclassification decision announced by management in writing. When an employee is offered a position with grade retention in anticipation of a reduction in grade, the agency shall inform the employee in writing that acceptance of the position is not required and that declination of the offer has no effect on the employee's entitlement to grade retention under paragraph (a) of this section if he or she is actually moved to a lower graded position.

(c)(1) An employee who, immediately before being placed in a lower graded position as a result of reduction-in-force procedures, is in a position under a covered pay schedule, is eligible for grade retention only if the employee has served for 52 consecutive weeks or more in a position(s) under a covered pay schedule at a grade(s) higher than the position in which the employee is placed, including service performed by an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, as defined.

in 5 U.S.C. 2105(c), who is moved to a position in the civil service employment system of the Department of Defense or the Coast Guard, respectively, without a break in service of more than 3 days.

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

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


§ 536.104 Coverage and applicability of pay retention.

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

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

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

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

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

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

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

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

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

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

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


§ 536.105 Exclusions.

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

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

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

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

(4) Does not satisfactorily complete the probationary period prescribed by 5 U.S.C. 3321(a)(2), and, as a result, is removed from a supervisory or managerial position; or
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(b) An employee's entitlement to grade or pay retention is not affected by a temporary promotion or temporary reassignment. However, an employee serving under a temporary promotion or temporary reassignment may not retain a grade or rate of basic pay held during the temporary promotion or temporary reassignment.

(c) Grade retention under §536.103(a)(1) or (b) shall not apply to a member of the Senior Executive Service or an individual in a position subject to the senior-level pay authority in 5 U.S.C. 5376 who is placed in a position in a covered pay schedule.

§ 536.203 Determination of retained grade.

(a) An employee who is in a position under a covered pay schedule immediately prior to the action which gives entitlement to grade retention shall retain the grade held immediately prior to the action.

(b) An employee who is in a position not under a covered pay schedule immediately prior to the action which gives entitlement to grade retention shall retain:

(1) The lowest grade of the covered pay schedule in which placed which has a representative rate equal to or higher than the representative rate of the grade held immediately prior to that placement; or

(2) The highest grade of the covered pay schedule in which placed, if there is no grade in the covered pay schedule with a representative rate equal to or higher than the representative rate held immediately prior to that placement.

§ 536.204 Determination of applicable rate schedule.

(a) When an employee entitled to grade retention is placed in a position in a different geographical area, the rate schedule which applies to the employee is the rate schedule in the new geographical area.

(b) When an employee entitled to grade retention is placed in a position in, or his or her position is changed to, a different occupational series, the rate
schedule which applies to the individual is the rate schedule for the new occupational series.

§ 536.205 Determination of rate of basic pay.

(a) When an employee becomes entitled to grade retention, or moves to another position during a period of grade retention under conditions which permit continuation of the grade retention entitlement, the employee is entitled to the greatest of:

(1) His or her rate of basic pay before the movement, or
(2) The rate of basic pay from the applicable rate schedule for the grade and step (except as provided by §531.204(d)(4) of this chapter) held by the employee before the movement, or
(3) The lowest rate of basic pay from the applicable rate schedule for the retained grade which equals or exceeds the employee's rate of basic pay before the movement.

(b) (1) When an employee becomes entitled to pay retention, or moves to another position while receiving pay retention, the employee's rate of basic pay immediately prior to eligibility or movement shall be compared with the range of rates of basic pay for the position to be occupied by the employee upon this eligibility or movement.

(2) The employee is entitled to the lowest rate of basic pay in the position to be occupied which equals or exceeds the employee's rate of basic pay immediately prior to the movement. If the rate of basic pay can be accommodated in the range of rates for the latter position, pay retention does not apply.

(3) If the employee's rate of basic pay immediately prior to the pay retention exceeds the maximum rate of the position to be occupied when he or she becomes entitled to pay retention, the employee is entitled to the lower of:

(i) The rate of basic pay payable to the employee immediately before the reduction in pay; or
(ii) 150 percent of the maximum rate of basic pay payable for the new grade.

(c) When an increase in the scheduled rates of the grade of the employee's position occurs while the employee is under pay retention, the employee is entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the grade of the employee's current position.

(d) When, as a result of an increase in the scheduled rate(s) of the grade of the employee's position, an employee's retained rate of basic pay becomes equal to or lower than the maximum rate of that grade, the employee is entitled to the maximum rate of that grade and pay retention ceases.

(e) An employee who is serving on a temporary promotion at the time he or she becomes entitled to pay retention is entitled to retain the rate of basic pay which he or she would have been receiving at that time had the temporary promotion not occurred.

(f) Notwithstanding §536.204(a)(1) of this part, pay retention shall continue to apply to an employee serving under an interim appointment made under §772.102 of this chapter if the employee's pay was retained under this part in the appointment immediately preceding the interim appointment.

(g) When an employee's entitlement to grade or pay retention terminates, the employee's rate of basic pay shall be set in accordance with the provisions of parts 531 and 532 of this title unless:

(1) Grade retention is being terminated as a result of the expiration of the 2-year retention period; or
(2) The employee is moved to a grade equal to or greater than the retained grade; or
(3) The employee is entitled to a higher rate of basic pay under paragraph (b) or (d) of this section.


§ 536.206 Criteria for a "reasonable offer".

For the purposes of this part, an offer of a position, in order to be considered a reasonable one, must fulfill the following conditions:

(1) The offer must be in writing, and must include an official position description of the offered position; and
(2) The offer must inform the employee that an entitlement to grade or pay retention will be terminated if the offer is declined and that the employee...
may appeal the reasonableness of the offer as provided in §536.302; and

(3) The offered position must be of tenure equal to or greater than that of the position creating the grade or pay retention entitlement; and

(4) The offered position must be in an agency, as defined in 5 U.S.C. 5102, although not necessarily in the same agency in which the employee is serving at the time of the offer; and

(5) The offered position must be full-time, unless the employee's position immediately before the change creating entitlement to grade or pay retention was less than full-time, in which case the offered position must have a work schedule of no less time than that of the position held before the change; and

(6) The offered position must be in the same commuting area as the employee's position immediately before the offer, unless the employee is subject to a mobility agreement or a published agency policy which requires employee mobility.

§536.207 Loss of eligibility for grade retention.

(a) Eligibility for grade retention as a result of entitlement under §536.103(a) of this part ceases if any of the following conditions occurs at any time after the employee receives written notice of the reduction in grade action, but before the commencement of the 2-year period of grade retention:

1) The employee has a break in service of 1 workday or more; or

2) The employee is demoted for personal cause or at the employee's request; or

3) The employee is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

4) The employee elects in writing to terminate the benefits of grade retention.

(b) Eligibility for grade retention as a result of entitlement under §536.103(b) also terminates if any of the conditions listed in §536.207(b) occur after the commencement of the 2-year period of grade retention.

(c) The effective date of termination of grade retention benefits is:

1) The day before placement if the termination is the result of the employee's placement in another position; or

2) At the end of the last day of the pay period which the employee:
   (i) Declines a reasonable offer; or
   (ii) Elects to waive grade retention benefits; or
   (iii) Fails to enroll in, or comply with reasonable written requirements established to assure full consideration under, a program providing priority consideration for placement.

(d) Grade retention terminates on the day before the first day of the first pay period beginning on or after April 23, 1991 in the case of an employee who, on that date, becomes subject to the senior-level pay system established under 5 U.S.C. 5376 and subpart E of part 534 of this chapter.

§ 536.209 Loss of eligibility for, or termination of, pay retention.

(a) Eligibility for pay retention, or actual retention of pay, ceases if any of the following conditions occurs at any time after the employee had received written notification that his or her pay is to be reduced:

1. The employee has a break in service of 1 workday or more; or
2. The employee is entitled to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under pay retention; or
3. The employee is demoted for personal cause or at the employee's request.

(b) The effective date of termination of pay retention benefits is:

1. The day before placement or conversion if the termination is the result of the employee's placement in another position or conversion to the senior-level pay system established under 5 U.S.C. 5376 and subpart E of part 534 of this chapter.
2. The end of the last day of the pay period in which the employee declines a reasonable offer.


Subpart C—Miscellaneous Provisions

§ 536.301 Placement and classification plans.

(a) Agencies which employ individuals subject to this part are required to establish in writing placement and classification plans.

(b) The placement and classification plans must commit the agency to:

1. Identify and correct classification errors; and
2. Correct position management problems; and
3. Carry out specific planned efforts to place employees subject to this part; and
4. Pursue placement efforts that do not adversely affect affirmative action goals.

§ 536.302 Appeal of termination of benefits because of reasonable offer.

(a) Except as provided for in paragraph (e) of this section, an employee whose grade or pay retention benefits are terminated on the grounds the employee declined a reasonable offer of a position the grade or pay of which is equal to or greater than his or her retained grade or pay may appeal the termination to the Office of Personnel Management.

(b) An employee who appeals under this section shall file the appeal in writing with the Office of Personnel Management not later than 20 calendar days after being notified that his or her grade of pay retention benefits have been terminated, and shall state in the appeal the reasons why the employee believes the offer of a position was not a reasonable offer.

(c) The Office of Personnel Management may conduct any investigation or hearing it determines necessary to ascertain the facts of the case.

(d) If a decision by the Office of Personnel Management on an appeal under this section requires corrective action by an agency, including the retroactive or prospective restoration of grade or pay retention benefits, the agency shall take that corrective action.

(e) Termination of benefits based on a declination of a reasonable offer by an employee in an exclusively recognized bargaining unit may be reviewed under the negotiated grievance and arbitration procedures in accordance with chapter 71 of title 5, United States Code, and the terms of any applicable collective bargaining agreement. An employee in an exclusively recognized bargaining unit may not appeal a termination of benefits to the Office of Personnel Management if the grievance procedure of the agreement by which he or she is covered provides for this review.

(f) Decisions issued by the Office of Personnel Management shall be considered final decisions. OPM may, at its discretion, reconsider an original appellate decision when new and material information is presented, in writing, by the employee or the agency, which establishes a reasonable doubt as to the appropriateness of the original decision. The request must show that the
information was not readily available when the decision was issued. A request for reconsideration of an original appeal decision must be submitted to OPM within 30 calendar days of the date of the original decision.


§ 536.303 Documentation.

The application of the provisions of this part shall be documented in writing as a permanent part of the employee's Official Personnel Folder. As a minimum this documentation will include a copy of the letter described in § 536.304.

§ 536.304 Issuance of employee letters.

When an employee is entitled to grade and/or pay retention, the employing agency shall give to the employee, with a copy of the Notification of Personnel Action (SF-50) documenting entitlement to grade and/or pay retention, a letter describing the circumstances warranting grade and/or pay retention, and the nature of that entitlement.

§ 536.305-536.306 [Reserved]

§ 536.307 Availability of information.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the appeal;

(3) The results of the appeal (i.e., proper title, pay plan, series, and grade);

(4) The classification requested (i.e., title, pay plan, series, and grade); and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(b) The Office will disclose to the parties concerned, the information contained in an appeal file in proceedings under this part, except when the disclosure would violate the proscription against the disclosure of medical information in § 207.204(c) of this chapter. For the purposes of this section, “the parties concerned” means the Government employee or former Government employee involved in the proceedings, his or her representative designated in writing, and the representative of the agency or the Office involved in the proceeding.


§ 536.308 Applicability of retained grade.

(a) Except as provided in paragraph (b) of this section, when an employee is entitled to grade retention, the retained grade shall be treated as the employee’s grade for all purposes, including pay and pay administration, retirement, life insurance, and eligibility for training.

(b) The retained grade may not be used—

(1) In any reduction-in-force procedure;

(2) To determine whether an employee has been demoted for the purpose of terminating grade or pay retention;

(3) To determine whether an employee retains status as a GM employee (as defined in § 531.202 of this chapter); or

(4) To determine whether an employee is exempt or nonexempt from the Fair Labor Standards Act of 1938 (as amended).


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(GENERAL)

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SOURCE: 33 FR 12458, Sept. 4, 1968, unless otherwise noted.

Subpart A—Premium Pay

AUTHORITY: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5545b, 5548, 5553, and 6101(c); E.O. 12748, 3 CFR, 1992 Comp., p. 316.

GENERAL PROVISIONS

§ 550.101 Coverage and exemptions.

(a) Employees to whom this subpart applies. (1) This subpart applies to each employee in or under an Executive agency, as defined in 5 U.S.C. 105, except those named in paragraphs (b) and (c) of this section. (2) The sections in this subpart incorporating special provisions for certain types of work (§§ 550.141 to 550.164, inclusive) apply also to each employee of the judicial branch, legislative branch, and the government of the District of Columbia who is subject to subchapter
§ §550.101

V of chapter 55 of title 5, United States Code.

(b) Employees to whom this subpart does not apply. This subpart does not apply to:

(1) An elected official;
(2) The head of a department;
(3) [Reserved]
(4) An employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under subchapter IV of chapter 53 of title 5, United States Code, or by a wage board or similar administrative authority serving the same purpose, except that §550.113(d) is applicable to such an employee whose rate of basic pay is fixed on an annual or monthly basis;
(5) An employee outside the continental United States or in Alaska who is paid in accordance with local prevailing wage rates for the area in which employed;
(6) An employee of the Tennessee Valley Authority;
(7) An employee of the Central Intelligence Agency (sec. 10, 63 Stat. 212, as amended; 50 U.S.C. 403j);
(8) A seaman to whom section 1(a) of the act of March 24, 1943 (57 Stat. 45; 50 U.S.C. App. 1291(a)) applies;
(9) A member of the United States Park Police or the United States Secret Service Uniformed Division, except for the purpose of determining hours of work in excess of 8 hours in a day, §§550.111, 550.113, and 550.114 of this subpart do not apply to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938 and part 551 of this chapter.
(10) An officer or member of the crew of a vessel, whose pay is fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry (30 Comp. Gen. 158);
(11) A civilian keeper of a lighthouse, or a civilian employed on a lightship or another vessel of the Coast Guard (14 U.S.C. 432(f));
(12) A physician, dentist, nurse, or any other employee in the Department of Medicine and Surgery, Veterans Administration, whose pay is fixed under chapter 73 of title 38, United States Code;
(13) A student-employee as defined by section 5351 of title 5, United States Code;
(14) An employee of the Environmental Science Services Administration engaged in the conduct of meteorological investigations in the Arctic region (62 Stat. 286; 15 U.S.C. 327);
(15) An employee of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives;
(16) A “teacher” or an individual holding a “teaching position” as defined by section 901 of title 20, United States Code;
(17) A Foreign Service officer or a member of the Senior Foreign Service; or
(18) A member of the Senior Executive Service.

(c) Employees to whom §§550.111, 550.113, and 550.114 of this subpart do not apply. Except for the purpose of determining hours of work in excess of 8 hours in a day, §§550.111, 550.113, and 550.114 of this subpart do not apply to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938 and part 551 of this chapter.

(d) Services to which this subpart does not apply. This subpart does not apply to overtime, night, or holiday services for which additional pay is provided by the act of:

(1) February 13, 1911, as amended (36 Stat. 899, as amended; 19 U.S.C. 261, 267), involving inspectors, storekeepers, weighers, and other customs officers and employees;
(3) June 17, 1930, as amended (46 Stat. 715, as amended; 19 U.S.C. 1450, 1451, 1452), involving customs officers and employees;
(4) March 2, 1931 (46 Stat. 1467; 8 U.S.C. 1353a), involving inspectors and employees, Immigration and Naturalization Service;
§ 550.103 Definitions.

In this subpart:
Administrative workweek means a period of 7 consecutive calendar days designated in advance by the head of a department under section 6101(a) of title 5, United States Code.

Agency means (1) a department as defined in paragraph (a) of this section, (2) the government of the District of Columbia, and (3) a legislative or judicial agency which has positions that are subject to subchapter V of chapter 55 of title 5, United States Code, and this subpart.

Law enforcement officer means an employee who—
(1) Is a law enforcement officer within the meaning of section 8331(20) or section 8401(17) of title 5, United States Code;
(2) In the case of an employee who holds a secondary position, as defined in paragraph (a) of this section, (2) the government of the District of Columbia, and (3) a legislative or judicial agency which has positions that are subject to subchapter V of chapter 55 of title 5, United States Code.

Basic workweek, for full-time employees, means the 40-hour workweek established in accordance with § 610.111 of this chapter.

Criminal investigator means a law enforcement officer as defined in this section (other than a special agent in the Diplomatic Security Service) who, based on OPM standards, is properly classified under the GS-1811 or GS-1812 series in the General Schedule classification system, or who would be so classified if covered under that system.

Department means an executive agency and a military department as defined by sections 105 and 102 of title 5, United States Code.

Emergency means a temporary condition posing a direct threat to human life or property, including a forest wildfire emergency.

Employee means an employee to whom this subpart applies.

Head of a department means the head of a department and, except for the purpose of § 550.101(b)(2), an official who has been delegated authority to act for the head of a department in the matter concerned.

Holiday work means nonovertime work performed by an employee during a regularly scheduled daily tour of duty on a holiday designated in accordance with § 610.202 of this chapter.

Irregular or occasional overtime work means overtime work that is not part of an employee’s regularly scheduled administrative workweek.

Law enforcement officer means an employee who—
(1) Is a law enforcement officer within the meaning of section 8331(20) or section 8401(17) of title 5, United States Code;
(2) In the case of an employee who holds a secondary position, as defined in 5 CFR 831.902, and is subject to the Civil Service Retirement System, but who does not qualify to be considered a law enforcement officer within the meaning of section 8331(20), would so qualify if such employee had transferred directly to such position after serving as a law enforcement officer within the meaning of such section;
(3) In the case of an employee who holds a secondary position, as defined in 5 CFR 842.802, and is subject to the Federal Employees Retirement System, but who does not qualify to be considered a law enforcement officer within the meaning of section 8401(17), would so qualify if such employee had transferred directly to such position after performing duties described in section 8401(17) (A) and (B) for at least 3 years; and
(4) In the case of an employee who is not subject to either the Civil Service Retirement System or the Federal Employees Retirement System—
(i) Holds a position that the Office of Personnel Management, on its own motion or at the request of the head of an
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agency or an official who has been delegated authority to act for the head of the agency in this matter, determines would satisfy paragraph (1), (2), or (3) of this definition if the employee were subject to the Civil Service Retirement System or the Federal Employees Retirement System; or

(ii) Is a special agent in the Diplomatic Security Service.

Nightwork has the meaning given that term in § 550.121, and includes any nightwork performed by an employee as part of his or her regularly scheduled administrative workweek.

Overtime work has the meaning given that term in § 550.111 and includes irregular or occasional overtime work and regular overtime work.

Performing work in connection with an emergency means performing work that is directly related to resolving or coping with an emergency or its immediate aftermath.

Premium pay means additional pay authorized by subchapter V of chapter 55 of title 5, United States Code, and this subpart for overtime, night, holiday, or Sunday work, and for standby duty, administratively uncontrollable overtime work, or availability duty.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, including any applicable special pay adjustment for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-500), locality-based comparability payment under 5 U.S.C. 5304, or continued rate adjustment under subpart G of part 531 of this chapter, before any deductions and exclusive of additional pay of any other kind.

Regular overtime work means overtime work that is part of an employee's regularly scheduled administrative workweek.

Regularly scheduled administrative workweek, for a full-time employee, means the period within an administrative workweek, established in accordance with § 610.111 of this chapter, within which the employee is regularly scheduled to work. For a part-time employee, it means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.

Regularly scheduled work means work that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with § 610.111, excluding any such work to which availability pay under § 550.181 applies.

Sunday work means nonovertime work performed by a full-time employee during a regularly scheduled daily tour of duty when any part of that daily tour of duty is on a Sunday. For any such tour of duty, not more than 8 hours of work are Sunday work, unless the employee is on a compressed work schedule, in which case the entire regularly scheduled daily tour of duty constitutes Sunday work.

Tour of duty means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.

§ 550.105 Biweekly maximum earnings limitation.

(a) Except as provided in paragraph (b) of this section, an employee may be paid premium pay under this subpart only to the extent that the payment does not cause the total of his or her basic pay and premium pay for any pay period to exceed the maximum rate for GS-15, including—

(1) A locality-based comparability payment under 5 U.S.C. 5304; and

(2) A special salary rate established under 5 U.S.C. 5305.

(b) This section does not apply to—

(1) Any pay period during which an employee has been determined to be performing work in connection with an emergency under § 550.106(a);

(2) An employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under 5 U.S.C. 5546a; or
§ 550.106 Annual maximum earnings limitation for work in connection with an emergency.

(a) For any pay period in which the head of an agency, his or her designee, or the Office of Personnel Management on its own motion determines that an emergency exists, an employee shall be paid premium pay under the annual limitation described in paragraph (c) of this section, instead of under the bi-weekly limitation described in § 550.105(a) if the employee has been determined by the head of the employing agency, or his or her designee, to be performing work in connection with the emergency.

(b) The head of an agency, or his or her designee, shall make the determination under paragraph (a) of this section as soon as practicable after the emergency begins. Entitlement to premium pay under the annual limitation shall be effective on the first day of the pay period in which the emergency began.

(c) In any calendar year during which an employee has been determined to be performing work in connection with an emergency, he or she shall be paid premium pay under subpart V of this part to the extent that the payment does not cause the total of his or her basic pay and premium pay for the calendar year to exceed the maximum rate for GS-15 in effect on the last day of the calendar year, including—

1. A locality-based comparability payment under 5 U.S.C. 5304; and

(d) This section does not apply to—

1. An employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under 5 U.S.C. 5546a; or
2. A law enforcement officer.

§ 550.107 Special maximum earnings limitation for law enforcement officers.

A law enforcement officer may be paid premium pay under this subpart only to the extent that the payment does not cause the total of his or her basic pay and premium pay for any period to exceed the lesser of—

(a) 150 percent of the minimum rate for GS-15, including a locality-based comparability payment under 5 U.S.C. 5304 or special law enforcement adjustment under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509) and any special salary rate established under 5 U.S.C. 5305, rounded to the nearest whole cent, counting one-half cent and over as a whole cent; or

(b) The rate payable for level V of the Executive Schedule.

§ 550.111 Authorization of overtime pay.

(a) Except as provided in paragraphs (d), (f), and (g) of this section, overtime work means work in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek that is—

1. Officially ordered or approved; and
2. Performed by an employee. Hours of work in excess of 8 in a day are not included in computing hours of work in excess of 40 hours in an administrative workweek.

(b) Except as otherwise provided in this subpart, a department shall pay for overtime work at the rates provided in § 550.113.

(c) Overtime work in excess of any included in a regularly scheduled administrative workweek may be ordered or approved only in writing by an officer or employee to whom this authority has been specifically delegated.

(d) For an employee for whom the first 40 hours of duty in an administrative workweek is his basic workweek under § 610.111(b) of this chapter, overtime work means work in excess of 40 hours in an administrative workweek that is:
§ 550.112 Computation of overtime work.

The computation of the amount of overtime work of an employee is subject to the following conditions:

(a) Time spent in principal activities. Principal activities are the activities that an employee is employed to perform. They are the activities that an employee performs during his or her regularly scheduled administrative workweek (including regular overtime work) and activities performed by an employee during periods of irregular or occasional overtime work authorized under § 550.111. Overtime work in principal activities shall be credited as follows:

(1) An employee shall be compensated for every minute of regular overtime work.

(2) A quarter of an hour shall be the largest fraction of an hour used for crediting irregular or occasional overtime work under this subpart. When irregular or occasional overtime work is performed in other than the full fraction, odd minutes shall be rounded up or rounded down to the nearest full fraction of an hour used to credit overtime work.

(b) Time spent in preshift or postshift activities. A preshift activity is a preparatory activity that an employee performs prior to the commencement of his or her principal activities, and a postshift activity is a concluding activity that an employee performs after the completion of his or her principal activities. Such activities are not principal activities as defined in paragraph (a) of this section.

(1) If the head of a department reasonably determines that a preshift or postshift activity is closely related to an employee's principal activities, and is indispensable to the performance of the principal activities, and that the total time spent in that activity is more than 10 minutes per daily tour of duty, he or she shall credit all of the

pay computations, in excess of 53 hours in an administrative workweek.
time spent in that activity, including the 10 minutes, as hours of work.

(ii) If the time spent in a preshift or postshift activity is compensable as hours of work, the head of the department shall schedule the time period for the employee to perform that activity. An employee shall be credited with the actual time spent in that activity during the time period scheduled by the head of the department. In no case shall the time credited for the performance of an activity exceed the time scheduled by the head of the department. If the time period scheduled by the head of the department for the performance of a pereshift or postshift activity is outside the employee’s daily tour of duty, the employee shall be credited with the time spent performing that activity in accordance with paragraph (a)(2) of this section.

(2) A preshift or postshift activity that is not closely related to the performance of the principal activities is considered a preliminary or postliminary activity. Time spent in preliminary or postliminary activities is excluded from hours of work and is not compensable, even if it occurs between periods of activity that are compensable as hours of work.

(c) Leave with pay. An employee’s absence from duty on authorized leave with pay under subchapter I of chapter 61 of title 5, United States Code, during the time when he would otherwise have been required to be on duty during a basic workweek (including authorized absence on a legal holiday, on a non-workday established by Executive or administrative order, and on compensatory time off as provided in §550.114) is deemed employment and does not reduce the amount of overtime pay to which the employee is entitled during an administrative workweek. Leave of absence with pay under subchapter I of chapter 61 of title 5, United States Code, is charged only for an absence that occurs during a basic workweek.

(d) Leave without pay. (1) For a period of leave without pay in an employee’s basic workweek, an equal period of service performed outside the basic workweek, but in the same administrative workweek, shall be substituted and paid for at the rate applicable to his basic workweek before any remaining period of service may be paid for at the overtime rate on the basis of exceeding 40 hours in a workweek.

(2) For a period of leave without pay in an employee’s daily tour of duty, an equal period of service performed outside the daily tour, but in the same workday, shall be substituted and paid for at the rate applicable to his daily tour of duty before any remaining period of service may be paid for at the overtime rate on the basis of exceeding 8 hours in a workday.

(e) Absence during overtime periods. Except as provided by paragraph (a) of this section, as expressly authorized by statute, or to the extent authorized while the employee is in a travel status, a period is counted as overtime work only when the employee actually performs work during the period or is taking compensatory time off as provided in §550.114.

(f) Night, Sunday, or holiday work. Hours of night, Sunday, or holiday work are included in determining for overtime pay purposes the total number of hours of work in an administrative workweek.

(g) Time in travel status. Time in travel status away from the official duty station of an employee is deemed employment only when:

(1) It is within his regularly scheduled administrative workweek, including regular overtime work; or

(2) The travel—

(i) Involves the performance of actual work while traveling;

(ii) Is incident to travel that involves the performance of work while traveling;

(iii) Is carried out under such arduous and unusual conditions that the travel is inseparable from work; or

(iv) Results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of the employee to his or her official-duty station.

(h) Call-back overtime work. Irregular or occasional overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment, is deemed at least 2 hours in duration for the purpose of premium
§ 550.113 Computation of overtime pay.

(a) For each employee whose rate of basic pay does not exceed the minimum rate for GS–10 (including any applicable special rate of pay for law enforcement officers or special pay adjustment for law enforcement officers under section 403 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law), the overtime hourly rate is 1 1/2 times the hourly rate of basic pay.

(b) For each employee whose rate of basic pay exceeds the minimum rate for GS–10 (as determined under paragraph (a) of this section), the overtime hourly rate is 1 1/2 times the hourly rate of basic pay at the minimum rate for GS–10 (as determined under paragraph (a) of this section), except as provided in 5 U.S.C. 5542(a)(3) and (4).

(c) An employee is paid for overtime work performed on a Sunday or a holiday at the same rate as for overtime work performed on another day.

(d) An employee whose rate of basic pay is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by a wage board or similar administrative authority serving the same purpose is entitled to overtime pay in accordance with the provisions of section 5544 of title 5, United States Code. The rate of pay for each hour of overtime work of such an employee is computed as follows:

1. If the rate of basic pay of the employee is fixed on an annual basis, divide the rate of basic pay by 2,087 and multiply the quotient by one and one-half; and

2. If the rate of basic pay of the employee is fixed on a monthly basis, multiply the rate of basic pay by 12 to derive an annual rate of basic pay, divide the annual rate of basic pay by 2,087, and multiply the quotient by one and one-half.

Rates are computed in full cents, counting a fraction of a cent as the next higher cent.

(e)(1) For firefighters compensated under subpart M of this part, the overtime hourly rate for all overtime hours is 1 1/2 times the firefighter's hourly rate of basic pay under §550.1303(a) or (b)(2), as applicable, except as provided in paragraph (e)(2) of this section.

(e)(2) For firefighters compensated under subpart M of this part who are exempt from the overtime provisions of the Fair Labor Standards Act and whose hourly rate of basic pay under §550.1303(a) or (b)(2), as applicable, exceeds the applicable minimum hourly rate of basic pay for GS–10 (as computed under paragraph (a) of this section by dividing the annual rate of basic pay by 2087 hours), the overtime hourly rate is equal to the greater of—

1. One and one-half times the applicable minimum hourly rate of basic

2. One and one-half times the employee's hourly rate of basic pay.
§ 550.122 Computation of night pay differential.

(a) Absence on holidays or in travel status. An employee is entitled to a night pay differential for a period when he is excused from nightwork on a holiday or other nonworkday and for night hours of his tour of duty while he is in an official travel status, whether performing actual duty or not.

(b) Absence on leave. An employee is entitled to a night pay differential for a period of paid leave only when the total amount of that leave in a pay period, including both night and day hours, is less than 8 hours.

(c) Relation to overtime. Sunday, and holiday pay. Night pay differential is in...
§ 550.131  

addition to overtime, Sunday, or holiday pay payable under this subpart and it is not included in the rate of basic pay used to compute the overtime, Sunday, or holiday pay.

(d) Temporary assignment to a different daily tour of duty. An employee is entitled to a night pay differential when he or she is temporarily assigned during the administrative workweek to a daily tour of duty that includes nightwork. This temporary change in a daily tour of duty within the employee's regularly scheduled administrative workweek is distinguished from a period of irregular or occasional overtime work in addition to the employee's regularly scheduled administrative workweek.


PAY FOR HOLIDAY WORK

§ 550.131 Authorization of pay for holiday work.

(a) Except as otherwise provided in this subpart, an employee who performs holiday work is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to his or her rate of basic pay for that holiday work that is not in excess of 8 hours.

(b) An employee is entitled to pay for overtime work on a holiday at the same rate as for overtime work on other days.

(c) An employee who is assigned to duty on a holiday is entitled to pay for at least 2 hours of holiday work.


§ 550.132 Relation to overtime, night, and Sunday pay.

(a) Premium pay for holiday work is in addition to overtime pay or night pay differential, or premium pay for Sunday work payable under this subpart and is not included in the rate of basic pay used to compute the overtime pay or night pay differential or premium pay for Sunday work.

(b) Notwithstanding premium pay for holiday work, the number of hours of holiday work are included in determining for overtime pay purposes the total number of hours of work performed in the administrative workweek in which the holiday occurs.


§ 550.141 Authorization of premium pay on an annual basis.

An agency may pay premium pay on an annual basis, instead of the premium pay prescribed in this subpart for regularly scheduled overtime, night, holiday, and Sunday work, to an employee in a position requiring him or her regularly to remain at or within the confines of, his or her station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work. Premium pay under this section is determined as an appropriate percentage, not in excess of 25 percent, of that part of the employee's rate of basic pay which does not exceed the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under 5 U.S.C. 5304 or special rate of pay under 5 U.S.C. 5305 or similar provision of law).


§ 550.142 General restrictions.

An agency may pay premium pay under §550.141 only if that premium pay, over a period appropriate to reflect the full cycle of the employee's duties and the full range of conditions in his position, would be:

(a) More than the premium pay which would otherwise be payable under this subpart for the hours of actual work customarily required in his position, excluding standby time during which he performs no work; and

(b) Less than the premium pay which would otherwise be payable under this subpart for the hours of duty required in his position, including standby time during which he performs no work.
§ 550.143 Bases for determining positions for which premium pay under § 550.141 is authorized.

(a) The requirement for the type of position referred to in § 550.141 that an employee regularly remain at, or within the confines of, his station must meet all the following conditions:

(1) The requirement must be definite and the employee must be officially ordered to remain at his station. The employee's remaining at his station must not be merely voluntary, desirable, or a result of geographic isolation, or solely because the employee lives on the ground.

(2) The hours during which the requirement is operative must be included in the employee's tour of duty. This tour of duty must be established on a regularly recurring basis over a substantial period of time, generally at least a few months. The requirement must not be occasional, irregular, or for a brief period.

(3) The requirement must be associated with the regularly assigned duties of the employee's job, either as a continuation of his regular work which includes standby time, or as a requirement to stand by at his post to perform his regularly assigned duties if the necessity arises.

(b) The words “at, or within the confines of his station”, in § 550.141 mean one of the following:

(1) At an employee's regular duty station.

(2) In quarters provided by an agency, which are not the employee's ordinary living quarters, and which are specifically provided for use of personnel required to stand by in readiness to perform actual work when the need arises or when called.

(3) In an employee's living quarters, when designated by the agency as his duty station and when his whereabouts is narrowly limited and his activities are substantially restricted. This condition exists only during periods when an employee is required to remain at his quarters and is required to hold himself in a state of readiness to answer calls for his services. This limitation on an employee's whereabouts and activities is distinguished from the limitation placed on an employee who is subject to call outside his tour of duty but may leave his quarters provided he arranges for someone else to respond to calls or leaves a telephone number by which he can be reached should his services be required.

(c) The words “longer than ordinary periods of duty” in § 550.141 mean more than 40 hours a week.

(d) The words “a substantial part of which consists of remaining in a standby status rather than performing work” in § 550.141 refer to the entire tour of duty. This requirement is met:

(1) When a substantial part of the entire tour of duty, at least 25 percent, is spent in a standby status which occurs throughout the entire tour;

(2) If certain hours of the tour of duty are regularly devoted to actual work and others are spent in a standby status, that part of the tour of duty devoted to standing by is at least 25 percent of the entire tour of duty; or

(3) When an employee has a basic workweek requiring full-time performance of actual work and is required, in addition, to perform standby duty on certain nights, or to perform standby duty on certain days not included in his basic workweek.

(e) An employee is in a standby status, as referred to in § 550.141, only at times when he is not required to perform actual work and is free to eat, sleep, read, listen to the radio, or engage in other similar pursuits. An employee is performing actual work, rather than being in a standby status, when his full attention is devoted to his work, even though the nature of his work does not require constant activity (for example, a guard on duty at his post and a technician continuously observing instruments are engaged in the actual work of their positions). Actual work includes both work performed during regular work periods and work performed when called out during periods ordinarily spent in a standby status.

§ 550.144 Rates of premium pay payable under § 550.141.

(a) An agency may pay the premium pay on an annual basis referred to in § 550.141 to an employee who meets the requirements of that section, at one of the following percentages of that part of the employee's rate of basic pay.
§ 550.151 Authorization of premium pay on an annual basis.

An agency may pay premium pay on an annual basis, instead of other premium pay prescribed in this subpart (except premium pay for regular overtime work, and work at night, on Sundays, and on holidays), to an employee in a position in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. Premium pay under this section is determined as an appropriate percentage, not less

adding (i) 2½ percent to the rate when the employee is required to perform Sunday work on an average of 20 to 40 Sundays over a year's period or (ii) 5 percent to the rate when the employee is required to perform Sunday work on an average of 41 or more Sundays over a year's period but the rate thus increased may not exceed 25 percent.

(b) If an employee is eligible for premium pay on an annual basis under §550.141, but none of the percentages in paragraph (a) of this section is applicable, or unusual conditions are present which seem to make the applicable rate unsuitable, the agency may propose a rate of premium pay on an annual basis for OPM approval. The proposal shall include full information bearing on the employee's tour of duty; the number of hours of actual work required; and how it is distributed over the tour of duty; the number of hours in a standby status required and the extent to which the employee's whereabouts and activities are restricted during standby periods; the extent to which the assignment is made more onerous by night, holiday, or Sunday duty or by hours of duty beyond 8 in a day or 40 in a week; and any other pertinent conditions.

than 10 percent nor more than 25 percent, of the employee's rate of basic pay (as defined in § 550.103).

§ 550.153 Bases for determining positions for which premium pay under § 550.151 is authorized.

(a) The requirement in § 550.151 that a position be one in which the hours of duty cannot be controlled administratively is inherent in the nature of such a position. A typical example of a position which meets this requirement is that of an investigator of criminal activities whose hours of duty are governed by what criminals do and when they do it. He is often required to perform such duties as shadowing suspects, working incognito among those under suspicion, searching for evidence, meeting informers, making arrests, and interviewing persons having knowledge of criminal or alleged criminal activities. His hours on duty and place of work depend on the behavior of the criminals or suspected criminals and cannot be controlled administratively. In such a situation, the hours of duty cannot be controlled by such administrative devices as hiring additional personnel; rescheduling the hours of duty (which can be done when, for example, a type of work occurs primarily at certain times of the day); or granting compensatory time off duty to offset overtime hours required.

(b) In order to satisfactorily discharge the duties of a position referred to in § 550.151, an employee is required to perform substantial amounts of irregular or occasional overtime work. In regard to this requirement:

(1) A substantial amount of irregular or occasional overtime work means an average of at least 3 hours a week of that overtime work.

(2) The irregular or occasional overtime work is a continual requirement, generally averaging more than once a week.

(3) There must be a definite basis for anticipating that the irregular or occasional overtime work will continue over an appropriate period with a duration and frequency sufficient to meet the minimum requirements under paragraphs (b)(1) and (2) of this section.

(c) The words in § 550.151 that an employee is generally “responsible for recognizing, without supervision, circumstances which require him to remain on duty” mean that:

(1) The responsibility for an employee remaining on duty when required by circumstances must be a definite, official, and special requirement of his position.

(2) The employee must remain on duty not merely because it is desirable, but because of compelling reasons inherently related to continuance of his duties, and of such a nature that failure to carry on would constitute negligence.

(3) The requirement that the employee is responsible for recognizing circumstances does not include such clear-cut instances as, for example, when an employee must continue working because a relief fails to report as scheduled.

(d) The words “circumstances which require him to remain on duty” as used in § 550.151 mean that:

(1) The employee is required to continue on duty in continuation of a full daily tour of duty or that after the end of his regular workday, the employee resumes duty in accordance with a prearranged plan or an awaited event. Performance of only call-back overtime work referred to in § 550.151(f) does not meet this requirement.

(2) The employee has no choice as to when or where he may perform the work when he remains on duty in continuation of a full daily tour of duty. This differs from a situation in which an employee has the option of taking work home or doing it at the office; or doing it in continuation of his regular hours of duty or later in the evening. It also differs from a situation in which an employee has such latitude in his working hours, as when in a travel status, that he may decide to begin work later in the morning and continue working later at night to better accomplish a given objective.

§ 550.154 Rates of premium pay payable under § 550.151.

(a) An agency may pay the premium pay on an annual basis referred to in § 550.151 to an employee who meets the requirements of that section, at one of the following percentages of the employee's rate of basic pay (as defined in § 550.103):

1. A position which requires an average of at least 3 but not more than 5 hours a week of irregular or occasional overtime work—10 percent;
2. A position which requires an average of over five but not more than 7 hours a week of irregular or occasional overtime work—15 percent;
3. A position which requires an average of over seven but not more than 9 hours a week or irregular or occasional overtime work—20 percent;
4. A position which requires an average of over 9 hours a week of irregular or occasional overtime work—25 percent.

(b) If an agency proposes to pay an employee premium pay on an annual basis under § 550.151 but unusual conditions seem to make the applicable rate in paragraph (a) of this section unsuitable, the agency may propose a rate of premium pay on an annual basis for OPM approval. The proposal shall include full information bearing on the frequency and duration of the irregular or occasional overtime work required; the nature of the work which prevents hours of duty from being controlled administratively; the necessity for the employee being generally responsible for recognizing, without supervision, circumstances which require him to remain on duty; and any other pertinent conditions.

General Rules Governing Payments of Premium Pay on an Annual Basis

§ 550.161 Responsibilities of the agencies.

The head of each agency, or an official who has been delegated authority to act for the head of an agency in the matter concerned, is responsible for:

(a) Fixing tours of duty; ordering employees to remain at their stations in a standby status; and placing responsibility on employees for remaining on duty when required by circumstances.

(b) Determining, in accordance with section 5545(c) of title 5, United States Code, and this subpart, which employees shall receive premium pay on an annual basis under § 550.141 or § 550.151. These determinations may not be retroactive.

(c) Determining the number of hours of actual work to be customarily required in positions involving longer than ordinary periods of duty, a substantial part of which consists of standby duty. This determination shall be based on consideration of the time required by regular, repetitive operations, available records of the time required in the past by other activities, and any other information bearing on the number of hours of actual work which may reasonably be expected to be required in the future.

(d) Determining the number of hours of irregular or occasional overtime work to be customarily required in positions which require substantial amounts of irregular or occasional overtime work with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty. This determination shall be based on consideration of available records of the hours of irregular or occasional overtime work required in the past, and any other information bearing on the number of hours of duty which may reasonably be expected to be required in the future.

(e) Determining the rate of premium pay fixed by OPM under §550.144 or §550.154 which is applicable to each employee paid under §550.141 or §550.151; or, if no rate fixed under §550.144 or §550.154 is considered applicable, proposing a rate of premium pay on an annual basis to OPM.

(f) Reviewing determinations under paragraphs (b), (c), (d) and (e) of this section at appropriate intervals, and discontinuing payments or revising rates of premium pay on an annual basis in each instance when that action is necessary to meet the requirements.
§ 550.162 Payment provisions.

(a) Except as otherwise provided in this section, an employee’s premium pay on an annual basis under §550.141 or §550.151 begins on the date that he enters on duty in the position concerned for purposes of basic pay, and ceases on the date that he ceases to be paid basic pay in the position.

(b) When an employee is in a position in which conditions warranting premium pay on an annual basis under §550.141 or §550.151 exist only during a certain period of the year, such as during a given season, an agency may pay the employee premium pay on an annual basis only during the period he is subject to these conditions.

(c) An agency may continue to pay an employee premium pay on an annual basis under §550.141 or §550.151:

(1) For a period of not more than 10 consecutive prescribed workdays on temporary assignment to other duties in which conditions do not warrant payment of premium pay on an annual basis, and for a total of not more than 30 workdays in a calendar year while on such a temporary assignment.

(2) For an aggregate period of not more than 60 prescribed workdays on temporary assignment to a formally approved program for advanced training duty directly related to duties for which premium pay on an annual basis is payable. An agency may not continue to pay an employee premium pay on an annual basis under this paragraph for more than 60 workdays in a calendar year.

(d) When an employee is not entitled to premium pay on an annual basis under §550.141, he is entitled to be paid for overtime, night, holiday, and Sunday work in accordance with other sections of this subpart.

(e) An agency shall continue to pay an employee premium pay on an annual basis under §550.141 or §550.151 while he is on leave with pay during a period in which premium pay on an annual basis is payable under paragraphs (a), (b), and (c) of this section.

§ 550.163 Relationship to other payments.

(a) An employee receiving premium pay on an annual basis under §550.141 may not receive premium pay for regular overtime work or work at night or on a holiday or on Sunday under any other section of this subpart. An agency shall pay the employee in accordance with §550.113 and §550.114 for irregular or occasional overtime work.

(b) An employee receiving premium pay on an annual basis under §550.151 may not receive premium pay for irregular or occasional overtime work under any other section of this subpart. An agency shall pay the employee in accordance with other sections of this subpart for regular overtime work, and work at night, on Sundays, and on holidays.

(c) Overtime, night, holiday, or Sunday work paid under any statute other than subchapter V of chapter 55 of title 5, United States Code, is not a basis for payment of premium pay on an annual basis under §550.141 or §550.151.

(d) (1) Except as provided in paragraph (d)(2) of this section, premium pay on an annual basis under §550.141 or §550.151 is not base pay and is not included in the base used in computing foreign and nonforeign allowances and differentials, or any other benefits or deductions that are computed on base pay alone.

(2) Premium pay on an annual basis under §550.141 is base pay for the purpose of section 5595(c), section 8114(e), section 8331(3), and section 8704(c) of title 5, United States Code.

(e) Premium pay on an annual basis under §550.141 or §550.151 may not be paid to a criminal investigator receiving availability pay under §550.181.

§ 550.164 Construction and computation of existing aggregate rates.

(a) Pursuant to section 208(b) of the act of September 1, 1954 (68 Stat. 1111), nothing in this subpart relating to the
payment of premium pay on an annual basis may be construed to decrease the existing aggregate rate of pay of an employee on the rolls of an agency immediately before the date section 5545(c) of title 5, United States Code, is made applicable to him by administrative action.

(b) When it is necessary to determine an employee's existing aggregate rate of pay (referred to in this section as existing aggregate rate), an agency shall determine it on the basis of the earnings the employee would have received over an appropriate period (generally 1 year) if his tour of duty immediately before the date section 5545(c) of title 5, United States Code, is made applicable to him had remained the same. In making this determination, basic pay and premium pay for overtime, night, holiday, and Sunday work are included in the earnings the employee would have received. Premium pay for irregular or occasional overtime work may be included only if it was of a significant amount in the past and the conditions which required it are expected to continue.

(c) An agency shall recompute an employee's rate of pay based on premium pay on an annual basis when he received subsequent increases in his rate of basic pay in order to determine whether or not the employee should continue to receive an existing aggregate rate or be paid premium pay on an annual basis.

(d) Except as otherwise provided by statute, an agency may not use subsequent increases in an employee's rate of basic pay to redetermine or increase the employee's existing aggregate rate. However, these increases shall be used for other pay purposes, such as the computation of retirement deductions and annuities, payment of overseas allowances and post differentials, and determination of the highest previous rate under part 531 of this chapter.

(e) When an agency elects to pay an employee premium pay on an annual basis, he is entitled to continue to receive hourly premium pay properly payable under sections 5542, 5543, 5545 (a) and (b), and 5546 of title 5, United States Code, until his base pay plus premium pay on an annual basis equals or exceeds his existing aggregate rate. When this occurs, the agency shall pay the employee his base pay plus premium pay on an annual basis.

(f) Except when terminated under paragraph (e) of this section, an agency shall continue to pay an employee an existing aggregate rate so long as:

1. He remains in a position to which §550.141, §550.151, or §550.162(c) is applicable;
2. His tour of duty does not decrease in length; and
3. He continues to perform equivalent night, holiday, and irregular or occasional overtime work.

(g) If an employee who is entitled to an existing aggregate rate moves from one position to another in the same agency, both of which are within the scope of section 5545(c) of title 5, United States Code, he is entitled to be paid an existing aggregate rate in the new position such as he would have received had he occupied that position when the agency elected to make section 5545(c) applicable to it.

PAY FOR SUNDAY WORK

§ 550.171 Authorization of pay for Sunday work.

A full-time employee is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to 25 percent of his or her rate of basic pay for each hour of Sunday work (as defined in §550.103) and each hour that would be Sunday work but for the placement of the employee in paid leave or excused absence status.

§ 550.172 Relation to overtime, night, and holiday pay.

Premium pay for Sunday work is in addition to premium pay for holiday work, overtime pay, or night pay differential payable under this subpart and is not included in the rate of basic pay used to compute the pay for holiday work, overtime pay, or night pay differential.
Office of Personnel Management

LAW ENFORCEMENT AVAILABILITY PAY

§ 550.181 Coverage.

Each criminal investigator meeting the definition in §550.103, and the conditions and requirements of 5 U.S.C. 5545a and the regulations in §§550.181 through 550.187, shall receive availability pay to ensure the availability of criminal investigators for unscheduled duty in excess of the 40-hour workweek based on the needs of the employing agency.


§ 550.182 Unscheduled duty.

(a) Unscheduled duty hours. For the purpose of availability pay, unscheduled duty hours are those hours during which a criminal investigator performs work or is determined by the employing agency to be available for work, that are not—

(1) Part of the 40-hour basic workweek of the investigator; or

(2) Overtime hours compensated under 5 U.S.C. 5542 and §550.111 (which are those overtime hours scheduled in advance of the investigator’s administrative workweek, excluding any such hours that are the first 2 hours of overtime work on any day containing a part of the investigator’s basic 40-hour workweek, as required by §550.111(f)).

(b) Actual work hours. To be considered to be performing work under paragraph (a) of this section, a criminal investigator must be performing work as officially ordered or approved, including work performed without specific supervisory preapproval, if circumstances require the criminal investigator to perform the duty to meet the needs of the employing agency, subject to agency policies and procedures (including any requirements for after-the-fact validation or approval).

(c) Availability hours. To be considered available for work under paragraph (a) of this section, a criminal investigator must be determined by the employing agency to be generally and reasonably accessible to perform unscheduled duty based on the needs of the agency. Generally, the agency will place the investigator in availability status by directing the investigator to be available during designated periods to meet agency needs, as provided by agency policies and procedures. Placing the investigator in availability status shall not be considered scheduling the investigator for overtime hours compensated under 5 U.S.C. 5542 and 5 CFR 550.111. Availability hours may include hours during which an investigator places himself or herself in availability status to meet the needs of the agency, subject to agency policies and procedures (including any requirements for after-the-fact validation or approval).

(d) Ensuring availability. Except as provided in paragraphs (e) and (f) of this section, an employing agency shall ensure that each criminal investigator’s hours of unscheduled duty are sufficient to enable the investigator to meet the substantial hours requirement in §550.183 and make the certification required under §550.184.

(e) Voluntary opt-out. Notwithstanding paragraph (d) of this section, an employing agency may, at its discretion, approve a criminal investigator’s voluntary request that the investigator generally be assigned no overtime work (including unscheduled duty) for a designated period of time because of a personal or family hardship situation. The investigator must sign a written statement documenting this request and his or her understanding that availability pay will not be payable during the designated period.

(f) When availability pay is suspended. The employing agency is not subject to the requirement of paragraph (d) of this section in the case of a criminal investigator for whom availability pay is suspended in accordance with §550.184(d) due to denial or cancellation of the required certification based on—

(1) Failure to perform unscheduled duty as assigned or reported; or

(2) Inability to perform unscheduled duty for an extended period because of a physical or health condition.

[59 FR 66151, Dec. 23, 1994]

§ 550.183 Substantial hours requirement.

(a) A criminal investigator shall be eligible for availability pay only if the annual average number of hours of unscheduled duty per regular workday is
§ 550.184 Annual certification.

(a) Each newly hired criminal investigator who will receive availability pay and the appropriate supervisory officer (as designated by the head of the agency or authorized designee) shall make an initial certification to the head of the agency attesting that the investigator is expected to meet the substantial hours requirement in § 550.183 during the upcoming 1-year period. A similar certification shall be made for a criminal investigator who will begin receiving availability pay after a period of nonreceipt (e.g., a designated voluntary opt-out period under § 550.182(e)).

(b) Each criminal investigator who is receiving availability pay and the appropriate supervisory officer (as designated by the head of the agency or authorized designee) shall make an annual certification to the head of the agency attesting that the investigator currently meets, and is expected to continue to meet during the upcoming 1-year period, the substantial hours requirement in § 550.183.

(c) A certification shall no longer apply when the employee separates from Federal service, is employed by another agency, moves to a position that does not qualify as a criminal investigator position, or begins a voluntary opt-out period under § 550.182(e).

(d) The employing agency shall ensure that criminal investigators receiving availability pay comply with the substantial hours requirement in § 550.183, as certified in accordance with this section. The employing agency may deny or cancel a certification based on a finding that an investigator has failed to perform unscheduled duty (availability or work) as assigned or reported, or is unable to perform unscheduled duty for an extended period due to physical or health reasons. If a certification is denied or canceled, the investigator's entitlement to availability pay shall be suspended for an appropriate period, consistent with agency policies. If the investigator's certification was valid when made, the suspension of availability pay shall be effected prospectively.

(e) An involuntary suspension of availability pay resulting from a denial or cancellation of certification under paragraph (d) of this section shall be a reduction in pay for the purpose of applying the adverse action provisions of 5 U.S.C. 7512 and 5 CFR part 752.

(f) The head of an agency (or authorized designee) may prescribe any additional regulations necessary to administer the certification requirement, including procedures for retroactive correction in cases in which a certification is issued belatedly or lapses due to administrative error.

§ 550.185 Payment of availability pay.

(a) Availability pay shall be an amount equal to 25 percent of the criminal investigator's rate of basic pay (as defined in § 550.103). However, availability pay shall be paid only for periods of time during which the investigator receives basic pay.

(b) Except as provided in paragraph (c) of this section, a criminal investigator who is eligible for availability pay
shall continue to receive such pay during any period such investigator is attending agency-sanctioned training, on agency-ordered travel status, on agency-approved leave with pay, or on excused absence with pay for relocation purposes.

(c) Agencies may, at their discretion, provide availability pay to criminal investigators during training that is considered initial, basic training usually provided in the first year of service.

(d) Agencies may, at their discretion, provide for the continuation of availability pay when a criminal investigator is on excused absence with pay, except where payment is mandatory under paragraph (b) of this section.

(e) The amount of availability pay payable to a criminal investigator for a pay period is not affected by the occurrence of a paid holiday during that period.


§ 550.186 Relationship to other payments.

(a) Standby duty pay under § 550.141 and administratively uncontrollable overtime pay under § 550.151 may not be paid to a criminal investigator receiving availability pay. Receipt of availability pay does not affect an investigator's entitlement to other types of premium pay (including overtime pay under § 550.111) based on hours other than unscheduled duty hours. However, a criminal investigator receiving availability pay may not be paid any other premium pay based on unscheduled duty hours.

(b) Availability pay shall be treated as part of basic pay only for the following purposes:

(1) 5 U.S.C. 5524a, pertaining to advances in pay;

(2) 5 U.S.C. 5595(c), pertaining to severance pay;

(3) 5 U.S.C. 8114(e), pertaining to workers' compensation;

(4) 5 U.S.C. 8331(3) and 5 U.S.C. 8401(4), pertaining to retirement benefits;

(5) 5 U.S.C. 8431, pertaining to the Thrift Savings Plan; and

(6) 5 U.S.C. 8704(c), pertaining to life insurance.

(c) Availability pay shall be used in computing a lump-sum payment for accumulated annual leave under 5 U.S.C. 5551 and 5552.

(d) The minimum wage and the hours of work and overtime pay provisions of the Fair Labor Standards Act do not apply to criminal investigators receiving availability pay.

[59 FR 66151, Dec. 23, 1994]

§ 550.187 Transitional provisions.

(a) Except as provided in paragraph (b) of this section, not later than the first day of the first pay period beginning on or after October 30, 1994, each criminal investigator qualified to receive availability pay and the appropriate supervisory officer (as designated by the agency head or authorized designee) shall make an initial certification to the head of the agency that the investigator is expected to meet the substantial hours requirement in § 550.183. The head of an agency may prescribe procedures necessary to administer this paragraph.

(b) (1) In the case of criminal investigators who are employed in offices of Inspectors General and who, immediately prior to September 30, 1994, were not receiving administratively uncontrollable overtime pay, or were receiving such pay at a rate of less than 25 percent, the employing office may delay implementation of availability pay; however, availability pay shall be implemented (in accordance with §§ 550.181 through 550.186) no later than—

(i) September 30, 1995, for investigators who are not receiving administratively uncontrollable overtime pay; or

(ii) The first day of the last pay period ending on or before September 30, 1995, for investigators who were receiving administratively uncontrollable overtime pay at a rate of less than 25 percent immediately prior to September 30, 1994.

(2) A criminal investigator who is employed in an Inspector General office and was receiving administratively uncontrollable overtime pay at a rate of less than 25 percent immediately prior to September 30, 1994, shall continue to receive at least that rate or a higher rate, if increased by the employing agency, until the availability pay...
§ 550.201 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5524a which provides that the head of each agency may make advance payments of basic pay, covering not more than 2 pay periods, to any individual who is newly appointed to a position in the agency.

§ 550.202 Definitions.

In this subpart: Agency means an Executive agency, as defined in 5 U.S.C. 105.

Employee means an individual employed in or under an agency who is appointed to a position with a scheduled tour of duty.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Newly appointed means—
(a) The first appointment, regardless of tenure, as an employee of the Federal Government;
(b) A new appointment following a break in service of at least 90 days; or
(c) A permanent appointment in the competitive service following a period of leave without pay for at least 90 days received after termination of employment in a cooperative work-study program under a Schedule B appoint-

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ment made in accordance with §213.3202 of this chapter, provided such employee has fully repaid any former advance in pay under §550.205 of this part.

Offset or setoff means repayment in installments of an advance in pay by payroll deductions or an administrative offset under subpart K of this part to collect a debt under 5 U.S.C. 5514 from an indebted Government employee.

Pay period means the pay period established by an agency for an employee under 5 U.S.C. 5504.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, including, as applicable, annual premium pay under 5 U.S.C. 5545(c), availability pay under 5 U.S.C. 5545a, straight-time pay for regular overtime hours for firefighters under 5 U.S.C. 5545b (as provided in §550.1305(b)), night differential for prevailing rate employees under 5 U.S.C. 5343(f), and any special pay adjustment for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509) or locality-based comparability payment under 5 U.S.C. 5304, but not including additional pay of any kind.

§ 550.203 Advances in pay.

(a) The head of an agency may provide for the advance payment of basic pay, in one or more installments covering not more than 2 pay periods, to an employee who is newly appointed to a position in the agency.

(b) The maximum amount of pay that may be advanced to an employee shall be based on the rate of basic pay to which the employee is entitled on the date of his or her new appointment with the agency, reduced by the amount of any allotments or deductions that would normally be deducted from the employee’s first regular pay-check.

(c) An advance in pay may be made to an employee no earlier than the date of appointment with the agency and no later than 60 days after the date of appointment.

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(d) An advance in pay under this subpart may not be made to any employee when an agency expects to make an advance in pay to the same employee under 5 U.S.C. 5927 within 2 pay periods after the employee's appointment.

(e) An advance in pay may not be made to the head of an agency or to an employee appointed to a position in the expectation of receiving an appointment as the head of an agency.

§ 550.204 Agency procedures.

(a) Each agency shall establish written procedures governing advance payments. These procedures shall include—

(1) Criteria to be considered before approval or denial of employee requests for advance payments;

(2) Criteria to be considered before waiving all or part of advance payments; and

(3) Processing and accounting procedures governing advance payments.

(b) Before making an advance payment, an agency shall require that the employee sign an agreement to repay to the Federal Government any amount for which repayment has not been waived by the agency head under § 550.206 of this part.

(c) Before making an advance payment, an agency shall provide the following information to the employee in writing:

(1) A statement indicating how the advance in pay will be recovered from the employee by the Federal Government, either in installments under agency procedures for payroll deductions or by salary offset procedures under subpart K of this part;

(2) The total amount of the advance in pay, the total number of pay periods for repayment of the advance in pay, and the amount that will be deducted from the pay of the employee by payroll deductions or salary offset for each pay period;

(3) A statement indicating that the employee may prepay all or part of the balance of the advance payment at any time before the money is due, including instructions as to where and how such prepayments may be made.

§ 550.205 Recovery of advances in pay.

(a) Unless repayment is waived in whole or in part under § 550.206 of this part, an agency shall recover an advance in pay by installments under agency procedures for payroll deductions or by salary offset procedures established under subpart K of this part. An employee may prepay all or part of the remaining balance of an advance in pay at any time before payments are due.

(b) An agency shall establish a recovery period for each employee to repay an advance in pay, but no agency may establish a recovery period of longer than 14 pay periods beginning on the date the advance in pay is made to the employee under § 550.203 of this part. If a longer period for recovery is necessary to avoid exceeding the limitations on deductions described in § 550.1104(i) of this part, recovery may be accomplished under salary offset procedures established under subpart K of this part. Upon written request, an employee may elect a recover period of less than 14 pay periods.

(c) If an employee transfers to another agency or employment with an agency is terminated for any reason, the remaining balance of an advance in pay not yet repaid is due and must be
§ 550.206 Waiver of repayment.

The head of an agency may waive in whole or in part a right of recovery of an advance payment under 5 U.S.C. 5524a and this subpart if he or she determines that recovery would be against equity and good conscience or against the public interest under criteria established by the agency.

Subpart C—Allotments and Assignments From Federal Employees


Source: 46 FR 2325, Jan. 9, 1981, unless otherwise noted.

Definitions

§ 550.301 Definitions.

In this subpart:

Agency means an Executive agency as defined by section 105 of Title 5, United States Code.

Allotment means a recurring specified deduction for a legal purpose from pay authorized by an employee to be paid to an allottee.

Allottee means the person or institution to whom an allotment is made payable.

Allotter means the employee from whose pay an allotment is made.

Association of management officials and/or supervisors means an association composed of either management officials and/or supervisors with which the agency has established official relationships.

Combined Federal Campaign means an organization of voluntary health and welfare agencies authorized to solicit charitable contributions in a local area in accordance with arrangements prescribed by the Director of the Office of Personnel Management under Executive Order 10927.

Continental United States means the several States and the District of Columbia, but excluding Alaska and Hawaii.

Dues means the regular periodic amount specified by an allotter to be withheld from his or her pay which is required to maintain the allotter as a member in good standing in a labor organization or association of management officials and/or supervisors or other organization.

Employee means an employee of an agency, unless otherwise provided.

Foreign affairs agency means the Department of State, the International Communications Agency, the Agency for International Development and its successor agency or agencies.

Labor organization means a labor organization as defined by section 7103(a)(4) of title 5, United States Code, unless specified otherwise.

Pay means the net pay due an employee after all deductions authorized by law (such as retirement or social security deductions, Federal withholding tax, and others, when applicable) have been made.

General Provisions

§ 550.311 Authority of agency.

(a) An agency shall permit an employee to make:

(1) An allotment for dues to a labor organization under section 7115 of Title 5, United States Code;

(2) An allotment for dues to an association of management officials and/or supervisors under § 550.331;

(3) An allotment for charitable contributions to a Combined Federal Campaign under §§ 550.341 and 550.342;

(4) An allotment for income tax withholding under § 550.351;

(5) Up to two allotments for savings under Department of Treasury regulations as codified at part 209 of title 31, Code of Federal Regulations;

(6) An allotment for savings for an employee assigned to a post of duty outside the continental United States under § 550.361;
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(7) An allotment for child support and/or alimony payments under §550.371.

(b) In addition to those allotments provided for in paragraph (b) of this section, an agency may permit an employee to make an allotment for any legal purpose deemed appropriate by the head of the agency.

(c) The head of an agency may prescribe such additional regulations governing allotments as appropriate which are consistent with subchapter III of chapter 5 of title 5, United States Code, and this subpart. Discretionary allotments under this subpart may be limited in number as determined appropriate by the head of the agency.

§ 550.312 General limitations.

(a) The allotter shall specifically designate the allottee and the amount of the allotment in writing in an allotment authorization.

(b) The total amount of allotments may not exceed the pay due the allottee for a particular period.

(c) An employee shall request in writing a change in or the revocation of an allotment.

(d) Allotters shall agree that the agency shall be held harmless for any authorized allotment disbursed by the agency in accordance with the employee's request for an allotment from pay.

(e) Allotters shall agree that disputes regarding any authorized allotment shall be a matter between the allotter and the allottee.

LABOR ORGANIZATION

§ 550.321 Authority.

Section 7115, title 5, United States Code, authorizes an employee to make an allotment for dues to a labor organization as defined in subchapter 1 of chapter 71 of title 5, United States Code. Such an allotment shall be effected in accordance with such rules and regulations as may be prescribed by the Federal Labor Relations Authority.

§ 550.322 Saving provision.

An agency shall permit a supervisor who so desires, to continue an allotment of dues to a labor organization as defined by section 2(e) of Executive Order 11491, as amended, which was permissible when the supervisor was excluded from a formal or exclusive unit by reason of the requirements of former section 24(d) of this Order.

ASSOCIATION OF MANAGEMENT OFFICIALS AND/OR SUPERVISORS

§ 550.331 Scope.

An agency shall permit an employee to make an allotment for dues to an association of management officials and/or supervisors when the employee is a supervisor or management official, and the employee is a member of an association of management officials and/or supervisors with which the agency has agreed in writing to deduct allotments for the payment of dues to the association.

COMBINED FEDERAL CAMPAIGN

§ 550.341 Scope.

An agency shall permit an employee to make an allotment for charitable contributions to a Combined Federal Campaign. Allotments for contributions to the Department of Defense Overseas Combined Federal Campaign shall be permitted in accordance with a special agreement between the Office of Personnel Management and the Department of Defense which may contain any necessary exceptions to these regulations.

§ 550.342 Limitation of allotment.

(a) An agency shall permit an employee to make an allotment for a charitable contribution to a Combined Federal Campaign only when the employee is employed in an area in which a Combined Federal Campaign authorized by the Office of Personnel Management is established.

(b) An allotment to a Combined Federal Campaign shall be:

(1) For a term of 1 year beginning with the first pay period which begins in January and ending with the last pay period which begins in December, and

(2) An equal amount deducted each pay period. Minimum deductions will be established by agreement between OPM and officials of the Combined Federal Campaign.

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(c) The allotter may not change the amount deducted each pay period during the term of an allotment to a Combined Federal Campaign. The allotter shall be informed of this restriction before the allotment is requested.

(d) The allotter may voluntarily discontinue the allotment at any time, but a discontinued allotment may not be reinstated.

Income Tax Withholding

§ 550.351 Scope.

When an employee has a legal obligation to pay, but the agency has no legal obligation to withhold, State, District of Columbia, or local income or employment taxes, an agency shall permit an employee to make an allotment for payment of the taxes.

Allotments for Savings

§ 550.361 Scope.

An agency shall permit an employee within the continental United States to make up to two allotments of pay to a financial organization of his/her choice, for credit to his/her savings account as authorized under Department of Treasury regulations codified at part 209 of title 31, Code of Federal Regulations. Additional allotments to savings for these employees will not be permitted under this part.

An employee assigned to a post of duty outside the continental United States who is not covered under Department of Treasury regulations at 31 CFR part 209 shall be permitted to make allotments of pay to a financial organization of his/her choice for credit to his/her savings account.

Alimony and/or Child Support

§ 550.371 Scope.

An agency shall permit an employee to make an allotment for alimony and/or child support when he or she voluntarily elects to do so. However, this provision does not apply to garnishment orders issued to enforce child support and/or alimony obligations which are codified at part 581 of this title.
(c) Authority. The head of an agency may make advance payments and evacuation payments and pay special allowances as provided by this subpart. If the head of an agency proposes to issue regulations that deviate from the provisions of this subpart, prior approval of the agency regulations, as required by section 4(b) of Executive Order 10982 of December 25, 1961, must be secured from the Office of Personnel Management.

(d) Administration. The head of an agency having employees subject to this subpart is responsible for the proper administration of this subpart. Payment of advance payments and evacuation payments and any required adjustments shall be made in accordance with procedures established by the agency.

§ 550.402 Definitions.
Agency means an Executive agency, as defined in section 105 of title 5, United States Code.
Day means a calendar day, except when otherwise specified by the head of an agency.
Dependent means a relative of the employee residing with the employee and dependent on the employee for support.
Designated representative means a person 16 years of age or over who is named by an employee for the purpose of caring for a dependent.
Evacuated employee means an employee of an agency who has received an order to evacuate.
Order to evacuate means an oral or written order to evacuate an employee from an assigned area.
Safe haven means a designated area to which an employee or dependent will be or has been evacuated.
United States area means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, and any territory or possession of the United States (excluding the Trust Territory of the Pacific Islands).

§ 550.403 Advance payments; evacuation payments; special allowances.
(a) An advance payment of pay, allowances, and differentials may be made to an employee who has received an order to evacuate, provided that, in the opinion of the agency head or designated official, payment in advance of the date on which an employee otherwise would be entitled to be paid is required to help the employee defray immediate expenses incidental to the evacuation.

(b) Evacuation payments of pay, allowances, and differentials may be made to an employee during an evacuation and shall be paid on the employee's regular pay days when feasible.

(c) Special allowances, including travel expenses and per diem, may be paid to evacuated employees to offset any direct added expenses that are incurred by the employee as a result of his or her evacuation or the evacuation of his or her dependents.

(d) An advance payment or an evacuation payment may be paid to the employee, a dependent 16 years of age or over, or a designated representative. When payment is made to someone other than the employee, prior written authorization by the employee must have been provided to the authorizing agency official.

(e) Any agency may make payments in an evacuation situation to an employee of another Federal agency (or his or her dependent(s) or personal representative) who has received an order to evacuate. When a payment is made under this subpart by an agency other than the employee's agency, the agency making the payment shall immediately report the amount and date of the payment to the employee's agency in order that prompt reimbursement may be made.

§ 550.404 Computation of advance payments and evacuation payments; time periods.
(a) Payments shall be based on the rate of pay (including allowances, differentials, or other authorized payments) to which the employee was entitled immediately before the issuance of the order of evacuation. All deductions authorized by law, such as retirement or social security deductions, authorized allotments, Federal withholding taxes, and others, when applicable, shall be made before advance payments or evacuation payments are made.
(b)(1) The amount of advance payments shall cover a time period not to exceed 30 days or a lesser number of days, as determined by the authorizing agency official.

(2) Evacuation payments shall cover the period of time during which the order to evacuate remains in effect, unless terminated earlier, but shall not exceed 180 days. When feasible, evacuation payments shall be paid on the employee's regular pay days.

(c) When an advance payment has been made to or for the account of an employee, the amount of the advance payment shall not diminish the amount of the evacuation payments that would otherwise be due the employee.

(d)(1) For full-time and part-time employees, the amount of an advance payment or an evacuation payment shall be computed on the basis of the number of regularly scheduled workdays for the time period covered.

(2) For intermittent employees, the amount of an advance payment or evacuation payment shall be computed on the basis of the number of days on which the employee would be expected to work during the time period covered. The number of days shall be determined, whenever possible, by approximating the number of days per week normally worked by the employee during an average 6-week period, as determined by the agency.

§ 550.405 Determination of special allowances.

In determining the direct added expenses that may be payable as special allowances, the following shall be considered:

(a) The travel expenses and per diem for an evacuated employee and the travel expenses for his or her dependents shall be determined in accordance with the Federal Travel Regulation (FTR), whether or not the employee or dependents would actually be covered or subject to the FTR. Per diem for an employee and his or her dependents shall be payable from the date of departure from the evacuated area through the date of arrival at the safe haven, including any period of delay en route that is beyond an evacuee's control or that may result from evacuation travel arrangements.

(b) Subsistence expenses for an evacuated employee or his or her dependents shall be determined at applicable per diem rates for the safe haven or for a station other than the safe haven that has been approved by appropriate authority. Such subsistence expenses shall begin to be paid on the date following arrival and may continue until terminated. The subsistence expenses shall be computed on a daily rate basis, as follows:

(1) The applicable maximum per diem rate shall be computed for the employee and each dependent who is 11 years of age or over. One-half of such rate shall be computed for each dependent under 11 years of age. These maximum rates may be paid for a period not to exceed the first 30 days of evacuation.

(2) If, after expiration of the 30-day period, the evacuation has not been terminated, the per diem rate shall be computed at 60 percent of the rates prescribed in paragraph (b)(1) of this section until a determination is made by the agency that subsistence expenses are no longer authorized. This rate may be paid for a period not to exceed 180 days after the effective date of the order to evacuate.

(3) The daily rate of the subsistence expense allowance actually paid an employee shall be either a rate determined in accordance with paragraphs (b) (1) and (2) of this section or a lower rate determined by the agency to be appropriate for necessary living expenses.

(c) Payment of subsistence expenses shall be decreased by the applicable per-person amount for any period during which the employee is authorized regular travel per diem in accordance with the FTR.

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§ 550.406 Work assignments during evacuation; return to duty.

(a) Evacuated employees at safe havens may be assigned to perform any work considered necessary or required to be performed during the period of the evacuation without regard to the grades or titles of the employees. Failure or refusal to perform assigned work may be a basis for terminating further evacuation payments.

(b) When part-time employees are given assigned work at the safe haven, records of the number of hours worked shall be maintained so that payment may be made for any hours of work that are greater than the number of hours on which evacuation payments are computed.

(c) Not later than 180 days after the effective date of the order to evacuate, or when the emergency or evacuation situation is terminated, whichever is earlier, an employee must be returned to his or her regular duty station, or appropriate action must be taken to reassign him or her to another duty station.

§ 550.407 Termination of payments during evacuation.

Advance payments or evacuation payments terminate when the agency determines that—

(a) The employee is assigned to another duty station outside the evacuation area;

(b) The employee abandons or is otherwise separated from his or her position;

(c) The employee's employment is terminated by his or her transfer to retirement roles or other type of annuity based on cessation of civilian employment;

(d) The employee resumes his or her duties at the duty station from which he or she was evacuated;

(e) The agency determines that payments are no longer warranted; or

(f) The date the employee is determined to be covered by the Missing Persons Act (50 App. U.S.C. 1001 et seq.), unless payment is earlier terminated under these regulations.

§ 550.408 Review of accounts; service credit.

(a) The payroll office having jurisdiction over the employee’s account shall review each employee’s account for the purpose of making adjustments at the earliest possible date after the evacuation is terminated (or earlier if the circumstances justify), after the employee returns to his or her assigned duty station, or when the employee is reassigned officially.

(b) The employee’s pay shall be adjusted on the basis of the rates of pay, allowances, or differentials, if any, to which he or she would otherwise have been entitled under all applicable statutes other than section 5527 of title 5, United States Code. Any adjustments in the employee’s account shall also reflect advance payments made to the employee under §550.403(a) of this subpart.

(c)(1) After an employee's account is reviewed as required by paragraph (a) of this section, if it is found that the employee is indebted for any part of the advance payment made to him or her or his or her dependent(s) or designated representative, recovery of the indebtedness shall be effected by the payroll office having jurisdiction over the employee’s account, unless a waiver of recovery has been approved. Repayment of the indebtedness may be made either in full or in partial payments, as determined by the head of the agency or designated official.

(2) Recovery of indebtedness for advance payment shall not be required when it is determined by the head of the agency or designated official that the recovery would be against equity or good conscience or against the public interest. Findings that formed the basis for waiver of recovery shall be filed in the employee’s personnel folder on the permanent side.

(d) For the period or periods covered by any payments made under this subpart, the employee shall be considered as performing active Federal service in his or her position without a break in service.
Subpart E—Pay From More Than One Position


§ 550.501 Scope.

(a) Applicability. (1) This subpart and section 5533 of title 5, United States Code, apply in determining an employee’s entitlement to receive pay from more than one position.

(2) This subpart and section 5533(a) of title 5, United States Code, apply only to an employee holding more than one position when the aggregate number of hours worked during a week exceeds 40.

(b) Coverage. This subpart and section 5533(a) of title 5, United States Code, apply to each department and agency (including each corporation owned or controlled by the Government of the United States and including non-appropriated fund instrumentalities under the jurisdiction of the armed forces) in the legislative, judicial, and executive branches of the Government of the United States and to the government of the District of Columbia.

§ 550.502 Definitions.

In this subpart:

Employee means a person holding a position.

Pay means pay paid for services in a position but excludes fees paid on other than a time basis.

Position has the meaning given that term by section 5531 of title 5, United States Code.

Week means the period of 7 calendar days from Sunday through Saturday.

[33 FR 12458, Sept. 4, 1968, as amended at 60 FR 67287, Dec. 29, 1995]

Subpart F—Reduction-in-Retired-Pay Provisions of the Dual Pay Statute

Authority: 5 U.S.C. 5532.

§ 550.601 Scope.

(a) Applicability. This subpart and section 5532 of title 5, United States Code, apply in determining the entitlement to retired or retainer pay of a member or former member of a uniformed service when employed in a position.

(b) Coverage. This subpart and section 5532 of title 5, United States Code, apply to each department and agency (including each corporation owned or controlled by the Government of the United States and including non-appropriated fund instrumentalities under the jurisdiction of the Armed Forces) in the legislative, judicial, and executive branches of the Government of the United States and to the government of the District of Columbia.

[44 FR 44814, July 31, 1979]

§ 550.602 Definitions.

In this subpart:

“Member”, “position”, and “retired or retainer pay” have the meanings...
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given those terms by section 5531 of title 5, United States Code.

Officer means commissioned or warrant officer.

Uniformed services means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

[44 FR 44814, July 31, 1979, as amended at 60 FR 67287, Dec. 29, 1995]

§ 550.603 Administrative responsibilities.

(a) Uniformed services pay centers. Uniformed services pay centers are responsible for determining the amount of military retired or retainer pay to be withheld.

(b) Employing agencies. (1) Federal agencies are responsible for notifying the appropriate uniformed service pay center concerning the Federal civilian pay of retired members according to instructions provided in the Federal Personnel Manual.

(2) If an agency believes that exception to the reduction in retired or retainer pay required by section 5532 of title 5, United States Code, is justified in an individual case based on an emergency posing direct and immediate threat to life or property or on exceptional difficulty in recruiting or retaining a qualified candidate for a position, the agency may submit a request to OPM or approve an exception under delegated authority from OPM as provided in part 553 of this chapter. The agency is responsible for notifying the appropriate uniformed service finance center of any approved exception.


Subpart G—Severance Pay


Source: 55 FR 6993, Feb. 26, 1990, unless otherwise noted.

§ 550.701 Introduction.

This subpart contains regulations of the Office of Personnel Management to implement the provisions of 5 U.S.C. 5595. These regulations authorize severance pay for employees who are involuntarily separated from Federal service and who meet other conditions of eligibility.

§ 550.702 Coverage.

Except as provided in 5 U.S.C. 5595(a)(2) (i) through (viii), this subpart applies to each full-time or part-time employee; that is, an employee with a regularly scheduled tour of duty who is serving under a qualifying appointment, as defined in § 550.703.

§ 550.703 Definitions.

(a) Agency means an agency as defined in 5 U.S.C. 5595(a)(1), except the government of the District of Columbia.

(b) Commuting area means the geographic area that normally is considered one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities where people live and reasonably can be expected to travel back and forth daily to work.

(c) Employee means an employee as defined in 5 U.S.C. 5595(a)(2), except an individual employed by the government of the District of Columbia.

(d) Immediate annuity means—

(1) A recurring benefit payable under a Federal civilian or military retirement system that begins to accrue within 1 month after separation; or

(2) An annuity under § 842.204(a)(1) of this chapter for which the commencing date has been postponed under § 842.204(c) of this chapter.

(e) Inefficiency means unacceptable performance or conduct that leads to a separation under part 432 or 752 of this chapter.

(f) Involuntary separation means a separation initiated by an agency against the employee’s will and without his or her consent for reasons other than inefficiency, including a separation resulting from the expiration of a time-limited appointment effected within 3 calendar days after separation from a qualifying appointment. In addition, when an employee is separated because he or she declines to accept reassignment outside the commuting area, the separation is “involuntary” if the employee’s position description or other written agreement does not provide for
such a reassignment. However, an employee's separation is not “involuntary” if, after such a written mobility agreement is added, the employee accepts one reassignment outside the commuting area, but subsequently declines another such reassignment.

Nonqualifying appointment means an appointment with an intermittent work schedule, and the following appointments regardless of work schedule:

(a) A Presidential appointment;
(b) An emergency appointment;
(c) An excepted appointment under Schedule C; a noncareer appointment in the Senior Executive Service, as defined in 5 U.S.C. 3132(a); or an equivalent appointment made for similar purposes; and
(d) A time-limited appointment that is not made effective within 3 calendar days after separation from a qualifying appointment, including—
   (1) A term appointment;
   (2) A temporary appointment pending establishment of a register (TAPER);
   (3) An overseas limited appointment with a time limitation;
   (4) A limited term or limited emergency appointment in the Senior Executive Service, as defined in 5 U.S.C. 3132(a); or an equivalent appointment made for similar purposes; and
   (5) A limited executive assignment under part 305 of this chapter or an equivalent appointment made for similar purposes.

Qualifying appointment means—

(a) A career or career-conditional appointment in the competitive service or the equivalent in the excepted service;
(b) A career appointment in the Senior Executive Service;
(c) An excepted appointment without time limitation, except under Schedule C or an equivalent appointment made for similar purposes;
(d) An overseas limited appointment without time limitation;
(e) A status quo appointment, including one that becomes indefinite when the employee is promoted, demoted, or reassigned;
(f) A time-limited appointment in the Foreign Service, when the employee was assigned under a statutory authority that carried entitlement to reemployment in the same agency, but this right of reemployment has expired; and
(g) A time-limited appointment that takes effect within 3 calendar days after the end of one or more of the qualifying appointments listed in paragraphs (a) through (g) of this definition.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, including, as applicable, annual premium pay for standby duty under 5 U.S.C. 5545(c)(1), availability pay under 5 U.S.C. 5545a, straight-time pay for regular overtime hours for firefighters under 5 U.S.C. 5545b (as provided in §550.1305(b)), night differential for prevailing rate employees under 5 U.S.C. 5343(f), and any continued rate adjustment under subpart G of part 531 of this chapter, special pay adjustment for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), or locality-based comparability payment under 5 U.S.C. 5304, but not including additional pay of any kind.

Reasonable offer means the offer of a position that meets all the following conditions:

(a) The offer is in writing;
(b) The employee meets established qualification requirements; and
(c) The offered position is—
   (1) In the employee's agency, including an agency to which the employee is transferred with his or her function in a transfer of functions between agencies;
   (2) Within the employee's commuting area, unless geographic mobility is a condition of employment;
   (3) Of the same tenure and work schedule (that is, part-time or full-time); and
   (4) Not lower than two grade or pay levels below the employee's current grade or pay level, without consideration of grade or pay retention under part 536 of this chapter or other authority. In movements between pay schedules or pay systems, the representative rate of the offered position must not be lower than the representative rate of the grade or pay level that is two grades below the grade of the current position on the same pay schedule as the current position.
Representative rate has the meaning given that term in § 536.102 of this chapter.

Severance pay fund means the total severance pay to which an employee is entitled during a single entitlement under 5 U.S.C. 5595. It includes a basic severance pay allowance and, where applicable, an age adjustment allowance, as computed under § 550.707.

§ 550.704 Eligibility for severance pay.
(a) To be eligible for severance pay, an employee must:
(1) Be serving under a qualifying appointment;
(2) Have completed at least 12 months of continuous service, as described in § 550.705; and
(3) Be removed from Federal service by involuntary separation.
(b) An employee is not eligible for severance pay if he or she:
(1) Is serving under a nonqualifying appointment;
(2) Declines a reasonable offer;
(3) Is serving under a qualifying appointment in an agency scheduled by law or Executive order to be terminated within 1 year after the date of the appointment, unless on the date of separation, the agency's termination has been postponed to a date more than 1 year after the date of the appointment, or the appointment is effected within 3 calendar days after separation from a qualifying appointment;
(4) Is receiving injury compensation under subchapter I of chapter 81 of title 5, United States Code, unless the compensation is being received concurrently with pay or is the result of someone else's death; or
(5) Is eligible upon separation for an immediate annuity from a Federal civilian retirement system or from the uniformed services. Such an employee is ineligible even if all or part of the annuity is offset by payments from a non-Federal retirement system the employee elected instead of Federal civilian retirement benefits or disability benefits received from the Department of Veterans Affairs.

§ 550.705 Criteria for meeting the requirement for 12 months of continuous employment.
(a) The requirement for 12 months of continuous employment is met if, on the date of separation, an employee has held one or more civilian Federal positions over a period of 12 months without a single break in service of more than 3 calendar days. The positions held must have been under:
(1) One or more qualifying appointments;
(2) One or more nonqualifying temporary appointments that precede the current qualifying appointment; or
(3) An appointment to a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard that precedes the current qualifying appointment in the Department of Defense or the Coast Guard, respectively.
(b) When a break in service that is covered by severance pay interrupts otherwise continuous Federal employment, the entire period is considered continuous service.
(c) The period during which an employee receives continuation of pay or compensation for an injury on the job under chapter 81 of title 5, United States Code, is considered continuous Federal service.

§ 550.706 Criteria for meeting the requirement for involuntary separation.
(a) Employees who resign because they expect to be involuntarily separated are considered to have been involuntarily separated if they resign after receiving:
(1) Specific written notice that they will be involuntarily separated, and the notice of separation is not cancelled before the resignation is effected; or
(2) A general written notice of reduction in force or transfer of function that announces that all positions in the competitive area will be abolished or transferred to another commuting area.
(b) Except for resignations under the conditions described in paragraph (a) of
this section, all resignations are voluntary separations and do not carry entitlement to severance pay.

§ 550.707 Computation of severance pay.

(a) Basic severance pay allowance. Except as provided in paragraph (b) of this section, the basic severance pay allowance consists of the following:

(1) One week of pay at the rate of basic pay for the position held by the employee at the time of separation for each full year of creditable service through 10 years;

(2) Two weeks of pay at the rate of basic pay for the position held by the employee at the time of separation for each full year of creditable service beyond 10 years; and

(3) Twenty-five percent of the otherwise applicable amount for each full 3 months of creditable service beyond the final full year.

(b) Basic severance pay allowance for employees with variable work schedules or rates of pay. The basic severance pay allowance is computed on the basis of the average rate of basic pay for the last position held during the 26 biweekly pay periods immediately preceding separation for an employee in a position:

(1) In which the work schedule regularly varies from full-time to part-time throughout the year;

(2) In which the rate of annual premium pay for standby duty varies throughout the year;

(3) Under a prevailing rate schedule in which the work schedule regularly alternates between a day shift and a night shift throughout the year; and

(4) In which the employee's pay is computed under subpart M of this part (dealing with firefighter pay) when the employee has a recurring cycle of variable workweeks within his or her regular tour of duty (as defined in § 550.1302).

(c) Age adjustment allowance. The basic severance pay allowance is augmented by an age adjustment allowance consisting of 2.5 percent of the basic severance pay allowance for each full 3 months of age over 40 years.

§ 550.708 Creditable service.

The following types of service are creditable for computing an employee’s severance pay under § 550.707:

(a) Civilian service performed by an employee;

(b) Service performed with the United States Postal Service or the Postal Rate Commission;

(c) Military service, including active or inactive training with the National Guard, when performed by an employee who returns to civilian service through the exercise of a restoration right provided by law, Executive order, or regulation; and

(d) Service performed by an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, as defined in 5 U.S.C. 2105(c), who moves to a position within the civil service employment system of the Department of Defense or the Coast Guard, respectively, without a break in service of more than 3 days.

§ 550.709 Payment of severance pay.

(a) Each severance payment must be equal to the employee's rate of basic pay, less taxes and Medicare, and, when appropriate, contributions under the Federal Insurance Contributions Act (FICA). Payment must be made at the same pay period intervals salary would be paid if the employee were still employed. The final payment may be a partial payment consisting of that portion of the severance pay fund remaining from the employee's immediate entitlement of the balance of the lifetime limitation of 1 year.

(b) When an employee receives severance pay as the result of separation from a qualifying temporary appointment (that is, a temporary appointment effected within 3 days after separation from a qualifying permanent appointment), severance pay shall be paid in an amount equal to the rate of basic pay received at the time of separation from the qualifying temporary appointment.

(c) When an employee is in a nonpay status immediately before separation, basic pay is the pay the employee would have received.
§ 550.710 Suspension of severance pay.
(a) When an individual receiving severance pay is given one or more nonqualifying temporary appointments, the severance pay is suspended on the day of the appointment. Severance pay begins again when the employee separates from the nonqualifying temporary appointment.
(b) When an individual who is eligible for severance pay is given a nonqualifying temporary appointment before severance payments begin, the severance payments do not begin until the employee is separated from the temporary appointment.

§ 550.711 Termination of severance pay entitlement.
Entitlement to severance pay ends when:
(a) An employee is appointed to the Federal Government under a qualifying appointment;
(b) The severance pay fund is exhausted; or
(c) The employee has received 1 year of severance pay.

§ 550.712 Reemployment; recredit of service.
(a) When a former employee is reemployed, the employing agency shall record on the appointment document the number of weeks of severance pay received (including partial weeks).
(b) If an employee again becomes entitled to severance pay, the agency in which entitlement arises shall recompute the severance pay allowance on the basis of all creditable service and current age and deduct from the number of weeks it would take to exhaust the allowance the number of weeks for which severance pay previously was received.

§ 550.713 Records.
Agencies shall maintain records, by fiscal year, of the number of employees who receive severance pay and the total amount of severance pay paid. When entitlement to severance pay arises as the result of contracting a Federal function to a private contractor, the affected agency also shall record the number of separated employees who go to work for the contractor within 90 days after the effective date of the contract. The Office of Personnel Management may require agencies to report such information to the Office.

§ 550.714 Panama Canal Commission employees.
(a) Notwithstanding any other provisions of this subpart, an employee separated from employment with the Panama Canal Commission as a result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements shall not be entitled to severance pay if he or she—
(1) Receives a written offer of reasonably comparable employment when such offer is made before separation from Commission employment;
(2) Accepts reasonably comparable employment within 30 days after separation from Commission employment; or
(3) Was hired by the Commission on or after December 18, 1997.
(b) The term reasonably comparable employment means a position that meets all the following conditions:
(1) The position is with the Panamanian public entity that assumes the functions of managing, operating, and maintaining the Panama Canal as a result of the Panama Canal Treaty of 1977;
(2) The rate of basic pay of the position is not more than 10 percent below the employee's rate of basic pay as a Panama Canal Commission employee;
(3) The position is within the employee's commuting area;
(4) The position carries no fixed time limitation as to length of appointment; and
(5) The work schedule (that is, part-time or full-time) of the position is the same as that of the position held by the employee at the Panama Canal Commission.
(c) A Panama Canal Commission employee who resigns prior to receiving an official written notice that he or she...
§ 550.801 Applicability.
(a) This subpart contains regulations of the Office of Personnel Management to carry out section 5596 of title 5, United States Code, which authorizes the payment of back pay, interest, and reasonable attorney fees for the purpose of making an employee financially whole (to the extent possible) when, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance), the employee is found by an appropriate authority to have been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due to the employee. This subpart should be read together with this section of law.
(b) This subpart does not apply to any reclassification action.

§ 550.802 Coverage.
(a) Except as provided in paragraph (b) of this section, this subpart applies to employees, as defined in §550.803 of this subpart.
(b) This subpart does not apply to—
(1) Employees of the government of the District of Columbia; and
(2) Employees of the Tennessee Valley Authority.

§ 550.803 Definitions.
In this subpart:
Agency has the meaning given that term in section 5596(a) of title 5, United States Code.
Appropriate authority means an entity having authority in the case at hand to correct or direct the correction of an unjustified or unwarranted personnel action, including (a) a court, (b) the Comptroller General of the United States, (c) the Office of Personnel Management, (d) the Merit Systems Protection Board, (e) the Equal Employment Opportunity Commission, (f) the Federal Labor Relations Authority and its General Counsel, (g) the Foreign Service Labor Relations Board, (h) the Foreign Service Grievance Board, (i) an arbitrator in a binding arbitration case, and (j) the head of the employing agency or another official of the employing agency to whom such authority is delegated.
Collective bargaining agreement has the meaning given that term in section 7103(a)(8) of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1002 of the Foreign Service Act of 1980 (22 U.S.C. 4102(4)).
Employee means an employee or former employee of an agency.
Grievance has the meaning given that term in section 7103(a)(9) of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1101 of the Foreign Service Act of 1980 (22 U.S.C. 4131). Such a grievance includes a grievance processed under an agency administrative grievance system, if applicable.
Pay, allowances, and differentials means monetary and employment benefits to which an employee is entitled by statute or regulation by virtue of the performance of a Federal function.
Unfair labor practice means an unfair labor practice described in section 7116 of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1101 of the Foreign Service Act of 1980 (22 U.S.C. 4115).
Unjustified or unwarranted personnel action means an act of commission or an act of omission (i.e., failure to take an action or confer a benefit) that an appropriate authority subsequently determines, on the basis of substantive or
procedural defects, to have been unjustified or unwarranted under applicable law, Executive order, rule, regulation, or mandatory personnel policy established by an agency or through a collective bargaining agreement. Such actions include personnel actions and pay actions (alone or in combination).


§ 550.804 Determining entitlement to back pay.

(a) When an appropriate authority has determined that an employee was affected by an unjustified or unwarranted personnel action, the employee shall be entitled to back pay under section 5596 of title 5, United States Code, and this subpart only if the appropriate authority finds that the unjustified or unwarranted personnel action resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee.

(b) The requirement for a “timely appeal” is met when—

(1) An employee or an employee’s personal representative initiates an appeal or grievance under an appeal or grievance system, including appeal or grievance procedures included in a collective bargaining agreement; a claim against the Government of the United States; a discrimination complaint; or an unfair labor practice charge; and

(2) An appropriate authority accepts that appeal, grievance, claim, complaint, or charge as timely filed.

(c) The requirement for an “administrative determination” is met when an appropriate authority determines, in writing, that an employee has been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee.

(d) The requirement for “correction of the personnel action” is met when an appropriate authority, consistent with law, Executive order, rule, regulation, or mandatory personnel policy established by an agency or through a collective bargaining agreement, after a review, corrects or directs the correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee.

§ 550.805 Back pay computations.

(a) When an appropriate authority corrects or directs the correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due an employee—

(1) The employee shall be deemed to have performed service for the agency during the period covered by the corrective action; and

(2) The agency shall compute for the period covered by the corrective action the pay, allowances, and differentials the employee would have received if the unjustified or unwarranted personnel action had not occurred.

(b) No employee shall be granted more pay, allowances, and differentials under section 5596 of title 5, United States Code, and this subpart than he or she would have been entitled to receive if the unjustified or unwarranted personnel action had not occurred.

(c) Except as provided in paragraph (d) of this section, in computing the amount of back pay under section 5596 of title 5, United States Code, and this subpart, an agency may not include—

(1) Any period during which an employee was not ready, willing, and able to perform his or her duties because of an incapacitating illness or injury; or

(2) Any period during which an employee was unavailable for the performance of his or her duties for reasons other than those related to, or caused by, the unjustified or unwarranted personnel action.

(d) In computing the amount of back pay under section 5596 of title 5, United States Code, and this subpart, an agency shall grant, upon request of an employee, any sick or annual leave available to the employee for a period of incapacitation if the employee can establish that the period of incapacitation was the result of illness or injury.

(e) In computing the amount of back pay under section 5596 of title 5, United States Code, and this subpart, an agency shall deduct—
§ 550.806 Interest computations.

(a) Interest begins to accrue on the date or dates (usually one or more pay dates) on which the employee would have received the pay, allowances, and differentials if the unjustified or unwarranted personnel action had not occurred.

(b) In computing the amount of interest due under section 5596 of title 5, United States Code, the agency shall reduce the amount of pay, allowances, and differentials due for each date described in paragraph (a) of this section by an amount determined as follows:

(1) Divide the employee's earnings from other employment during the period covered by the corrective action, as described in §550.805(e)(1) of this part, by the total amount of back pay prior to any deductions;

(2) Multiply the ratio obtained in paragraph (b)(1) of this section by the amount of pay, allowances, and differentials due for each date described in paragraph (a) of this section.

(c) The agency shall compute interest on the amount of back pay computed under section 5596 of title 5, United States Code, and this subpart before making deductions for erroneous payments, as required by §550.805(e)(2) of this part.

(d) The rate or rates used to compute the interest payment shall be the annual percentage rate or rates established by the Secretary of the Treasury as the overpayment rate under section...
§ 550.807 Payment of reasonable attorney fees.

(a) An employee or an employee’s personal representative may request payment of reasonable attorney fees related to an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee. Such a request may be presented only to the appropriate authority that corrected or directed the correction of the unjustified or unwarranted personnel action. However, if the finding that provides the basis for a request for payment of reasonable attorney fees is made on appeal from a decision by an appropriate authority other than the employing agency, the employee or the employee’s personal representative shall present the request to the appropriate authority from which the appeal was taken.

(b) The appropriate authority to which such a request is presented shall provide an opportunity for the employing agency to respond to a request for payment of reasonable attorney fees.

(c) Except as provided in paragraph (e) of this section, when an appropriate authority corrects or directs the correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due an employee, the payment of reasonable attorney fees shall be deemed to be warranted only if—

(1) Such payment is in the interest of justice, as determined by the appropriate authority in accordance with standards established by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(2) There is a specific finding by the appropriate authority setting forth the reasons such payment is in the interest of justice.

(d) When an appropriate authority determines that such payment is warranted, it shall require payment of attorney fees in an amount determined to be reasonable by the appropriate authority. When an appropriate authority determines that such payment is not warranted, no such payment shall be required.

(e) When a determination by an appropriate authority that an employee has been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee is based on a finding of discrimination prohibited under section 2302(b)(1) of title 5, United States Code, the payment of attorney fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-5(k)).

(f) The payment of reasonable attorney fees shall be allowed only for the services of members of the Bar and for

[53 FR 18072, May 20, 1988, and 53 FR 45886, Nov. 15, 1988]
§ 550.808

the services of law clerks, paralegals, or law students, when assisting members of the Bar. However, no payment may be allowed under section 5596 of title 5, United States Code, and this subpart for the services of any employee of the Federal Government, except as provided in section 205 of title 18, United States Code, relating to the activities of officers and employees in matters affecting the Government.

(g) A determination concerning whether the payment of reasonable attorney fees is in the interest of justice and concerning the amount of any such payment shall be subject to review or appeal only if provided for by statute or regulation.

(h) This section does not apply to any administrative proceeding that was pending on January 11, 1979.


§ 550.808 Prohibition against setting aside proper promotions.

Nothing in section 5596 of title 5, United States Code, or this subpart shall be construed as authorizing the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.


Subpart I—Pay for Duty Involving Physical Hardship or Hazard

AUTHORITY: 5 U.S.C. 5545(d), 5548(b).

§ 550.901 Purpose.

This subpart prescribes the regulations required by sections 5545(d) and 5548(b) of title 5, United States Code, for the payment of differentials for duty involving unusual physical hardship or hazard to employees.

[56 FR 20344, May 3, 1991]

§ 550.902 Definitions.

In this subpart: Agency has the meaning given that term in 5 U.S.C. 5102(a)(1).

Duty involving physical hardship means duty that may not in itself be hazardous, but causes extreme physical discomfort or distress and is not adequately alleviated by protective or mechanical devices, such as duty involving exposure to extreme temperatures for a long period of time, arduous physical exertion, or exposure to fumes, dust, or noise that causes nausea, skin, eye, ear, or nose irritation.

Employee has the meaning given that term in 5 U.S.C. 5102(a)(2).

Hazardous duty means duty performed under circumstances in which an accident could result in serious injury or death, such as duty performed on a high structure where protective facilities are not used or on an open structure where adverse conditions such as darkness, lightning, steady rain, or high wind velocity exist.

Hazard pay differential means additional pay for the performance of hazardous duty or duty involving physical hardship.

Head of an agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.


§ 550.903 Establishment of hazard pay differentials.

(a) A schedule of hazard pay differentials, the hazardous duties or duties involving physical hardship for which they are payable, and the period during which they are payable is set out as appendix A to this subpart and incorporated in and made a part of this section.

(b) Amendments to appendix A of this subpart may be made by OPM on its own motion or at the request of an agency. An agency may recommend the rate of hazard pay differential to be established and shall submit with its request for an amendment of the appendix information about the hazardous duty or duty involving physical hardship showing—

(1) The nature of the duty;

(2) The degree to which the employee is exposed to hazard or physical hardship;

(3) The length of time during which the duty will continue to exist;
§ 550.904 Authorization of hazard pay differential.

(a) An agency shall pay the hazard pay differential listed in appendix A of this subpart to an employee who is assigned to and performs any duty specified in appendix A of this subpart. However, hazard pay differential may not be paid to an employee when the hazardous duty or physical hardship has been taken into account in the classification of his or her position, without regard to whether the hazardous duty or physical hardship is grade controlling, unless payment of a differential has been approved under paragraph (b) of this section.

(b) The head of an agency may approve payment of a hazard pay differential when:

(1) The actual circumstances of the specific hazard or physical hardship have changed from that taken into account and described in the position description; and

(2) Using the knowledge, skills, and abilities that are described in the position description, the employee cannot control the hazard or physical hardship; thus, the risk is not reduced to a less than significant level.

(c) For the purpose of this section, the phrase “has been taken into account in the classification of his or her position” means that the duty constitutes an element considered in establishing the grade of the position—i.e., the knowledge, skills, and abilities required to perform that duty are considered in the classification of the position.

(d) The head of the agency shall maintain records on the use of the authority described in paragraph (b) of this section, including the specific hazardous duty or duty involving physical hardship; the authorized position description(s); the number of employees paid the differential; documentation of the conditions described in paragraph (b) of this section; and the annual cost to the agency.

(4) The degree to which control may be exercised over the physical hardship or hazard; and

(5) The estimated annual cost to the agency if the request is approved.

[56 FR 20344, May 3, 1991]

§ 550.905 Payment of hazard pay differential.

When an employee performs duty for which hazard pay differential is authorized, the agency shall pay the hazard pay differential for the hours in a pay status on the day (a calendar day or a 24-hour period, when designated by the agency) on which the duty is performed. Hours in a pay status for work performed during a continuous period extending over 2 days shall be considered to have been performed on the day on which the work began, and the allowable differential shall be charged to that day.

[56 FR 20345, May 3, 1991]

§ 550.906 Termination of hazard pay differential.

An agency shall discontinue payment of hazard pay differential to an employee when—

(a) One or more of the conditions requisite for such payment ceases to exist;

(b) Safety precautions have reduced the element of hazard to a less than significant level of risk, consistent with generally accepted standards that may be applicable, such as those published by the Occupational Safety and Health Administration, Department of Labor; or

(c) Protective or mechanical devices have adequately alleviated physical discomfort or distress.


§ 550.907 Relationship to additional pay payable under other statutes.

Hazard pay differential is in addition to any additional pay or allowances payable under other statutes. It shall not be considered part of the employee’s rate of basic pay in computing additional pay or allowances payable under other statutes.

[56 FR 20345, May 3, 1991]
## APPENDIX A—SCHEDULE OF PAY DIFFERENTIALS AUTHORIZED FOR HAZARDOUS DUTY UNDER SUBPART I

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

<table>
<thead>
<tr>
<th>Duty</th>
<th>Rate of hazard pay differential (percent)</th>
<th>Effective date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exposure to Hazardous Weather or Terrain:</td>
<td></td>
<td></td>
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<tr>
<td>(1) Work in rough and remote terrain. When working on cliffs, narrow ledges, or near vertical mountainous slopes where a loss of footing would result in serious injury or death, or when working in areas where there is danger of rock falls or avalanches.</td>
<td>25</td>
<td>First pay period beginning after July 1, 1969.</td>
</tr>
<tr>
<td>(2) Traveling under hazardous conditions: (a) When traveling over secondary or unimproved roads to isolated mountain top installations is required at night, or under adverse weather conditions (such as snow, rain, or fog) which limits visibility to less than 30 meters (100 feet), when there is danger of rock, mud, or snow slides.</td>
<td>25</td>
<td>Do.</td>
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<tr>
<td></td>
<td>(b) When travel in the wintertime, either on foot or by means of vehicle, over secondary or unimproved roads or snow trails, in sparsely settled or isolated areas to isolated installations is required when there is danger of avalanches, or during “whiteout” phenomenon which limits visibility to less than 3 meters (10 feet).</td>
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<tr>
<td></td>
<td>(c) When work or travel in sparsely settled or isolated areas results in exposure to temperatures and/or wind velocity shown to be of considerable danger, or very great danger, on the windchill chart (appendix A–1), and shelter (other than temporary shelter) or assistance is not readily available.</td>
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<td></td>
<td>(3) Snow or ice removal operations. When participating in snowplowing or snow or ice removal operations, regardless of whether on primary, secondary or other class of roads, when (a) there is danger of avalanche, or (b) there is danger of missing the road and falling down steep mountainous slopes because of lack of snow stakes, “white-out” conditions, or slipping ice-pack covering the snow.</td>
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<td></td>
<td>(4) Water search and rescue operations. Participating as a member of a water search and rescue team in adverse weather conditions when winds are blowing at 56 km/h (35 m.p.h.) (classified as gale winds) or in water search and rescue operations conducted at night.</td>
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<tr>
<td></td>
<td>(5) Travel on Lake Pontchartrain. (a) When embarking, disembarking or traveling in small craft (boat) on Lake Pontchartrain when wind direction is from north, northeast, or northwest, and wind velocity is over 7.7 meters per second (15 knots); or.</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) When travelling in small crafts, where craft is not radar equipped, on Lake Pontchartrain is necessary due to emergency or unavoidable conditions and the trip is made in a dense fog under fog run procedures.</td>
</tr>
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<td></td>
<td>(6) Hazardous boarding or leaving of vessels. When duties (a), (b), or (c) are performed under adverse conditions of foul weather, ice, or night and when the sea state is high (0.9 meter (3 feet) and above):</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) Boarding or leaving vessels at sea or standing offshore during lightering or personnel transfer operations.</td>
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<tr>
<td></td>
<td>(b) Boarding, leaving, or transferring equipment between small boats or rafts and steep, rocky, or coral surrounded shorelines.</td>
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<tr>
<td></td>
<td>(c) Transferring equipment between a small boat and rudimentary dock by improvised or temporary facility such as an unfastened plank leading from boat to dock.</td>
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<td></td>
<td>(7) Small craft tests under unsafe sea conditions. Conducting craft tests to determine the seakeeping characteristics of small craft in a seaway when U.S. storm warnings normally indicate unsafe seas for a particular size craft.</td>
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<td></td>
<td>(8) Working on a drifting sea ice floe. When the job requires that the work be performed out on sea ice, e.g., installing scientific instruments and making observations for research purposes.</td>
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<tr>
<td>Exposure to Physiological Hazards:</td>
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<tr>
<td>(1) Pressure chamber subject. (a) Participating as a subject in diving research tests which seek to establish limits for safe pressure profiles by working in a pressure chamber simulating diving or, as an observer to the test or as a technician assembling underwater mock-up components for the test, when the observer or technician is exposed to high pressure gas piping systems, gas cylinders, and pumping devices which are susceptible to explosive ruptures.</td>
<td>25</td>
<td>Do.</td>
</tr>
<tr>
<td></td>
<td>(b) Working in pressurized sonar domes. Performing checkout of sonar system after sonar dome has been pressurized. This may include such duties as changing transducer elements, setting of transducer turntables, checking of cables, piping, valves, circuits, underwater telephone, and pressurization plugs.</td>
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<tr>
<td></td>
<td>(c) Working in nonpressurized sonar domes that are a part of an underwater system. Performing certification pretrial inspections, involving such duties as calibrating, adjusting, and photographing equipment, in limited space and with limited egress.</td>
<td>4</td>
</tr>
<tr>
<td>(2) Simulated altitude chamber subjects. Observers. Participating in simulated altitude studies ranging from 5500 to 45,700 meters (18,000 to 150,000 feet) either as subject or as observer exposed to the same conditions as the subject.</td>
<td>25</td>
<td>Do.</td>
</tr>
</tbody>
</table>
### Office of Personnel Management  
**Pt. 550, Subpt. I, App. A**

**APPENDIX A—SCHEDULE OF PAY DIFFERENTIALS AUTHORIZED FOR HAZARDOUS DUTY UNDER SUBPART I—Continued**

**HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)**

#### Duty | Rate of hazard pay differential (percent) | Effective date
--- | --- | ---
(3) Centrifuge subjects. Participating as subject in centrifuge studies involving elevated G forces above the level of 49 meters per second^2 (5 G's) whether or not at reduced atmospheric pressure. | 25 | Do. |
(4) Rotational flight simulator subject. Participating as a subject in a Rotational Flight Simulator in studies involving continuous rotation in one axis through 360° or in a combination of any axes through 360° at rotation rates greater than 15 r.p.m. for periods exceeding three minutes. | 25 | First pay period beginning after July 1, 1969. |
Hot Work—Working in confined spaces wherein the employee is subject to temperatures in excess of 43° C (110° F). | 4 | First pay period beginning after Feb. 16, 1975. |
(5) Environmental thermal-chamber tests: Subjects and observers exposed to the hazards and physical hardships of an environmental chamber-thermal test which simulates adverse weather or sea conditions such as the exposure to subzero temperatures; high heat and humidity; and cold water, spray, wind, and wave action. | 25 | May 4, 1988. |
Exposure to Hazardous Agents, work with or in close proximity to: | |
(1) Explosive or incendiary materials. Explosive or incendiary materials which are unstable and highly sensitive. | 25 | First pay period beginning after July 1, 1969. |
(2) At-sea shock and vibration tests. Arming explosive charges and/or working with, or in close proximity to, explosive armed charges in connection with at-sea shock and vibration tests of naval vessels, machinery, equipment and supplies. | 25 | Do. |
(3) Toxic chemical materials. Toxic chemical materials when there is a possibility of leakage or spillage. | 25 | Do. |
(4) Fire retardant materials tests. Conducting tests on fire retardant materials when the tests are performed in ventilation restricted rooms where the atmosphere is continuously contaminated by obnoxious odors and smoke which causes irritation to the eyes and respiratory tract. | 25 | Do. |
(5) Virulent biologicals. Materials of micro-organic nature which when introduced into the body are likely to cause serious disease or fatality and for which protective devices do not afford complete protection. | 25 | Do. |
(6) Asbestos. Significant risk of exposure to airborne concentrations of asbestos fibers in excess of the permissible exposure limits (PELS) in the standard for asbestos provided in Title 29, Code of Federal Regulations, §1910.1001 or 1926.58, when the risk of exposure is directly connected with the performance of assigned duties. Regulatory changes in §1910.1001 or 1926.58 are hereby incorporated in and made a part of this category, effective on the first day of the first pay period beginning on or after the effective date of the changes. | 8 | June 8, 1993 |
Participating in Liquid Missile Propulsion Tests and Certain Solid Propulsion Operations: | |
(1) Tanking and detanking. Tanking or detanking operations of a missile or the test stand “run” bottles with liquid propellants. | 25 | First pay period beginning after July 1, 1969. |
(2) Hoisting a tanked missile. Hoisting a tanked missile or a solid propellant propulsion system into and/or over the test stand. | 25 | Do. |
(3) Pressure tests. Pressure tests on loaded missiles, missile tanks, or run bottles during prefire preparations. | 25 | Do. |
(4) Test stand tests. Test stand operations on loaded missiles under environmental conditions where the high or low temperatures could cause a failure of a critical component. | 25 | Do. |
(5) Disassembly and breakdown. Disassembly and breakdown of a contaminated missile system or test stand plumbing after test. | 25 | Do. |
(6) “Go” condition test stand work. Working on any test stand above the 15-meter (50-foot) level or any stand work while the system is in a “go” condition. | 25 | Do. |
(7) Arming and decommissioning systems. Arming, dearming or the installation and/or removal of any squib, explosive device, or a component thereof connected to, or part of, any live or potentially expended liquid or solid propulsion system. | 25 | Do. |
(8) Demolition and destruct tests. Demolition, hazards classification, or destruct type tests where the specimen is nonstandard and/or unproven and the test techniques do not conform to standard or proven procedures. | 25 | Do. |
Work in Fuel Storage Tanks: When inspecting, cleaning or repairing fuel storage tanks where there is no ready access to an exit, under conditions requiring a breathing apparatus because all or part of the oxygen in the atmosphere has been displaced by toxic vapors or gas, and failure of the breathing apparatus would result in serious injury or death within the time required to leave the tank. | 25 | Do. |
### Appendix A—Schedule of Pay Differentials Authorized for Hazardous Duty Under Subpart I—Continued

<table>
<thead>
<tr>
<th>Duty</th>
<th>Rate of hazard pay differential (percent)</th>
<th>Effective date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Firefighting:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Firefighting:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forest and range fires. Participating as a member of a firefighting</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>crew in fighting forest and range fires on the fireline.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2) Equipment, installation, or building fires. Participating as an</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>emergency member of a firefighting crew in fighting fires of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>equipment, installations, or buildings.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(3) In-water under-pier firefighting operations. Participating in</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>in-water under-pier firefighting operations (involving hazards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>beyond those normally encountered in firefighting on land, e.g.,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>strong currents, cold water temperature, etc.).</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Work in Open Trenches:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Work in an open trench 4.6 meters (15 feet) or more deep until</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>proper shoring has been installed.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Underground Work:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Work underground performed in the construction of tunnels and shafts,</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>and the inspection of such underground construction, until the</td>
<td></td>
<td></td>
</tr>
<tr>
<td>necessary lining of the shaft or tunnel has eliminated the hazard.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Underwater Duty:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Submerged submarine or deep research vehicle. Duty aboard a</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>submarine or deep research vehicle when it submerges.</td>
<td></td>
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<tr>
<td></td>
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</tr>
<tr>
<td>(2) Diving. Diving, including SCUBA (self-contained underwater</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>breathing apparatus) diving, required in scientific and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>engineering pursuits, or search and rescue operations, when:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) at a depth of 6 meters (20 feet) or more below the surface; or,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) visibility is restricted; or,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) in rapidly flowing or cold water; or,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) vertical access to the surface is restricted by ice, rock, or</td>
<td></td>
<td></td>
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<tr>
<td>other structure; or,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e) testing or working with hardware which presents special</td>
<td></td>
<td></td>
</tr>
<tr>
<td>hazards (such as work with high voltage equipment or work with</td>
<td></td>
<td></td>
</tr>
<tr>
<td>underwater mockup components in an underwater space simulation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>study).</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Sea Duty Aboard Deep Research Vessels:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Participating in sea duty wherein the team member is engaged in</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>handling equipment on or over the side of the vessel when the</td>
<td></td>
<td></td>
</tr>
<tr>
<td>sea-state is high (6.2 meter-per-second winds (12-knot winds) and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0.9-meter waves (3-foot waves) and the work is done on deck in</td>
<td></td>
<td></td>
</tr>
<tr>
<td>relatively unprotected areas.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Collection of Aircraft Approach and Landing Environmental Data:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>When operating or monitoring camera equipment adjacent to flight</td>
<td>25 First pay period beginning</td>
<td></td>
</tr>
<tr>
<td>deck in the area of maximum hazard during landing sequence while</td>
<td>after July 1, 1969.</td>
<td></td>
</tr>
<tr>
<td>conducting photographic surveys aboard aircraft carriers during</td>
<td></td>
<td></td>
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<tr>
<td>periods of heavy aircraft operations.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Experimental Landing/Recovery Equipment Tests:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Participating in tests of experimental or prototype landing and</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>recovery equipment where personnel are required to serve as test</td>
<td></td>
<td></td>
</tr>
<tr>
<td>subjects in spacecraft being dropped into the sea or laboratory</td>
<td></td>
<td></td>
</tr>
<tr>
<td>tanks.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Land Impact or Pad Abort of Space Vehicle:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actual participating in dearming and safing explosive ordinance,</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>toxic propellant and high pressure vessels on vehicles that have</td>
<td></td>
<td></td>
</tr>
<tr>
<td>land impacted or on vehicles on the launch pad that have reached a</td>
<td></td>
<td></td>
</tr>
<tr>
<td>point in the countdown where no remote means are available for</td>
<td></td>
<td></td>
</tr>
<tr>
<td>returning the vehicle to a safe condition.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Height Work:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Working on any structure of at least 15 meters (50 feet) above the</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>base level, ground, deck, floor, roof, etc., under open</td>
<td></td>
<td></td>
</tr>
<tr>
<td>conditions, if the structure is unstable or if scaffold-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ing guards or other suitable protective facilities are not used, or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>if performed under adverse conditions such as snow, sleet, ice on</td>
<td></td>
<td></td>
</tr>
<tr>
<td>walking surfaces, darkness, lightning, steady rain, or high wind</td>
<td></td>
<td></td>
</tr>
<tr>
<td>velocity.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Flying, participating in:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Pilot proficiency training. Flights for pilot proficiency</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>training in aircraft new to the pilot under simulated emergency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>conditions which parallel conditions encountered in performing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>flight tests.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2) Delivery of new aircraft for flight testing. Flights to deliver</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>aircraft which has been prepared for one-time flight without being</td>
<td></td>
<td></td>
</tr>
<tr>
<td>tested flown prior to delivery flight.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duty</td>
<td>Rate of hazard pay differential (percent)</td>
<td>Effective date</td>
</tr>
<tr>
<td>---------------------------------------------------------------------</td>
<td>------------------------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>(3) Test flights of new modified, or repaired aircraft. Test flights of a new or repaired aircraft or modified aircraft when the modification may affect the flight characteristics of the aircraft.</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>(4) Reduced gravity—parabolic arc flights—subjects/observers. Reduced gravity flight testing in an aircraft flying a parabolic flight path and providing a testing environment ranging from weightlessness up through 20+ meters per second² (+2 gravity conditions).</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>(5) Launch and recovery: Test flights involving launch and recovery aboard an aircraft carrier.</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>(6) Limited control flights. Flights undertaken under unusual and adverse conditions (such as extreme weather, maximum load or overload, limited visibility, extreme turbulence, or low level flights involving fixed or tactical patterns) which threaten or severely limit control of the aircraft.</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>(7) Flight tests of expandable aircraft tires. Landing to test aircraft tires designed to deflate upon retraction, undertaken to appraise the normal deflate-reinflate cycle and also to evaluate the capability to make a satisfactory landing with the tires deflated.</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>(8) Landing and taking-off in polar areas. Landing in polar areas on unprepared snow or ice surfaces and/or taking-off under the same conditions.</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>Experimental Parachute Jumps: Participating as a jumper in field exercises to test and evaluate new types of jumping equipment and/or jumping techniques.</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>Ground Work Beneath Hovering Helicopter: Participating in ground operations to attach external load to helicopter hovering just overhead.</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>Sling-suspended transfers. When performance of duties requires transfer from a helicopter to a ship via a sling on the end of a steel cable or from a ship to another ship via a chair harness hanging from a highline between the ships when both vessels are underway.</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>Carrier suitability trials aboard aircraft carriers. Participating in carrier suitability trials aboard aircraft carriers when work is performed on the flight deck during launch, recovery, and refueling operations.</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>Cargo handling during lightening operations. Off-loading of cargo and supplies from surface ships to Landing Craft—Medium (LCM) boats involving exposure not only to falling cargo but such other hazards as shifting cargo within the LCM, swinging cargo hooks, and possibility of falling between the LCM and cargo vessel.</td>
<td>25 Do.</td>
<td></td>
</tr>
<tr>
<td>Work in unsafe structures: Working within or immediately adjacent to a building or structure which has been severely damaged by earthquake, fire, tornado, flood, or similar cause, when the structure has been declared unsafe by competent technical authority, and when such work is considered necessary for the safety of personnel or recovery of valuable materials or equipment, and the work is authorized by competent authority.</td>
<td>25 First pay period beginning after Oct. 11, 1969.</td>
<td></td>
</tr>
<tr>
<td>Tropical Jungle Duty: Work outdoors in undeveloped jungle regions outside the continental United States. Work must involve both of the following:</td>
<td>25 June 14, 1989.</td>
<td></td>
</tr>
<tr>
<td>(1) An unusual degree of physical hardship caused by high heat, humidity, or other inclement conditions; and</td>
<td>25 June 14, 1989.</td>
<td></td>
</tr>
<tr>
<td>(2) An unusual danger of serious injury or illness due to.</td>
<td>25 June 14, 1989.</td>
<td></td>
</tr>
<tr>
<td>(a) Travel on unimproved roads or rudimentary trails in rugged terrain (e.g., walking on narrow trails in steep mountainous areas, fording deep, fast-moving rivers, and crossing deep crevasses via log or other unsafe means);</td>
<td>25 June 14, 1989.</td>
<td></td>
</tr>
<tr>
<td>(b) Immediate presence of dangerous wildlife (e.g., venomous snakes, poisonous insects, and large carnivores); or</td>
<td>25 June 14, 1989.</td>
<td></td>
</tr>
<tr>
<td>(c) Known exposure to serious disease for which adequate protection cannot be provided.</td>
<td>25 June 14, 1989.</td>
<td></td>
</tr>
</tbody>
</table>
## WINDCHILL CHART IN METRIC UNITS

<table>
<thead>
<tr>
<th>Wind Speed (KPH)</th>
<th>0</th>
<th>-5</th>
<th>-10</th>
<th>-15</th>
<th>-20</th>
<th>-25</th>
<th>-30</th>
<th>-35</th>
<th>-40</th>
<th>-45</th>
<th>-50</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calm</td>
<td>0</td>
<td>C</td>
<td>-5</td>
<td>-10</td>
<td>-15</td>
<td>-20</td>
<td>-25</td>
<td>-30</td>
<td>-35</td>
<td>-40</td>
<td>-45</td>
</tr>
<tr>
<td>8</td>
<td>-2</td>
<td>-7</td>
<td>-12</td>
<td>-17</td>
<td>-23</td>
<td>-28</td>
<td>-33</td>
<td>-38</td>
<td>-44</td>
<td>-49</td>
<td>-54</td>
</tr>
<tr>
<td>16</td>
<td>-8</td>
<td>-14</td>
<td>-20</td>
<td>-26</td>
<td>-32</td>
<td>-38</td>
<td>-44</td>
<td>-51</td>
<td>-57</td>
<td>-63</td>
<td>-69</td>
</tr>
<tr>
<td>32</td>
<td>-14</td>
<td>-21</td>
<td>-28</td>
<td>-36</td>
<td>-42</td>
<td>-49</td>
<td>-57</td>
<td>-64</td>
<td>-71</td>
<td>-78</td>
<td>-85</td>
</tr>
<tr>
<td>48</td>
<td>-17</td>
<td>-24</td>
<td>-33</td>
<td>-41</td>
<td>-48</td>
<td>-56</td>
<td>-63</td>
<td>-72</td>
<td>-78</td>
<td>-86</td>
<td>-94</td>
</tr>
<tr>
<td>80</td>
<td>-20</td>
<td>-28</td>
<td>-36</td>
<td>-44</td>
<td>-52</td>
<td>-60</td>
<td>-68</td>
<td>-76</td>
<td>-84</td>
<td>-92</td>
<td>-100</td>
</tr>
</tbody>
</table>

### For properly clothed persons
- Little danger: For temperatures above -20°C.
- Considerable danger: For temperatures between -20°C and -30°C.
- Very great danger: For temperatures below -30°C.

### Danger of freezing of exposed flesh
- For temperatures below -40°C, exposure to windchill can lead to frostbite and hypothermia.

*Note: This chart is intended for general guidance and should not replace professional medical advice.*
**Subpart J—Adjustment of Work Schedules for Religious Observances**

**AUTHORITY:** 5 U.S.C. 5550a.

§ 550.1001 Coverage.

This subpart applies to each employee in or under an executive agency as defined by section 105 of title 5, United States Code.

§ 550.1002 Compensatory time off for religious observances.

(a) These regulations are issued pursuant to title IV of Public Law 95-390, enacted September 29, 1978. Under the law and these regulations, an employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in overtime work for time lost for meeting those religious requirements.

(b) To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of an agency's mission, the agency shall in each instance afford the employee the opportunity to work compensatory overtime and shall in each instance grant compensatory time off to an employee requesting such time off for religious observances when the employee's personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek.

(c) For the purpose stated in paragraph (b) of this section, the employee may work such compensatory overtime before or after the grant of compensatory time off. A grant of advanced compensatory time off should be repaid.
by the appropriate amount of compensatory overtime work within a reasonable amount of time. Compensatory overtime shall be credited to an employee on an hour for hour basis or authorized fractions thereof. Appropriate records will be kept of compensatory overtime earned and used.

(d) The premium pay provisions for overtime work in subpart A of part 550 of title 5, Code of Federal Regulations, and section 7 of the Fair Labor Standards Act of 1938, as amended, do not apply to compensatory overtime work performed by an employee for this purpose.


Subpart K—Collection by Offset From Indebted Government Employees

AUTHORITY: 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2-1 of E.O. 12107.

SOURCE: 49 FR 27472, July 3, 1984, unless otherwise noted.

§ 550.1101 Purpose.

This subpart provides the standards to be used by Federal agencies to prepare regulations implementing 5 U.S.C. 5514 and by OPM to review and approve such agency regulations, and establishes procedural guidelines to recover debts from the current pay account of an employee when the employee's creditor and paying agencies are not the same.

§ 550.1102 Scope.

(a) Coverage. This subpart applies to agencies and employees defined by §550.1103.

(b) Applicability. This subpart and 5 U.S.C. 5514 apply in recovering certain debts by administrative offset, except where the employee consents to the recovery, from the current pay account of the employee. Because salary offset is a type of administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations should be consistent with the provisions of the Federal Claims Collections Standards (FCCS) (dealing with administrative offset generally) and 31 CFR part 285 (dealing with centralized administrative offset under 31 U.S.C. 3716). Section 550.1108 addresses the use of centralized administrative offset procedures to effect salary offset. Generally, the procedures under §550.1109 should apply only when centralized administrative offset cannot be accomplished.

(1) Excluded debts. The procedures contained in this subpart do not apply to debts arising under the Internal Revenue Code (26 U.S.C. 1 et seq.) or the tariff laws of the United States or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) Waiver requests. This subpart does not preclude an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt, in the manner prescribed by the head of the responsible agency. Similarly, this subpart does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.


EFFECTIVE DATE NOTE: At 63 FR 72099, Dec. 31, 1998, §550.1102(b) was revised, effective Feb. 1, 1999. For the convenience of the user, the superseded text is set forth as follows:

§ 550.1102 Scope.

* * * * *

(b) Applicability. This subpart and 5 U.S.C. 5514 apply in recovering certain debts by administrative offset, except where the employee consents to the recovery, from the current pay account of an employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations should be consistent with the provisions of FCCS.

(1) Excluded debts or claims. The procedures contained in this subpart do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 et seq.), the Social Security Act (42 U.S.C. 301 et seq.), or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel
§ 550.1103 Definitions.

For purposes of this subpart—

Agency means an executive department or agency; a military department; the United States Postal Service; the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branch of the Government; or a Government corporation.

Creditor Agency means the agency to which the debt is owed, including a debt collection center when acting in behalf of a creditor agency in matters pertaining to the collection of a debt (as provided in § 550.1110).

Debt means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with parts 581 and 582 of this chapter). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in § 581.105(b) through (f) of this chapter.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

Effective Date Note: At 63 FR 72100, Dec. 31, 1998, § 550.1103 was amended by revising the definitions of “agency”, “creditor agency”, “disposable pay”, and “FCCS”; and adding the definition of “debt collection center”, effective Feb. 1, 1999. For the convenience of the user, the superseded text is set forth as follows:

§ 550.1103 Definitions.

Agency means (a) an Executive agency as defined in Section 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission; (b) a military department as defined in Section 102 of title 5, United States Code; (c) an agency or court in the judicial branch, including a court as defined in Section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation; (d) an agency of the legislative branch, including...
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the U.S. Senate and the U.S. House of Representatives; and (e) other independent establishments that are entities of the Federal Government.

Creditor agency means the agency to which the debt is owed.

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

FCCS means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR 101.1 et seq.

§ 550.1104 Agency regulations.

Under this subpart and 5 U.S.C. 5514, each creditor agency must issue regulations, subject to approval by the Office of Personnel Management (OPM), governing the collection of a debt by salary offset. Each agency is responsible for assuring that the regulations governing collection of internal debts are uniformly and consistently applied to all its employees. Agency regulations issued under authority of 5 U.S.C. 5514 must contain the following minimum provisions:

(a) Applicability or scope. Indicate whether regulations cover internal or Government-wide collections under 5 U.S.C. 5514, or both.

(b) Entitlement to notice, hearing, written responses and decisions. Identify when the employee is entitled to notice, when hearings will be offered, when the employee is entitled to a response or decision after exercising his or her rights under §5514 and this subpart, and if the hearing official’s decision is not in the employee’s favor or the employee chooses not to request a hearing, what other rights and remedies are available under the statutes or regulations governing the program that requires the collection to be made. Except as provided in paragraph (c) of this section, each employee from whom the creditor agency proposes to collect a debt under this subpart is entitled to receive from the creditor agency—

1. A written notice as described in paragraph (d) of this section;

2. The opportunity to petition for a hearing and, if a hearing is given, to receive a written decision from the official holding the hearing on the following issues:

(i) The determination of the creditor agency concerning the existence or amount of the debt; and

(ii) The repayment schedule, if it was not established by written agreement between the employee and the creditor agency.

(c) Exception to entitlement to notice, hearing, written responses, and final decisions. In regulations covering internal collections, an agency must except from the provisions of paragraph (b) of this section—

1. Any adjustment to pay arising out of an employee’s election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 pay periods or less;

2. A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for such adjustment; or

3. Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(d) Notification before deductions begin. Provide for notification before deductions begin. Except as provided in paragraph (c) of this section, deductions under the authority of 5 U.S.C. 5514 must not be made unless the head of
the creditor agency (or authorized designate) provides the employee at least 30 days before any deduction, written notice stating at a minimum:

(1) The creditor agency's determination that a debt is owed, including the origin, nature, and amount of that debt;

(2) The creditor agency's intention to collect the debt by means of deduction from the employee's current disposable pay account;

(3) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

(4) An explanation of the creditor agency's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the FCCS as defined in §550.1103;

(5) The employee's right to inspect and copy Government records relating to the debt or, if employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(6) If not previously provided, the opportunity (under terms agreeable to the creditor agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the creditor agency; and documented in the creditor agency's files (see the FCCS);

(7) The employee's right to a hearing conducted by an official arranged by the creditor agency (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed by the creditor agency;

(8) The method and time period for petitioning for a hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(10) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code, part 752 of title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, §§3729–3731 of title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under §§286, 287, 1001, and 1002 of title 18, United States Code or any other applicable statutory authority.

(12) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(e) Petitions for hearing. (1) Prescribe the method and time period for petitioning for a hearing. Ordinarily, a hearing may be requested by filing a written petition addressed to the appropriate creditor agency official stating why the employee believes the determination of the creditor agency concerning the existence or amount of the debt is in error.

(2) The employee's petition or statement must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(f) Petitions for hearing made after time expires. Prescribe the action to be taken on a petition for hearing made after the expiration of the period provided in the notice described in paragraph (d) of this section. Ordinarily a creditor agency should accept requests if the employee can show that the
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delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it).

(g) Form of hearings, written responses, and final decisions. (1) Define the form and content of hearings, written responses, and written decisions to be provided when the employee exercises his or her rights under §5514 and this subpart.

(2) The form and content of hearings granted under this subpart will depend on the nature of the transactions giving rise to the debts included within each debt collection program. Agencies should refer to the FCCS for information on hearing form and content.

(3) Written decisions provided after a request for hearing must, at a minimum, state the facts purported to evidence the nature and origin of the alleged debt; the hearing official’s analysis, findings and conclusions, in light of the hearing, as to the employee’s and/or creditor agency’s grounds, the amount and validity of the alleged debt and, where applicable, the repayment schedule.

(h) Method and source of deductions. Identify the method and source of deductions. At a minimum, agency regulations must identify the method of collection as salary offset and the source of deductions as current disposable pay, except as provided in paragraphs (l) and (m) of this section.

(i) Limitation on amount of deductions. Prescribe the limitations on the amount of the deduction. Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee’s ability to pay (see the FCCS). However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount.

(j) Duration of deductions. Prescribe the duration of deductions. Ordinarily, debts must be collected in one lump-sum where possible. However, if the employee is financially unable to pay in one lump-sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. Such installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be, except as provided in paragraphs (l) and (m) of this section.

(k) When deductions may begin. Prescribe when deductions will be scheduled to begin in internal agency collections.

(l) Liquidation from final check. Provide for offset under 31 U.S.C. 3716, if the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, from subsequent payments of any nature (e.g., final salary payment, lump-sum leave, etc.) due the employee from the paying agency as of the date of separation to the extent necessary to liquidate the debt.

(m) Recovery from other payments due a separated employee. Provide for offset under 31 U.S.C. 3716 from later payments of any kind due the former employee from the United States, where appropriate, if the debt cannot be liquidated by offset from any final payment due the former employee as of the date of separation. (See the FCCS.)

(n) Interest, penalties, and administrative costs. Provide for the assessment of interest, penalties, and administrative costs on debts being collected under this subpart. These charges and the waiving of them must be prescribed in accordance with the FCCS.

(o) Non-waiver of rights by payments. Provide that an employee’s involuntary payment, of all or any portion of a debt being collected under 5 U.S.C. 5514 must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

(p) Refunds. (1) Provide for promptly refunding to the appropriate party, amounts paid or deducted under this subpart when—

(i) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(ii) The employee’s paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.
(2) Refunds do not bear interest unless required or permitted by law or contract.


Effective Date Note: At 63 FR 72100, Dec. 31, 1998, §550.1104 was amended, in paragraph (d), in the second sentence of the introductory text, by removing “or his designee” and adding in its place “(or authorized designee)” and in paragraph (d)(4), by adding “as defined in §550.1103” after “FCCS”; in paragraph (d)(6), by removing “(4 CFR 102.2(e))” and adding in its place “(see the FCCS)”; in paragraph (e)(1), by adding the word “creditor” before the second appearance of the word “agency”; in paragraph (g)(2), by removing “4 CFR 102.3(c)” and adding in its place “the FCCS”; in paragraph (m), by removing “4 CFR 102.3” and adding in its place “the FCCS”; in paragraph (n), by removing “4 CFR 102.13” and adding in its place “the FCCS”; and by revising paragraphs (c) and (d)(3), effective Feb. 1, 1999. For the convenience of the user, the superseded text is set forth as follows:

§550.1104 Agency regulations.

* * * * *

(c) Exception to entitlement to notice, hearing, written responses, and final decisions. In regulations covering internal collections, an agency shall except from the provisions of paragraph (b) of this section any adjustment to pay arising out of an employee’s election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

* * * * *

(d) * * *

(3) The amount, frequency, proposed beginning date, and duration of the intended deductions;

* * * * *

§550.1105 Review and approval of agency regulations.

(a) Initial OPM review of agency regulations. (1) Creditor agencies must submit regulations to the Office of Personnel Management (OPM) for review in accordance with 5 U.S.C. 5514 and this subpart prior to publication of final regulations or prior to implementation if intra-agency collection procedures are not published. Submissions must be for agency-wide and/or Government-wide collections.

(2) Creditor agency regulations must contain all provisions specified in §550.1104. If agency regulations are incomplete, OPM will return them with information as to what must be done to obtain approval.

(b) Proposed changes in salary offset regulations. If a creditor agency proposes significant changes in the regulations covering provisions specified in §550.1104, the proposed revisions must be submitted to OPM for review and approval prior to implementation.

(c) Supplemental regulations. When a creditor agency has issued approved regulations covering the provisions specified in §550.1104, the agency may issue any supplemental regulations or instructions, consistent with its approved regulations, which are necessary for solely internal operations, without prior OPM approval.

§550.1106 Time limit on collection of debts.

Under the FCCS as defined in §550.1103, agencies may not initiate offset to collect a debt more than 10 years after the Government’s right to collect the debt first accrued, with certain exceptions explained in that paragraph.

[51 FR 21325, June 12, 1986, as amended at 63 FR 72100, Dec. 31, 1998]

Effective Date Note: At 63 FR 72100, Dec. 31, 1998, §550.1106 was amended by removing “4 CFR 102.3(b)(3)” and adding “the FCCS as defined in §550.1103” in its place, effective Feb. 1, 1999.

§550.1107 Obtaining the services of a hearing official.

(a) When the debtor does not work for the creditor agency and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the creditor agency may contact an agent of the paying agency designated in appendix A of part 581 of this chapter to arrange for a hearing official, and the paying agency must then cooperate as provided by the FCCS as defined in §550.1103 and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency
§ 550.1108 Requesting recovery through centralized administrative offset.

Under 31 U.S.C. 3716, creditor agencies must notify the Secretary of the Treasury of all debts that are delinquent as defined in the FCCS (over 180 days) so that recovery may be made by centralized administrative offset. This includes those debts the agency seeks to recover from the pay account of an employee of another agency via salary offset. The Secretary of the Treasury and other Federal disbursing officials will match payments, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payments will be offset to collect the debt. Prior to offset of the pay account of an employee, an agency must comply with the requirements of 5 U.S.C. 5514, this subpart, and agency regulations issued thereunder. Specific procedures for notifying the Secretary of the Treasury of a debt for purposes of collection by centralized administrative offset are contained in 31 CFR part 285 and the FCCS. At its discretion, a creditor agency may notify the Secretary of the Treasury of debts that have been delinquent for 180 days or less, including debts the agency seeks to recover from the pay account of an employee via salary offset.


EFFECTIVE DATE NOTE: At 63 FR 72100, Dec. 31, 1998, § 550.1108 was amended, in paragraph (a), by removing “4 CFR 102.1” and adding “the FCCS as defined in §550.1103” in its place; in paragraph (b), by removing “4 CFR 102.1” and adding “the FCCS” in its place; and by adding a new paragraph (c), effective Feb. 1, 1999.

§ 550.1109 Requesting recovery when the current paying agency is not the creditor agency.

When possible, salary offset through the centralized administrative offset procedures in §550.1108 should be attempted before applying the procedures in this section.

(a) Responsibilities of creditor agency. Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency must do the following:

(1) The creditor agency must certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government’s right to collect the debt first accrued, and that the creditor agency’s regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) If the collection must be made in installments, the creditor agency also must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment, and if the creditor agency wishes, the number and the commencing date of the installments (if a date other than the next officially established pay period is required).

(3) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency, the creditor agency also must advise the paying agency of the action(s) taken.
under 5 U.S.C. 5514 and give the date(s) the action(s) was taken.

(4) Except as otherwise provided in this paragraph, the creditor agency must submit a debt claim containing the information specified in paragraphs (a) (1) through (3) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency.

(5) If the employee is in the process of separating, the creditor agency must submit its debt claim to the employee’s paying agency for collection as provided in §550.1104(1). The paying agency must certify the total amount of collection and notify the creditor agency and the employee as provided in paragraph (c)(1) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with. However, the creditor agency must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(6) If the employee is already separated and all payments due from his or her former paying agency have been paid, the creditor agency may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 C.F.R. 831.1801 et seq.), or other similar funds, be administratively offset to collect the debt. (See 31 U.S.C. 3716 and the FCCS.)

(b) Responsibilities of paying agency—

(1) Complete claim. When the paying agency receives a properly certified debt claim from a creditor agency, deductions should be scheduled to begin prospectively at the next officially established pay interval. The employee must receive written notice that the paying agency has received a certified debt claim from the creditor agency (including the amount) and written notice of the date deductions from salary will commence and of the amount of such deductions.

(2) Incomplete claim. When the paying agency receives an incomplete debt claim from a creditor agency, the paying agency must return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) Review. The paying agency is not required or authorized to review the merits of the determination with respect to the amount or validity of the debt certified by the creditor agency.

(c) Employees who transfer from one paying agency to another. (1) If, after the creditor agency has submitted the debt claim to the employee's paying agency, the employee transfers to a position served by a different paying agency before the debt is collected in full, the paying agency from which the employee separates must certify the total amount of the collection made on the debt. One copy of the certification must be furnished to the employee, another to the creditor agency along with notice of the employee's transfer. However, the creditor agency must submit a properly certified claim to the new paying agency before collection can be resumed.

(2) When an employee transfers to another paying agency, the creditor agency need not repeat the due process procedures described by 5 U.S.C. 5514 and this subpart to resume the collection. However, the creditor agency is responsible for reviewing the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.


Effective Date Note: At 63 FR 72100, Dec. 31, 1998, §550.1108 was redesignated as §550.1109 and was amended by removing the "(b)" after "5514" in paragraph (a)(3), adding "claim" after the first appearance of "debt" in paragraph (b)(2), removing "creditor agency's" in paragraph (b)(3), and adding introductory text at the beginning of the section, effective Feb. 1, 1999.
§ 550.1110 Debt collection centers.

A debt collection center may act in behalf of a creditor agency to collect claims via salary offset consistent with this section, subject to any limitations on its authority established by the creditor agency it represents or by the U.S. Department of the Treasury.

(a) A debt collection center may be authorized to enter into a written agreement with the indebted employee regarding the repayment schedule or, in the absence of such agreement, to establish the terms of the repayment schedule.

(b) A debt collection center may make certifications to the Secretary of the Treasury under § 550.1108 or to a paying agency under § 550.1109 based on the certifications it has received from the creditor agency or a hearing official.

(c) A debt collection center responsible for collecting a particular debt may not act in behalf of a creditor agency for the purpose of making determinations regarding the existence or amount of that debt.

(d) A debt collection center responsible for collecting a particular debt may arrange for a hearing on the existence or amount of the debt or the repayment schedule by an administrative law judge or, alternatively, another hearing official not under the supervision or control of the head of the creditor agency or the debt collection center.

[63 FR 72101, Dec. 31, 1998]


Subpart L [Reserved]

Subpart M—Firefighter Pay

Authority: 5 U.S.C. 5545b, 5548, 5553, and subsections (f) and (g) of section 628 as included in section 101(h) of Public Law 105-277.

Source: 63 FR 64593, Nov. 23, 1998, unless otherwise noted.

§ 550.1301 Purpose, applicability, and administration.

(a) Purpose. This subpart provides regulations governing the pay of covered Federal firefighters. It implements sections 5542(f) and 5545b of title 5, United States Code, as added by section 628 of section 101(h) of Pub. L. 105-277, and must be read together with those sections of law.

(b) Applicability. This subpart applies to any firefighter as defined in § 550.1302.

(c) Administration. The head of an agency having employees subject to this subpart is responsible for the proper administration of this subpart.

§ 550.1302 Definitions.

In this subpart:

Annual rate of basic pay (except as otherwise provided in §§ 550.1305 and 550.1308) means the annual rate fixed under the rate schedule applicable to the position held by the firefighter, including a locality rate schedule established under 5 U.S.C. 5304 or a special rate schedule established under 5 U.S.C. 5305, before any deductions and exclusive of additional pay of any other kind.

Basic 40-hour workweek means—

(1) A standard 40-hour workweek consisting of five 8-hour workdays that is part of the firefighter's regular tour of duty; or

(2) A designated block of hours within a firefighter's regular tour of duty that, on a fixed and recurring basis, consists of 40 hours of actual work during each administrative week (or 80 hours of actual work in each biweekly pay period), excluding sleep and standby duty hours, provided the regular tour of duty does not consist primarily of 24-hour shifts.

Firefighter means an employee—

(1) Who is in a position covered by the General Schedule and classified in the GS-081 Fire Protection and Prevention classification series, consistent with standards published by the Office of Personnel Management; and

(2) Whose regular tour of duty, as in effect throughout the year, averages at least 106 hours per biweekly pay period.

Firefighter hourly rate of basic pay means an hourly rate computed by dividing the applicable annual rate of basic pay by 2756 hours, as described in § 550.1303.
Irregular hours means hours of work that are outside a firefighter's regular tour of duty.

Overtime hours means hours of work in excess of 106 hours in a biweekly pay period, or, if the agency establishes a weekly basis for overtime pay computations, hours of work in excess of 53 hours in an administrative workweek.

Overtime pay means pay for overtime hours.

Regular tour of duty means a firefighter's official work schedule, as established by the employing agency on a regular and recurring basis (or on a temporary basis in cases where a temporary change in schedules results in a reduction in regular work hours or a change in the pay computation method used under §550.1303). The tour of duty may consist of a fixed number of hours each week or a fixed recurring cycle of work schedules in which the number of hours per week varies in a repeating pattern. The regular tour of duty includes only those overtime hours that are part of the fixed recurring work schedule. However, irregular hours are deemed to be included in a firefighter's regular tour of duty if those hours are substituted for hours in the regular tour of duty for which leave without pay is taken, as provided in §550.1303(d).

§ 550.1303 Hourly rates of basic pay.

(a) For firefighters with a regular tour of duty that does not include a basic 40-hour workweek (e.g., firefighters whose schedules generally consist of 24-hour shifts with a significant amount of designated standby and sleep time), the hourly rate of basic pay is computed by dividing the applicable annual rate of basic pay by 2756 hours. The resulting firefighter hourly rate of basic pay is multiplied by all nonovertime hours to determine the pay for those hours.

(b) For firefighters with a regular tour of duty that includes a basic 40-hour workweek, the hourly rate of basic pay is computed by dividing the applicable annual rate of basic pay by 2087 hours, for any additional non-overtime hours.

(c) A firefighter's daily, weekly, or biweekly rate of basic pay must be computed using the applicable rates, as derived under paragraphs (a) and (b) of this section.

(d) If a firefighter takes leave without pay during his or her regular tour of duty, the agency must substitute any irregular hours worked in the same biweekly pay period for those hours of leave without pay. (If the firefighter's overtime pay is computed on a weekly basis, the irregular hours must be worked in the same administrative workweek.) For firefighters whose regular tour of duty includes a basic 40-hour workweek, irregular hours must be substituted first for hours of leave without pay in the basic 40-hour workweek. Each substituted hour will be paid at the rate applicable to the hour in the regular tour for which substitution is made, consistent with this section and §550.1304.

§ 550.1304 Overtime hourly rates of pay.

(a) For a firefighter who is covered by (i.e., nonexempt from) the overtime provisions of the Fair Labor Standards Act (FLSA), the overtime hourly rate of pay equals 1 1/2 times the firefighter hourly rate of basic pay for that firefighter, as established under §550.1303(a) and (b)(2).

(b) For a firefighter who is exempt from the FLSA, the overtime hourly rate is computed as provided in §550.113(e).

(c) For any firefighter, overtime pay for any pay period is derived by multiplying the applicable overtime hourly rate by all overtime hours within that period.

§ 550.1305 Treatment as basic pay.

(a) The sum of pay for nonovertime hours that are part of a firefighter's regular tour of duty (as computed under §550.1303) and the straight-time portion of overtime pay for hours in a firefighter's regular tour of duty is treated as basic pay for the following purposes:

(1) Retirement deductions and benefits under chapters 83 and 84 of title 5, United States Code;
§ 550.1306 Relationship to other entitlements.

(a) A firefighter who is compensated under this subpart is entitled to overtime pay as provided under this subpart, but may not receive additional premium pay under any other provision of subchapter V of chapter 55 of title 5, United States Code, including night pay, Sunday pay, holiday pay, and hazardous duty pay.

(b) A firefighter who is subject to section 7(k) of the Fair Labor Standards Act (FLSA) and who is subject to this subpart is deemed to be appropriately compensated under section 7(k) of the FLSA if the requirements of § 550.1304(a) are satisfied.

(c) In computing a lump-sum payment for accumulated annual leave under 5 U.S.C. 5551 and 5552 for firefighters with an uncommon tour of duty established under § 631.210 of this chapter for leave purposes, an agency must use the rates of pay for the position held by the firefighter that apply to hours in that uncommon tour of duty, including regular overtime pay for such hours.

§ 550.1307 Authority to regularize paychecks.

Upon a written request from the head of an agency (or designee), the Office of Personnel Management may approve an agency’s plan to reduce or eliminate variation in the amount of firefighters’ biweekly paychecks caused by work scheduling cycles that result in varying hours in the firefighters’ tours of duty from pay period to pay period. Such a plan must provide that the total pay any firefighter would otherwise receive for regular tours of duty over the firefighter’s entire work scheduling cycle must, to the extent practicable, remain the same.

§ 550.1308 Transitional provisions.

(a)(1) Effective on the first day of the first pay period beginning on or after October 1, 1998, a firefighter subject to this subpart who has a regular tour of duty that averages 60 hours or less per week during a year, and that does not include a basic 40-hour workweek, must be granted an increase in basic pay equal to two within-grade increases for the General Schedule grade applicable to the firefighter.

(2) An increase granted under paragraph (a)(1) of this section is not considered an equivalent increase in pay for within-grade increase purposes under 5 U.S.C. 5335 and subpart D of part 531 of this chapter.

(3) If an increase granted under paragraph (a)(1) of this section results in a longer waiting period for the firefighter’s next within-grade increase, the firefighter must be credited with 52 weeks of service for the purpose of that waiting period.

(4) If an increase granted under paragraph (a)(1) of this section results in a rate of basic pay that is above the maximum rate of basic pay for the applicable grade, that resulting pay rate must be treated as a retained rate of basic pay consistent with 5 U.S.C. 5363 and part 536 of this chapter.
(b)(1) Effective on the first day of the first pay period beginning on or after October 1, 1998, an employing agency must temporarily establish a protected annual rate of basic pay that exceeds a firefighter’s actual annual rate of basic pay (including any adjustment under paragraph (a) of this section), if necessary to ensure that the firefighter’s annualized regular pay is not reduced on that date. For this purpose, annualized regular pay means total pay for hours in the firefighter’s regular tour of duty, expressed as an annual rate based on the cycle of schedules under the firefighter’s regular tour of duty. The annualized regular pay resulting from using the protected rate in applying the pay computation rules under this subpart must approximately equal (but be no less than) the annualized regular pay to which the firefighter would have been entitled on the effective date of this paragraph under the former pay computation method.

(2) The protected rate of basic pay is fixed and not subject to further adjustments. The protected rate is a scheduled rate of basic pay for purposes of computing locality payments under 5 U.S.C. 5304 and part 531, subpart F of this chapter.

(3) The protected rate of basic pay is terminated when it is equal to or less than the firefighter’s actual rate of basic pay or when the employee is no longer covered by this subpart.

c For purposes of this section, the term basic pay excludes locality pay under 5 U.S.C. 5304 and part 531, subpart F, of this chapter.

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

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§ 551.101 General.

(a) The Fair Labor Standards Act of 1938, as amended (referred to as “the Act” or “FLSA”), provides for minimum standards for both wages and overtime entitlement, and delineates administrative procedures by which covered worktime must be compensated. Included in the Act are provisions related to child labor, equal pay, and portal-to-portal activities. In addition, the Act exempts specified employees or groups of employees from the application of certain of its provisions. It prescribes penalties for the commission of specifically prohibited acts.

(b) This part contains the regulations, criteria, and conditions that the Office of Personnel Management has prescribed for the administration of the Act. This part supplements and implements the Act, and must be read in conjunction with it.
Office of Personnel Management

§ 551.104 Definitions.

In this part—

Act or FLSA means the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.).

Administrative employee means an employee who meets the criteria in §551.206.

Agency, for purposes of OPM’s administration of the Act, means any instrumentality of the United States Government, or any constituent element thereof acting directly or indirectly as an employer, as this term is defined in section 3(d) of the Act and in this section, but does not include the entities of the United States Government listed in §551.102(c) for which the Department of Labor administers the Act or §551.102(d)(1) through (8), whose employees are covered by the Congressional Accountability Act of 1995, as amended, which makes applicable the rights and protections of the FLSA and assigns certain administrative responsibilities to the Office of Compliance.

Claim means a written allegation from a current or former employee concerning his or her FLSA exemption status determination or entitlement to minimum wage or overtime pay for work performed under the Act. The term “claim” is used generically in subpart G of this part to include complaints under the child labor provisions of the Act.

Claim period means the time during which the cause or basis of the claim occurred.

Claimant means a current or former employee who files an FLSA claim.

Customarily and regularly means a frequency which must be greater than occasional but which may be less than constant. For example, the requirement in §551.205(a)(2) will be met by an employee who normally and recurrently exercises discretion and independent judgment in the day-to-day performance of duties.

Discretion and independent judgment means work that involves comparing and evaluating possible courses of conduct, interpreting results or implications, and independently taking action or making a decision after considering the various possibilities. However, firm commitments or final decisions are not necessary to support exemption. The “decisions” made as a result of the exercise of independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee’s decisions are subject to review, and that on occasion the decisions are revised or reversed after review, does not mean that the employee is not exercising discretion and independent judgment of the level required for exemption. Work reflective of discretion and independent judgment must meet the three following criteria:

(1) The work must be sufficiently complex and varied so as to customarily and regularly require discretion and independent judgment in determining the approaches and techniques to be used, and in evaluating results. This precludes exempting an employee who performs work primarily requiring skill in applying standardized techniques or knowledge of established procedures, precedents, or other guidelines which specifically govern the employee’s action.

(2) The employee must have the authority to make such determinations during the course of assignments. This precludes exempting trainees who are in a line of work which requires discretion but who have not been given authority to decide discretionary matters independently.

(3) The decisions made independently must be significant. The term “significant” is not so restrictive as to include only the kinds of decisions made by employees who formulate policies or exercise broad commitment authority. However, the term does not extend to the kinds of decisions that affect only the procedural details of the employee’s own work, or to such matters as deciding whether a situation does or
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does not conform to clearly applicable criteria.

Emergency means a temporary condition that poses a direct threat to human life or safety, serious damage to property, or serious disruption to the operations of an activity, as determined by the employing agency.

Employ means to engage a person in an activity that is for the benefit of an agency, and includes any hours of work that are suffered or permitted.

Employee means a person who is employed—

(1) As a civilian in an executive agency as defined in section 105 of title 5, United States Code;

(2) As a civilian in a military department as defined in section 102 of title 5, United States Code;

(3) In a nonappropriated fund instrumentality of an executive agency or a military department;

(4) In a unit of the judicial branch of the Government that has positions in the competitive service; or


Employer, as defined in section 3(d) of the Act, means any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

Essential part of administrative or professional functions means work that is included as an integral part of administrative or professional exempt work. This work is identified by examining the processes involved in performing the exempt function. For example, the processes involved in evaluating a body of information include collecting and organizing information; analyzing, evaluating, and developing conclusions; and frequently, preparing a record of findings and conclusions. Often collecting or compiling information and preparing reports or other records, if divorced from the evaluative function, are nonexempt tasks. When an employee who performs the evaluative functions also performs some or all of these related steps, all such work (for example, collecting background information, recording test results, tabulating data, or typing reports) is included in the employee's exempt duties.

Executive employee means an employee who meets the criteria in §551.205.

Exempt area means any foreign country, or any territory under the jurisdiction of the United States other than the following locations:

(1) A State of the United States;

(2) The District of Columbia;

(3) Puerto Rico;

(4) The U.S. Virgin Islands;

(5) Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);

(6) American Samoa;

(7) Guam;

(8) Midway Atoll;

(9) Wake Island;

(10) Johnston Island; and

(11) Palmyra.

FLSA exempt means not covered by the minimum wage and overtime provisions of the Act.

FLSA exemption status means an employee's designation by the employing agency as either FLSA exempt or FLSA nonexempt from the minimum wage and overtime provisions of the Act.

FLSA exemption status determination claim means a claim from a current or former employee challenging the correctness of his or her FLSA exemption status determination.

FLSA nonexempt means covered by the minimum wage and overtime provisions of the Act.

FLSA overtime pay, for the purpose of §551.208, means overtime pay under this part.

FLSA pay claim means a claim from a current or former employee concerning his or her entitlement to minimum wage or overtime pay for work performed under the Act.

Foreign exemption means a provision of the Act under which the minimum wage, overtime, and child labor provisions of the Act do not apply to any employee who spends all hours of work in a given workweek in an exempt area.

Formulation or execution of management programs or policies means work that involves management programs and policies which range from broad...
national goals expressed in statutes or Executive orders to specific objectives of a small field office. Employees make policy decisions or participate indirectly, through developing or recommending proposals that are acted on by others. Employees significantly affect the execution of management programs or policies typically when the work involves obtaining compliance with such policies by other individuals or organizations, within or outside of the Federal Government, or making significant determinations furthering the operation of programs and accomplishment of program objectives. Administrative employees engaged in such work typically perform one or more phases of program management (that is, planning, developing, promoting, coordinating, controlling, or evaluating operating programs of the employing organization or of other organizations subject to regulation or other controls).

Hours of work means all time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency. Hours of work are creditable for the purposes of determining overtime pay under subpart D of this subpart. Section 551.401 of subpart D further explains this term. However, whether time is credited as hours of work is determined by considering many factors, such as the rules in subparts D and E of this subpart, provisions of law, Compulser General decisions, OPM policy guidance, agency policy and regulations, negotiated agreements, the rules in part 550 of this chapter (for hours of work for travel), and the rules in part 410 of this chapter (for hours of work for training).

Management or general business function or supporting service, as distinguished from production functions, means the work of employees who provide support to line managers.

(i) These employees furnish such support by—

(ii) Providing expert advice in specialized subject matter fields, such as that provided by management consultants or systems analysts;

(iii) Representing management in such business functions as negotiating and administering contracts, determining acceptability of goods or services, or authorizing payments;

(iv) Providing supporting services, such as automated data processing, communications, or procurement and distribution of supplies.

(2) Neither the organizational location nor the number of employees performing identical or similar work changes management or general business functions or supporting services into production functions. The work, however, must involve substantial discretion on matters of enough importance that the employee's actions and decisions have a noticeable impact on the effectiveness of the organization advised, represented, or serviced.

Nonexempt area means any of the following locations:

(1) A State of the United States;
(2) The District of Columbia;
(3) Puerto Rico;
(4) The U.S. Virgin Islands;
(5) Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);
(6) American Samoa;
(7) Guam;
(8) Midway Atoll;
(9) Wake Island;
(10) Johnston Island; and
(11) Palmyra.

Participation in the executive or administrative functions of a management official means the participation of employees, variously identified as secretaries, administrative or executive assistants, aides, etc., in portions of the managerial or administrative functions of a supervisor whose scope of responsibility precludes personally attending to all aspects of the work. To support exemption, such employees must be delegated and exercise substantial authority to act for the supervisor in the absence of specific instructions or procedures, and take actions which significantly affect the supervisor's effectiveness.

Perform work in connection with an emergency means to perform work that
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is directly related to resolving or coping with an emergency, or its immediate aftermath, as determined by the employing agency.

Preserve the claim period means to establish the period of possible entitlement to back pay by filing a written claim with either the agency employing the claimant during the claim period or with OPM. The date the agency or OPM receives the claim is the date that determines the period of possible entitlement to back pay.

Primary duty typically means the duty that constitutes the major part (over 50 percent) of an employee’s work. A duty constituting less than 50 percent of the work may be credited as the primary duty for exemption purposes provided that duty—

(1) Constitutes a substantial, regular part of a position;
(2) Governs the classification and qualification requirements of the position; and

(3) Is clearly exempt work in terms of the basic nature of the work, the frequency with which the employee must exercise discretion and independent judgment, and the significance of the decisions made.

Professional employee means an employee who meets the criteria in § 551.207.

Reckless disregard of the requirements of the Act means failure to make adequate inquiry into whether conduct is in compliance with the Act.

Recognized organizational unit means an established and defined organizational entity which has regularly assigned employees and for which a supervisor is responsible for planning and accomplishing a continuing workload. This distinguishes supervisors from leaders who head temporary groups formed to perform assignments of limited duration.

Situations 1 through 4 means the four basic situations described under Factor I, Nature of Supervisory Responsibility, in the Federal Wage System Job Grading Standard for Supervisors. The situations depict successively higher levels of supervisory responsibility and authority for scheduling work operations, planning use of resources to accomplish work, directing subordinates in performing work assignments, and carrying out administrative duties.

Statute of limitations means the time frame within which an FLSA pay claim must be filed, starting from the date the right accrued. All FLSA pay claims filed on or after June 30, 1994, are subject to a 2-year statute of limitations, except in cases of willful violation where the statute of limitations is 3 years.

Suffered or permitted work means any work performed by an employee for the benefit of an agency, whether requested or not, provided the employee’s supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed.

Supervisory and closely related work means work that is included in the calculation of exempt work for supervisory positions.

(1) Work is considered closely related to exempt supervisory work if it contributes to the effective supervision of subordinate workers, or the smooth functioning of the unit supervised, or both. Examples of closely related work include the following:

(i) Maintaining various records pertaining to workload or employee performance;
(ii) Performing setup work that requires special skills, typically is not performed by production employees in the occupation, and does not approach the volume that would justify hiring a specially trained employee to perform; and
(iii) Performing infrequently recurring or one-time tasks which are impractical to delegate because they would disrupt normal operations or take longer to explain than to perform.

(2) Activities in which both workers and supervisors are required to engage themselves are considered to be closely related to the primary duty of the position, for example, physical training during tours of duty for firefighting and law enforcement personnel.

Temporary work or duties means work or duties an employee must temporarily perform that are not consistent with the primary or grade-controlling duty of the employee’s official position description. The period of temporary...
work or duties may or may not involve a different geographic duty location.

Title 5 overtime pay, for the purpose of §551.208, means overtime pay under part 550 of this chapter.

Trainee means a person who does not meet the definition of employee in this section and who is assigned or attached to a Federal activity primarily for training. A person who attends a training program under the following conditions is considered a trainee and, therefore, is not an employee of the Government of the United States for purposes of the Act:

1. The training, even though it includes actual operation of the facilities of the Federal activity, is similar to that given in a vocational school or other institution of learning;
2. The training is for the benefit of the individual;
3. The trainee does not displace regular employees, but, rather, is supervised by them;
4. The Federal activity which provides the training derives no immediate advantage from the activities of the trainee; on occasion its operations may actually be impeded;
5. The trainee is not necessarily entitled to a job with the Federal activity at the completion of the training period; and
6. The agency and the trainee understand that the trainee is not entitled to the payment of wages from the agency for the time spent in training.

Volunteer means a person who does not meet the definition of employee in this section and who volunteers or donates his or her service, the primary benefit of which accrues to the performer of the service or to someone other than the agency. Under such circumstances there is neither an expressed nor an implied compensation agreement. Services performed by such a volunteer include personal services that, if left unperformed, would not necessitate the assignment of an employee to perform them.

Willful violation means a violation in circumstances where the agency knew that its conduct was prohibited by the Act or showed reckless disregard of the requirements of the Act. All of the facts and circumstances surrounding the violation are taken into account in determining whether a violation was willful.

Work of an intellectual nature means work requiring general intellectual abilities, such as perceptiveness, analytical reasoning, perspective, and judgment applied to a variety of subject matter fields, or work requiring mental processes which involve substantial judgment based on considering, selecting, adapting, and applying principles to numerous variables. The employee cannot rely on standardized application of established procedures or precedents, but must recognize and evaluate the effect of a continual variety of conditions or requirements in selecting, adapting, or innovating techniques and procedures, interpreting findings, and selecting and recommending the best alternative from among a broad range of possible actions.

Work of a specialized or technical nature means work which requires substantial specialized knowledge of a complex subject matter and of the principles, techniques, practices, and procedures associated with that subject matter field. This knowledge characteristically is acquired through considerable on-the-job training and experience in the specialized subject matter field, as distinguished from professional knowledge characteristically acquired through specialized academic education.

Workday means the period between the commencement of the principal activities that an employee is engaged to perform on a given day and the cessation of the principal activities for that day. The term is further explained in §551.411.

Worktime, for the purpose of determining FLSA exemption status, means time spent actually performing work. This excludes periods of time during which an employee performs no work, such as standby time, sleep time, meal periods, and paid leave.

Worktime in a representative workweek means the average percentages of worktime over a period long enough to even out normal fluctuations in workloads and be representative of the job as a whole.

Workweek means a fixed and recurring period of 168 hours—seven consecutive 24-hour periods. It need not...
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coincide with the calendar week but may begin on any day and at any hour of a day. For employees subject to part 610 of this chapter, the workweek shall be the same as the administrative workweek defined in § 610.102 of this chapter.

Workweek basis means the unit of time used as the basis for applying overtime standards under the Act and, for employees under flexible or compressed work schedules, under 5 U.S.C. 6121(6) or (7). The Act takes a single workweek as its standard and does not permit averaging of hours over two or more weeks, except for employees engaged in fire protection or law enforcement activities under section 7(k) of the Act.


Subpart B—Exemptions and Exclusions

SOURCE: 62 FR 67247, Dec. 23, 1997, unless otherwise noted.

§ 551.201 Agency authority.

The employing agency may designate an employee FLSA exempt only when the agency correctly determines that the employee meets one or more of the exemption criteria of this subpart and such supplemental interpretations or instructions issued by OPM.

§ 551.202 General principles governing exemptions.

In all exemption determinations, the agency must observe the following principles:

(a) Each employee is presumed to be FLSA nonexempt unless the employing agency correctly determines that the employee clearly meets one or more of the exemption criteria of this subpart and such supplemental interpretations or instructions issued by OPM.

(b) Exemption criteria must be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption.

(c) The burden of proof rests with the agency that asserts the exemption.

(d) An employee who clearly meets the criteria for exemption must be designated FLSA exempt. If there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee should be designated FLSA nonexempt.

(e) There are groups of General Schedule employees who are FLSA nonexempt because they do not fit any of the exemption categories. These groups include the following:

(1) Nonsupervisory General Schedule employees in equipment operating and protective occupations, and most clerical occupations (see the definition of participation in the executive or administrative functions of a management official in subpart A of this part);

(2) Nonsupervisory General Schedule employees performing technician work in positions properly classified below GS-9 (or the equivalent level in other comparable white-collar pay systems) and many, but not all, of those positions properly classified at GS-9 or above (or the equivalent level in other comparable white-collar pay systems); and

(3) Nonsupervisory General Schedule employees at any grade level in occupations requiring highly specialized technical skills and knowledges that can be acquired only through prolonged job training and experience, such as the Air Traffic Control series, GS-2152, or the Aircraft Operations series, GS-2181, unless such employees are performing predominantly administrative functions rather than the technical work of the occupation.

(f) Although separate criteria are provided for the exemption of executive, administrative, and professional employees, those categories are not mutually exclusive. All exempt work, regardless of category, must be considered. The only restriction is that, when the requirements of one category are more stringent, the combination of exempt work must meet the more stringent requirements.

(g) Failure to meet the criteria for exemption under what might appear to be the most appropriate criteria does not preclude exemption under another category. For example, an engineering technician who fails to meet the professional exemption criteria may be performing exempt administrative work, or an administrative officer who
fails to meet the administrative criteria may be performing exempt executive work.

(h) Although it is normally feasible and more convenient to identify the exemption category, this is not essential. An exemption may be based on a combination of functions, no one of which constitutes the primary duty, or the employee’s primary duty may involve two categories which are intermingled and difficult to segregate. This does not preclude designating an employee FLSA exempt, provided the work as a whole clearly meets the other exemption criteria.

(i) The designation of an employee as FLSA exempt or nonexempt ultimately rests on the duties actually performed by the employee.

§ 551.203 Exemption of General Schedule employees.

(a) GS-4 or below. Any employee in a position properly classified at GS-4 or below (or the equivalent level in other comparable white-collar pay systems) is nonexempt, unless the employee is subject to the foreign exemption in § 551.209.

(b) GS-5 or above. Any employee in a position properly classified at GS-5 or above (or the equivalent level in other comparable white-collar pay systems) is exempt only if the employee is an executive, administrative, or professional employee as defined in this subpart, unless the employee is subject to § 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or § 551.209 (the foreign exemption).

§ 551.204 Exemption of Federal Wage System employees.

(a) Nonsupervisory. A nonsupervisory employee in the Federal Wage System or in other comparable wage systems is nonexempt, unless the employee is subject to § 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or § 551.209 (the foreign exemption).

(b) Supervisory. A supervisory employee in the Federal Wage System or in other comparable wage systems is exempt only if the employee is an executive employee as defined in § 551.205, unless the employee is subject to § 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or § 551.209 (the foreign exemption).

§ 551.205 Executive exemption criteria.

An executive employee is a supervisor or manager who manages a Federal agency or any subdivision thereof (including the lowest recognized organizational unit with a continuing function) and customarily and regularly directs the work of subordinate employees and meets both of the following criteria:

(a) Primary duty test. The primary duty test is met if the employee—

(1) Has authority to make personnel changes that include, but are not limited to, selecting, removing, advancing in pay, or promoting subordinate employees, or has authority to suggest or recommend such actions with particular consideration given to these suggestions and recommendations; and

(2) Customarily and regularly exercises discretion and independent judgment in such activities as work planning and organization; work assignment, direction, review, and evaluation; and other aspects of management of subordinates, including personnel administration.

(b) 80-percent test. In addition to the primary duty test that applies to all employees, the following employees must spend 80 percent or more of the worktime in a representative workweek on supervisory and closely related work to meet the 80-percent test:

(1) Employees in positions properly classified in the General Schedule at GS-5 or GS-6 (or the equivalent level in other comparable white-collar pay systems);

(2) Firefighting or law enforcement employees in positions properly classified in the General Schedule at GS-7, GS-8, or GS-9 who are subject to section 207(k) of title 29, United States Code; and

(3) Supervisors in positions properly classified in the Federal Wage System below situation 3 of Factor I of the Federal Wage System Job Grading Standard for Supervisors (or the equivalent level in other comparable wage systems).
§ 551.206 Administrative exemption criteria.

An administrative employee is an advisor or assistant to management, a representative of management, or a specialist in a management or general business function or supporting service and meets all four of the following criteria:

(a) Primary duty test. The primary duty test is met if the employee’s work—

(1) Significantly affects the formulation or execution of management programs or policies; or

(2) Involves management or general business functions or supporting services of substantial importance to the organization serviced; or

(3) Involves substantial participation in the executive or administrative functions of a management official.

(b) Nonmanual work test. The employee performs office or other predominantly nonmanual work which is—

(1) Intellectual and varied in nature; or

(2) Of a specialized or technical nature that requires considerable special training, experience, and knowledge.

(c) Discretion and independent judgment test. The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) 80-percent test. In addition to the primary duty test that applies to all employees, General Schedule employees in positions properly classified at GS-5 or GS-6 (or the equivalent level in other comparable white-collar pay systems) must spend 80 percent or more of the worktime in a representative workweek on administrative functions and work that is an essential part of those functions to meet the 80-percent test.


§ 551.207 Professional exemption criteria.

A professional employee is an employee who meets all of the following criteria, or any teacher who is engaged in the imparting of knowledge or in the administration of an academic program in a school system or educational establishment.

(a) Primary duty test. The primary duty test is met if the employee’s work consists of—

(1) Work that requires knowledge in a field of science or learning customarily and characteristically acquired through education or training that meets the requirements for a bachelor’s or higher degree, with major study in or pertinent to the specialized field as distinguished from general education; or is performing work, comparable to that performed by professional employees, on the basis of specialized education or training and experience which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field; or

(2) Work in a recognized field of artistic endeavor that is original or creative in nature (as distinguished from work which can be produced by a person endowed with general manual or intellectual ability and training) and the result of which depends on the invention, imagination, or talent of the employee; or

(3) Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering or other similar work in the computer software field. The work must consist of one or more of the following:

(i) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; or

(ii) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or

(iii) The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

(iv) A combination of the duties described in paragraphs (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) of this section, the performance of which requires the same level of skills.
(b) Intellectual and varied work test. The employee's work is predominantly intellectual and varied in nature, requiring creative, analytical, evaluative, or interpretative thought processes for satisfactory performance.

(c) Discretion and independent judgment test. The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) 80-percent test. In addition to the primary duty test that applies to all employees, General Schedule employees in positions properly classified at GS-5 or GS-6 (or the equivalent level in other comparable white-collar pay systems), must spend 80 percent or more of the worktime in a representative workweek on professional functions and work that is an essential part of those functions to meet the 80-percent test.

§ 551.208 Effect of performing temporary work or duties on FLSA exemption status.

(a) Applicability.

(1) When applicable. This section applies only when an employee must temporarily perform work or duties that are not consistent with the primary or grade-controlling duty of the employee's official position description. The period of temporary work or duties may or may not involve a different geographic duty location. The FLSA exemption status of employees during a period of temporary work or duties must be determined as described in this section.

(2) When not applicable. This section does not apply when an employee is detailed to an identical additional position as the employee's position or to a position of the same grade, series code, basic duties, and FLSA exemption status as the employee's position.

(b) Effect on nonexempt employees.

(1) A nonexempt employee who must temporarily perform work or duties that are not consistent with the primary or grade-controlling duty of the employee's official position description remains nonexempt for the entire period of temporary work or duties unless all three of the following conditions are met:

(i) 30-day test. The period of temporary work or duties exceeds 30 calendar days; and

(ii) Exempt work or duty. The employee's primary duty for the period of temporary work or duties is exempt work or duty as defined in this part; and

(iii) Positions at GS-7 or above, or at situation 3 or 4. The employee's position (including a position to which the employee is temporarily promoted) is properly classified in the General Schedule at GS-7 or above (or the equivalent level in other comparable white-collar pay systems) or properly classified in the Federal Wage System as a supervisor at situation 3 or 4 of Factor I of the Federal Wage System Job Grading Standard for Supervisors (or the equivalent level in other comparable wage systems).

(2) If a nonexempt employee becomes exempt under the criteria in paragraph (b)(1) of this section—

(i) The employee must be considered exempt for the entire period of temporary work or duties; and

(ii) If the employee received FLSA overtime pay for work performed during the first 30 calendar days of the temporary work or duties, the agency must recalculate the employee's total pay retroactive to the beginning of that period because the employee is now not entitled to the FLSA overtime pay received but may be owed title 5 overtime pay.

(c) Effect on exempt employees.

(1) An exempt employee not covered by the special provision of paragraph (c)(3) of this section who must temporarily perform work or duties that are not consistent with the primary or grade-controlling duty of the employee's official position description remains exempt for the entire period of temporary work or duties unless all three of the following conditions are met:

(i) 30-day test. The period of temporary work or duties exceeds 30 calendar days; and

(ii) Not exempt work or duty. The employee's primary duty for the period of temporary work or duties is not exempt work or duty as defined in this part; and
§ 551.209

(iii) Positions at GS-7 or above, or at situation 3 or 4. The employee's position (including a position to which the employee is temporarily promoted) is properly classified in the General Schedule at GS-7 or above (or the equivalent level in other comparable white-collar pay systems) or properly classified in the Federal Wage System as a supervisor at situation 3 or 4 of Factor I of the Federal Wage System Job Grading Standard for Supervisors (or the equivalent level in other comparable wage systems).

(2) If an exempt employee becomes nonexempt under the criteria in paragraph (c)(1) of this section—

(i) The employee must be considered nonexempt for the entire period of temporary work or duties; and

(ii) If the employee received title 5 overtime pay for work performed during the first 30 calendar days of the temporary work or duties, the agency must recalculate the employee's total pay retroactive to the beginning of that period because the employee may now not be entitled to some or all of the title 5 overtime pay received but may be owed FLSA overtime pay.

(3) Special provision for exempt employees at GS-5 or GS-6, or below situation 3. The exemption status of certain exempt employees who must temporarily perform work or duties that are not consistent with the primary or grade-controlling duty of their official position description must be determined on a workweek basis for the period of temporary work or duties. Such employees are exempt employees whose positions (including a position to which the employee is temporarily promoted) are properly classified in the General Schedule at GS-5 or GS-6 (or the equivalent level in other comparable white-collar pay systems), or are properly classified in the Federal Wage System below situation 3 of Factor I of the Federal Wage System Job Grading Standard for Supervisors (or the equivalent level in other comparable wage systems). The exemption status determination of these employees will result in the employee either remaining exempt or becoming nonexempt for that workweek, as described in paragraphs (c)(3)(i) and (c)(3)(ii) of this section.

(i) Remain exempt. An exempt employee remains exempt for a given workweek only if the employee performs exempt work or duties for 80 percent or more of the worktime in that workweek.

(ii) Become nonexempt. An exempt employee becomes nonexempt for a given workweek only if the employee performs nonexempt work or duties for more than 20 percent of the worktime in that workweek.

(d) Emergency situation. Notwithstanding any other provisions of this section, and regardless of an employee's grade level, the agency may determine that an emergency situation exists that directly threatens human life or safety, serious damage to property, or serious disruption to the operations of an activity, and there is no recourse other than to assign qualified employees to temporarily perform work or duties in connection with the emergency. In such a designated emergency—

(1) Nonexempt employee. The exemption status of a nonexempt employee remains nonexempt whether the employee performs nonexempt work or exempt work during the emergency; and

(2) Exempt employee. The exemption status of an exempt employee must be determined on a workweek basis. The exemption status determination of exempt employees will result in the employee either remaining exempt or becoming nonexempt for that workweek, as described in paragraphs (d)(2)(i) and (d)(2)(ii) of this section.

(i) Remain exempt. An exempt employee remains exempt for any workweek in which the employee performs exempt work or duties for 80 percent or more of the worktime in a given workweek.

(ii) Become nonexempt. An exempt employee becomes nonexempt for any workweek in which the employee performs nonexempt work or duties for more than 20 percent of the worktime in a given workweek.


§ 551.209 Foreign exemption criteria.

(a) Application. When the foreign exemption applies, the minimum wage, overtime, and child labor provisions of the Act do not apply to any employee.
Office of Personnel Management

§ 551.301 Minimum wage.

(a)(1) Except as provided in paragraph (a)(2) of this section and §551.311, an agency shall pay each of its employees wages at rates not less than the minimum wage specified in section 6(a)(1) of the Act for all hours of work as defined in subpart D of this part.
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(2) The minimum wage provisions of the Act do not apply to a criminal investigator receiving availability pay under §550.181.

(b) An employee has been paid in compliance with the minimum wage provisions of this subpart if the employee's hourly regular rate of pay, as defined in §551.511(a) of this part, for the workweek is equal to or in excess of the rate specified in section 6(a)(1) of the Act.


§ 551.311 Subminimum wage.

An agency may, if it meets certain criteria published by the Office of Personnel Management, employ certain groups of less than fully productive employees (e.g., handicapped patient workers) at rates less than the minimum wage specified in section 6(a)(1) of the Act.

[45 FR 85664, Dec. 30, 1980]

Subpart D—Hours of Work

SOURCE: 45 FR 85664, Dec. 30, 1980, unless otherwise noted.

GENERAL PROVISIONS

§ 551.401 Basic principles.

(a) All time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency is “hours of work.” Such time includes:

(1) Time during which an employee is required to be on duty;

(2) Time during which an employee is suffered or permitted to work; and

(3) Waiting time or idle time which is under the control of an agency and which is for the benefit of an agency.

(b) For an employee, as defined in 5 U.S.C. 5541(2), hours in a paid nonwork status (e.g., paid leave, holidays, compensatory time off, or excused absences) are “hours of work” under this part.

(c) Hours in an unpaid nonwork status (e.g., leave without pay, furlough, absence without leave) are not “hours of work” under this part.

(d) Time that is considered hours of work under this part shall be used only to determine an employee’s entitlement to minimum wages or overtime pay under the Act, and shall not be used to determine hours of work for pay administration under title 5, United States Code, or any other authority.

(e) Irregular or occasional overtime work performed by an employee on a day on which work was not scheduled for that employee or for which the employee is required to return to his or her place of employment is deemed at least 2 hours in duration for the purpose of determining whether the employee may be entitled to overtime pay under this part, either in money or compensatory time off.

(f) For the purpose of determining hours of work in excess of 8 hours in a day under this part, agencies shall credit hours of work under §410.602 of this chapter, part 532 of this chapter and 5 U.S.C. 5544, and part 550 of this chapter, as applicable.

(g) For the purpose of determining hours of work in excess of 40 hours in a week or in excess of another applicable overtime work standard under section 7(k) of the Fair Labor Standards Act, agencies shall credit hours of work under §410.602 of this chapter, part 532 of this chapter and 5 U.S.C. 5544, and part 550 of this chapter, as applicable, that will not be compensated as hours of work in excess of 8 hours in a day, as well as any additional hours of work under this part.

(h) For the purpose of determining overtime pay for work in excess of 40 hours in a workweek under this part, time spent in a travel status is hours of work as provided in §551.422 of this part and §550.112(g) of this chapter or 5 U.S.C. 5544, as applicable.


§ 551.402 Agency responsibility.

(a) An agency is responsible for exercising appropriate controls to assure that only that work for which it intends to make payment is performed.
(b) An agency shall keep complete and accurate records of all hours worked by its employees.

APPLICATION OF PRINCIPLES IN RELATION TO NORMAL WORKDAY

§ 551.411 Workday.

(a) For the purposes of this part, workday means the period between the commencement of the principal activities that an employee is engaged to perform on a given day, and the cessation of the principal activities for that day. All time spent by an employee in the performance of such activities is hours of work. The workday is not limited to a calendar day or any other 24-hour period.

(b) Any rest period authorized by an agency that does not exceed 20 minutes and that is within the workday shall be considered hours of work.

(c) Bona fide meal periods shall not be considered hours of work, except for employees engaged in fire protection or law enforcement activities who receive compensation for overtime hours of work under 5 U.S.C. 5545(c) (1) or (2). However, for employees engaged in fire protection or law enforcement activities who have periods of duty of more than 24 hours, meal periods may be excluded from hours of work by agreement between the employer and the employee.


§ 551.412 Preparatory or concluding activities.

(a) (1) If an agency reasonably determines that a preparatory or concluding activity is closely related to an employee's principal activities, and is indispensable to the performance of the principal activities, and that the total time spent in that activity is more than 10 minutes per workday, the agency shall credit all of the time spent in that activity, including the 10 minutes, as hours of work.

(2) If the time spent in a preparatory or concluding activity is compensable as hours of work, the agency shall schedule the time period for the employee to perform that activity. An employee shall be credited with the actual time spent in that activity during the time period scheduled by the agency. In no case shall the time credited for the performance of an activity exceed the time scheduled by the agency. The employee shall be credited for the time spent performing preparatory or concluding activities in accordance with paragraph (b) of §551.521 of this part.

(b) A preparatory or concluding activity that is not closely related to the performance of the principal activities is considered a preliminary or postliminary activity. Time spent in preliminary or postliminary activities is excluded from hours of work and is not compensable, even if it occurs between periods of activity that are compensable as hours of work.

[48 FR 36805, Aug. 15, 1983]

APPLICATION OF PRINCIPLES IN RELATION TO OTHER ACTIVITIES

§ 551.421 Regular working hours.

(a) Under the Act there is no requirement that a Federal employee have a regularly scheduled administrative workweek. However, under title 5 United States Code, and part 610 of this chapter, the head of an agency is required to establish work schedules for his or her employees. In determining what activities constitute hours of work under the Act, there is generally a distinction based on whether the activity is performed by an employee during regular working hours or outside regular working hours. For purposes of this part, "regular working hours" means the days and hours of an employee's regularly scheduled administrative workweek established under part 610 of this chapter.


§ 551.422 Time spent traveling.

(a) Time spent traveling shall be considered hours of work if:

(1) An employee is required to travel during regular working hours;

(2) An employee is required to drive a vehicle or perform other work while traveling;
§ 551.423 Time spent in training or attending a lecture, meeting, or conference.

(a) Time spent in training, whether or not it is under the purview of part 410 of this chapter, shall be administered as follows:

(1) Time spent in training during regular working hours shall be considered hours of work.

(2) Time spent in training outside regular working hours shall be considered hours of work if:

(i) The employee is directed to participate in the training by his or her employing agency; and

(ii) The purpose of the training is to improve the employee’s performance of the duties and responsibilities of his or her current position.

(3) Time spent in apprenticeship or other entry level training, or internship or other career related work study training, or training under the Veterans Readjustment Act (5 CFR part 307) outside regular working hours shall not be considered hours of work, provided no productive work is performed during such periods.

(4) Time spent by an employee performing work for the agency during a period of training shall be considered hours of work.

(b) The following phrases contained in paragraph (a) of this section, are further clarified:

(1) Directed to participate means that the training is required by the agency and the employee’s performance or continued retention in his or her current position will be adversely affected by nonenrollment in such training.

(2) Training “to improve the employee’s performance” * * * of his or her current position” is distinguished from upward mobility training or developmental training to provide an employee the knowledge or skills needed for a subsequent position in the same career field.

(c) Time spent by an employee within an agency’s allowance of preparatory time for attendance at training shall be considered hours of work if such preparatory time is:

(1) During an employee’s regular working hours; or

(2) Outside the employee’s regular working hours, and the purpose of the
training meets the requirements of paragraph (a)(2) of this section.

(d) Time spent attending a lecture, meeting, or conference shall be considered hours of work if attendance is:
(1) During an employee’s regular working hours; or
(2) Outside an employee’s regular working hours, and
(i) The employee is directed by an agency to attend such an event; or
(ii) The employee performs work for the benefit of the agency during such attendance.

§ 551.424 Time spent adjusting grievances or performing representational functions.

(a) Time spent by an employee adjusting his or her grievance (or any appealable action) with an agency during the time the employee is required to be on the agency’s premises shall be considered hours of work.

(b) “Official time” granted an employee by an agency to perform representational functions during those hours when the employee is otherwise in a duty status shall be considered hours of work.

§ 551.425 Time spent receiving medical attention.

(a) Time spent waiting for and receiving medical attention for illness or injury shall be considered hours of work if:
(1) The medical attention is required on a workday an employee reported for duty and subsequently became ill or was injured;
(2) The time spent receiving medical attention occurs during the employee’s regular working hours; and
(3) The employee receives the medical attention on the agency’s premises, or at the direction of the agency at a medical facility away from the agency’s premises.

(b) Time spent taking a physical examination that is required for the employee’s continued employment with the agency shall be considered hours of work.

§ 551.426 Time spent in charitable activities.

Time spent working for public or charitable purposes at an agency’s request, or under an agency’s direction or control, shall be considered hours of work. However, time spent voluntarily in such activities outside an employee’s regular working hours is not hours of work.

Special Situations

§ 551.431 Time spent on standby duty or in an on-call status.

(a) An employee will be considered on duty and time spent on standby duty shall be considered hours of work if:
(1) The employee is restricted to an agency’s premises, or so close thereto that the employee cannot use the time effectively for his or her own purposes; or
(2) The employee, although not restricted to the agency’s premises:
   (i) Is restricted to his or her living quarters or designated post of duty;
   (ii) Has his or her activities substantially limited; and
   (iii) Is required to remain in a state of readiness to perform work.

(b) An employee will be considered off duty and time spent in an on-call status shall not be considered hours of work if:
(1) The employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or
(2) The employee is allowed to make arrangements such that any work which may arise during the on-call period will be performed by another person.

§ 551.432 Sleep time.

(a) Except as provided in paragraph (b) of this section, bona fide sleep time that fulfills the following conditions shall not be considered hours of work if:
§ 551.501 Overtime pay.

(a) An agency shall compensate an employee who is not exempt under subpart B of this part for all hours of work in excess of 8 in a day or 40 in a workweek at a rate equal to one and one-half times the employee's hourly regular rate of pay, except that an employee shall not receive overtime compensation under this part—

(1) On the basis of periods of duty in excess of 8 hours in a day when the employee receives compensation for that duty under 5 U.S.C. 5545(c)(1) or (2) or 5545(b);

(2) On the basis of hours of work in excess of 8 hours in a day that are not overtime hours of work under §410.602 of this chapter, part 532 of this chapter and 5 U.S.C. 5544, or part 550 of this chapter;

(3) On the basis of hours of work in excess of 8 hours in a day for an employee covered by 5 U.S.C. 5544 for any hours in a standby or on-call status or while sleeping or eating;

(4) On the basis of hours of work in excess of 8 hours in a day for an individual who is not an employee, as defined in 5 U.S.C. 5541(2), for purposes of 5 U.S.C. 5542, 5543, and 5544;

(5) On the basis of hours of work in excess of 40 hours in a workweek for an employee engaged in fire protection or law enforcement activities when the employee receives compensation for those hours of work under 5 U.S.C. 5545(c)(1) or (2) or 5545b;

(6) For hours of work that are not "overtime hours," as defined in 5 U.S.C. 6121, for employees under flexible or compressed work schedules;

(7) For hours of work compensated by compensatory time off under §551.531 of this part; and

(8) For fractional hours of work, except as provided in §551.521 of this part.

(b) An employee's "workweek" is a fixed and recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of a day. For employees subject to part 610 of this chapter, the workweek shall be the same as the administrative workweek defined in §610.102 of this chapter.

(c) In this subpart, "irregular or occasional overtime work" is overtime work that is not scheduled in advance of the employee's workweek.

(d) The maximum earnings limitations described in §§550.105, 550.106, and 550.107 of this chapter do not apply to overtime pay due the employee under this subpart.

§ 551.511 Hourly regular rate of pay.

(a) An employee’s “hourly regular rate” is computed by dividing the total remuneration paid to an employee in the workweek by the total number of hours of work in the workweek for which such compensation was paid.

(b) “Total remuneration” includes all remuneration for employment paid to, or on behalf of, an employee except:

(1) Payments as rewards for service the amount of which is not measured by or dependent on hours of work, production, or efficiency (e.g., a cash award for a suggestion made by an employee and adopted by an agency);

(2) Reimbursements for travel expenses, or other similar expenses, incurred by an employee in furtherance of an agency’s interest, which are not related to hours of work;

(3) Payments made in recognition of services performed during a given period, if both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the agency (e.g., incentive awards for outstandingly high-quality work);

(4) Contributions by an agency to a fund for retirement, insurance, or similar benefits;

(5) Extra compensation provided by a premium rate paid for hours of work performed by an employee in excess of eight in a day, or in excess of the normal workweek applicable to the employee;

(6) Extra compensation provided by a premium rate paid for hours of work performed by an employee on a Sunday or a holiday where such premium rate is at least one and one-half times the employee’s rate of pay for work performed in nonovertime hours on other days; or

(7) Extra compensation provided by a premium rate paid for hours of work performed by an employee outside his or her regular working hours, where such premium rate is at least one and one-half times the employee’s rate of pay for work performed in nonovertime hours.

§ 551.512 Overtime pay entitlement.

(a) An employee’s overtime entitlement under this subpart includes:

(1) The straight time rate of pay times all overtime hours worked; plus

(2) One-half times the employee’s hourly regular rate of pay times all overtime hours worked.

(b) An employee’s “straight time rate of pay” is equal to the employee’s rate of pay for the position (exclusive of any premiums or differentials) except for an employee who is authorized annual premium pay under §550.141 or §550.151 of this chapter. For an employee who is authorized annual premium pay, straight time rate of pay is equal to basic pay plus annual premium pay divided by the hours for which the basic pay plus annual premium pay are intended.

(c) An employee has been paid in compliance with the overtime pay provisions of this subpart only if the employee has received pay at a rate at least equal to the employee’s straight time rate of pay for all nonovertime hours of work in the workweek.

§ 551.513 Entitlement to other forms of pay.

Overtime pay under this subpart shall be paid in addition to all pay, other than overtime pay, to which the employee is entitled under title 5, United States Code, or any other authority. An employee entitled to overtime pay under this subpart and overtime pay under any authority outside of title 5, United States Code, shall be paid under whichever authority provides the greater overtime pay entitlement in the workweek.

§ 551.521 Fractional hours of work.

(a) An employee shall be compensated for every minute of regular overtime work.

(b) A quarter of an hour shall be the largest fraction of an hour used for crediting irregular or occasional overtime work under this subpart. When irregular or occasional overtime work is performed in other than the full fraction, odd minutes shall be rounded up.
§ 551.531 Compensatory time off.

(a) At the request of an employee who is not exempt under subpart B of this part, the head of an agency (or designee) may grant compensatory time off from an employee's tour of duty instead of payment under §551.501 for an equal amount of irregular or occasional overtime work.

(b) At the request of an employee, as defined in 5 U.S.C. 2105, the head of an agency may grant compensatory time off from an employee's basic work requirement under a flexible work schedule under 5 U.S.C. 6122 instead of payment under §551.501 of this part for an equal amount of overtime work, whether or not irregular or occasional in nature.

(c) An agency may not require that an employee be compensated for overtime work under this subpart with an equivalent amount of compensatory time off from the employee's tour of duty. An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with such employee's rights to request or not to request compensatory time off in lieu of payment for overtime hours.

(d) The head of an agency may fix time limits for an employee to request and take compensatory time off under this section. If compensatory time off is not requested or taken within the established time limits, the employee must be paid for overtime work at the overtime rate in effect for the work period in which it was earned under this subpart.

§ 551.541 Employees engaged in fire protection activities or law enforcement activities.

(a) An employee engaged in fire protection activities or law enforcement activities shall be paid at a rate equal to one and one-half times the employee's hourly regular rate of pay for those hours in a tour of duty which exceed the overtime standard for a work period specified in section 7(k) of the Act or which are in excess of 40 hours in a workweek for such an employee who does not receive compensation for those hours of work under 5 U.S.C. 5545(c)(1) or (c)(2) or 5545b.

(b) The "tour of duty" of an employee engaged in these activities shall include all time the employee is on duty. Meal periods and sleep periods are included in the tour of duty except as otherwise provided in §§511.411(c) and 551.432(b) of this part.

(c) Each agency shall establish the "work period" to be used for application of section 7(k) of the Act. The work period shall be at least seven days and not more than 28 days.

(d) A firefighter subject to section 7(k) of the Act who is compensated under part 550, subpart M, of this chapter is deemed to be appropriately compensated under section 7(k) of the Act and this part if the requirements of §550.1304(a) of this chapter are satisfied. (See 5 U.S.C. 5545b(d)(2).)


Subpart F—Child Labor


§ 551.601 Minimum age standards.

(a) 16-year minimum age. The Act, in section 3(l), sets a general 16-year minimum age, which applies to all employment subject to its child labor provisions, with certain exceptions not applicable here.

(b) 18-year minimum age. The Act, in section 3(l), also sets an 18-year minimum age with respect to employment in any occupation found and declared by the Secretary of Labor to be particularly hazardous for the employment of minors of such age or detrimental to their health or well-being.
§ 551.702 Responsibilities.

(a) Agencies must remain cognizant of and abide by regulations and orders published in part 570 of title 29, Code of Federal Regulations, by the Secretary of Labor regarding the employment of individuals under the age of 18 years. These regulations and orders govern the minimum age at which persons under the age of 18 years may be employed and the occupations in which they may be employed. Persons under the age of 18 years must not be employed in occupations or engage in work deemed hazardous by the Secretary of Labor.

(b) OPM will decide complaints concerning the employment of persons under the age of 18 years. Complaints must be filed following the procedures set forth in subpart G of this part.

Subpart G—FLSA Claims and Compliance


§ 551.701 Applicability.

(a) Applicable. This subpart applies to FLSA exemption status determination claims, FLSA pay claims for minimum wage or overtime pay for work performed under the Act, and complaints arising under the child labor provisions of the Act.

(b) Not applicable. This subpart does not apply to claims or complaints arising under the equal pay provisions of the Act. The equal pay provisions of the Act are administered by the Equal Employment Opportunity Commission.

§ 551.702 Time limits.

(a) Claims. A claimant may at any time file a complaint under the child labor provisions of the Act or an FLSA claim challenging the correctness of his or her FLSA exemption status determination. A claimant may also file an FLSA claim concerning his or her entitlement to minimum wage or overtime pay for work performed under the Act; however, time limits apply to FLSA pay claims. All FLSA pay claims filed on or after June 30, 1994, are subject to a 2-year statute of limitations (3 years for willful violations).

(b) Statute of limitations. An FLSA pay claim filed on or after June 30, 1994, is subject to the statute of limitations contained in the Portal-to-Portal Act of 1947, as amended (section 255a of title 29, United States Code), which imposes a 2-year statute of limitations, except in cases of a willful violation where the statute of limitations is 3 years. In deciding a claim, a determination must be made as to whether the cause or basis of the claim was the result of a willful violation on the part of the agency.

(c) Preserving the claim period. A claimant or a claimant's designated representative may preserve the claim period by submitting a written claim either to the agency employing the claimant during the claim period or to OPM. The date the agency or OPM receives the claim is the date that determines the period of possible entitlement to back pay. The claimant is responsible for proving when the claim was received by the agency or OPM. The claimant should retain documentation to establish when the claim was received by the agency or OPM, such as by filing the claim using certified, return receipt mail, or by requesting that the agency or OPM provide written acknowledgment of receipt of the claim. If a claim for back pay is established, the claimant will be entitled to pay for a period of up to 2 years (3 years for a willful violation) back from the date the claim was received.

§ 551.703 Avenues of review.

(a) Negotiated grievance procedure (NGP) as exclusive administrative remedy. If at any time during the claim period, a claimant was a member of a bargaining unit covered by a collective bargaining agreement that did not specifically exclude matters under the Act from the scope of the negotiated grievance procedure, the claimant must use that negotiated grievance procedure as the exclusive administrative remedy for all claims under the Act. There is no right to further administrative review by the agency or by OPM. The remaining sections in this subpart (that is, §§ 551.704 through 551.710) do not apply to such employees.

(b) Non-NGP administrative review by agency or OPM. A claimant may file a
§ 551.704 Claimant's representative.

A claimant may designate a representative to assist in preparing or presenting a claim. The claimant must designate the representative in writing. A representative may not participate in OPM interviews unless specifically requested to do so by OPM. An agency may disallow a claimant's representative who is a Federal employee in any of the following circumstances:

(a) When the individual's activities as a representative would cause a conflict of interest or position;

(b) When the designated representative cannot be released from his or her official duties because of the priority needs of the Government; or

(c) When the release of the designated representative would give rise to unreasonable costs to the Government.

§ 551.705 Filing an FLSA claim.

(a) Filing an FLSA claim. A claimant may file an FLSA claim with either the agency employing the claimant during the claim period or with OPM, but a claimant cannot pursue the same claim with both at the same time. OPM encourages a claimant to obtain a decision on the claim from the agency before filing the claim with OPM. However, a claimant is not required to do this. This is a matter of personal discretion and a claimant may use either avenue. A claimant who receives an unfavorable decision on a claim from the agency may still file the claim with OPM. However, a claimant may not file the claim with the agency after receiving an unfavorable decision from OPM. An OPM decision on a claim is final and is not subject to further administrative review.

(b) FLSA claim filed with agency. An FLSA claim filed with an agency should be made according to appropriate agency procedures. At the request of the claimant, the agency may forward the claim to OPM on the claimant's behalf. The claimant is responsible for ensuring that OPM receives all the information requested in paragraph (b) of this section.

(c) FLSA claim filed with OPM. An FLSA claim filed with OPM must be made in writing and must be signed by the claimant or the claimant's representative. Relevant information may be submitted to OPM at any time following the initial submission of a claim to OPM and prior to OPM's decision on the claim. The claim must include the following:

(1) The identity of the claimant (see §551.706(a)(2) regarding requesting confidentiality) and any designated representative, the agency employing the claimant during the claim period, the position (job title, series, and grade) occupied by the claimant during the claim period, and the current mailing address, commercial telephone number, and facsimile machine number, if available, of the claimant and any designated representative;

(2) A description of the nature of the claim and the specific issues or incidents giving rise to the claim, including the time period covered by the claim;

(3) A description of actions taken by the claimant to resolve the claim within the agency and the results of any actions taken;

(4) A copy of any relevant decision or written response by the agency;

(5) Evidence available to the claimant or the claimant's designated representative which supports the claim, including the identity, commercial
§ 551.707 Responsibilities.

(a) Claimant.

(1) Providing information to OPM. For all FLSA claims, the claimant or claimant’s designated representative must provide any additional information requested by OPM within 15 workdays after the date of the request, unless the claimant or the claimant’s representative requests additional time in which to provide the requested information. The disclosure of information by a claimant is voluntary. However, OPM may be unable to render a decision on a claim without the information requested. In such a case, the claim will be cancelled without further action being taken by OPM. In the case of an FLSA pay claim, it is the claimant’s responsibility to provide evidence that the claim period was preserved in accordance with §551.702 and of the liability of the agency and the claimant’s right to payment.

(2) Requesting confidentiality. If the claimant wishes the claim to be treated confidentially, the claim must specifically request that the identity of the claimant not be revealed to the agency. Witnesses or other sources may also request confidentiality. OPM will make every effort to conduct its investigation in a way to maintain confidentiality. If OPM is unable to obtain sufficient information to render a decision and preserve the requested confidentiality, OPM will notify the claimant that the claim will be cancelled with no further action by OPM unless the claimant voluntarily provides written authorization for his or her name to be revealed.

(b) Agency.

(1) In FLSA exemption status determination claims, the burden of proof rests with the agency that asserts the FLSA exemption.

(2) The agency must provide the claimant with a written acknowledgment of the date the claim was received.

(3) Upon a claimant’s request, and subject to any Privacy Act requirements, an agency must provide a claimant with information relevant to the claim.

(4) The agency must provide any information requested by OPM within 15 workdays after the date of the request, unless the agency requests additional time and OPM grants a longer period of time in which to provide the requested information.

§ 551.707 Withdrawal or cancellation of an FLSA claim.

(a) Withdrawal. A claimant or the claimant’s representative may withdraw a claim at any time prior to the issuance of an OPM FLSA claim decision by providing written notice to the OPM office where the claim was filed.

(b) Cancellation. OPM may, at its discretion, cancel an FLSA claim if the claimant or the claimant’s designated representative fails to provide requested information within 15 workdays after the date of the request, unless the claimant or the claimant’s representative requests additional time and OPM grants a longer period of time
§ 551.708 Finality and effect of OPM FLSA claim decision.

OPM will send an FLSA claim decision to the claimant or the claimant's representative and the agency. An FLSA claim decision made by OPM is final. There is no further right of administrative appeal. At its discretion, OPM may reconsider a decision upon a showing that material information was not considered or there was a material error of law, regulation, or fact in the original decision. A decision by OPM under the Act is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which OPM administers the Act. Upon receipt of a decision, the agency employing the claimant during the claim period must take all necessary steps to comply with the decision, including adherence with compliance instructions provided with the decision. All compliance actions must be completed within the time specified in the decision, unless an extension of time is requested by the agency and granted by OPM. The agency should identify all similarly situated current and, to the extent possible, former employees, ensure that they are treated in a manner consistent with the decision, and inform them in writing of their right to file an FLSA claim with the agency or OPM.

§ 551.709 Availability of information.

(a) Except when the claimant has requested confidentiality, the agency and the claimant must provide to each other a copy of all information submitted with respect to the claim.

(b) When a claimant has not requested confidentiality, OPM will disclose to the parties concerned the information contained in an FLSA claim file. When a claimant has requested confidentiality, OPM will delete any information identifying the claimant before disclosing the information in an FLSA claim file to the parties concerned. For the purposes of this subpart, the parties concerned means the claimant, any representative designated in writing, and any representative of the agency or OPM involved in the proceeding.

(c) Except when the claimant has requested confidentiality or the disclosure would constitute a clearly unwarranted invasion of personal privacy, OPM, upon a request which identifies the individual from whose file the information is sought, will disclose the following information from a claim file to a member of the public:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;
(2) The remedy sought;
(3) The status of the claim;
(4) The decision on the claim; and
(5) With the consent of the parties concerned, other reasonably identified information from the file.

§ 551.710 Where to file an FLSA claim with OPM.

An FLSA claim must be filed with the OPM office serving the area where the cause or basis of the claim occurred. Following are OPM addresses and service areas.

OPM ATLANTA OVERSIGHT DIVISION
75 Spring Street SW., Suite 972, Atlanta, GA 30303-3109
Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia (except the Virginia locations listed under the Washington, DC Oversight Division)

OPM CHICAGO OVERSIGHT DIVISION
230 S. Dearborn Street, DPN 30-6, Chicago, IL 60604-1687
Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, West Virginia, Wisconsin

OPM DALLAS OVERSIGHT DIVISION
1100 Commerce Street, Room 4C22, Dallas, TX 75242-9969
Arizona, Arkansas, Colorado, Louisiana, Montana, New Mexico, Oklahoma, Texas, Utah, Wyoming

OPM PHILADELPHIA OVERSIGHT DIVISION
600 Arch Street, Room 3400, Philadelphia, PA 19106-1956
Connecticut, Delaware, Maine, Maryland (except the Maryland locations listed under
PART 553—REEMPLOYMENT OF MILITARY AND CIVILIAN RETIREES TO MEET EXCEPTIONAL EMPLOYMENT NEEDS

Subpart A—General Provisions

§ 553.101 Applicability.

This part applies to employment of both civilian annuitants who would be subject to termination of annuity or annuity offset under 5 U.S.C. 8344 or 8468 and former members of the uniformed services who would be subject to reduction in retired or retainer pay under 5 U.S.C. 5532. Agencies may request exceptions as provided in subpart B from the reemployed annuitant provisions of 5 U.S.C. 8344 (for Civil Service Retirement System annuitants) or 8468 (for Federal Employees Retirement System annuitants), as appropriate, and/or from either or both of the reductions in retired pay required by 5 U.S.C. 5532.

[57 FR 12406, Apr. 10, 1992]

§ 553.102 Definitions.

(a) Agency, as used in this part, means an executive agency as defined in 5 U.S.C. 105.

(b) Annuitant, as used in this part, refers to a current or former civilian employee who is receiving, or meets the legal requirements and is applying or has announced intention to apply for, an annuity under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, based on his or her service.

(c) Retiree, as used in this part, refers to either an annuitant as defined in paragraph (b) of this section or a former member of a uniformed service who is receiving retired or retainer pay.

§ 553.103 General policy.

(a) Agency discretion and responsibility. The decision to request an exception, or to grant an exception under delegated authority, for any individual under any of the provisions of this part will be at the discretion of the employing agency. A determination made in connection with one position does not require a like determination in connection with any other position. In deciding whether to request an exception or grant an exception under delegated authority, each agency is expected to weigh fiscal responsibility and employee equity and should consider such factors as availability of funds as well as the criteria set out in this part.

(b) Application of exceptions. An exception to the reduction in retired pay provisions of 5 U.S.C. 5532 or to the salary offset provisions of 5 U.S.C. 8344 or 8468 authorized by OPM or an agency under this part applies only to the particular individual for whom it was authorized and only while that individual...
continues to serve in the same or a successor position. The exception terminates upon the individual's assignment to a different position unless a new exception is authorized under the provisions of this part.

Subpart B—Special Provisions for Reemployment Without Penalty To Meet Exceptional Recruiting or Retention Needs

§ 553.201 Requesting OPM approval for reemployment without reduction in individual cases.

(a) Request by agency head. The head of an agency may request OPM to approve individual exceptions on a case-by-case basis to meet temporary emergency hiring needs or when the agency has encountered exceptional difficulty in recruiting or retaining a qualified candidate for a particular position. Authority to submit such a request may not be redelegated to an official below the agency’s headquarters level (or, in the case of the Department of Defense, to an official below the headquarters level of the military department or Defense agency).

(b) Requirements for all requests. (1) Each request must identify the individual for whom the exception is requested, the appointing authority to be used, and the position to which he or she will be appointed.

(2) The request must be submitted in accordance with the criteria set out in paragraph (c), paragraph (d), or paragraph (e) of this section.

(3) Unless the request is submitted in accordance with paragraph (e) of this section, the individual must be off the agency’s rolls before submission.

(4) Unless the request is submitted in accordance with paragraph (c) of this section, or involves employment that is excluded from retirement coverage, a request for continuation of an annuity that would otherwise be terminated under 5 U.S.C. 8344 or 8468 must show that continuation of the annuity would be within the spirit of the applicable law.

(c) Requests based on an emergency hiring need. An agency may request reemployment without penalty for an individual whose services are needed on a temporary basis to respond to an emergency involving a direct threat to life or property or other unusual circumstances. Requests submitted on this basis must meet the following criteria:

(1) Nature of emergency. Describe the military threat, natural disaster, or other unforeseen occurrence, the date it occurred, and the expected duration of the emergency response effort.

(2) Need for the individual’s services. The agency must show either that the individual is uniquely qualified for the emergency response effort or that the number of positions to be filled and/or urgency of response justifies making the particular appointment without further delay. OPM will not approve reemployment without penalty under 5 U.S.C. 5532, 8344, or 8468 solely to meet normal seasonal workload fluctuations.

(d) Requests based on severe recruiting difficulty. Generally, requests for exception will be based on exceptional difficulty in recruiting a qualified candidate for a particular position. Requests submitted on this basis must include a description of the length, breadth, and results of the agency’s recruiting efforts for the position and any other factors demonstrating that a legitimate recruiting need cannot be met without the requested waiver. These factors may include, but are not limited to, unusual qualification requirements or working conditions, possibility of job reengineering or contracting, or a need to fill the position without further delay.

(e) Exceptions based on need to retain a particular individual. In very rare cases, an exception may be appropriate when an agency needs to retain the services of a particular individual who is uniquely qualified for an ongoing project. Requests submitted on this basis must meet the following criteria:

(1) Critical nature of project. The agency must describe the importance of the project to the agency’s mission, the potential costs of project failure or delay, legislative or Presidential deadlines, if any, and any other factors demonstrating that the project is unusually critical. Exceptions will not be approved under this paragraph merely to avoid delay in scheduled completion of ongoing work.
Office of Personnel Management § 553.203

(2) Candidate’s unique qualifications. The agency must describe the knowledges, skills, and abilities possessed by the individual that are essential for successful completion of the project and that could not be acquired by another appointee within a reasonable time.

(3) Need for retention. The agency must show good cause to believe that the employee will retire (or, in the case of an individual currently reemployed without an exception, will resign from that position) and that the agency will lose his or her services if the exception is not granted.

(4) Other staffing options. While an agency in this situation is not required to conduct outside recruiting, the request for exception must address why the work could not be assigned to other employees involved with the same project.

(f) Length of exceptions. OPM may specify a time limit for reemployment without penalty of any individual approved under this subpart. If the agency wishes to continue the exception for an individual beyond the specified time, the request for renewal must demonstrate that the conditions justifying the initial exception still exist.

§ 553.202 Request for delegation of authority to approve reemployment without reduction in emergencies.

(a) Request by agency head. The head of an agency may request OPM to delegate to the agency authority to approve individual exceptions on a case-by-case basis in specific circumstances. Authority to submit such a request may not be redelegated to an official below the agency’s headquarters level (or, in the case of the Department of Defense, to an official below the headquarters level of the military department or Defense agency).

(b) Content of request. The request for delegation must include:

(1) Description of the situations for which authority is requested. The situations must result from emergencies posing immediate and direct threat to life or property or emergencies resulting from other unusual circumstances.

(2) Identification of the occupations, grades, and locations of positions that might be filled under the delegated authority.

(3) Statement of the expected duration of the reemployment to be approved under the requested authority.

(c) Delegation agreement. OPM will set out the conditions for use of each authority that it delegates under the provisions of this section in a delegation agreement. The agreement will remain in effect without time limit unless OPM specifies a termination date in the agreement, or unless OPM withdraws the delegated authority upon finding that the circumstances justifying the delegation have changed substantially or that the agency has failed to manage the authority in accordance with the law, the regulations, and the agreement itself.


§ 553.203 Status of individuals serving without reduction.

(a) Reemployed civilian annuitants. Annuities reemployed with full salary and annuity under an exception granted in accordance with this part are not considered employees for purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code. They may not elect to have retirement contributions withheld from their pay; they may not use any employment for which an exception is granted as a basis for a supplemental or recomputed annuity; and they may not participate in the Thrift Savings Plan.

PART 572—TRAVEL AND TRANSPORTATION EXPENSES; NEW APPOINTEES AND INTERVIEWS

Sec.
572.101 Agency authority.
572.102 Agency discretion.
572.103 Recordkeeping.

Authority: 5 U.S.C. 5706b and 5723.

Source: 56 FR 6204, Feb. 14, 1991, unless otherwise noted.

§ 572.101 Agency authority.
(a) An agency may determine which positions qualify for the payment of a new appointee’s travel expenses to the first post of duty. Payment of travel and transportation expenses will be in accordance with the Federal Travel Regulation (FTR) (41 CFR chapters 301-304).
(b) An agency may determine which interviewees are eligible for payment of pre-employment interview travel expenses. Payment of these travel expenses will be in accordance with the FTR.

[56 FR 28307, June 20, 1991]

§ 572.102 Agency discretion.

Payment of travel expenses for any individual candidate or appointee will be at the discretion of the employing agency. A decision by one agency that payment is appropriate for a particular position does not require a like determination by any other agency filling similar positions. A decision made in connection with one specific vacancy does not require a like decision in connection with future vacancies. In deciding to pay travel and transportation or interview expenses in filling any position, the agency should consider such factors as availability of funds as well as the desirability of conducting interviews for a particular job or offering a recruiting incentive to a particular candidate.

§ 572.103 Recordkeeping.

Each agency will maintain records of payments made under this authority and will make those records available to OPM on request.

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

Subpart A—Recruitment Bonuses

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Subpart A—Recruitment Bonuses

§ 575.101 Purpose.
This subpart provides regulations to implement 5 U.S.C. 5753, which authorizes payment of a recruitment bonus of up to 25 percent of the annual rate of basic pay to a newly appointed employee, provided there is a determination that, in the absence of such a bonus, difficulty would be encountered in filling the position.

§ 575.102 Delegation of authority.
(a) Except as provided in paragraph (b) of this section, the head of an agency (or, with respect to positions not under the General Schedule, the head of an Executive agency) may pay a recruitment bonus to an employee who is newly appointed to—
(1) A General Schedule position paid under 5 U.S.C. 5332;
(2) A senior-level or scientific or professional position paid under 5 U.S.C. 5376;
(3) A Senior Executive Service position paid under 5 U.S.C. 5383;
(4) A position as a law enforcement officer, as defined in §550.103 of this chapter.
(5) A position under the Executive Schedule established under subchapter II of chapter 53 of title 5, United States Code, or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule; or
(6) An executive branch position filled by Presidential appointment (with or without the advice and consent of the Senate).
(b) The delegation of authority under paragraph (a) of this section shall not apply to the payment of a recruitment bonus to—
(1) The head of an agency, including an agency headed by a collegial body composed of two or more individual members; or
(2) An employee appointed to a position in the expectation of receiving an appointment as the head of an agency.
(c) The head of an Executive agency may request that OPM authorize the payment of a recruitment bonus to one or more categories of employees of his or her agency not otherwise covered by 5 U.S.C. 5753 or this subpart.
(d) When OPM finds that an agency is not paying recruitment bonuses in conformance with the agency's recruitment bonus plan and the criteria established under §575.104 of this part or otherwise determines that the agency is not using this authority selectively and judiciously, it may—
(1) Direct the agency to revoke or suspend the authority granted to any organizational component of the agency and with respect to any category or categories of employees and require that prior approval be secured before paying a recruitment bonus to such employees; or
(2) Revoke or suspend the authority granted to the head of the agency by paragraph (a) of this section for all or any part of the agency and with respect to any category or categories of employees and require that prior OPM approval be secured before paying a recruitment bonus to such employees.

§ 575.103 Definitions.
In this subpart:
Agency has the meaning given that term in 5 U.S.C. 5102.
Commuting area means the geographic area that normally is considered one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities where people live and reasonably can be expected to travel back and forth daily to work.
Employee means—
(a) An employee in or under an agency who is newly appointed; or
(b) An individual not yet employed who has received a written offer to be newly appointed and has signed a written service agreement in accordance with §575.106 prior to payment of the recruitment bonus.
Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.
Involuntarily separated refers to a separation initiated by an agency against the employee's will and without his or
her consent for reasons other than cause on charges of misconduct or delinquency. An involuntary separation includes a separation resulting from the employee's actual inability to do the work following genuine efforts to do so, but does not include a separation under part 752 of this chapter or an equivalent procedure for reasons that involve culpable wrongdoing on the part of the employee. In addition, when an employee is separated because he or she declines to accept reassignment outside the commuting area, the separation is involuntary if the employee's position description or other written agreement does not provide for such reassignment. However, an employee's separation is not involuntary if, after such a written mobility agreement is added, the employee accepts one reassignment outside the commuting area, but subsequently declines another such reassignment.

Newly appointed refers to—
(a) The first appointment, regardless of tenure, as an employee of the Federal Government; or
(b) An appointment as an employee of the Federal Government following a break in service of at least 90 days from the candidate's last period of Federal employment, other than—
(1) Employment under the Student Educational Employment Program under §213.3202;
(2) Employment as a law clerk trainee under §213.3102(e) of this chapter;
(3) Employment while a student during school vacations under a short-term temporary appointing authority;
(4) Employment under a provisional appointment designated under §316.403 if the new appointment is permanent and immediately follows the provisional appointment; or
(5) Employment under a temporary appointment that is neither full-time nor the principal employment of the candidate.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is or will be newly appointed before deductions and exclusive of additional pay of any 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).

Service agreement means a written agreement between an agency and a newly appointed employee under which the employee agrees to a specified period of employment of a minimum of 12 months with the appointing agency in return for payment of a recruitment bonus.


§ 575.104 Agency recruitment bonus plans; higher level review and approval; and criteria for payment.

(a) Agency recruitment bonus plans. (1) Before paying a recruitment bonus under this subpart, the head of an agency shall establish a recruitment bonus plan.
(2) A recruitment bonus plan shall include the following elements:
(i) The designation of officials with authority to review and approve payment of recruitment bonuses;
(ii) Criteria that must be met or considered in authorizing bonuses, including criteria for determining the amount of a bonus;
(iii) Procedures for paying bonuses;
(iv) Requirements for service agreements; and
(v) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action.

(b) Higher level review and approval.
(1) Except as provided in paragraph (b)(2) of this section, each determination to pay a recruitment bonus, including the amount of such bonus, shall be reviewed and approved by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.
(2) When necessary to make a timely offer of employment, a higher level official may establish criteria for offering recruitment bonuses in advance and authorize the recommending official to offer a recruitment bonus (in any amount within a pre-established range) to any candidate without further review or approval.

(c) Criteria for payment.
(1) Each bonus paid under this subpart shall be
based on a written determination that, in the absence of such a bonus, the agency would encounter difficulty in filling the position. Such a determination shall be made before the employee actually enters on duty in the position for which he or she was recruited. An agency may target groups of positions that have been difficult to fill in the past or that may be difficult to fill in the future and may make the required written determination to offer a recruitment bonus on a group basis.

(2) In determining whether a recruitment bonus should be paid and in determining the amount of any such payment, an agency shall consider the following factors, as applicable in the case at hand:

(i) 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;

(ii) Recent turnover in similar positions;

(iii) Labor-market factors that may affect the ability of the agency to recruit candidates for similar positions now or in the future;

(iv) Special qualifications needed for the position; and

(v) The practicality of using the superior qualifications appointment authority provided by 5 U.S.C. 5333 and § 531.203(b) of this chapter alone or in combination with a recruitment bonus.


§ 575.107 Repayment of recruitment bonus.

(a) Except as provided in paragraph (d) of this section, an employee who fails to complete the period of employment established under a service agreement shall be indebted to the Federal Government and shall repay the recruitment bonus on a pro rata basis. 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.

(b) Failure to complete the period of employment established under a service agreement occurs when the employee's service with the appointing agency terminates before the employee completes the period of employment specified in the service agreement.

(c) Amounts owed by an employee under paragraph (a) of this section shall be recovered from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and subpart K of part 550 of this chapter.

(d) Paragraph (a) of this section does not apply when an employee fails to complete a period of employment established under a service agreement because the employee is involuntarily separated.

(e) A right of recovery of an employee's debt under 5 U.S.C. 5514 may be waived in whole or in part by the head of the agency if he or she determines that recovery would be against equity and good conscience or against the public interest.

[60 FR 33326, June 28, 1995]

§ 575.108 Internal monitoring.

Each agency shall monitor the use of recruitment bonuses to ensure that its recruitment bonus plan conforms to the requirements established under this subpart and that the payment of
§ 575.109 Records and reports.

(a) Each agency shall keep a record of each determination required by §575.104(c) of this part and make such records available for review upon request by OPM. Each agency shall promptly submit a report of each such determination as a part of its regular submission to OPM’s Central Personnel Data File.

(b) So that OPM can evaluate agencies’ use of this authority and provide the Congress and others with information regarding the use of recruitment bonuses, each agency shall maintain such other records and submit to OPM such other reports and data as OPM shall require.

Subpart B—Relocation Bonuses

§ 575.201 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5753, which authorizes payment of a relocation bonus of up to 25 percent of the annual rate of basic pay to an employee who must relocate to accept a position in a different commuting area, provided there is a determination that, in the absence of such a bonus, difficulty would be encountered in filling the position.

[60 FR 33226, June 28, 1995]

§ 575.202 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency (or, with respect to positions not under the General Schedule, the head of an Executive agency) may pay a relocation bonus to an employee appointed to—

(1) A General Schedule position paid under 5 U.S.C. 5332;
(2) A senior-level or scientific or professional position paid under 5 U.S.C. 5376;
(3) A Senior Executive Service position paid under 5 U.S.C. 5383;
(4) A position as a law enforcement officer, as defined in §550.103 of this chapter;
(5) A position under the Executive Schedule established under subchapter II of chapter 53 of title 5, United States Code, or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule; or
(6) An executive branch position filled by Presidential appointment (with or without the advice and consent of the Senate).

(b) The delegation of authority under paragraph (a) of this section shall not apply to the payment of a relocation bonus to—

(1) The head of an agency, including an agency headed by a collegial body composed of two or more individual members; or
(2) An employee appointed to a position in the expectation of receiving an appointment as the head of an agency.

(c) The head of an Executive agency may request that OPM authorize the payment of a relocation bonus to one or more categories of employees of his or her agency not otherwise covered by 5 U.S.C. 5753 or this subpart.

(d) When OPM finds that an agency is not paying relocation bonuses in conformance with the agency’s relocation bonus plan and the criteria established under §575.204 of this part or otherwise determines that the agency is not using this authority selectively and judiciously, it may—

(1) Direct the agency to revoke or suspend the authority granted to any organizational component of the agency and with respect to any category or categories of employees and require that prior approval be secured at headquarters level before paying a relocation bonus to such employees; or
(2) Revoke or suspend the authority granted to the head of the agency by paragraph (a) of this section for all or any part of the agency and with respect to any category or categories of employees and require that prior OPM approval be secured before paying a relocation bonus to such employees.


§ 575.203 Definitions.

In this subpart: Agency has the meaning given that term in 5 U.S.C. 5102.

Commuting area means the geographic area that normally is considered one
area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities where people live and reasonably can be expected to travel back and forth daily to work.

Employee means an employee in or under an agency who is appointed without a break in service to a position in a different commuting area or whose duty station is changed permanently or temporarily to a different commuting area.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Involuntarily separated refers to a separation initiated by an agency against the employee's will and without his or her consent for reasons other than cause on charges of misconduct or delinquency. An involuntary separation includes a separation resulting from the employee's actual inability to do the work following genuine efforts to do so, but does not include a separation under part 752 of this chapter or an equivalent procedure for reasons that involve culpable wrongdoing on the part of the employee. In addition, when an employee is separated because he or she declines to accept assignment outside the commuting area, the separation is involuntary if the employee's position description or other written agreement does not provide for such reassignment. However, an employee's separation is not involuntary if, after such a written mobility agreement is added, the employee accepts one reassignment outside the commuting area, but subsequently declines another such reassignment.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is being relocated or, in the case of an employee who is entitled to grade or pay retention, the employee's retained rate of pay, before deductions and exclusive of additional pay of any 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). Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment with the agency at the new duty station to which relocated in return for payment of a relocation bonus.

§ 575.204 Agency relocation bonus plans; higher level review and approval; criteria for payment; and exceptions to case-by-case approval.

(a) Agency relocation bonus plans. (1) Before paying a relocation bonus under this subpart, the head of an agency shall establish a relocation bonus plan. (2) A relocation bonus plan shall include the following elements: (i) The designation of officials with authority to review and approve payment of relocation bonuses; (ii) Criteria that must be met or considered in authorizing bonuses, including criteria for determining the size of a bonus; (iii) Procedures for paying bonuses; (iv) Requirements for service agreements; and (v) Documentation and record-keeping requirements sufficient to allow reconstruction of the action.

(b) Higher level review and approval. Except as provided in paragraph (d) of this section, each determination to pay a relocation bonus, including the amount of such bonus, shall be reviewed and approved by an official of an agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(c) Criteria for payment. (1) Each bonus paid under this subpart shall be based on a written determination that, in the absence of such a bonus, the agency would encounter difficulty in filling the position. Each such determination shall be made before the employee actually enters on duty in the position to which he or she was relocated. An agency may target groups of positions that have been difficult to fill in the past or that may be difficult to fill in the future. However, except as
§ 575.205 Payment of relocation bonus.

(a) A relocation bonus shall be calculated as a percentage of the employee's annual rate of basic pay and paid as a lump sum. Except as provided in paragraph (b) of this section, the amount of a relocation bonus may not exceed 25 percent of the employee's annual rate of basic pay. It shall not be considered part of an employee's rate of basic pay for any purpose.

(b) The amount of a relocation bonus may not exceed the greater of $15,000 or 25 percent of a law enforcement officer's annual rate of basic pay in the case of—

(1) A law enforcement officer, as defined in §550.103 of this chapter, with respect to whom the provisions of chapter 51 of title 5, United States Code, apply;

(2) A member of the United States Secret Service Uniformed Division;

(3) A member of the United States Park Police;

(4) A special agent within the Diplomatic Security Service;

(5) A probation officer (referred to in section 3672 of title 18, United States Code; and

(6) A pretrial services officer (referred to in section 3153 of title 18, United States Code).

(c) Before a relocation bonus may be paid to an employee, the employee must establish a residence in the new commuting area.

§ 575.206 Service agreement.

Before a relocation bonus may be paid, an agency shall require that the employee sign a written service agreement to complete a specified period of employment with the appointing agency (or the successor agency in the event of a transfer of function) at the new duty station.

§ 575.207 Repayment of relocation bonus.

(a) Except as provided in paragraph (d) of this section, an employee who fails to complete the period of employment established under a service agreement shall be indebted to the Federal Government and shall repay the relocation bonus on a pro rata basis. The amount to be repaid shall be determined by providing credit for each full month of employment completed by...
§ 575.302 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency (or, with respect to positions not under the General Schedule, the head of an Executive agency) may pay a retention allowance to an employee who holds—

(1) A General Schedule position paid under 5 U.S.C. 5332;

(2) A senior-level or scientific or professional position paid under 5 U.S.C. 5376;

(3) A Senior Executive Service position paid under 5 U.S.C. 5383;

(4) A position as a law enforcement officer, as defined in §550.103 of this chapter;

(5) A position under the Executive Schedule established under subchapter II of chapter 53 of title 5, United States Code, or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule; or

(6) An executive branch position filled by Presidential appointment (with or without the advice and consent of the Senate).

(b) The delegation of authority under paragraph (a) of this section shall not apply to the payment of a retention allowance to the head of an agency, including an agency headed by a collegial body composed of two or more individual members.

(c) The head of an Executive agency may request that OPM authorize the
§ 575.303 Definitions.

In this subpart: Agency has the meaning given that term in 5 U.S.C. 5102.

Employee means an employee in or under an agency.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

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 who is entitled to grade or pay retention, the employee's retained rate of pay, before deductions and exclusive of additional pay of any 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).


§ 575.304 Conditions for payment.

(a) An agency may not begin payment of a retention allowance during a period of employment established under any service agreement required for payment of a recruitment bonus under subpart A of this part or relocation bonus under subpart B of this part. After retention allowance payments have commenced, a relocation bonus may be paid without affecting the payment of a retention allowance.

(b) An agency may pay a retention allowance to an employee if the employee is likely to leave the Federal service for any reason.

(c) An agency may not pay a retention allowance to an employee who is likely to leave his or her position for employment in the executive, legislative, or judicial branch of the Federal Government, whether in the same or a different agency.


§ 575.305 Agency retention allowance plans; higher level review and approval; and criteria for payment.

(a) Agency retention allowance plans.

(1) Before paying a retention allowance under this subpart, the head of an agency shall establish a retention allowance plan.

(2) A retention allowance plan shall include the following elements:

(i) The designation of officials with authority to review and approve payment of retention allowances;

(ii) Criteria that must be met or considered in authorizing allowances, including criteria for determining the size of an allowance;

(iii) Procedures for paying allowance; and

(iv) Documentation and record-keeping requirements sufficient to allow reconstruction of the action.

(b) Higher level review and approval. Each determination to pay a retention allowance, including the amount of such allowance, shall be reviewed and

approved by an official of an agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(c) Criteria for payment. (1) Each allowance paid under this subpart shall be based on a written determination that the unusually high or unique qualifications of the employee or a special need of the agency for the employee’s services makes it essential to retain the employee and that, in the absence of such an allowance, the employee would be likely to leave the Federal service.

(2) The determination required by paragraph (c)(1) of this section shall be based on a written description of the extent to which the employee’s departure would affect the agency's ability to carry out an activity or perform a function that is deemed essential to the agency’s mission.

(3) In determining whether a retention allowance should be paid and in determining the amount of any such payment, an agency shall consider the following factors, as applicable in the case at hand:

(i) 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; and

(ii) 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.

(d) Approval of retention allowances for groups or categories of employees. (1) An agency may authorize a retention allowance of up to 10 percent of an employee’s rate of basic pay for a group or category of employees (excluding individuals covered by §575.302(a) (2), (3), (5), or (6) or those in similar positions with respect to which the authority to approve retention allowances has been delegated to agency heads by OPM under §575.302(c)) based on a written determination that the category of employees has unusually high or unique qualifications, or the agency 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 are likely to leave Federal service in the absence of the allowance. The determination that there is a high risk that a significant number of employees in the targeted category are 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.

(2) Upon the request of the head of an agency, OPM may approve a retention allowance in excess of 10 percent, but not in excess of 25 percent, of an employee’s rate of basic pay for a group or category of employees that meets the criteria specified in paragraph (d)(1) of this section. OPM may require that such requests be coordinated with other agencies having similarly situated employees in the same category.

Group retention allowance requests must include—

(i) A description of the group or category and number of employees to be covered by the proposed retention allowance;

(ii) A written determination that the group or category of employees meets the criteria specified in paragraph (d)(1) of this section;

(iii) The proposed percentage retention allowance payment and a justification for that percentage;

(iv) The expected duration of retention allowance payments; and

(v) Any other information pertinent to the case at hand.

(3) All other criteria and requirements for payment under this subpart must be met before a retention allowance may be paid to any individual employee under this paragraph (d).

§ 575.306 Payment of retention allowance.

(a) A retention allowance shall be calculated as a percentage of the employee's rate of basic pay (not to exceed 25 percent) and paid in the same manner and at the same time as basic pay—i.e., the allowance shall be paid at an hourly rate for each hour during which the employee receives basic pay. It shall not be considered part of an employee's rate of basic pay for any purpose.

(b) The head of an agency may not authorize a retention allowance for an employee if or to the extent that such an allowance, when added to the employee's estimated aggregate compensation, as defined in §530.202 of this chapter, would cause the aggregate compensation actually received by the employee during the calendar year to exceed the rate payable for level I of the Executive Schedule at the end of the calendar year.

(c) Except as provided in §575.307(a) of this part, an agency may continue payment of a retention allowance as long as the conditions giving rise to the original determination to pay the allowance still exist. However, at least annually, each determination to pay an allowance shall be reviewed by the agency to determine whether the payment is still warranted, and this determination shall be certified in writing by the approving official.

(d) A retention allowance is not pay for purposes of a lump-sum payment for annual leave under 5 U.S.C. 5551 or 5552.

§ 575.307 Reduction or termination of retention allowance.

(a) At the time an increase in one or more nondiscretionary payments to an employee causes the employee's estimated aggregate compensation, as defined in §530.202 of this chapter, to exceed the aggregate limitation on pay, as described in §530.203 of this chapter, the agency shall reduce the authorization for the amount of the retention allowance to the extent necessary to ensure that the aggregate compensation the employee actually receives does not exceed the rate payable for level I of the Executive Schedule at the end of the calendar year.

(b) The head of an agency may reduce or terminate payment of a retention allowance when it determines that—

1. A lesser amount (or none at all) would be sufficient to retain the employee;

2. Labor-market factors make it more likely (or reasonably likely) to recruit a candidate with qualifications similar to those possessed by the employee;

3. The agency's need for the services of the employee has been reduced to a level that makes it unnecessary to continue payment at the level originally approved (or at all); or

4. Budgetary considerations make it difficult to continue payment at the level originally approved (or at all).

(c) The reduction or termination of a retention allowance may not be appealed. However, the preceding sentence shall not be construed to extinguish or lessen any right or remedy under subchapter II of chapter 12 of title 5, United States Code, or any of the laws referred to in 5 U.S.C. 2302(d).

§ 575.308 Internal monitoring.

Each agency shall monitor the use of retention allowances to ensure that its retention allowance plan conforms to the requirements established under this subpart and that the payment of retention allowances conforms to the criteria established under this subpart.

§ 575.309 Records and reports.

(a) Each agency shall keep a record of each determination required by §575.305(c) of this part and make such records available for review upon request by OPM. Each agency shall promptly submit a report of each such determination as a part of its regular submission to OPM's Central Personnel Data File.

(b) So that OPM can evaluate agencies' use of this authority and provide the Congress and others with information regarding the use of retention allowances, each agency shall maintain
such other records and submit to OPM such other reports and data as OPM shall require.

Subpart D—Supervisory Differentials

SOURCE: 56 FR 20338, May 3, 1991, unless otherwise noted.

§ 575.401 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5755, which authorizes payment of a supervisory differential to an employee under the General Schedule who has supervisory responsibility for one or more civilian employees not under the General Schedule if one or more of the subordinate civilian employees would, in the absence of such a differential, be paid more than the supervisory employee.

§ 575.402 Delegation of authority.

(a) The head of an agency may pay a supervisory differential to a supervisor who is—

(1) In a General Schedule position paid under 5 U.S.C. 5332; and

(2) Responsible for providing direct, technical supervision over the work of one or more civilian employees whose positions are not under the General Schedule if the continuing pay (as determined under §575.405(d) of this part) of one or more of the subordinates would, in the absence of such a differential, be more than the continuing pay (as determined under §575.405(c) of this part) of the supervisor.

(b) A supervisory differential may not be paid on the basis of supervising a civilian employee whose rate of basic pay exceeds the maximum rate of basic pay established for grade GS-15 on the pay schedule applicable to the GS supervisor, including a schedule for any applicable locality rate of pay under 5 U.S.C. 5304, a special law enforcement adjusted rate of pay under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

Supervisor has the meaning given that term in 5 U.S.C. 7103(a)(10).

§ 575.403 Definitions.

In this subpart:

Agency has the meaning given that term in 5 U.S.C. 5102.

Continuing pay means the aggregate of all continuing payments and annual premium pay received by an employee at any one time.

Continuing payment means basic pay and any other form of pay that is paid in the same manner and at the same time as basic pay—i.e., for periods during which an employee receives basic pay.

Employee has the meaning given that term in 5 U.S.C. 5102.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee before deductions and exclusive of additional pay of any 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).

Supervisor has the meaning given that term in 5 U.S.C. 7103(a)(10).

§ 575.404 Use of authority.

(a) Each determination to pay a supervisory differential shall be made in writing under procedures established by each agency.

(b) The procedures established by each agency under paragraph (a) of this section shall provide that—

(1) Each determination to pay a supervisory differential, including the amount of such differential, shall be reviewed and approved by an official of the agency who is at higher level than the official who made the initial decision, unless there is no official at a higher level in the agency; and

(2) In determining whether to use the authority under 5 U.S.C. 5755 and this subpart and in determining the amount of such differential, the relationship in
§ 575.405 Calculation and payment of supervisory differential.

(a) A supervisory differential shall be calculated as a percentage of the supervisor’s rate of basic pay or as a dollar amount and shall be paid in the same manner and at the same time as the supervisor’s basic pay—i.e., the differential shall be paid at an hourly rate for each hour during which the supervisor receives basic pay.

(b) The amount of a supervisory differential shall not cause the supervisor’s continuing pay, as determined under paragraph (c) of this section, to exceed the continuing pay of the highest paid subordinate not under the General Schedule, as determined under paragraph (d) of this section, by more than 3 percent.

(c) For purposes of comparing the continuing pay of a supervisor whose position is under the General Schedule with the continuing pay of a subordinate whose position is not under the General Schedule, the following payments shall be included in determining the amount of continuing pay received by the supervisor:

(1) Basic pay, including a retained rate of pay under 5 U.S.C. 5363 and part 536 of this chapter or other similar authority;

(2) A locality-based comparability payment under 5 U.S.C. 5304, a continued rate adjustment under subpart G of part 531 of this chapter, or a special pay adjustment for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509);

(3) A staffing differential under section 209 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509);

(4) A retention allowance under 5 U.S.C. 5754;

(5) Any other continuing payment, except night, Sunday, or holiday premium pay or a hazardous duty differential under chapter 55 of title 5, United States Code;

(6) Premium pay paid on an annual basis under 5 U.S.C. 5545(c); and


(d) For purposes of comparing the continuing pay of a supervisor whose position is under the General Schedule with the continuing pay of a subordinate whose position is not under the General Schedule, the following payments shall be included in determining the amount of continuing pay received by the subordinate:

(1) Basic pay, excluding a night or environmental differential under 5 U.S.C. 5343(f) or part 532 of this chapter, respectively, or other similar authority and a retained rate of pay under 5 U.S.C. 5363 and part 536 of this chapter or other similar authority;

(2) A locality-based comparability payment under 5 U.S.C. 5304, a special law enforcement adjusted rate of pay under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), or another locality-based payment under similar authority, excluding a continued rate adjustment under subpart G of part 531 of this chapter;

(3) Any other continuing payment, except Sunday or holiday pay or another similar payment under title 5, United States Code, or other similar authority and a retention allowance under 5 U.S.C. 5754 or other similar authority; and

(4) Premium pay paid on an annual basis under an authority similar to 5 U.S.C. 5545(c).

(e) For the purpose of making any of the comparisons required by this subpart, continuing pay shall be calculated on an annual basis for both the supervisor and the subordinate.

(f) Payment of a supervisory differential is subject to the aggregate limitation on pay under 5 U.S.C. 5307 and subpart B of part 530 of this chapter.
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§ 576.101 Repayment requirement.
(a) Who is covered. This subpart covers any executive agency employee who received a voluntary separation incentive payment on or after March 30, 1994, including employees of the Department of Defense and Central Intelligence Agency.
(b) What is covered. This subpart covers reemployment of any duration, under any authority, in the Federal Government of the United States, within 5 years of the date of the separation on which payment of an incentive is based.
(c) What is required. The employee must repay the entire amount of the voluntary separation incentive payment, including all deductions for taxes, etc., to the agency that made the payment. Repayment will be made as provided in 5 U.S.C. 5514, as implemented in part 550, subpart K, of this chapter, or other appropriate authority.

§ 575.406 Adjustment or termination of supervisory differential.
(a) An agency may establish procedures that allow for adjusting or terminating a supervisory differential at any time the agency determines it is appropriate to do so.
(b) A supervisory differential shall be terminated when the continuing pay of the supervisor (not including the supervisory differential) exceeds the continuing pay of the highest paid subordinate whose position is not under the General Schedule.
(c) A supervisory differential shall be reduced or terminated, as appropriate, when the continuing pay of the supervisor (including the supervisory differential) exceeds the continuing pay of the highest paid subordinate whose position is not under the General Schedule by more than 3 percent.
(d) The effective date of a reduction or termination of a supervisory differential under paragraph (b) or (c) of this section shall be not later than 30 calendar days after the date on which the event that necessitates the reduction or termination occurs.
(e) Each determination to adjust a supervisory differential shall be made in writing under procedures established by each agency similar to those established under §575.404 of this part.
(f) The reduction or termination of a supervisory differential may not be appealed. However, the preceding sentence shall not be construed to extinguish or lessen any right or remedy under subchapter II of chapter 12 of title 5, United States Code, or under any of the laws referred to in 5 U.S.C. 2302(d).

§ 575.407 Records.
(a) Each agency shall keep a record of each determination required by §§575.404(a) and 575.406(e) of this part. Each record shall contain sufficient information to allow reconstruction of the action, including the basis for determining the amount of the differential and the comparison of continuing pay required by §575.405(b) of this part.
(b) Each agency shall promptly submit a report of each determination made to establish, adjust, or terminate a supervisory differential as a part of its regular submission to OPM’s Central Personnel Data File.
\(\text{§ 576.102 Requesting Office of Personnel Management approval for waiver of repayment.}\)

(a) Request by agency head. The head of an Executive agency may request the Office of Personnel Management to approve a waiver of repayment for an individual when the agency has determined that the individual involved possesses unique abilities and is the only qualified applicant available for the position. Authority to submit such a request may not be redelegated to an official below the agency's headquarters level (or, in the case of the Department of Defense, below the headquarters level of the military department or Defense agency).

(b) Content of requests. Each request must:

1. Identify the individual for whom the exception is requested, the appointing authority to be used, and the position to which he or she will be appointed.
2. Describe how the position is essential to accomplishing the agency's mission and how the individual is uniquely qualified for the position.
3. Describe the length, breadth, and results of the agency's recruiting efforts for the position and any other factors demonstrating that the individual is the only qualified applicant available for the position.
4. If the individual is being reemployed in the agency that paid the separation incentive, demonstrate why the recruiting need could not have been foreseen at the time of separation.

(c) Application of exceptions. A waiver of repayment of a separation incentive approved by the Office of Personnel Management under this part applies only while the individual for whom it was approved continues to serve in the same or a successor position. The waiver terminates if the individual is assigned to a different position during the 5-year period in which repayment is required, unless OPM approves a new waiver.
Subpart A—Purpose and Definitions

§ 581.101 Purpose.
(a) Notwithstanding any other provision of law (including section 407 of title 42, United States Code, section 5301 of title 38, United States Code, and sections 8346 and 8470 of title 5, United States Code), section 659 of title 42, United States Code, as amended, provides that moneys, the entitlement to which is based upon remuneration for employment, due from, or payable by, the United States or the District of Columbia to any individual, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person:

(1) To legal process for the enforcement of an obligor's legal obligations to provide child support, alimony, or both, resulting from an action brought by an individual obligee; and

(2) To withholding in accordance with State law enacted pursuant to subsections (a)(1) and (b) of section 666 of title 42, United States Code, and to regulations of the Secretary of Health and Human Services under such subsections, and to any other legal process brought by a State agency subject to regulations of the Secretary of Health and Human Services that is administering a program under an approved State plan to enforce the legal obligations of obligors to provide child support and alimony.

(b) Section 659 of title 42, United States Code, as amended, provides further that each governmental entity shall be subject to the same requirements as would apply if the governmental entity were a private person, except as set forth in this part.

[63 FR 14757, Mar. 26, 1998]

§ 581.102 Definitions.
In this part: (a) The executive branch of the Government of the United States means all "governmental entities" as defined in this section, including therein the territories and possessions of the United States, the United States Post-
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other division of property between spouses or former spouses.

(f) Legal process means any writ, order, summons, notice to withhold income pursuant to subsection (a)(1) or (b) of section 666 of title 42, United States Code, or other similar process in the nature of garnishment, which may include an attachment, writ of execution, court ordered wage assignment, or in the case where a child support order is submitted by a child support agency using the standard Order/Notice to Withhold Income for Child Support as required by section 324 of Pub. L. 104-193 and which—

(i) Is issued by:

(1) A court of competent jurisdiction, including Indian tribal courts, within any State, territory, or possession of the United States, or the District of Columbia;

(ii) A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement that requires the United States to honor such process; or

(iii) An authorized official pursuant to an order of a court of competent jurisdiction or pursuant to State or local law;

(iv) A State agency authorized to issue income withholding notices pursuant to the requirements of section 666(b) to title 42 of the United States Code.

(j) Party means the person or persons to whom alimony and/or child support payments should be made, or, in the case of an agency established by State or local law, the agency which has been assigned, by law or by agreement, the right to receive such payment or payments.

(k) Individual obligee means any individual or entity other than a State agency authorized to issue income withholding notices pursuant to the requirements of section 666(b) to title 42 of the United States Code.


§ 581.103 Moneys which are subject to garnishment.

(a) For the personal service of a civilian employee obligor:

(1) Saved pay;

(2) Retained pay;

(3) Night differentials;

(4) Sunday and holiday premium pay;

(5) Overtime pay;

(6) Standby duty pay, administratively uncontrollable overtime pay, and availability pay;

(7) Environmental differentials;

(8) Hazardous duty pay;

(9) Tropical differentials;

(10) Recruitment incentives, recruitment and relocation bonuses and retention allowances;

(11) Equalization allowance;

(12) Any payment in consideration of accrued leave;

(13) Severance pay;

(14) Sick pay;

(15) Physicians comparability allowances;

(16) Special pay for physicians and dentists;

(17) Amounts paid pursuant to a personal services contract where the contractor recipient performed the services and received the payments in the capacity as a Federal employee;

(18) Merit pay;

(19) Incentive pay;

(20) Cash awards, including performance-based cash awards;
(21) Agency and Presidential incentive awards (except where such award is for making a suggestion);
(22) Senior Executive Service rank and performance awards;
(23) Moneys due for the services of a deceased employee obligor, including:
   (i) Overtime or premium pay;
   (ii) Amounts due as refunds of pay deductions for United States savings bonds;
   (iii) Payments for accumulated and current accrued annual or vacation leave as provided for in section 5581 of title 5 of the United States Code;
   (iv) Retroactive pay as provided for in section 5344(b)(2) of title 5 of the United States Code;
   (v) Amounts of checks drawn for moneys due which were not delivered by the governmental entity to the employee obligor prior to the employee obligor's death or which were not negotiated and returned to the governmental entity because of the death of the employee obligor, except those moneys due that are listed in § 581.104(i);
(24) Locality-based comparability payments or continued rate adjustments;
(25) Staffing differentials;
(26) Supervisory differentials;
(27) Special pay adjustments for law enforcement officers in selected cities;
(28) Advances in pay; and
(29) Voluntary separation incentive payments.
(b) For the personal service of an obligor in the uniformed services of the United States:
   (1) Basic pay (including service academy cadet and midshipmen pay);
   (2) Special pay (including enlistment and re-enlistment bonuses);
   (3) Lump sum reserve bonus;
   (4) Continuation pay for physicians and dentists;
   (5) Special pay for physicians, dentists, optometrists, and veterinarians;
   (6) Incentive pay;
   (7) Variable incentive pay;
   (8) Inactive duty training pay;
   (9) Administrative duty pay;
   (10) Academy official pay (other than personal money allowances);
   (11) Any payments made in consideration of accrued leave (basic pay portion only);
   (12) Readjustment pay;
   (13) Disability retired pay;
   (14) Severance pay (including disability severance pay);
   (15) Cash awards (NOAA Corps);
   (16) Special separation benefits; and
   (17) Voluntary separation incentives.
(c) For obligors generally:
   (1) Periodic benefits, including a periodic benefit as defined in section 428(h)(3) of title 42 of the United States Code, title II of the Social Security Act, to include a benefit payable in a lump sum if it is commutation of, or a substitute for, periodic payments; or other payments to these individuals under the programs established by subchapter II of chapter 7 of title 42 of the United States Code (Railroad Retirement Act) or any other system, plan, or fund established by the United States (as defined in section 662(a) of title 42 of the United States Code) which provides for the payment of:
      (i) Pensions;
      (ii) Retirement benefits;
      (iii) Retired/retainer pay;
      (iv) Annuities; and
      (v) Dependents' or survivors' benefits when payable to the obligor;
   (2) Refunds of retirement contributions where an application has been filed;
   (3) Amounts received under any federal program for compensation for work injuries; and
   (4) Benefits received under the Longshoremen's and Harbor Workers' Compensation Act.
   (5) Compensation for death under any federal program, including death gratuities authorized under 5 U.S.C. 8133(f); 5 U.S.C. 8134(a); Pub. L. 103-332, section 312; and Pub. L. 104-208, section 651.
   (6) Any payment under any federal program established to provide "black lung" benefits;
   (7) Any payment by the Secretary of Veterans Affairs as compensation for a service-connected disability paid by the Secretary to a former member of the Armed Forces who is in receipt of retired or retainer pay if the former member has waived either the entire amount or a portion of the retired or retainer pay in order to receive such
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Moneys which are not subject to garnishment.

(a) Payments made pursuant to the provisions of the Federal Tort Claims Act, as amended, sections 1346(b) and 2671 et seq., of title 28 of the United States Code;

(b) Payments or portions of payments made by the Department of Veterans Affairs pursuant to sections 501-562 of title 38 of the United States Code, in which the entitlement of the payee is based on non-service-connected disability or death, age, and need;

(c) Refunds and other payments made in connection with overpayments or erroneous payments of income tax and other taxes levied under title 26 of the United States Code;

(d) Grants;

(e) Fellowships;

(f) Education and vocational rehabilitation benefits for veterans and eligible persons under chapters 30, 31, 32, 35, and 36 of title 38, United States Code, and chapters 106 and 107 of title 10, United States Code;

(g) Contracts, except where the contract recipient performed personal services and received payments in his/her capacity as an employee of a governmental entity; and

(h) Reimbursement for expenses incurred by an individual in connection with his/her employment, or allowances in lieu thereof, and other payments and allowances, including, but not limited to:

(i) In the case of civilian employees:

(ii) Uniform allowances;

(iii) Travel and transportation expenses (including mileage allowances);

(iv) Relocation expenses;

(v) Storage expenses;

(vi) Post differentials;

(vii) Foreign areas allowances;

(viii) Education allowances for dependents;

(ix) Separate maintenance allowances;

(x) Post allowances and supplementary post allowances;

(xi) Home service transfer allowances;

(xii) Quarters allowances;

(xiii) Cost-of-living allowances (COLA), when applicable to an employee in a foreign area or an employee stationed outside of the continental United States or in Alaska;

(xiv) Per diem allowances.

(2) In the case of members of the uniformed services:

(i) Position pay (Navy only);

(ii) Basic allowance for quarters;

(iii) Basic allowance for subsistence;

(iv) Station allowances;

(v) Armed Forces health professions scholarship stipends;

(vi) Public Health Service scholarship stipends;

(vii) Travel and transportation allowances;

(viii) Dislocation allowances;

(ix) Family separation allowances;

(x) ROTC subsistence allowance;

(xi) Allowance for recruiting expenses;

(xii) Education allowances for dependents;

(xiii) Clothing allowances for enlisted personnel;

(xiv) Uniform allowances; and

(xv) Personal money allowances for General and Flag officers, and for the Surgeon General of the United States.

(3) In the case of volunteers serving under either the Domestic Volunteer Service Act or the Peace Corps Act, all allowances, including, but not limited to, readjustment allowances, stipends, and reimbursements for out-of-pocket expenses.

(i) Moneys due a deceased employee obligor where the amounts are reimbursement for expenses incurred by the deceased employee in connection with his/her employment, or allowances in lieu thereof, including:

(1) Per diem instead of subsistence, mileage, and amounts due in reimbursement of travel expenses, including incidental and miscellaneous expenses in connection therewith;
§ 581.106 Additional payments.

(2) Allowances on change of official station;
(3) Quarters allowances; and
(4) Cost-of-living allowances (COLA), when applicable as a result of the deceased employee obligor's having been in a foreign area or stationed outside of the continental United States or in Alaska.

(j) Supplemental Security Income (SSI) payments made pursuant to sections 1381 et seq., of title 42 of the United States Code (title XVI of the Social Security Act).

§ 581.105 Exclusions.

In determining the amount of any "moneys due from, or payable by, the United States" to any individual, there shall be excluded amounts which:
(a) Are owed by the individual to the United States, except that an indebtedness based on a levy for income tax under section 6331 of title 26 of the United States Code, shall not be excluded in complying with legal process for the support of minor children if the legal process was entered prior to the date of the levy;
(b) Are required by law to be deducted from the remuneration or other payment involved, including, but not limited to:
(1) Amounts withheld from benefits payable under title II of the Social Security Act, where the withholding is required by law;
(2) Federal employment taxes;
(3) Amounts mandatorily withheld for the United States Soldiers' and Airmen's Home;
(4) Fines and forfeitures ordered by a court-martial or by a commanding officer; and
(5) Amounts deducted for Medicare;
(c) Are properly withheld for Federal, State, or local income tax purposes, if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he/she was entitled. The withholding of additional amounts pursuant to section 3402(i) of title 26 of the United States Code may be permitted only when the individual presents evidence of a tax obligation which supports the additional withholding;
(d) Are deducted as health insurance premiums, including, but not limited to, amounts deducted from civil service annuities for Medicare where such deductions are requested by the Health Care Financing Administration;
(e) Are deducted as normal retirement contributions, not including amounts deducted for supplementary coverage. For purposes of this section, all amounts contributed under sections 8351 and 8432(a) of title 5 of the United States Code to the Thrift Savings Fund are deemed to be normal retirement contributions. Amounts withheld as Survivor Benefit Plan or Retired Serviceman's Family Protection Plan payments are considered to be normal retirement contributions. Except as provided in this paragraph, amounts voluntarily contributed toward additional retirement benefits are considered to be supplementary; or
(f) Are deducted as normal life insurance premiums from salary or other remuneration for employment, not including amounts deducted for supplementary coverage. Both Servicemen's Group Life Insurance and "Basic Life" Federal Employees' Group Life Insurance premiums are considered to be normal life insurance premiums; all optional Federal Employees' Group Life Insurance premiums and life insurance premiums paid for by allotment, such as National Service Life Insurance, are considered to be supplementary.

§ 581.106 Future payments.

Moneys paid by a governmental entity which may be due and payable to an individual at some future date, shall not be considered due the individual unless and until all of the conditions necessary for payment of the moneys to the individual have been met, including, but not limited to, the following conditions which might apply:
(a) Retirement;
(b) Resignation from a position in the Federal service; or
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(c) Application for payment of mon-
eys by the individual.

Subpart B—Service of Process

§ 581.201  Agent to receive process.

(a) Appendix A to this part lists agents designated to accept service of
process.
(b) The head of each governmental entity shall submit to the Office of the
General Counsel, Office of Personnel Management, 1900 E Street NW., Wash-
ington, DC 20415, for publication in appendix A to this part, the following in-
formation concerning the agent(s) des-
ignated to accept service of process:
(1) Title;
(2) Mailing address;
(3) Telephone number; and
(4) Geographical area or region, if ap-
plicable.
(c) United States Attorneys are not
considered appropriate agents to ac-
cept service of process.

§ 581.202  Service of process.

(a) A party using this part shall serve
legal process on the agent designated
in appendix A to this part, or if no
agent has been designated for the gov-
ernmental entity having payment re-
sponsibility for the moneys involved,
then upon the head of that govern-
mental entity, which has moneys due
and payable to the obligor. Where the
legal process is directed to, and the
purpose of the legal process is to com-
pel a governmental entity which holds
moneys which are otherwise payable to
an individual, to make a payment from
such moneys in order to satisfy a legal
obligation of such individual to provide
child support or make alimony pay-
ments, the legal process need not ex-
pressly name the governmental entity
as a garnishee.
(b) Service shall be accomplished
pursuant to State procedures in effect
pursuant to subsection (a)(1) or (b) of
section 666 of title 42 of the United
States Code. The designated agent
shall note the date and time of receipt
on the legal process. The governmental
entity shall make every reasonable ef-
fort to facilitate proper service of proc-
ess on its designated agent(s). If legal
process is not directed to any particu-
lar official within the entity, or if it is
addressed to the wrong individual, the
recipient shall, nonetheless, forward
the legal process to the designated
agent. However, valid service is not ac-
complished until the legal process is
received in the office of the designated
agent. Moreover, the Government will
not be liable for any costs or damages
resulting from an agency's failure to
timely serve process or to correct
faulty service of process.
(c) Where it does not appear from the
face of the process that it has been
brought to enforce the legal obligation(s)
defined in §581.102(d) and/or (e), the
process must be accompanied by a
certified copy of the court order or
other document establishing such legal
obligation(s).
(d) Where the State or local law pro-
vides for the issuance of legal process
without a support order, such other
documentation establishing that it was
brought to enforce legal obligation(s)
defined in §581.102(d) and/or (e) must be
submitted.
(e) In order for the party who caused
the legal process to be served to re-
ceive the additional five (5) percent
provided for in either §581.402(a) or (b),

§ 581.203  Information minimally re-
quired to accompany legal process.

(a) Sufficient identifying information
must accompany the legal process in
order to enable processing by the gov-
ernmental entity named. Therefore,
the following identifying information
about the obligor, if known, is re-
quested:
(1) Full name;
(2) Date of birth;
Office of Personnel Management

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(3) Employment number, social security number, Department of Veterans Affairs claim number, or civil service retirement claim number;

(4) Component of the governmental entity for which the obligor works, and the official duty station or worksite; and

(5) Status of the obligor, e.g., employee, former employee, or annuitant.

(b) If the information submitted is not sufficient to identify the obligor, the legal process shall be returned directly to the court, or other authority, with an explanation of the deficiency. However, prior to returning the legal process, if there is sufficient time, an attempt should be made to inform the party who caused the legal process to be served, or the party’s representative, that it will not be honored unless adequate identifying information is supplied.


Subpart C—Compliance With Process

§ 581.301 Suspension of payment.

Upon proper service of legal process, together with all supplementary documents and information as required by §§581.202 and 581.203, the head of the governmental entity, or his/her designee, shall identify the obligor to whom that governmental entity holds moneys due and payable as remuneration for employment and shall suspend, i.e., withhold, payment of such moneys for the amount necessary to permit compliance with the legal process in accordance with this part.

[48 FR 26280, June 7, 1983]

§ 581.302 Notification of obligor.

(a) As soon as possible, but not later than fifteen (15) calendar days after the date of valid service of legal process, the agent designated to accept legal process shall send to the obligor, at his or her duty station or last known home address, written notice:

(1) That such process has been served, including a copy of the process, and, if submitted, such other documents as may be required by § 581.202;

(2) Of the maximum garnishment limitations set forth in § 581.402, with a request that the obligor submit supporting affidavits or other documentation necessary for determining the applicable percentage limitation;

(3) That by submitting supporting affidavits or other necessary documentation, the obligor consents to the disclosure of such information to the garnishor; and

(4) Of the percentage that will be deducted if he/she fails to submit the documentation necessary to enable the governmental entity to respond to the legal process within the time limits set forth in § 581.303.

(b) The governmental entity may provide the obligor with the following additional information:

(1) Copies of any other documents submitted in support of the legal process;

(2) That the United States does not represent the interests of the obligor in the pending legal proceedings;

(3) That the obligor may wish to consult legal counsel regarding defenses to the legal process that he or she may wish to assert; and

(4) That obligors in the uniformed services may avail themselves of the protections provided in sections 520, 521, and 523 of the Soldiers’ and Sailors’ Civil Relief Act of 1940 (50 U.S. Code App. 501 et seq.).

§ 581.303 Response to legal process or interrogatories.

(a) Whenever the designated agent is validly served with legal process pursuant to State procedures in effect pursuant to subsection (a)(1) or (b) of section 666 of title 42, United States Code, within 30 calendar days, or within such longer period as may be prescribed by applicable State law, the agent shall comply with all applicable provisions of section 666, including as follows:

(1) If an agent is served with notice concerning amounts owed by an obligor to more than one person, the agent shall comply with section 666(b)(7);

(2) Allocation of moneys due and payable to an individual under section 666(b) shall be governed by section 666(b) and the regulations prescribed under such section by the Secretary of Health and Human Services;
§ 581.304 Nonliability for disclosure.

(a) No Federal employee whose duties include responding to interrogatories pursuant to §581.303(b), shall be subject to any disciplinary action or civil or criminal liability or penalty for any disclosure of information made by him/her in connection with the carrying out of any duties pertaining directly or indirectly to answering such interrogatories.

(b) However, a governmental entity would not be precluded from taking disciplinary action against an employee who consistently or purposely failed to provide correct information requested by interrogatories.


§ 581.305 Honoring legal process.

(a) The governmental entity shall comply with legal process, except where the process cannot be complied with because:

(1) It does not, on its face, conform to the laws of the jurisdiction from which it was issued;

(2) The legal process would require the withholding of funds not deemed moneys due from, or payable by, the United States as remuneration for employment;

(3) The legal process is not brought to enforce legal obligation(s) for alimony and/or child support;

(4) It does not comply with the mandatory provisions of this part; or

(5) An order of a court of competent jurisdiction enjoining or suspending the operation of the legal process has been served on the governmental entity.

(b) Where notice is received that the obligor has appealed either the legal process or the underlying alimony and/or child support order, payment of moneys subject to the legal process shall be suspended; i.e., moneys shall continue to be withheld, but these amounts shall be retained by the governmental entity until the entity is ordered by the court, or other authority, to resume payments or otherwise discharge the suspended amounts. However, no suspension action shall be taken where the applicable law of the jurisdiction wherein the appeal is filed requires compliance with the legal process while an appeal is pending. Where the legal process has been issued by a court in the District of Columbia, a motion to quash shall be deemed equivalent to an appeal.

(c) Under the circumstances set forth in §581.305 (a) or (b), or where the governmental entity is directed by the Justice Department not to comply with the legal process, the entity shall respond directly to the court, or other authority, setting forth its objections to compliance with the legal process.

In addition, the governmental entity shall inform the party who caused the legal process to be served, or the party’s representative, that the legal process will not be honored. Thereafter, if litigation is initiated or threatened, the entity shall immediately refer the matter to the United States Attorney for the district from which the legal process issued. To ensure uniformity in the executive branch, governmental
entities which have statutory authority to represent themselves in court shall coordinate their representation with the United States Attorney.

(d) If a governmental entity is served with more than one legal process for the same moneys due or payable to an individual, the entity shall comply with §581.303(a). Provided, That in no event will the total amount garnished for any pay or disbursement cycle exceed the applicable limitation set forth in §581.402.

(e) (1) Neither the United States, any disbursing officer, nor any governmental entity shall be liable for any payment made from moneys due from, or payable by, the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this part.

(2) Neither the United States, any disbursing officer, nor any governmental entity shall be liable under this part to pay money damages for failure to comply with legal process.

(f) Governmental entities affected by legal process served under this part shall not be required to vary their normal pay or disbursement cycles to comply with the legal process. However, legal process, valid at the time of service, which is received too late to be honored during the disbursement cycle in which it is received, shall be honored to the extent that the legal process may be satisfied during the next disbursement cycle within the limits set forth in §581.402. The fact that the legal process may have expired during this period would not relieve the governmental entity of its obligation to honor legal process which was valid at the time of service. If, in the next disbursement cycle, no further payment will be due from the entity to the obligor, the entity shall follow the procedures set forth in §581.306.

(g) If a governmental entity receives legal process which, on its face, appears to conform to the laws of the jurisdiction from which it was issued, the entity shall not be required to ascertain whether the authority which issued the legal process had obtained personal jurisdiction over the obligor.

(h) A failure by the party bringing the garnishment action to comply with the provisions of the Uniform Reciprocal Enforcement of Support Act (URESA) or the Revised Uniform Reciprocal Enforcement of Support Act by itself shall not be a valid basis for a governmental entity to refuse to comply with legal process.

§ 581.306 Lack of moneys due from, or payable by, a governmental entity served with legal process.

(a) When legal process is served on a governmental entity, and the individual identified in the legal process as the obligor is found not to be entitled to moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the governmental entity, the entity shall follow the procedures set forth in the legal process for that contingency or, if no procedures are set forth therein, shall return the legal process to the court, or other authority from which it was issued, and advise the court, or other authority, that no moneys, the entitlement to which is based upon remuneration for employment, are due from, or payable by, the governmental entity to the named individual.

(b) Where it appears that remuneration for employment is only temporarily exhausted or otherwise unavailable, the court, or other authority, shall be fully advised as to why, and for how long, the remuneration will be unavailable, if that information is known by the governmental entity.

(c) In instances where an employee obligor separates from his/her employment with a governmental entity which is presently honoring a continuing legal process, the entity shall inform the party who caused the legal process to be served, or the party’s representative, and the court, or other authority, that the payments are being discontinued. In cases where the obligor has a Thrift Savings Fund account, or has retired, or has separated and requested a refund of retirement contributions, or transferred, or is receiving benefits under the Federal Employees’ Compensation Act, or where the employee obligor has been employed by either another governmental entity or by a private employer, and where this
§ 581.307 Compliance with legal process requiring the payment of attorney fees, interest, and/or court costs.

Before complying with legal process that requires withholding for the payment of attorney fees, interest, and/or court costs, the governmental entity must determine that the legal process meets both of the following requirements:

(a) The legal process must expressly provide for inclusion of attorney fees, interest, and/or court costs as (rather than in addition to) child support and/or alimony payments;

(b) The awarding of attorney fees, interest, and/or court costs as child support and/or alimony must be within the authority of the court, authorized official, or authorized State agency that issued the legal process. It will be deemed to be within the authority of the court, authorized official, or authorized State agency to award attorney fees as child support and/or alimony if such order is not in violation of or inconsistent with State or local law, even if State or local law does not expressly provide for such an award.

§ 581.401 Aggregate disposable earnings.

The “aggregate disposable earnings”, when used in reference to the amounts due from, or payable by, the United States or the District of Columbia which are garnishable under the Consumer Credit Protection Act for child support and/or alimony, are the obligor’s remuneration for employment less those amounts deducted in accordance with § 581.105.
together with notification that the obligor’s support claim will be honored. If the garnishor disagrees with the obligor’s support claim, the garnishor should immediately refer the matter to the court, or other authority, for resolution.

(b) In instances where an obligor is receiving remuneration from more than one governmental entity, an authority described in §581.102(f)(1) may apply the limitations described in paragraph (a) of this section to the total remuneration, i.e., to the combined aggregate disposable earnings received by the obligor.

[63 FR 14759, Mar. 26, 1998]

Subpart E—Implementation by Governmental Entities

§581.501 Rules, regulations, and directives by governmental entities.

Appropriate officials of all governmental entities shall, to the extent necessary, issue implementing rules, regulations, or directives that are consistent with this part or as are otherwise in accordance with statutory law.

[63 FR 14759, Mar. 26, 1998]

APPENDIX A TO PART 581—LIST OF AGENTS DESIGNATED TO ACCEPT LEGAL PROCESS

(This appendix lists the agents designated to accept legal process for the Executive Branch of the United States, the United States Postal Service, the Postal Rate Commission, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Smithsonian Institution.)

I. DEPARTMENTS

Department of Agriculture

Office of the Secretary
Office of the Deputy Secretary
Office of the Under Secretaries
Director, Executive Resources and Services Division, Office of Personnel, Room 334 W—Administration Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250, (202) 720-6047

Office of Inspector General
Chief Counsel to the Inspector General, Office of Inspector General, Room 21E—Administration Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250, (202) 720-9110

Administration
Board of Contract Appeals
Chief Financial Officer
Judicial Officer
Office of Administrative Law Judges
Office of Budget and Program Analysis
Office of Civil Rights Enforcement
Office of Communications
Office of Congressional and Intergovernmental Relations
Office of the General Counsel
Office of Information and Resources Management
Office of Operations
Office of Personnel
Office of Small and Disadvantaged Business Utilization

Chief, Employment and Compensation Branch, Office of Personnel—POD, Room 334W—Administration Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250-9630, (202) 720-7797

Chief Economist Office of Risk Assessment and Cost-Benefit Analysis World Agricultural Outlook Board

Chief, Economics and Statistics Operations Branch, Human Resources Division, Agricultural Research Service, Room 1424—South Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250, (202) 720-7657

Federal Crop Insurance Corporation

Chief, Employee and Labor Relations Branch, Human Resources Division, Consolidated Farm Service Agency, Room 6732—South Bldg., PO Box 2415, Washington, DC 20013, (202) 720-5964

Federal Crop Insurance Corporation

Chief, Labor Relations Branch, Federal Crop Insurance Corporation, Consolidated Farm Service Agency, Room 6732—South Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250, (202) 720-5964

Food, Nutrition, and Consumer Services

Food and Consumer Service
Senior Employee Relations Specialist, Employee Relations Division, Food and Consumer Service, 3101 Park Center Drive, Room 623, Alexandria, VA 22302, (703) 305-2374

Marketing and Regulatory Programs

Agricultural Marketing Service (except for employees of the Milk Marketing Administration)
Animal and Plant Health Inspection Service
Grain Inspection, Packers and Stockyards Administration
Chief, Human Resources, USDA, APHIS, Butler Square West, 5th Floor, 100 North 6th Street, Minneapolis, MN 55403, (612) 370-2107

Agricultural Marketing Service

Milk Marketing Employees

Personnel Management Specialist, Agricultural Marketing Service, DA, Room 2754—South Bldg., P.O. Box 96656, Washington, DC 20090-6566, (202) 720-7258

Food Safety

Food Safety and Inspection Service

Chief, Employee Relations Branch, Human Resources Division, Food Safety and Inspection Service, Room 3175 South Building, Washington, DC 20250-3700, (202) 720-6287.

Note: The listing for the Department of Agriculture's Food Safety remains unchanged.

Rural Development

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Chief, Human Resources Programs Branch, Human Resources, Rural Development, 1400 Independence Avenue, SW., Stop 0730, Washington, DC 20250-0730, (202) 692-0194

Rural Utilities Service

Chief, Rural Utilities Service, Personnel Operations Branch, Human Resources Division, Rural Housing and Community Development Service, Room 403—South Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250-1382, (202) 720-1382

Natural Resources and Environment

Forest Service

Washington Office

Director, Personnel Management, 900 RP-E, PO Box 96000, Washington, DC 20090-6990, (703) 235-8102

International Institute of Tropical Forestry

Director, Call Box 25000, UPR Experimental Station Grounds, Rio Piedras, PR 00926-2500, (809) 766-5335

Region 1

Regional Forester, Regional Office, Federal Bldg., PO Box 7691, Missoula, MT 59807, (406) 329-2750

Idaho

Clearwater—Forest Supervisor, 12730 Highway 12, Orofino, ID 83544, (208) 476-4541

Idaho Panhandle National Forests—Forest Supervisor, 1201 Ironwood Dr., Coeur d’Alene, ID 83814, (208) 765-7223

Nez Perce—Forest Supervisor, Rt. 2, Box 475, Grangeville, ID 83530, (208) 983-1950

Montana

Beaverhead—Forest Supervisor, 420 Barrett St., Dillon, MT 59725-3572, (406) 683-3900

Bitterroot—Forest Supervisor, 1801 N. 1st St., Hamilton, MT 59840, (406) 363-7121

Custer—Forest Supervisor, Box 2566, Billings, MT 59103, (406) 657-6361

Deerlodge—Forest Supervisor, Federal Bldg., Box 400, Butte, MT 59701, (406) 496-3400

Flathead—Forest Supervisor, 1935 3rd Ave., E., Kalispell, MT 59901, (406) 755-5401

Gallatin—Forest Supervisor, Federal Bldg., 10 E. Babcock Ave., Box 130, Bozeman, MT 59771, (406) 587-6701

Helena—Forest Supervisor, 2880 Skyway Dr., Helena, MT 59601, (406) 449-5201

Kootenai—Forest Supervisor, 506 Highway 2 W., Libby, MT 59923, (406) 293-6211

Lewis and Clark—Forest Supervisor, PO Box 869, 1101 15th St. N., Great Falls, MT 59403, (406) 791-7700

Lolo—Forest Supervisor, Bldg. 24, Ft. Missoula, Missoula, MT 59801, (406) 329-3750

Region 2

Regional Forester, Regional Office, 700 Simms St., Lakewood, CO 80255, (303) 275-5306

Colorado

Arapaho and Roosevelt—Forest Supervisor, 240 W. Prospect, Fort Collins, CO 80526, (303) 498-1100

Grand Mesa, Uncompahgre, and Gunnison—Forest Supervisor, 2250 Highway 50, Delta, CO 81416, (303) 874-7691

Pike and San Isabel—Forest Supervisor, 1920 Valley Dr., Pueblo, CO 81008, (719) 545-6737

Río Grande—Forest Supervisor, 1803 West Highway 160, Monte Vista, CO 81144, (719) 852-5941

Routt—Forest Supervisor, 29007 W. US 40, Suite 21, Steamboat Springs, CO 80487-9550, (303) 879-1722

San Juan—Forest Supervisor, 701 Camino Del Rio, Room 301, Durango, CO 81301, (303) 247-4674

White River—Forest Supervisor, Old Federal Bldg., Box 948, Glenwood Springs, CO 81602, (303) 945-2521

Nebraska

Nebraska—Forest Supervisor, 125 N. Main St., Chadron, NE 69337, (308) 432-0300

South Dakota

Black Hills—Forest Supervisor, R.R. 2, Box 200, Custer, SD 57730-9904, (605) 673-2251

Wyoming

Big Horn—Forest Supervisor, 1909 So. Sheridan Ave., Sheridan, WY 82801, (307) 672-0751

Medicine Bow—Forest Supervisor, 2468 Jackson St., Laramie, WY 82070-6538, (307) 745-8971
Office of Personnel Management

Shoshone—Forest Supervisor, 808 Meadow Lane, Cody, WY 82414, (307) 527-6241

Region 3
Regional Forester, Regional Office, Federal Bldg., 517 Gold Ave., SW., Albuquerque, NM 87102, (505) 842-3380

Arizona
Apache—Sitgreaves—Forest Supervisor, Federal Bldg., Box 640, Springerville, AZ 85938, (602) 333-4301
Coconino—Forest Supervisor, 2323 E. Greenlaw Lane, Flagstaff, AZ 86004, (602) 771-3600
Coronado—Forest Supervisor, 300 W. Congress, Tucson, AZ 85701, (602) 771-4700
Kaibab—Forest Supervisor, 800 S. 6th St., Williams, AZ 86046, (602) 635-2681
Prescott—Forest Supervisor, 344 South Cortez, Prescott, AZ 86303, (602) 771-4700
Tonto—Forest Supervisor, 2324 E. McDowell Rd., Phoenix, AZ 85006, (602) 225-5200

Carson—Forest Supervisor, 208 Cruz Alta Rd., PO Box 558, Taos, NM 87571, (505) 758-6200
Cibola—Forest Supervisor, 2113 Osuna Rd., NE, Suite A, Albuquerque, NM 87113-1001, (505) 761-4650
Gila—Forest Supervisor, 3005 E. Camino del Bosque, Silver City, NM 88061, (505) 388-6201
Lincoln—Forest Supervisor, Federal Bldg., 1301 New York Ave., Alamogordo, NM 88340-6992, (505) 434-7200
Santa Fe—Forest Supervisor, 1220 St. Francis Dr., Santa Fe, NM 87504, (505) 988-6940

Region 4
Regional Forester, Regional Office, Federal Bldg., 324 25th St., Ogden, UT 84401, (801) 625-5290

Idaho
Boise—Forest Supervisor, 1750 Front Street, Boise, ID 83702, (208) 364-4100
Caribou—Forest Supervisor, 250 S. 4th Ave., Suite 282, Federal Bldg., Pocatello, ID 83201, (208) 236-7500
Challis—Forest Supervisor, HC 63 Box 1671, F. S. Bldg., Challis, ID 83226, (208) 879-2286
Payette—Forest Supervisor, Box 10206 or 106 W. Park, McCall, ID 83638, (208) 634-0700
Salmon—Forest Supervisor, P.O. Box 729, Salmon, ID 83467-0729, (208) 765-2215
Sawtooth—Forest Supervisor, 2647 Kimberly Rd. East, Twin Falls, ID 83301-7976, (208) 737-3200
Targhee—Forest Supervisor, 420 N. Bridge St., P.O. Box 208, St. Anthony, ID 83445, (208) 624-3151

Nevada
Humboldt—Forest Supervisor, 976 Mountain City Highway, Elko, NV 89801, (702) 738-5171
Toiyabe—Forest Supervisor, 1200 Franklin Way, Sparks, NV 89431, (702) 355-5300

Utah
Ashley—Forest Supervisor, 355 North Vernal Ave., Vernal, UT 84078, (801) 739-1181
Dixie—Forest Supervisor, 82 No. 100 E. St., P.O. Box 580, Cedar City, UT 84721-0580, (801) 865-3700
Fishlake—Forest Supervisor, 115 E. 900 N, Richfield, UT 84701, (801) 896-9233
Manti—La Sal—Forest Supervisor, 599 W. Price River Drive, Price, UT 84501, (801) 637-2817
Uinta—Forest Supervisor, 88 W. 100 N., Provo, UT 84601, (801) 342-5100
Wasatch—Cache—Forest Supervisor, 8236 Federal Bldg., 125 S. State St., Salt Lake City, UT 84136, (801) 524-5030

Wyoming
Bridger—Teton—Forest Supervisor, F.S. Bldg., 340 N. Cache, Box 1888, Jackson, WY 83001, (307) 739-5500

Region 5
Regional Forester, Regional Office, 630 Sansome St., San Francisco, CA 94111, (415) 705-2856

California
Angeles—Forest Supervisor, 701 N. Santa Anita Ave., Arcadia, CA 91006, (818) 574-1613
Cleveland—Forest Supervisor, 18845 Rancho Bernardo Rd., Suite 200, San Diego, CA 92127-2107, (619) 673-6180
Eldorado—Forest Supervisor, 100 Forni Rd., Placerville, CA 95667, (916) 622-5062
Inyo—Forest Supervisor, 873 North Main St., Bishop, CA 93514, (619) 873-2400
Klamath—Forest Supervisor, 1312 Fairlane Rd., Yreka, CA 96097, (916) 842-6131
Lassen—Forest Supervisor, 55 S. Sacramento St., Susanville, CA 96070, (916) 257-2151
Los Padres—Forest Supervisor, 6144 Calle Real, Goleta, CA 93117, (805) 683-6711
Mendocino—Forest Supervisor, 420 E. Laurel St., Willows, CA 95988, (916) 934-3316
Modoc—Forest Supervisor, 800 W. 12th St., Alturas, CA 96001, (916) 233-5811
Plumas—Forest Supervisor, 159 Lawrence St., Box 11500, Quincy, CA 95973-8025, (916) 263-2060
San Bernardino—Forest Supervisor, 1534 S. Commercenter Cir., San Bernardino, CA 92408-3430, (909) 363-5988
Sequoia—Forest Supervisor, 900 W. Grand Ave., Porterville, CA 93257-2035, (209) 784-1500
Shasta—Trinity—Forest Supervisor, 2400 Washington Ave., Redding, CA 96001, (916) 246-5222
<table>
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<tr>
<th>Region</th>
<th>Location</th>
<th>Contact Information</th>
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<tr>
<td>1</td>
<td>Sierra—Forest Supervisor, 1600 Tollhouse Rd., Clovis, CA 93611, (209) 297-0706</td>
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<td>2</td>
<td>Six Rivers—Forest Supervisor, 1330 Bayshore Way, Eureka, CA 95501-3834, (707) 441-3517</td>
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<td>Stanislaus—Forest Supervisor, 1977 Greenley Rd., Sonora, CA 95370, (209) 532-3671</td>
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<td>4</td>
<td>Tahoe—Forest Supervisor, 631 Coyote St., PO Box 6003, Nevada City, CA 95959-6003, (916) 265-4531</td>
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<td>5</td>
<td>Region 6</td>
<td>Regional Forester, Regional Office, 333 S.W. 1st Ave., PO Box 3623, Portland, OR 97208, (503) 326-3630</td>
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<td>6</td>
<td>Oregon</td>
<td>Deschutes—Forest Supervisor, 1645 Highway 20 E., Bend, OR 97701, (503) 388-2715</td>
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<td>Fremont—Forest Supervisor, 524 North G St., Lakeview, OR 97630, (503) 947-2151</td>
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<td>Malheur—Forest Supervisor, 139 NE Dayton St., John Day, OR 97845, (503) 575-1731</td>
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<td>9</td>
<td>Mt. Hood—Forest Supervisor, 2955 N.W. Division St., Gresham, OR 97030, (503) 666-0700</td>
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<td>10</td>
<td>Ochoco—Forest Supervisor, Box 490, Prineville, OR 97754, (503) 447-6247</td>
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<td>Rogue River—Forest Supervisor, Federal Bldg., 333 W. 8th St., Box 520, Medford, OR 97501, (503) 776-3600</td>
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<td>12</td>
<td>Siskiyou—Forest Supervisor, Box 440, Grants Pass, OR 97526, (503) 471-6500</td>
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<td>Siuslaw—Forest Supervisor, Box 1148, Corvallis, OR 97330, (503) 750-7000</td>
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<td>Umatilla—Forest Supervisor, 2517 SW Hailey Ave., Pendleton, OR 97801, (503) 276-3600</td>
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<td>Willamette—Forest Supervisor, 2819 Dahlia, Klamath Falls, OR 97601, (503) 883-6714</td>
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<td>16</td>
<td>Washington</td>
<td>Colville—Forest Supervisor, 765 S. Main, Colville, WA 99114, (509) 684-7000</td>
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<td>17</td>
<td>Gifford—Forest Supervisor, 6926 E. 4th Plain Blvd., Vancouver, WA 98669-6944, (206) 750-5000</td>
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<td>18</td>
<td>Mt. Baker—Snoqualmie—Forest Supervisor, 2105 64th Avenue West, Mountlake Terrace, WA 98043, (206) 744-3200</td>
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<td>19</td>
<td>Okanogan—Forest Supervisor, 1240 South Second Ave., Okanogan, WA 98840, (509) 826-3275</td>
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<td>20</td>
<td>Olympic—Forest Supervisor, 1835 Black Lake Blvd., SW., Olympia, WA 98512, (206) 596-2300</td>
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<td>21</td>
<td>Wenatchee—Forest Supervisor, 303 Yakima St., PO Box 811, Wenatchee, WA 98807, (509) 662-4335</td>
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<td>Region 8</td>
<td>Regional Forester, Regional Office, 1720 Peachtree Rd., NW., Atlanta, GA 30367, (404) 347-3841</td>
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<td>18</td>
<td>Alabama</td>
<td>National Forests in Alabama—Forest Supervisor, 2946 Chestnut St., Montgomery, AL 36107-3010, (205) 332-4470</td>
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<td>19</td>
<td>Arkansas</td>
<td>Ouachita—Forest Supervisor, Box 1270, Federal Bldg., Hot Springs National Park, AR 71902, (501) 321-5200</td>
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<td>20</td>
<td>Ozark—St. Francis—Forest Supervisor, 605 West Main, Box 1008, Russellville, AR 72801, (501) 965-2354</td>
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<td>22</td>
<td>Georgia</td>
<td>Chattahoochee and Oconee—Forest Supervisor, 508 Oak St., NW., Gainesville, GA 30501, (404) 536-0541</td>
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<td>23</td>
<td>Kentucky</td>
<td>Daniel Boone—Forest Supervisor, 100 Vaught Rd., Winchester, KY 40391, (606) 745-3100</td>
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<td>24</td>
<td>Louisiana</td>
<td>Kisatchie—Forest Supervisor, 2500 Shreveport Hwy., PO Box 5500, Pineville, LA 71361-5500, (318) 479-7160</td>
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<td>25</td>
<td>Mississippi</td>
<td>National Forests in Mississippi—Forest Supervisor, 100 W. Capital St., Suite 114, Jackson, MS 39209, (601) 965-4391</td>
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<td>26</td>
<td>North Carolina</td>
<td>National Forests in North Carolina—Forest Supervisor, Post and Otis Streets, PO Box 2790, Asheville, NC 28802, (704) 257-4200</td>
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<td>27</td>
<td>Puerto Rico and the Virgin Islands</td>
<td>Caribbean National Forest—Forest Supervisor, Calle Box 25000, Rio Piedras, PR 00936-2500, (366) 766-3335</td>
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<td>28</td>
<td>South Carolina</td>
<td>Francis Marion and Sumter National Forests—Forest Supervisor, 4023 Broad River Rd., Columbia, SC 29022, (803) 765-5222</td>
</tr>
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<td>29</td>
<td>Tennessee</td>
<td>Cherokee—Forest Supervisor, 200 N. Ocoee St., NE., PO Box 2030, Cleveland, TN 37320, (423) 467-9700</td>
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</table>
Office of Personnel Management

Texas
National Forests in Texas—Forest Supervisor, Homer Garrison Federal Bldg., 701 N. First St., Lufkin, TX 75901, (409) 639-8501

Virginia
George Washington—Forest Supervisor, PO Box 233, Harrison Plaza, Harrisonburg, VA 22801, (703) 433-2491.

Region 9
Regional Forester, Regional Office, 310 W. Wisconsin Ave., Room 500, Milwaukee, WI 53203, (414) 297-3674

Illinois
Shawnee—Forest Supervisor, 901 S. Commercial St., Harrisburg, IL 62946, (618) 253-7114

Indiana
Hoosier—Forest Supervisor, 811 Constitution Ave., Bedford, IN 47421, (812) 275-5987

Michigan
Hiawatha—Forest Supervisor, 2727 N. Lincoln Rd., Escanaba, MI 49829, (906) 786-4062
Huron—Manistee—Forest Supervisor, 2727 N. Lincoln Rd., Escanaba, MI 49829, (906) 786-4062

Ottawa—Forest Supervisor, 2727 N. Lincoln Rd., Escanaba, MI 49829, (906) 786-4062

Minnesota
Chippewa—Forest Supervisor, Rt. 3 Box 244, Cass Lake, MN 56633, (218) 335-8600
Superior—Forest Supervisor, Box 338, Federal Bldg., 515 W. First St., Duluth, MN 55802, (218) 270-5234

Missouri
Mark Twain—Forest Supervisor, 401 Fairgrounds Rd., Rolla, MO 65401, (314) 364-4621
New Hampshire and Maine, White Mountain—Forest Supervisor, Federal Bldg., 719 Main St., PO Box 638, Laconia, NH 03247, (603) 528-8721

Ohio
Wayne—Forest Supervisor, 219 Columbus Rd., Athens, OH 45701-1399, (614) 592-6644

Pennsylvania
Allegheny—Forest Supervisor, 222 Liberty St., Box 847, Warren, PA 16365, (814) 723-5150

Vermont
Green Mountain and Finger Lakes—Forest Supervisor, 23 N. Main St., Rutland, NY 05701, (802) 747-6700

West Virginia
Monongahela—Forest Supervisor, USDA Bldg., 200 Sycamore St., Elkins, WV 26241-3962, (304) 636-1800

Wisconsin
Chequamegon—Forest Supervisor, 1170 4th Ave. South, Park Falls, WI 54552, (715) 762-2461
Nicolet—Forest Supervisor, Federal Bldg., 68 S. Stevens, Rhinelander, WI 54501, (715) 362-1300

Region 10
Regional Forester, Regional Office, Federal Bldg., Box 21628, Juneau, AK 99802-1628, (907) 586-8719

Alaska
Chugach—Forest Supervisor, 3301 C St., Suite 300, Anchorage, AK 99503-3998, (907) 271-2500
Tongass—Chatham Area—Forest Supervisor, 204 Siginaka Way, Sitka, AK 99835, (907) 747-6671
Tongass—Ketchikan Area—Forest Supervisor, Federal Bldg., Ketchikan, AK 99901, (907) 225-3101
Tongass—Stikine Area—Forest Supervisor, Box 309, Petersburg, AK 99833, (907) 772-3841

Forest and Range Experiment Stations
Intermountain Research Station, Director, 324 25th Street, Ogden, UT 84401, (801) 625-5412
North Central Forest Experiment Station, Director, 1900 Folwell Ave., St. Paul, MN 55108, (612) 649-5249
Northeastern Forest Experiment Station, Director, 5 Radnor Corporate Center, Suite 200, PO Box 6775, Radnor, PA 19087-6775, (610) 495-4017
Pacific Northwest Research Station, Director, PO Box 3980, Portland, OR 97208-3980, (503) 326-5640
Pacific Southwest Forest and Range Experiment Station, Director, 800 Buchanan St., West Building, Albany, CA 94710-0011, (510) 559-6310
Rocky Mountain Forest and Range Experiment Station, Director, 240 W. Prospect Rd., Fort Collins, CO 80526-2090, (303) 496-1126
Southeastern Forest Experiment Station, Director, 200 Weaver Blvd., PO Box 2680, Asheville, NC 28802, (704) 257-4300
Southern Forest Experiment Station, Director, P.O. Box 10210, U.S. Postal Service Bldg., 701 Loyola Ave., New Orleans, LA 70113, (504) 589-3901
Forest Products Laboratory, Director, One Gifford Pinchot Dr., Madison, WI 53705-2398, (608) 231-9318
Northeastern Area State and Private Forestry, Director, 5 Radnor Corporate Center,
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- Natural Resources Conservation Service
- Regional Administrative Officer, Natural Resources Conservation Service, Midwest Regional Office, 2820 Walton Commons West, Suite 123, Madison, WI 53704-6785, (608) 224-3800
- Regional Administrative Officer, Natural Resources Conservation Service, West Regional Office, 850 Capitol Mall, Room 6072, Sacramento, CA 95814, (916) 498-5240
- Regional Administrative Officer, Natural Resources Conservation Service, Southeast Regional Office, 1720 Peachtree Road, NW, Suite 716-N, Atlanta, GA 30309-2439, (404) 347-6133
- Regional Administrative Officer, Natural Resources Conservation Service, East Regional Office, 11710 Beltsville Drive, Suite 100, Calverton Office Bldg., Ft. Beltsville, MD 20705, (301) 586-1328
- Regional Administrative Officer, Natural Resources Conservation Service, Southern Plains Regional Office, PO Box 6459, Ft. Worth, TX 76115-0459, (817) 334-5258, ext. 3504
- Regional Administrative Officer, Natural Resources Conservation Service, Northern Plains Regional Office, 100 Centennial Mall North, Room 152, Lincoln, NE 68508-3866, (402) 437-5315
- Human Resources Officer, Natural Resources Conservation Service, National Business Management Center, Bldg. 23, 501 W. Felix Street, PO Box 6567, Ft. Worth, TX 76115, (817) 334-5427, ext. 3750
- Human Resources Officer, Natural Resources Conservation Service, PO Box 2890, Room 5125-South Bldg., Washington, DC 20033-2890, (202) 720-4284
- Human Resources Officer, Natural Resources Conservation Service, 665 Opelika Road, PO Box 311, Auburn, AL 36830-0311, (334) 887-4543
- Human Resources Officer, Natural Resources Conservation Service, 3003 N. Central Ave., Suite 800, Phoenix, AZ 85012-2945, (602) 280-8800
- Human Resources Officer, Natural Resources Conservation Service, 700 West Capitol Avenue, Federal Bldg., Room 5404, Little Rock, AR 72201-3225, (501) 324-5479
- Human Resources Officer, Natural Resources Conservation Service, 2121-C 2nd Street, Davis, CA 95616, (916) 757-8294
- Human Resources Officer, Natural Resources Conservation Service, 655 Parfet Street, Room E 200C, Lakewood, CO 80215-5517, (303) 236-2801, ext. 219
- Human Resources Officer, Natural Resources Conservation Service, 16 Professional Park Road, Storrs, CT 06268-1299, (860) 487-4034
- Human Resources Officer, Natural Resources Conservation Service, 1203 College Park Drive, Suite 101, Dover, DE 19904-8713, (302) 678-4173
- Human Resources Officer, Natural Resources Conservation Service, 2614 NW 43rd Street, Gainesville, FL 32606, (352) 338-9525
- Human Resources Officer, Natural Resources Conservation Service, Federal Bldg., Box 13, 355 E. Hancock Avenue, Athens, GA 30601, (706) 546-2270
- Human Resources Officer, Natural Resources Conservation Service, 300 Ala Moana Blvd., Rm 4316, PO Box 50004, Honolulu, HI 96850-0002, (808) 541-1896
- Human Resources Officer, Natural Resources Conservation Service, 693 Federal Bldg., 210 Walnut Street, Des Moines, IA 50309, (515) 294-4568
- Human Resources Officer, Natural Resources Conservation Service, 3244 Elder Street, Room 124, Boise, ID 83706-4711, (208) 378-5712
- Human Resources Officer, Natural Resources Conservation Service, 1902 Fox Drive, Champaign, IL 61820, (217) 398-5288
- Human Resources Officer, Natural Resources Conservation Service, 6013 Lakeside Blvd., Indianapolis, IN 46278, (317) 290-3207, ext. 323
- Human Resources Officer, Natural Resources Conservation Service, 760 S. Broadway, Salina, KS 67401, (913) 623-4510
- Human Resources Officer, Natural Resources Conservation Service, 711 Corporate Drive, Suite 110, Lexington, KY 40503-5479, (606) 224-7203
- Human Resources Officer, Natural Resources Conservation Service, 377 Government Street, Alexandria, LA 71302-3237, (318) 473-7766
- Human Resources Officer, Natural Resources Conservation Service, 451 West Street, Amherst, MA 01002-2955, (413) 525-4353
- Human Resources Officer, Natural Resources Conservation Service, John Hanson Business Center, 339 Busch's Frontage Road, Suite 301, Annapolis, MD 21401-5534, (410) 757-0861, ext. 337
- Human Resources Officer, Natural Resources Conservation Service, 5 Godfrey Drive, Orono, ME 04473, (207) 866-7245
- Human Resources Officer, Natural Resources Conservation Service, 1405 S. Harrison Road, Room 101, East Lansing, MI 48823-5243, (517) 337-6701, ext. 1233
- Human Resources Officer, Natural Resources Conservation Service, 600 FCS Bldg., 375 Jackson St., St. Paul, MN 55101-2854, (612) 290-3678
- Human Resources Officer, Natural Resources Conservation Service, 100 West Capitol Street, Federal Bldg., Suite 1321, Jackson, MS 39269, (601) 965-5133
- Human Resources Manager, Natural Resources Conservation Service, 601 Business Loop West, Parkade Center, Suite 250, Columbia, MO 65203, (573) 876-0064
- Human Resources Manager, Natural Resources Conservation Service, Federal
Office of Personnel Management

Building, Room 443, 10 East Babcock Street, Bozeman, MT 59715, (406) 587-6866
Human Resources Manager, Natural Resources Conservation Service, 4405 Bland Road, Suite 205, Raleigh, NC 27609, (919) 873-2108
Human Resources Manager, Natural Resources Conservation Service, 220 Rosser Avenue, P.O. Box 1458, Room 279, Bismarck, ND 58502-1458, (701) 250-4761
Human Resources Manager, Natural Resources Conservation Service, 100 Centennial Mall N., Federal Bldg., Room 152, Lincoln, NE 68508-3866, (402) 437-4057
Human Resources Manager, Natural Resources Conservation Service, 2 Madison Road, Federal Building, Durham, NH 03824-1495, (603) 686-7581
Human Resources Manager, Natural Resources Conservation Service, 1370 Hamilton Street, Somerville, NJ 08873, (908) 246-1171, ext. 166
Human Resources Manager, Natural Resources Conservation Service, 6200 Jefferson Street, NE., Albuquerque, NM 87109-3734, (505) 761-4409
Human Resources Manager, Natural Resources Conservation Service, 5301 Longley Lane, Bldg. F, Suite 201, Reno, NV 89511, (702) 794-5897
Human Resources Manager, Natural Resources Conservation Service, 441 South Salina Street, Suite 354, Syracuse, NY 13202-2450, (315) 477-6512
Human Resources Manager, Natural Resources Conservation Service, 200 North High Street, Room 522, Columbus, OH 43215, (614) 469-9977
Human Resources Manager, Natural Resources Conservation Service, 100 USDA, Suite 203, Stillwater, OK 74074-2655, (405) 742-1209
Human Resources Manager, Natural Resources Conservation Service, 101 SW Main Street, Suite 1300, Portland, OR 97204, (503) 414-3211
Human Resources Manager, Natural Resources Conservation Service, One Credit Union Place, Suite 340, Harrisburg, PA 17110-2993, (717) 782-3716
Human Resources Manager, Natural Resources Conservation Service, 1835 Assembly Street, Room 950, Columbia, SC 29001, (803) 253-3920
Human Resources Manager, Natural Resources Conservation Service, Federal Bldg., 200 4th St., NW., Huron, SD 57350-2475, (605) 352-1224
Human Resources Manager, Natural Resources Conservation Service, 675 U.S. Courthouse, 801 Broadway, Nashville, TN 37203, (615) 736-5388
Human Resources Manager, Natural Resources Conservation Service, W.R. Poage Federal Bldg., 301 South Main St., Temple, TX 76501-7602, (817) 774-1246
Human Resources Manager, Natural Resources Conservation Service, 125 S. State Street, Room 4402, P.O. Box 11350, Salt Lake City, UT 84147, (801) 524-5068
Human Resources Manager, Natural Resources Conservation Service, 69 Union Street, Winooski, VT 05404-1999, (802) 951-6705, ext. 223
Human Resources Manager, Natural Resources Conservation Service, 1606 Santa Rosa Road, Culpepper Bldg., Suite 209, Richmond, VA 23229-5014, (804) 807-1625
Human Resources Manager, Natural Resources Conservation Service, Rock Point Tower II, W. 316 Boone Avenue, Suite 450, Spokane, WA 99001-2488, (509) 353-2333
Human Resources Manager, Natural Resources Conservation Service, 75 High Street, Room 301, Morgantown, WV 26505, (304) 291-4152, ext. 176
Human Resources Manager, Natural Resources Conservation Service, 6515 Watts Road, Suite 200, Madison, WI 53719-2726, (608) 265-5341, ext. 161
Human Resources Manager, Natural Resources Conservation Service, 100 East B Street, Room 3124, Casper, WY 82601-1911, (307) 261-6402
Research, Education, and Economics
Agricultural Research Service
Cooperative State Research, Education, and Extension Service
Economic Research Service
National Agricultural Statistics Service
Director, Human Resources Division, Administrative and Financial Management Staff, Agricultural Research Service, 5601 Sunny-side Avenue, Room 3-1145A, Beltsville, MD 20705-5103, (301) 504-1478
National Appeals Division
Administrative Officer, National Appeals Division, 3101 Park Center Drive, Room 1020, Alexandria, VA 22312, (703) 305-2666
Department of Commerce
1. Bureau of the Census and the Economics and Statistics Administration (ESA): For Census employee-obligors employed by Headquarters, a Regional Office, the Hagerstown Telephone Center and the Tucson Telephone Center; and for employee-obligors in ESA—Headquarters/Washington, DC offices only:
Bureau of the Census, Human Resources Division, ATTN: Chief, Pay, Processing and Systems Branch, FOB # 3, Room 3254, Washington, DC 20233, (301) 457-3710
For employee-obligors employed by the Census Data Preparation Division:
Bureau of the Census, Data Preparation Division, ATTN: Chief, Human Resources Branch, Bldg. 66, Room 113, Jeffersonville, IN 47132, (812) 219-3523
2. Patent and Trademark Office (PTO): Human Resources Manager
3. United States and Foreign Commercial Service (US&FCS): Personnel Officer Office of Foreign Service Personnel, Room 3815, 14th & Constitution Avenue, NW., Washington, DC 20230, (202) 482-3133

4. International Trade Administration (ITA) (For employee-obligors of the Headquarters/Washington, DC offices only):

Human Resources Manager, Personnel Management Division, Room 4809, 14th & Constitution Avenue, NW., Washington, DC 20230, (202) 482-3818

5. National Institute of Standards and Technology (NIST), the Technology Administration (TA), and the National Technical Information Service (NTIS) (For NIST employee-obligors other than in Colorado and Hantui; for employee-obligors employed by TA and NTIS):

Personnel Officer, Office of Human Resources Management, Administration Building, Room A-123, Gaithersburg, MD 20899, (301) 975-3000


Human Resources Manager, Resource Management Division, Room 7713, 14th & Constitution Avenue, NW., Washington, DC 20230, (202) 482-4948

7. National Oceanic and Atmospheric Administration (NOAA) (For employee-obligors in the Headquarters/Washington, DC; the Silver Spring and Camp Springs, MD; and the Sterling, VA offices only): Chief Human Resources Services Division, NOAA, 1315 East-West Highway, Room 13619, Silver Spring, MD 20910, (301) 713-0524

8. Office of the Secretary (OS), Bureau of Economic Analysis (BEA), Bureau of Export Administration (BXA), Economic Development Administration (EDA), Minority Business Development Agency (MBDA), and National Telecommunications and Information Administration (NTIA) (For employee-obligors in Washington, DC metro area offices only):

Human Resources Manager, Office of Personnel Operations, Office of the Secretary, Room 5005, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482-3827

9. Regional employees of NOAA, NIST, BXA, EDA, MBDA, ITA, NTIA, to the Human Resources Manager servicing the region or State in which they are employed, as follows:

a. Central Region. For NOAA employee-obligors in the States of: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin; for National Marine Fisheries Service employees in the states of North Carolina, South Carolina and Texas; and for National Weather Service employees in the States of Colorado, Kansas, Nebraska, North Dakota, South Dakota, and Wyoming; for employee-obligors in the BXA, EDA, MBDA, and ITA in the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin:

Human Resources Manager, Central Administrative Support Center (CASC), Federal Building, Room 1736, 601 East 12th Street, Kansas City, MO 64106, (816) 426-2056


Human Resources Manager, Eastern Administrative Support Center (EASC), NOAA EC, 200 World Trade Center, Norfolk, VA 23510, (757) 441-6517

c. Mountain Region. For NOAA employee-obligors in the States of: Alaska, Colorado, Florida, Hawaii, Idaho, and Oklahoma, at the South Pole and in American Samoa; and for the National Weather Service employees in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, Oklahoma, Tennessee, Texas and in Puerto Rico; for employee-obligors in BXA, EDA, MBDA, NIST, and NTIA in the States of Arkansas, Colorado, Hawaii, Iowa, Louisiana, Missouri, Montana, South Dakota, Texas, Utah and Wisconsin:

Human Resources Officer, Mountain Administrative Support Center (MASC), MCC2A, 325 Broadway, Boulder, CO 80303-3228, (303) 497-3578

d. Western Region. For NOAA employee-obligors in the States of Arizona, California, Colorado, Nebraska, Nevada, Oregon, Utah, Washington, and the Trust Territories; for employee-obligors in BXA, EDA, MBDA, NIST, and ITA in the States of Arizona, California, Nebraska, Nevada, Oregon, Utah, Washington, and the Trust Territories:

Human Resources Manager, Western Administrative Support Center (WASC), NOAA WC2, 7600 Sand Point Way, NE., Bin C15700, Seattle, WA 98115-0070, (206) 526-6057

10. In cases where the name of the operating unit cannot be determined:
Office of Personnel Management

Director for Human Resources Management,
U.S. Department of Commerce, 14th and
Constitution Avenue, NW., Room 5001, (202)
482-4807

Department of Defense

Unless specifically listed below, all military members (active, retired, reserve, and national guard), and all civilian employees of the Department of Defense:
Assistant General Counsel for Garnishment Operations, Defense Finance and Accounting Service, Cleveland Center—Code L (DFAS-CL/L), P.O. Box 98002, Cleveland, OH 44199-8002, (216) 522-5301

Army
a. Civilian employees in Germany:
Commander, 266th Theater Finance Corps, Attention: AEUCF-CF, Unit 29001, APO AE 09007, 01-49-6223-57-97776044
b. Nonappropriated fund civilian employees of the Army:

Post Exchanges
Army and Air Force Exchange Service, Attention: CM-C-R, P.O. Box 660202, Dallas, TX 75266-0202, (214) 312-2011

Navy
a. Military Sealift Command Pacific Mariners:
Office of Counsel (Code N2), Military Sealift Command, Pacific, 280 Anchor Way, Suite 1W, Oakland, CA 94625-5010
b. Military Sealift Command Atlantic Mariners:
Office of Counsel, Military Sealift Command, Atlantic, Military Ocean Terminal, Building 42, Bayonne, NJ 07002-5399
c. Nonappropriated fund civilian employees of Navy Exchanges or related non-appropriated fund instrumentalities administered by the Navy Resale Systems Office:
Commanding Officer, Navy Exchange Service Command, 3290 Virginia Beach Blvd., Virginia Beach, VA 23452, (804) 631-3614
d. Nonappropriated fund civilian employees at Navy clubs, messes or recreational facilities:
Chief of Navy Personnel, Director, Morale, Welfare, and Recreation Division (MWR), Washington, DC 20370, (202) 433-3005
e. Nonappropriated fund personnel of activities that fall outside the purview of the Chief of Navy Personnel or the Commanding Officer of the Navy Exchange Service Command, such as locally established morale, welfare and other social and hobby clubs, such process may be served on the commanding officer of the activity concerned.

Marine Corps
Nonappropriated fund civilian employees, process may be served on the commanding officer of the activity concerned.

Air Force
a. Nonappropriated fund civilian employees of base exchanges:
Army and Air Force Exchange Service, Attention: FA-F/R, PO Box 650038, Dallas, TX 75265-0038, (214) 312-2119
b. Nonappropriated fund civilian employees of all other Air Force nonappropriated fund activities:
Office of Legal Counsel, Air Force Services Agency, 10101 Reunion Place, Suite 503, San Antonio, TX 78216-4138, (210) 652-7051

Department of Education
Assistant Secretary, Office of Management, F8-10, Room 2164, 600 Independence Avenue, SW., Washington, DC 20202-2110, (202) 401-0470

Department of Energy
Power Administration
1. Alaska Power Administration
Administrator, Alaska Power Administration, Department of Energy, PO Box 020050, Juneau, AK 99802-0050, (907) 586-7405

2. Bonneville Power Administration
Chief, Payroll Section DSDP, Bonneville Power Administration, Department of Energy, 905 NE. 11th Avenue, Portland, OR 97232, (503) 230-3203

3. Southeastern Power Administration
Chief, Payroll Branch, Department of Energy, Forrestal Building, Room 1E-184, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5351

4. Southwestern Power Administration
Chief Counsel, Southwestern Power Administration, Department of Energy, PO Box Drawer 1619, Tulsa, OK 74101, (918) 581-7426

5. Western Area Power Administration
General Counsel, Western Area Power Administration, Department of Energy, PO Box 3402, Golden, CO 80401, (303) 231-1529

Field Offices
1. Albuquerque Operations Office
Chief Counsel, Albuquerque Operations Office, Department of Energy, PO Box 5400, Albuquerque, NM 87115, (505) 844-7265
2. Chicago Operations Office
Chief Counsel, Chicago Operations Office, Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439, (312) 972-2032

3. Idaho Operations Office
Financial Services Division-Payroll, 850 Energy Drive, Idaho Falls, ID 83401, (208) 526-0459

4. Nevada Operations Office
Chief, Payroll Branch, CR-431, Department of Energy, GTN Building, Room 259, Washington, DC 20585, (301) 903-4012

5. Oak Ridge Operations Office
Chief Counsel, Oak Ridge Operations Office, Department of Energy, P.O. Box 20001, Oak Ridge, TN 37831-8510, (615) 576-1200

6. Richland Operations Office
Chief Counsel, Richland Operations Office, Department of Energy, P.O. Box 550, Richland, WA 99352, (509) 376-7311

7. Savannah River Operations Office
Director, Financial Management and Program Support Division, Department of Energy, P.O. Box A, Aiken, SC 29802, (803) 725-5590

9. Washington DC Headquarters, Pittsburgh Naval Reactors Office, Schenectady Naval Reactors Office, and All Other Organizations Within the Department of Energy
Chief, Payroll Branch, CR-431, Department of Energy, GTN Building, Room E-259, Washington, DC 20585, (301) 903-4012

Department of Health and Human Services
Garnishment Agent, Office of General Counsel, Room 5362—North Building, 330 Independence Ave., SW., Washington, DC 20201, (202) 619-0150

Department of Housing and Urban Development
Director, Systems Support Division, Employee Service Center, 451 Seventh Street, SW., Room 2204, Washington, DC 20012, (202) 708-0241

Department of the Interior
Chief, Payroll Operations Division, Attn: Code D-2605, Bureau of Reclamation, Administrative Service Center, Department of the Interior, P.O. Box 272030, 7201 West Mansfield Avenue, Denver, CO 80227-9030, (303) 969-7739

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Department of Justice
Offices, Boards, and Divisions
Personnel Group/Payroll Operations, 1331 Pennsylvania Avenue, NW., Suite 1170, Washington, DC 20530, (202) 514-6004

Office of the Inspector General
Personnel Division, 1425 New York Avenue, NW., Suite 7000, Washington, DC 20005, (202) 616-4501

For employees of any office of a United States Attorney and for employees of the Executive Office for United States Attorneys;
Assistant Director, Executive Office for United States Attorneys, Personnel Staff, Bicentennial Building, 600 E Street, NW., Room 8017, Washington, DC 20530

United States Marshals Service
Personnel Office, 600 Army Navy Drive, Room 850, Arlington, VA 22202-4210, (202) 307-9637

Office of Justice Programs
Office of Personnel, 633 Indiana Avenue, NW., Room 600, Washington, DC 20530, (202) 307-0730

U.S. Trustees Programs
Personnel Office, 901 E Street, NW., Room 770, Washington, DC 20530, (202) 616-1000

Drug Enforcement Administration
Office of Personnel, Employee Relations Unit, 700 Army Navy Drive, Room 3164, Arlington, VA 22202-4210, (202) 307-1222

Immigration and Naturalization Service
Personnel Support, Immigration and Naturalization Service, One Federal Drive, Whipple Bldg., Fort Snelling, MN 55111, (612) 725-3211

Human Resources and Career Development, Immigration and Naturalization Service, 70 Kimball Avenue, South Burlington, VT 05403, (802) 660-5137

Human Resources and Career Development, Immigration and Naturalization Service, 7701 N. Stemmons Freeway, Dallas TX 75247, (214) 655-6032

Human Resources and Career Development, Immigration and Naturalization Service, 70 Kimball Avenue, South Burlington, VT 05403, (802) 660-5137

Federal Prisons Systems, U.S. Penitentiary, Personnel Office, 1300 Metropolitan, Leavenworth, KS 66048, (913) 622-8700

Federal Correctional Institution, Personnel Office, Route 37, Danbury, CT 06811, (203) 743-6471

Personnel Office, 320 1st Street, NW., Room 161, Washington, DC 20534, (202) 307-3135
Federal Medical Center, Personnel Office, P.O. Box 4600, Rochester, MN 55903, (507) 287-0674
Federal Correctional Institution, Personnel Office, P.O. Box 1000, Loretto, PA 15940, (814) 472-4140
Federal Prison Camp, Personnel Office, Maxwell AFB, Montgomery, AL 36112, (205) 834-3683
Federal Correctional Institution, Personnel Office, Box 1630, El Paso, TX 79906, (915) 540-6150
Federal Correctional Institution, Personnel Office, P.O. Box 4000, Three Rivers, TX 78071, (512) 786-3576
Federal Detention Center, Personnel Office, P.O. Box 1000, Loretto, PA 15940, (814) 472-4140
Federal Prison Camp, Personnel Office, Box 709, Minersville, PA 17954, (717) 544-7121
Federal Prison Camp, Personnel Office, Box 40150, Tyndall AFB, FL 32403, (904) 286-6777

1. Payments to employees of the Department of Labor:
   Director, Office of Accounting, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219-8314
   2. Process relating to those exceptional cases where there is money due and payable by the United States under the Longshoreman's Act should be directed to the:

2. Process relating to those exceptional cases where there is money due and payable by the United States under the Longshoreman's Act should be directed to the:

   Chief, Payroll Administration and Processing Unit, Room 1885, 935 Pennsylvania Avenue, NW., Washington, DC 20210, (202) 336-1057
Office of Personnel Management

Associate Director for Longshore and Harbor Worker's Compensation, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219-8721

3. Process relating to benefits payable under the Federal Employees' Compensation Act should be directed to the appropriate district office of the Office of Workers' Compensation Programs:

District No. 1
District Director, Office of Workers’ Compensation Programs, John F. Kennedy Building, Room 1800, Government Center, Boston, MA 02203, (617) 565-2137
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

District No. 2
District Director, Office of Workers’ Compensation Programs, 201 Varick Street, Room 750, P.O. Box 566, New York, NY 10014-0566, (212) 337-2075
New Jersey, New York, Puerto Rico, and the Virgin Islands

District No. 3
District Director, Office of Workers’ Compensation Programs, Gateway Building, 3535 Market Street, Philadelphia, PA 19104, (215) 596-1457
Delaware, Pennsylvania, and West Virginia

District No. 6
District Director, Office of Workers’ Compensation Programs, 214 N. Hogan Street, Suite 1026, Jacksonville, FL 32202, (904) 232-2821
Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

District No. 9
District Director, Office of Workers’ Compensation Programs, 1240 East 9th Street, Cleveland, OH 44108, (216) 522-3800
Indiana, Michigan, and Ohio

District No. 10
District Director, Office of Workers’ Compensation Programs, 230 S. Dearborn Street, 8th Floor, Chicago, IL 60604, (312) 353-9696
Illinois, Minnesota, and Wisconsin

District No. 11
Regional Director, Office of Workers’ Compensation Programs, 1910 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106, (816) 426-2195

District No. 12
District Director, Office of Workers’ Compensation Programs, 1801 California Street, Suite 915, Denver, CO 80202, (303) 391-6000
Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming

District No. 13
District Director, Office of Workers’ Compensation Programs, 71 Stevenson Street, 2nd Floor, P.O. Box 3769, San Francisco, CA 94119-3769, (415) 744-6610
Arizona, California, Hawaii, Guam, and Nevada

District No. 14
District Director, Office of Workers’ Compensation Programs, 111 Third Avenue, Suite 615, Seattle, WA 98101, (206) 553-5508
Alaska, Idaho, Oregon, and Washington

District No. 16
District Director, Office of Workers’ Compensation Programs, 525 Griffin Street, Room 100, Dallas, TX 75202, (214) 767-2580
Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

District No. 25
District Director, Office of Workers’ Compensation Programs, 800 N. Capitol Street, Room 800, Washington, DC 20211, (202) 724-0713
District of Columbia, Maryland, and Virginia

4. Process relating to claims arising out of the places set forth below and process seeking to attach Federal Employees’ Compensation Act benefits payable to employees of the Department of Labor should be directed to the:

Regional Director, Office of Workers’ Compensation Programs, 1910 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106, (816) 426-2195

Department of State
Executive Director (L/EX), Office of the legal Adviser, Department of State, 22nd and C Streets, N.W., Room 5539A, Washington, DC 20520, (202) 647-8323

Department of Transportation
Office of the Secretary
General Counsel, Department of Transportation, 400 7th Street, S.W., Washington, DC 20590, (202) 366-4702
Agent designated to accept legal process issued by courts in the District of Columbia:
Assistant Chief Counsel, AGC-100, Department of Transportation, 701 Pennsylvania Avenue, NW., Suite 925, Washington, DC 20004, (202) 376-6416

Agent designated to accept legal process issued by courts in the District of Columbia:
Assistant Chief Counsel, MC-7, Department of Transportation, P.O. Box 25082, Oklahoma City, OK 73125, (405) 954-3296

Agent designated to accept legal process issued by courts in the State of New Jersey:
Assistant Chief Counsel, ACT-7, FAA Technical Center, Department of Transportation, Atlantic City, NJ 08405, (609) 485-7087

United States Coast Guard
Commanding Officer (LGL), Coast Guard Human Resources, Service and Information Center, 444 SE. Quincy Street, Topeka, KS 66603-3591, (785) 357-3595

Federal Aviation Administration

1. Headquarters (Washington, DC) and overseas employees:
Agent designated to accept legal process issued by courts in the District of Columbia:
Assistant Chief Counsel, AGC-100, General Legal Services Division, Federal Aviation Administration, 400 Seventh Street, SW., Suite PL-200A, Washington, DC 20590, (202) 366-4099.

Agent designated to accept legal process issued by courts in the State of Oklahoma:
Assistant Chief Counsel, AMC-7, Federal Aviation Administration, P.O. Box 25082, Oklahoma City, OK 73125, (405) 954-3296.

Agent designated to accept legal process issued by courts in the State of New Jersey:
Assistant Chief Counsel, ACT-7, FAA Technical Center, Federal Aviation Administration, Atlantic City, NJ 08405, (609) 485-7087

Agent designated to accept legal process issued by courts in the State of Alaska:
Assistant Chief Counsel, AAL-7, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AL 99533, (907) 271-5269

Agent designated to accept legal process issued by courts in the States of New York, Pennsylvania, Maryland, West Virginia, Delaware, and Virginia:
Assistant Chief Counsel, AEA-7, Federal Aviation Administration, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430, (718) 553-1035

Agent designated to accept legal process issued by courts in the States of Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, and Mississippi:
Assistant Chief Counsel, ASO-7, Federal Aviation Administration, P.O. Box 20036, Atlanta, GA 30330, (404) 763-7204

Agent designated to accept legal process issued by courts in the States of Louisiana, Arkansas, Texas, and New Mexico:
Assistant Chief Counsel, ASW-7, Federal Aviation Administration, 2601 Meacham Boulevard, Forth Worth, TX 76137-4298, (817) 222-5064

Agent designated to accept legal process issued by courts in the States of Nebraska, Iowa, Missouri, and Kansas:
Assistant Chief Counsel, ACE-7, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106, (816) 426-5446

Agent designated to accept legal process issued by courts in the States of Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, North Dakota, and South Dakota:
Assistant Chief Counsel, AGL-7, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018, (708) 294-7108

Agent designated to accept legal process issued by courts in the States of Colorado, Utah, Wyoming, Montana, Idaho, Oregon, and Washington:
Assistant Chief Counsel, AMN-7, Federal Aviation Administration, 1601 Lind Avenue, S.W., Renton, WA 98055-4056, (206) 227-2007

Agent designated to accept legal process issued by courts in the States of Hawaii, Arizona, Nevada, and California:
Assistant Chief Counsel, AWP, Federal Aviation Administration, PO Box 92007, World Postal Center, Los Angeles, CA 90009-3100, (310) 297-1270

Department of the Treasury

(1) Departmental Offices
Assistant General Counsel (Administrative and General Law), Treasury Department, 1500 Pennsylvania Avenue, NW., Room 1410, Washington, DC 20220, (202) 622-0450

(2) Office of Foreign Assets Control
Chief Counsel, Second Floor, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 622-2410

(3) Financial Management Service
Chief Counsel, Financial Management Service, 401 14th Street, S.W., Room 531, Washington, DC 20227, (202) 674-6600
Office of Personnel Management

(4) Internal Revenue Service
Chief, Special Processing Unit, Garnishing Processing Center, 214 North Kanawha Street, Beckley, WV 25801, (304) 256-6200

(5) Bureau of Alcohol, Tobacco & Firearms
Chief Counsel, 650 Massachusetts Avenue, NW., Room 6100, Washington, DC 20226, (202) 927-7772

(6) Bureau of the Public Debt
Deputy Chief Counsel, Bureau of the Public Debt, Room 119, Hintgen Building, Parkersburg, WV 26101-1328, (304) 480-5192

(7) Secret Service
Legal Counsel, 1800 G Street, NW., Room 842, Washington, DC 20226, (202) 435-5771

(8) Bureau of Engraving & Printing
Legal Counsel, 14th & C Streets, NW., Room 306M, Washington, DC 20228, (202) 874-2500

(9) Office of the Comptroller of the Currency
Washington Headquarters.

Director of Litigation, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219-0001, (202) 874-5280

District Offices
District Counsel, Office of the Comptroller of the Currency, Northeastern District, 1114 Avenue of the Americas, Suite 3900, New York, NY 10036-7730, (212) 790-4010

District Counsel, Office of the Comptroller of the Currency, Southeastern District, Marquis One Tower, Suite 600, 245 Peachtree Center Ave., NE., Atlanta, GA 30303-1223, (404) 586-4520

District Counsel, Office of the Comptroller of the Currency, Central District, One Financial Place, Suite 2700, 440 South LaSalle St., Chicago, IL 60654-1072, (312) 663-0800

District Counsel, Office of the Comptroller of the Currency, Midwestern District, 2345 Grand Avenue, Suite 700, Kansas City, MO 64108-2885, (816) 596-1870

District Counsel, Office of the Comptroller of the Currency, Southwestern District, 1600 Lincoln Plaza, 500 North Akard Street, Dallas, TX 75201-3345, (214) 720-6012

District Counsel, Office of the Comptroller of the Currency, Western District, 50 Fremont Street, Suite 3900, San Francisco, CA 94105-2292, (415) 545-5980

(10) United States Mint
Chief Counsel, 633 3rd Street, NW., Room 733, Washington, DC 20220, (202) 874-6040

(11) Federal Law Enforcement Training Center
Legal Counsel, Building 69, Glynn, GA 31524, (912) 267-2100

(12) Customs Service
Assistant Chief Counsel, PO Box 68914, Indianapolis, IN 46269, (317) 296-1233

(13) Office of Thrift Supervision
Chief Counsel, 1700 G Street, NW., Fifth Floor, Washington, DC 20552, (202) 906-6251

Department of Veterans Affairs

The fiscal officer at each Department of Veterans Affairs (VA) facility shall be the designated agent for VA employee obligers at that facility. When a facility at which an individual is employed does not have a fiscal officer, the address and telephone number listed is for the fiscal officer servicing such a facility. In those limited cases where a portion of VA service-connected benefits may be subject to garnishment, service of process, unless otherwise indicated below, should be made at the regional office nearest the veteran obligor’s permanent residence.

Alabama
Fiscal Officer, Birmingham Medical Center, Send to: Fiscal Officer, VA Medical Center, 215 Perry Hill Road, Montgomery, AL 36120, (205) 272-4670, ext. 4700

National Cemetery Area Office, 700 South 19th Street, Birmingham, AL 35233, (205) 999-2303

Mobile Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 215 Perry Hill Road, Montgomery, AL 36120, (205) 272-4670, ext. 4700

Fiscal Officer, Montgomery Regional Office, 474 South Court Street, Montgomery, AL 36104, (205) 832-7172

Fiscal Officer Montgomery Medical Center, 215 Perry Hill Road, Montgomery, AL 36109, (205) 272-4670, ext. 204

Fiscal Officer, Tuscaloosa Medical Center, Tuscaloosa, AL 35401, (205) 553-3760

Fiscal Officer, Tuskegee Medical Center, Tuskegee, AL 36788, (205) 727-0520, ext. 0622

Arizona
Fiscal Officer, Anchorage Regional Office, Outpatient Clinic, 235 East 8th Avenue, Anchorage, AK 99501, (907) 271-2250

Juneau VA Office, Send to: Fiscal Officer, VA Regional Office, 235 East 8th Avenue, Anchorage, AK 99501, (907) 271-2250

Sitka National Cemetery Area Office, Send to: Fiscal Officer, VA Regional Office, 235 East 8th Avenue, Anchorage, AK 99501, (907) 271-2250

United States Mint
Chief Counsel, 633 3rd Street, NW., Room 733, Washington, DC 20220, (202) 874-6040

Federal Law Enforcement Training Center
Legal Counsel, Building 69, Glynn, GA 31524, (912) 267-2100
Fiscal Officer, Phoenix Medical Center, Seventh Street & Indian School Road, Phoenix, AZ 85012, (602) 277-5551
Fiscal Officer, Prescott Medical Center, Prescott, AZ 86301, (602) 445-4650, ext. 264
Fiscal Officer, San Francisco Medical Center, San Francisco, CA 94121, (415) 556-0483
Fiscal Officer, San Diego Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161, (714) 453-7500, ext. 3551
Fiscal Officer, Los Angeles Outpatient Clinic, 425 South Hill Street, Los Angeles, CA 90013, (213) 894-3870
Fiscal Officer, Los Angeles Regional Office of Audit, Send to: Fiscal Officer, VA Medical Center—Brentwood Division, Los Angeles, CA 90073, (213) 824-4402
Fiscal Officer, Long Beach Medical Center, Send to: Fiscal Officer, VA Medical Center—Wadsworth Division, Los Angeles, CA 90073, (213) 478-3478
Fiscal Officer, San Diego Regional Office, Send to: Fiscal Officer, VA Medical Center—Wadsworth Division, Los Angeles, CA 90073, (213) 478-3478
San Diego Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 4150 Clement Street, San Diego, CA 92108, (714) 289-5703
Fiscal Officer, San Diego National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161, (714) 453-7500, ext. 3551
Fiscal Officer, San Francisco National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 4150 Clement Street, San Francisco, CA 94121, (415) 556-0483
Fiscal Officer, San Francisco Regional Office, 211 Main Street, San Francisco, CA 94105, (415) 974-0160
Jurisdiction over all counties in California except Inyo, Kern, Los Angeles, Orange, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Imperial, Riverside, San Diego, Alpaca, Lassen, Modoc and Mono.
Fiscal Officer, San Francisco Medical Center, 4150 Clement Street, San Francisco, CA 94121, (415) 228-4402, ext. 315/316
Fiscal Officer, Sepulveda Medical Center, 16111 Plummer Street, Sepulveda, CA 91345, (818) 891-2277
Colorado
Fiscal Officer, Denver Regional Office, Denver Federal Center, Building 20, Denver, CO 80225, (303) 224-3920

Arkansas
Fayetteville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443-4301
Fiscal Officer, Fayetteville Medical Center, Fayetteville, AR 72701, (501) 443-4301
Fiscal Officer, Little Rock National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443-4301
Fiscal Officer, Little Rock Regional Office, 1200 W. 3d Street, Little Rock, AR 72201, (501) 378-3142
Fiscal Officer, John L. McClellan Memorial Veterans Hospital, 4300 West 7th Street (04), Little Rock, AR 72205, (501) 661-1202, ext. 1310
Fiscal Officer, VA Regional Office, Send to: VA Medical Center, 11000 N. College Avenue, Fayetteville, AR 72701, (501) 444-5007
Fiscal Officer, VA Regional Office, Building 65, Fort Roots, PO Box 1280, North Little Rock, Little Rock, AR 72215, (501) 370-3471

California
Bell Supply Depot, Send to: Fiscal Officer, VA Supply Depot, PO Box 27, Hines, IL 60141, (312) 681-6800
Fiscal Officer, Fresno Medical Center, 2615 East Clinton Avenue, Fresno, CA 94105, (415) 447-2500, ext. 317
Fiscal Officer, Livermore Medical Center, Livermore, CA 94550, (415) 228-6680, ext. 324/325
Fiscal Officer, Martinez Medical Center, 150 Muir Rd., Martinez, CA 94553, (510) 229-0608, ext. 235
Fiscal Officer, Palo Alto Medical Center, 3801 Miranda Avenue, Palo Alto, CA 94304, (415) 493-5000, ext. 5603
Riverside National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center—Wadsworth Division, Los Angeles, CA 90073, (213) 478-3478
San Bruno National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 4150 Clement Street, San Bruno, CA 94066, (415) 221-4810, ext. 315/316
Fiscal Officer, San Diego Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161, (714) 453-7500, ext. 3551
Fiscal Officer, Sacramento Regional Office, 2200 Camino Del Rio North, San Diego, CA 92108, (714) 299-5703
Jurisdiction over the following counties in California: Imperial, Riverside and San Diego
San Francisco National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 4150 Clement Street, San Francisco, CA 94121, (415) 556-0483
Fiscal Officer, San Francisco Regional Office, 211 Main Street, San Francisco, CA 94105, (415) 974-0160
Jurisdiction over all counties in California except Inyo, Kern, Los Angeles, Orange, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Imperial, Riverside, San Diego, Alpine, Lassen, Modoc and Mono.
Fiscal Officer, San Francisco Medical Center, 4150 Clement Street, San Francisco, CA 94121, (415) 221-4810, ext. 315/316
Fiscal Officer, Sepulveda Medical Center, 16111 Plummer Street, Sepulveda, CA 91345, (818) 891-2277

Jurisdiction over the following counties in California: Inyo, Kern, Los Angeles, Orange, San Bernardino, San Luis Obispo, Santa Barbara and Ventura.
Los Angeles Data Processing Center, Send to: Fiscal Officer, VA Regional Office, Federal Bldg., 11000 Wilshire Blvd., Los Angeles, CA 90024, (213) 209-7565
Fiscal Officer, Los Angeles Medical Center—Brentwood Division, Los Angeles, CA 90073, (213) 478-3478
Fiscal Officer, Los Angeles Medical Center—Wadsworth Division, Los Angeles, CA 90073, (213) 478-3478
Office of Personnel Management

Fiscal Officer, Denver Medical Center, 1055 Clermont Street, Denver, CO 80220, (303) 393-2813

Denver National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220, (303) 393-2813

Fort Logan National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fort Lyon, CO 81038, (719) 384-3987

Fiscal Officer, Grand Junction Medical Center, 2121 North Avenue, Grand Junction, CO 81501, (303) 242-0731, ext. 275

Connecticut

Fiscal Officer, Hartford Regional Office, 450 Main Street, Hartford, CT 06103, (203) 244-3217

Fiscal Officer, Newington Medical Center, 555 Willard Avenue, Newington, CT 06111, (203) 666-6951, ext. 369

Fiscal Officer, West Haven Medical Center, 950 Campbell Avenue, West Haven, CT 06516, (203) 932-5711, ext. 859

Delaware

Fiscal Officer, Wilmington Medical and Regional Office Center, 1601 Kirkwood Highway, Wilmington, DE 19805, (302) 633-5432

District of Columbia

Finance Division Chief (047H), Washington Central Office, 810 Vermont Avenue, NW., Room C-50, Washington, DC 20420, (202) 233-3901

Washington Veterans Canteen Service Field Office, Send to: Finance Division Chief (047H), VA Central Office, 810 Vermont Avenue, NW., Room C-50, Washington, DC 20420, (202) 233-3901

Fiscal Officer, Washington Regional Office, 941 North Capitol Street, NE., Washington, DC 20421, (202) 208-1349

Jurisdiction over all foreign countries or overseas areas except Mexico, American Samoa, Guam, Midway, Wake, the Trust Territory of the Pacific Islands, the Virgin Islands and the Philippines. Also, jurisdiction over Prince George's and Montgomery Counties in Maryland; Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church in Virginia.

Fiscal Officer, Washington Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745-8229

Florida

Fiscal Officer, Bay Pines Medical Center, National Cemetery Area Office, Bay Pines, FL 33704, (813) 396-9321

Fiscal Officer, Gainesville Medical Center, Archer Road, Gainesville, FL 32601, (904) 376-1611, ext. 6685

Jacksonville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1601 SW. Archer Road, Gainesville, FL 32602, (904) 376-1611, ext. 6685

Jacksonville VA Office, Send to: Fiscal Officer, VA Regional Office, 144 First Avenue, South, St. Petersburg, FL 33731, (813) 893-3236

Fiscal Officer, Lake City Medical Center, 801 South Marion Street, Lake City, FL 32055, (904) 755-3036

Miami VA Office, Send to: Fiscal Officer, VA Regional Office, 144 First Avenue, South, St. Petersburg, FL 33731, (813) 893-3236

Fiscal Officer, Miami Medical Center, 1201 Northwest 18th Street, Miami, FL 33125, (305) 324-4284

Orlando Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1300 North 30th Street, Tampa, FL 33612, (813) 971-4500

Fiscal Officer, James A. Haley Veterans' Hospital, 13000 Bruce B. Downs Blvd., Tampa, FL 33612, (813) 972-7501

Riviera Beach Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1201 Northwest 18th Street, Miami, FL 33125, (305) 324-4284

Pensacola National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Gulfport, MS 39501, (601) 863-1972, ext. 225

St. Augustine National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 321-6111

Atlanta National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Office, 1670 Clairmont Road, Decatur, GA 30033, (404) 321-6111

Atlanta Field Office of Audit, Send to: Fiscal Officer, VA Regional Office, 730 Peachtree Street, NE., Atlanta, GA 30301, (404) 347-5008

Fiscal Officer, Augusta Medical Center, Augusta, GA 30904, (404) 733-4471, ext. 675/676
Fiscal Officer, VA Medical Center, 2460 Wrightsboro Road, Augusta, GA 30910, (404) 724-5116
Fiscal Officer, Decatur Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 321-6111, ext. 6320
Fiscal Officer, Dublin Medical Center, Dublin, GA 31021, (912) 272-1210, ext. 373
Marietta National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 724-5116

Hawaii
Fiscal Officer, Honolulu Regional Office, PO Box 50188, Honolulu, HI 96850, (808) 541-1490

Jurisdiction over Islands of American Samoa, Guam, Wake, Midway and Trust Territory of the Pacific Islands
Honolulu National Cemetery Area Office, Send to: Fiscal Officer, VA Regional Office, PO Box 50188, Honolulu, HI 96850, (808) 321-6111

Idaho
Fiscal Officer, Boise Medical Center, 500 West Fort Street, Boise, ID 83702, (208) 336-5100, ext. 7312
Fiscal Officer, Boise Regional Office, Federal Bldg. & U.S. Courthouse, 550 West Fort Street, Box 044, Boise, ID 83724, (208) 334-1009

Illinois
Alton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125, (314) 894-4631
AMF O'Hare Field Office of Audit, Send to: Fiscal Officer, VA Medical Center, Hines, IL 60411, (312) 343-7200, ext. 2481
Fiscal Officer, Chicago Medical Center (Lakeside), 33 East Huron Street, Chicago, IL 60611, (312) 943-6600
Fiscal Officer, Chicago Medical Center (West Side), 820 South Damen Avenue, Chicago, IL 60612, (312) 666-6500, ext. 3338
Fiscal Officer, Chicago Regional Office, 536 South Clark Street, Chicago, IL 60606, (312) 886-9417
Fiscal Officer, Danville Medical Center, 1000 E. Main Street, Danville, IL 61832, (217) 442-8000
Danville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1900 E. Main Street, Danville, IL 61832, (217) 442-8000, ext. 219
Fiscal Officer, Hines Medical Center, Hines, IL 60411, (312) 343-7200, ext. 2481
Hines Marketing Center, Send to: Fiscal Officer, VA Supply Depot, PO Box 27, Hines, IL 60417, (312) 681-6000
Fiscal Officer, Hines Supply Depot, PO Box 27, Hines, IL 60417, (312) 681-6000
Fiscal Officer, Hines Data Processing Center, PO Box 66303, AMF O'Hare, Hines, IL 60666, (312) 681-6050
Fiscal Officer, Marion Medical Center, Marion, IL 62959, (618) 997-5311
Mound City National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2401 West Main Street, Marion, IL 62959, (618) 997-5311
Fiscal Officer, North Chicago Medical Center, North Chicago, IL 60064, (312) 689-1900
Quincy National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52240, (319) 338-0581, ext. 304
Rock Island National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52240, (319) 338-0581, ext. 304
Springfield National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1900 E. Main Street, Danville, IL 61832, (217) 442-8000

Indiana
Evansville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Marion, IN 46952, (317) 674-3321, ext. 211
New Albany National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895-3401

Iowa
Fiscal Officer, Des Moines Regional Office, 210 Walnut Street, Des Moines, IA 50309, (515) 284-4220
Fiscal Officer, Des Moines Medical Center, 30th & Euclid Avenue, Des Moines, IA 50310, (515) 699-5999
Fiscal Officer, Iowa City Medical Center, Iowa City, IA 52246, (319) 338-0581, ext. 7702
Keokuk National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52246, (319) 338-0581, ext. 7702

Kansas
Ft. Leavenworth National Cemetery Area Office, Send to: Fiscal Officer, VA Medical
Office of Personnel Management

Center, Leavenworth, KS 66048, (913) 682-2000, ext. 214

Leavenworth National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048, (913) 682-2000, ext. 214

Leavenworth National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048, (913) 682-2000, ext. 214

Fiscal Officer, Leavenworth National Cemetery Area Office, Leavenworth, KS 66048, (913) 682-2000, ext. 214

Fiscal Officer, Topeka Medical Center, 2200 Gage Blvd., Topeka, KS 66622, (913) 272-3111, ext. 722

Fiscal Officer, Wichita Medical Center, 5500 East Kellogg, Wichita, KS 67211, (316) 685-2221, ext. 256

Wichita Regional Office, Send to: VA Medical Center, 5500 East Kellogg, Wichita, KS 67211, (316) 685-2211, ext. 256

Process for VA service-connected benefits should also be sent to the Wichita Medical Center rather than to the Wichita Regional Office.

Fiscal Officer, VA Regional Office, 901 George Washington Blvd, Wichita, KS 67211, (316) 269-8613

Kentucky

Danville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 223-4511

Fiscal Officer, Knoxville Medical Center, Knoxville, KY 30338, (515) 846-2301, ext. 241

Lebanon National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 223-4511

Lexington National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 223-4511

Fiscal Officer, Lexington Medical Center, Lexington KY 40507, (606) 223-4511

Fiscal Officer, Louisville Regional Office, 600 Federal Place, Louisville, KY 40202, (502) 895-3401, ext. 241

Louisville National Cemetery Area Office (Zachry Taylor), Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895-3401, ext. 241

Louisville National Cemetery Area Office (Cave Hill), Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895-3401, ext. 241

Nancy National Cemetery Area Office, Send to: Fiscal Office, VA Medical Center, Lexington, KY 40507, (606) 223-4511

Nicholasville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 223-4511

Perryville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 233-4511

Louisiana

Fiscal Officer, Alexandria Medical Center, Alexandria LA 71303, (318) 473-0010, ext. 2281

Baton Rouge National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70114, (504) 568-0811

Fiscal Officer, New Orleans Regional Office, 701 Loyola Avenue, New Orleans, LA 70133, (504) 569-6604

Fiscal Officer, New Orleans Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568-0811

Port Hudson (Zachary) National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568-0811

Shreveport VA Office, Send to: Fiscal Officer, VA Regional Center, 701 Loyola Avenue, New Orleans, LA 70113, (504) 569-6604

Port Hudson (Cave Hill) National Cemetery Area Office, Send to: Fiscal Office, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568-0811

Maine

Portland VA Office, Send to: Fiscal Officer, VA Center, Togus, ME 04330, (207) 623-8411

Fiscal Officer, Togus Medical & Regional Office Center, Togus, ME 04330, (207) 623-8411

Togus National Cemetery Area Office, Send to: Fiscal Officer, VA Center, Togus, ME 04330, (207) 623-8411

Maryland

Annapolis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467-9932, ext. 5281/5282

Fiscal Officer, Togus Medical & Regional Office Center, Togus, ME 04330, (207) 623-8411

Togus National Cemetery Area Office, Send to: Fiscal Officer, VA Center, Togus, ME 04330, (207) 623-8411

Baltimore Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467-9932, ext. 5281/5282

Fiscal Officer, Baltimore Regional Office, Federal Bldg., 31 Hopkins Plaza, Baltimore, MD 21201, (301) 962-4410

Jurisdiction does not include Prince George's and Montgomery Counties which are included under the Washington, DC Regional Office

Baltimore National Cemetery Area Office (Loudon Park), Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd.,
Fiscal Officer, Fort Howard Medical Center, Fort Howard, MD 21052, (301) 687-8768, ext. 326
Hyattsville Field Office of Audit, Send to: Fiscal Division Chief (047H), VA Central Office, Room C-50, 810 Vermont Avenue, Washington, DC 20420, (202) 389-3901
Fiscal Officer, Perry Point Medical Center, Perry Point, MD 21902, (301) 642-2411, ext. 5224/5225

Massachusetts
Fiscal Officer, Bedford Medical Center, 200 Springs Road, Bedford, MA 01730, (617) 275-7500
Fiscal Officer, Boston Regional Office, John F. Kennedy Bldg., Room 400C, Government Center, Boston, MA, (617) 565-2616
Jurisdiction over certain towns in Bristol and Plymouth Counties and the counties of Barnstable, Dukes and Nantucket is allocated to the Providence, Rhode Island Regional Office.
Boston Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 150 South Huntington Avenue, Boston, MA 02130, (617) 232-9500, ext. 427/420
Fiscal Officer, Boston Medical Center, 150 South Huntington Avenue, Boston, MA 02130, (617) 232-9500, ext. 427/420
Bourne National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Brockton, MA 02401, (617) 583-4500, ext. 266
Fiscal Officer, Brockton Medical Center, Brockton, MA 02401 (617) 583-4500, ext. 266
Lowell Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 150 South Huntington Avenue, Boston, MA 02130, (617) 322-9500, ext. 427/420
New Bedford Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Providence, RI 02908, (401) 273-7100
Fiscal Officer, Northampton Medical Center, Northampton, MA 01060, (413) 584-4040
Springfield Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Northampton, MA 01060, (413) 584-4040
Springfield VA Office, Send to: Fiscal Officer, VA Regional Office, John F. Kennedy Bldg., Room 400C, Government Center, Boston, MA 02203, (617) 565-2616
Fiscal Officer, West Roxbury Medical Center, 1400 Veterans of Foreign Wars Parkway, West Roxbury, MA 02132, (617) 323-7700, ext. 5650
Worcester Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1400 Veterans of Foreign Wars Parkway, West Roxbury, MA 02132, (617) 323-7700, ext. 5650

Michigan
Fiscal Officer, Allen Park Medical Center, Allen Park, MI 48101, (313) 562-6000, ext. 535
Fiscal Officer, Ann Arbor Medical Center, 2215 Fuller Road, Ann Arbor, MI 48105, (313) 769-7100, ext. 288289
Fiscal Officer, Battle Creek Medical Center, Battle Creek, MI 49010, (616) 966-5000, ext. 3566
Grand Rapids Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Battle Creek, MI 49010, (616) 966-5000, ext. 3566
Fiscal Officer, Detroit Regional Office, 477 Michigan Avenue, Detroit, MI 48226, (313) 226-4130
Fiscal Officer, Iron Mountain Medical Center, Iron Mountain, MI 49801, (906) 774-3300, ext. 308
Fiscal Officer, Saginaw Medical Center, 150 Weiss Street, Saginaw, MI 48602, (517) 793-2340, ext. 3061

Minnesota
Fiscal Officer, Minneapolis Medical Center, 54th & 48th Avenue, South Minneapolis, MN 55417, (612) 725-6767, ext. 6311
Fiscal Officer, St. Cloud Medical Center, St. Cloud, MN 56301, (612) 252-1600, ext. 411
Fiscal Officer, St. Paul Center (Regional Office), Federal Building, Ft. Snelling, St. Paul, MN 55111, (612) 725-4075
Fiscal Officer, VA Medical Center, One Veterans Drive, Minneapolis, MN 55417, (612) 725-2350
Jurisdiction over the counties of Becker, Beltrami, Clay, Clearwater, Kittson, Lake of the Woods, Mahnomen, Marshall, Norman, Otter Tail, Pennington, Polk, Red Lake, Roseau and Wilkin is allocated to the Fargo, North Dakota Center.
St. Paul National Cemetery Area Office, Send to: VA Medical Center, 54th & 48th Avenue, South Minneapolis, MN 55417, (612) 725-6767, ext. 6311
St. Paul Data Processing Center, Send to: Fiscal Officer, VA Center, Federal Building, Ft. Snelling, St. Paul, MN 55111, (612) 725-3075
St. Paul Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 54th & 48th Avenue, Minneapolis, MN 55411, (612) 725-6767, ext. 6311

Mississippi
Biloxi National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Biloxi, MS 35931, (601) 963-1972, ext. 225
Fiscal Officer, Biloxi Medical Center, Biloxi, MS 35931, (601) 863-1972, ext. 225
Corinth National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523-8990
Fiscal Officer, Gulfport Medical Center, Gulfport, MS 39501, (601) 863-1972, ext. 225
Fiscal Officer, Jackson Medical Center, 1500 East Woodrow Wilson Drive, Jackson, MS 39216, (601) 362-4471, ext. 1281
Office of Personnel Management

Fiscal Officer, VA Regional Office, Federal Building, 100 W. Capitol St., Suite 207, Jackson, MS 39269, (601) 965-4853

Natchez National Cemetery, Send to: Fiscal Officer, VA Medical Center, 1500 E. Woodrow Wilson Dr., Jackson, MS 39216, (601) 362-4471, ext. 1281

Process for VA service-connected benefits should also be sent to the Jackson Medical Center rather than to the Jackson Regional Office.

Missouri
Fiscal Officer, Columbia Medical Center, 800 Stadium Road, Columbia, MO 65201, (314) 443-2511
Jefferson City National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 800 Stadium Road, Columbia, MO 65201, (314) 443-2511, ext. 6050
Fiscal Officer, Kansas City Medical Center, 4801 Linwood Blvd., Kansas City, MO 64128, (816) 861-4700, ext. 214
Fiscal Officer, Poplar Bluff Medical Center, Poplar Bluff, MO 63901, (314) 686-4151
St. Louis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125, (314) 686-4151, ext. 265
Fiscal Officer, St. Louis Regional Office, 1520 Market Street, St. Louis, MO 63103, (314) 539-3112
Fiscal Officer, VA Medical Center, 1500 N. Westwood Blvd., Poplar Bluff, MO 63901, (314) 686-4151, ext. 265
Fiscal Officer, St. Louis Veterans Canteen Service Field Office, Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125, (314) 686-4151, ext. 265
Fiscal Officer, St. Louis Medical Center, St. Louis, MO 63125, (314) 686-4151, ext. 265
Fiscal Officer, St. Louis Records Processing Center, Send to: Fiscal Officer, VA Regional Office, 1520 Market Street, St. Louis, MO 63103, (314) 539-3112
Springfield National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443-4301

Montana
Fiscal Officer, Fort Harrison Medical & Regional Office Center, Fort Harrison, MT 59636, (406) 442-6101
Fiscal Officer, Mule City Medical Center, 210 N. Broadwell, Miles City, MT 59301, (406) 232-3060

New Jersey
Beverly National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, University and Woodland Avenues, Philadelphia, PA 19104, (215) 382-2400, ext. 201/202
Fiscal Officer, East Orange Medical Center, Tremont Avenue and So. Center Street, East Orange, NJ 07019, (201) 676-1000, ext. 125
Fiscal Officer, Lyons Medical Center, Lyons, NJ 07095, (201) 647-0180, ext. 4302
Newark Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, University and Woodland Avenues, Philadelphia, PA 19104, (215) 382-2400, ext. 201/202
Fiscal Officer, Newark Regional Office, 20 Washington Place, Newark, NJ 07102, (201) 645-3507
Salem National Cemetery Area Office, Send to: Fiscal Officer, VA Center, 1601 Kirkwood Highway, Wilmington, DE 19805, (302) 994-2511
Fiscal Officer, Somerville Supply Depot, Somerville, NJ 08876, (201) 725-2540

New Mexico
Fiscal Officer, Albuquerque Regional Office, 500 Gold Avenue, SW., Albuquerque, NM 87102, (505) 766-2204
Fiscal Officer, Albuquerque Medical Center, 2100 Ridgecrest Drive, SE., Albuquerque NM 87108, (505) 265-1711

Nevada
Las Vegas Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 1000 Locust Street, Reno, NV 89520, (702) 766-7200, ext. 244
Fiscal Officer, Reno Regional Office, 1201 Terminal Way, Reno, NV (702) 794-5637

New Hampshire
Fiscal Officer, Manchester Regional Office, 275 Chestnut Street, Manchester, NH 03103, (603) 666-7638
Fiscal Officer, Manchester Medical Center, 718 Smyth Road, Manchester, NH 03104, (603) 624-4366

New York
Fiscal Officer, Albany Regional Office, 500 Gold Avenue, SW., Albany, NY 12207, (518) 431-2323
Fiscal Officer, Albany Medical Center, 2100 Ridgecrest Drive, SE., Albany NY 12207, (518) 265-1711
Santa Fe National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2100 Ridgecrest Drive, SE, Albuquerque, NM 87108, (505) 265-1711, ext. 2214

New York
Fiscal Officer, Albany Medical Center, 113 Holland Ave., Albany, NY 12202, (518) 462-3311, ext. 355
Fiscal Officer, VA Medical Center, 800 Irving Center, Syracuse, NY 13210, (315) 476-7461, ext. 2388
Fiscal Officer, VA Regional Office, 252 Seventh Avenue & 24th Street, New York, NY 10001, (212) 620-6293
Fiscal Officer, Batavia Medical Center, Redfield Parkway, Batavia, NY 14020, (716) 345-7500, ext. 215
Fiscal Officer, Bronx Medical Center, 140 W. Kings Bridge Road, Bronx, NY 10408, (212) 584-9000, ext. 1502
Fiscal Officer, Brooklyn Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630-3542
Brooklyn National Cemetery Area Office, Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630-2541
Brooklyn Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630-3542
Fiscal Officer, Buffalo Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846-5251
Brooklyn Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630-3542
Fiscal Officer, Buffalo Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846-5251
Fiscal Officer, Buffalo Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846-5251

Jurisdiction over all counties in New York not listed under the New York Regional Office.
Fiscal Officer, Buffalo Medical Center, 3405 Bailey Avenue, Buffalo, NY 14215, (716) 862-3335,(716) 834-9000, ext. 3335
Calverton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Northport, NY 11768, (516) 261-4400, ext. 7101/7103
Fiscal Officer, Canandaigua Medical Center, Canandaigua, NY 14424, (716) 394-2000, ext. 3369
Fiscal Officer, Castle Point Medical Center, Castle Point, NY 12511, (914) 882-5404
Elmira National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Bath, NY 14810, (607) 776-2111
Farmingdale National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Northport, NY 11768, (516) 261-4400, ext. 2462/2463
Fiscal Officer, Montrose Medical Center, Montrose, NY 10548, (914) 737-4400, ext. 2463

Fiscal Officer, Montrose Medical Center, 2100 Ridgecrest Drive, SE, Albuquerque, NM 87108, (505) 265-1711, ext. 2214

New York
Fiscal Officer, Albany Medical Center, 113 Holland Ave., Albany, NY 12202, (518) 462-3311, ext. 355
Fiscal Officer, VA Medical Center, 800 Irving Center, Syracuse, NY 13210, (315) 476-7461, ext. 2388
Fiscal Officer, VA Regional Office, 252 Seventh Avenue & 24th Street, New York, NY 10001, (212) 620-6293
Fiscal Officer, Batavia Medical Center, Redfield Parkway, Batavia, NY 14020, (716) 345-7500, ext. 215
Fiscal Officer, Bronx Medical Center, 140 W. Kings Bridge Road, Bronx, NY 10408, (212) 584-9000, ext. 1502
Fiscal Officer, Brooklyn Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630-3542
Brooklyn National Cemetery Area Office, Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630-2541
Brooklyn Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630-3542
Fiscal Officer, Buffalo Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846-5251
Brooklyn Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630-3542
Fiscal Officer, Buffalo Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846-5251

Jurisdiction over all counties in New York not listed under the New York Regional Office.
Fiscal Officer, Buffalo Medical Center, 3405 Bailey Avenue, Buffalo, NY 14215, (716) 862-3335,(716) 834-9000, ext. 3335
Calverton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Northport, NY 11768, (516) 261-4400, ext. 7101/7103
Fiscal Officer, Canandaigua Medical Center, Canandaigua, NY 14424, (716) 394-2000, ext. 3369
Fiscal Officer, Castle Point Medical Center, Castle Point, NY 12511, (914) 882-5404
Elmira National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Bath, NY 14810, (607) 776-2111
Farmingdale National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Northport, NY 11768, (516) 261-4400, ext. 2462/2463
Fiscal Officer, Montrose Medical Center, Montrose, NY 10548, (914) 737-4400, ext. 2463

Fiscal Officer, New York Medical Center, First Avenue at East 24th Street, New York, NY 10010, (212) 686-7230
New York Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, First Avenue at East 24th Street, New York, NY 10010, (212) 686-7230
New York Prosthetics Center, Send to: Fiscal Officer, VA Regional Office, 252 Seventh Avenue, New York, NY 10001, (212) 620-6293
Fiscal Officer, New York Regional Office, 252 Seventh Avenue at 24th Street, New York, NY 10001, (212) 620-6293


New York Veterans Canteen Service Field Office, Send to: Fiscal Officer, VA Medical Center, First Avenue at East 24th Street, New York, NY 10010, (202) 686-7230
Fiscal Officer, Northport Medical Center, Northport, NY 11768, (516) 261-4400, ext. 2462/2463
Rochester VA Office, Send to: Fiscal Officer, VA Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846-5251
Rochester Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Batavia, NY 14020, (716) 345-7500, ext. 215
Fiscal Officer, Syracuse Medical Center, Irving Avenue & University Place, Syracuse, NY 13210, (315) 476-7461
Syracuse VA Office, Send to: Fiscal Officer, VA Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846-5251

North Carolina
Fiscal Officer, Asheville Medical Center, 1100 Tunnel Road, Asheville, NC 28801, (704) 225-7911, ext. 5616
Fiscal Officer, Durham Medical Center, 508 Fulton Street, Durham, NC 27705, (919) 671-6913
Fiscal Officer, Fayetteville Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 488-2120
New Bern National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 488-2120
Raleigh National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 508 Fulton Street, Durham, NC 27705, (919) 286-0411, ext. 6469
Fiscal Officer, Salisbury Medical Center, Salisbury, NC 28144, (704) 636-2351
Salisbury National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Salisbury, NC 28144, (704) 636-2351
Office of Personnel Management

Wilmington National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (910) 488-2120

Fiscal Officer, Winston-Salem Regional Office, 251 North Main Street, Winston-Salem, NC 27102, (919) 763-3513

Winston-Salem Outpatient Regional Office, Send to: Fiscal Officer, VA Medical Center, Salisbury, NC 28144, (704) 636-2351

Fiscal Officer, Muskogee Medical Center, 125 South Main St., Muskogee, OK 74401, (908) 687-2169

Fiscal Officer, Oklahoma City Medical Center, 2910 NE 4th St., Oklahoma City, OK 73104, (405) 272-3676, ext. 500

Oklahoma City VA Office, Send to: Fiscal Officer, VA Regional Office, 125 South Main St., Muskogee, OK 74401, (908) 687-2169

Portland National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97201, (503) 220-8262, ext. 6948

Fiscal Officer, Portland Regional Office, 1220 SW 3rd Avenue, Portland, OR 97204, (503) 221-2521

Fiscal Officer, Portland Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97201, (503) 220-8262, ext. 6948

Portland Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97210, (503) 220-8262, ext. 6948

Fiscal Officer, VA Medical Center, Garden Valley Blvd., Roseburg, OR 97470, (503) 440-1000, ext. 4261

Roseburg National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Garden Valley Blvd., Roseburg, OR 97470, (503) 672-4411

Fiscal Officer, White City Domiciliary, White City, OR 97501, (503) 826-2111, ext. 241

White City National Cemetery Area, Send to: Fiscal Officer, VA Medical Center, White City, OR 97503, (503) 826-2111, ext. 241

Pennsylvania

Fiscal Officer, Altoona Medical Center, Altoona, PA 16603, (814) 943-8164, ext. 7046

Annville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lebanon, PA 17042, (717) 275-6521, ext. 229

Fiscal Officer, VA Medical Center, Butler, PA 16001, (412) 277-4783, ext. 4556

Fiscal Officer, Coatsville Medical Center, Coatsville, PA 19320, (215) 384-7711, ext. 7046

Fiscal Officer, Erie Medical Center, 333 East 30th Street, Erie, PA 16503, (814) 866-8061

Harrisburg Outpatient Clinic Substation, Fiscal Officer, VA Medical Center, Lebanon, PA 17042, (717) 272-6621, ext. 229

Fiscal Officer, Lebanon Medical Center, Lebanon, PA 17042, (717) 272-6621, ext. 229

Fiscal Officer, Philadelphia Center (Regional Office), PO Box 8079, Philadelphia, PA 19101, (215) 951-5321


Philadelphia Data Processing Center, Send to: Fiscal Officer, VA Medical Center, P.O.
Philadelphia National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104, (215) 951-5321
Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104, (215) 951-5321
Fiscal Officer, Pittsburgh Regional Office, 1000 Liberty Avenue, Pittsburgh, PA 15222, (412) 644-4394
Fiscal Officer, Pittsburgh Medical Center, Highland Drive, Pittsburgh, PA 15206, (412) 363-4900, ext. 4235
Fiscal Officer, Pittsburgh Medical Center, University Drive C, Pittsburgh, PA 15240, (412) 683-3000, ext. 675
Fiscal Officer, Wilkes-Barre Medical Center, 1111 East End Blvd., Wilkes-Barre, PA 18711, (717) 824-3521, ext. 7211
Philippines
Manila Regional Office Outpatient Clinic and Manila Regional Office Center
For either of the above, send to:
Director, Department of Veterans Affairs, APO, San Francisco, CA 96528, 011-632-5217, ext. 2560
Puerto Rico
Raymon National Cemetery Area Office, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (809) 766-5115
Hato Regional Office, GPO, Box 4867, San Juan, PR 00936, (809) 766-5115
Mayaguez Outpatient Clinic Substation, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (809) 763-0275
Rio Piedras Medical and Regional Office Center, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (809) 758-7575, ext. 4953
Fiscal Officer, VA Medical Center, One Veterans Plaza, San Juan, PR 00927-5800, (809) 766-5365/(809) 766-5953
Rhode Island
Fiscal Officer, Providence Regional Office, 321 South Main Street, Providence, RI 02903, (401) 528-4439
Jurisdiction over the following towns and counties in Massachusetts: all towns in Bristol County except Mansfield and Easton, the towns of Lakeville, Middleboro, Carver, Rochester, Mattapoisett, Marion, and Wareham in Plymouth County; and the counties of Dukes, Nantucket and Barnstable.
Fiscal Officer, Mountain Home Medical Center, Mountain Home, TN 37684, (615) 926-1171, ext. 7601
Fiscal Officer, Murfreesboro Medical Center, Murfreesboro, TN 37130, (615) 893-1360, ext. 3196
Fiscal Officer, National Regional Office, 110 Ninth Avenue South, Nashville, TN 37223, (615) 736-5352
Fiscal Officer, Medical Center, 1310 24th Avenue, South, Nashville, TN 37212, (615) 327-4751, ext. 5147

Texas
Fiscal Officer, Amarillo Medical Center, 6010 Amarillo Blvd. W., Amarillo, TX 79106, (806) 355-9703, ext. 7370
Fiscal Officer, Austin Data Processing Center, 1615 East Woodward Street, Austin, TX 78772, (512) 482-4028
Beaumont Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211, (713) 795-7493
Fiscal Officer, Big Spring Medical Center, Big Spring, TX 79720, (915) 263-7361, ext. 326
Fiscal Officer, Bonham Medical Center, East 90th & Lipscomb Street, Bonham, TX 75418, (214) 583-2111, ext. 240
Corpus Christi Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78216, (512) 696-9660, ext. 5971
Fiscal Officer, Dallas Medical Center, 4500 South Lancaster Road, Dallas, TX 75216, (214) 376-5451, ext. 5238
Dallas VA Office, Send to: Fiscal Officer, VA Regional Office, 1400 North Valley Mills Drive, Waco, TX 76799, (817) 757-6454
Fiscal Officer, El Paso Outpatient Clinic, 5919 Brook Hollow Drive, El Paso, TX 79925, (915) 579-7960
Fort Bliss National Cemetery Area Office, Send to: Fiscal Officer, VA Outpatient Clinic, 5919 Brook Hollow Drive, El Paso, TX 79925, (915) 579-7960
Fiscal Officer, Houston Medical Center, 2002 Holcombe Blvd., Houston, TX 77211, (713) 795-7493
Fiscal Officer, Houston Regional Office, 2515 Murworth Drive, Houston, TX 77054, (713) 660-4121

Houston National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211, (713) 795-7493
Fiscal Officer, Kerrville Medical Center, Kerrville, TX 78028, (512) 896-2020, ext. 300
Kerrville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Kerrville, TX 78028, (512) 896-2020, ext. 300
Lubbock VA Office, Send to: Fiscal Officer, VA Regional Office, 1400 North Valley Mills Drive, Waco, TX 76799, (817) 657-6464, ext. 625
Fiscal Officer, Lubbock Outpatient Clinic, 1205 Texas Avenue, Lubbock, TX 79401, (806) 762-7209
Fiscal Officer, Marlin Medical Center, 1016 Ward Street, Marlin, TX 76661, (817) 883-3511, ext. 224
McAllen Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78216, (512) 696-9660, ext. 5971
Fiscal Officer, San Antonio Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78221, (512) 696-9660, ext. 5971
San Antonio VA Office, Send to: Fiscal Officer, VA Regional Office, 2511 Murworth Drive, Houston, TX 77054 (713) 226-4185
San Antonio National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78221, (512) 696-9660, ext. 5971
San Antonio National Cemetery Area Office, (Fort Sam Houston), Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78221, (512) 696-9660, ext. 5971
Fiscal Officer, Temple Medical Center, Temple, TX 76501, (817) 778-4811
Fiscal Officer, Waco Regional Office, 1400 North Valley Mills Drive, Waco, TX 76799, (817) 756-6454
Waco Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, Memorial Drive, Waco, TX 76703, (817) 752-6581
Utah
Fiscal Officer, Salt Lake City Regional Office, 125 South State Street, Salt Lake City, UT 84147, (801) 524-5361
Fiscal Officer, Salt Lake City Medical Center, 1500 Foothill Blvd., Salt Lake City, UT 85148, (801) 584-1213

Vermont
Fiscal Officer, White River Junction, Medical and Regional Office Center, White River Junction, VT 05001, (802) 295-9363, ext. 1034

Virginia
Alexandria National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745-8228
Culpeper National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Martinsburg, WV 25401, (304) 263-8011, ext. 3716
Danville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230-1304
Hopewell National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230-1304
Leesburg National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745-8228
Mechanicsville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230-1304
Fiscal Officer, Hampton Medical Center, Hampton, VA 23667, (804) 722-9961
Hampton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Hampton, VA 23667, (804) 722-9961
Quantico National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745-8228
Fiscal Officer, Richmond Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230-1304
Richmond National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230-1304
Fiscal Officer, Roanoke Regional Office, 210 Franklin Road, SW., Roanoke, VA 24011, (703) 982-6116

West Virginia
Fiscal Officer, Beckley Medical Center, 200 Veterans Avenue, Beckley, WV 25801, (304) 225-2121, ext. 4174
Fiscal Officer, Clarksburg Medical Center, Clarksburg, WV 26301, (304) 623-3461, ext. 3389
Grafton National Cemetery Area Office, Fiscal Officer, VA Medical Center, Clarksburg, WV 26301, (304) 623-3461, ext. 325
Fiscal Officer, Huntington Regional Office, 640 Fourth Avenue, Huntington, WV 25701, (304) 529-5477.

Wisconsin
Fiscal Officer, Madison Medical Center, 2500 Overlook Terrace, Madison, WI 53795, (608) 262-7050
Fiscal Officer, Milwaukee (Wood) Regional Office, PO Box 6, Wood, WI 53193, (414) 671-8121
Office of Personnel Management

Fiscal Officer, Tomah Medical Center, Tomah, WI 54660, (608) 372-1786
Fiscal Officer, VA Medical Center, 5000 West National Avenue, Milwaukee, WI 53295, (414) 384-2000, ext. 2591
Wood National Cemetery Area Office, Fiscal Officer, VA Medical Center, 5000 West National Avenue, Milwaukee, WI 53295, (414) 384-2000, ext. 2591

Fiscal Officer, VA Medical Center, 5000 West National Avenue, Milwaukee, WI 53295, (414) 384-2000, ext. 2591

Fiscal Officer, Sheridan Medical Center, Sheridan, WY 82801, (307) 672-3473

Social Security Administration
1. For the garnishment of the remuneration of employees:
Garnishment Agent, Office of the General Counsel, Room 611, Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-4202
Effective March 30, 1998, garnishment orders for employees of the Social Security Administration should be sent to:
Chief, Payroll Operations Division, Attn.: Code D-2640, Bureau of Reclamation, Administrative Services Center, Department of the Interior, P.O. Box 272030, Denver, CO 80227-9030, (303) 969-7739
2. For the garnishment of benefits under Title II of the Social Security Act, legal process may be served on the office manager at any Social Security District or Branch Office. The addresses and telephone numbers of Social Security District and Branch Offices may be found in the local telephone directory.

I. AGENCIES
(Unless otherwise indicated below, all agencies of the executive branch shall be subject to service of legal process brought for the enforcement of an individual's obligation to provide child support and/or make alimony payments where such service is sent by certified or registered mail, return receipt requested, or by personal service, upon the head of the agency.)

Agency for International Development
For employees of the Agency for International Development and the Trade and Development Program:

Arms Control and Disarmament Agency
General Counsel, Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20515, (202) 677-3596

Central Intelligence Agency
Office of Personnel Security, Attn: Chief, Special Activities Staff, Washington, DC 20505, (703) 482-1217

Commission on Civil Rights
Solicitor, Commission on Civil Rights, 624 9th Street, NW., Suite 632, Washington, DC 20025, (202) 376-8351

Commodity Futures Trading Commission
Director, Office of Personnel, Commodity Futures Trading Commission, Three Lafayette Center, Room 7200, 1155 21st Street, NW., Washington, DC 20581, (202) 418-5003

Consumer Product Safety Commission
(Mail Service), General Counsel, Consumer Product Safety Commission, Washington, DC 20207-0001, (202) 504-0980
(Personal Service), General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Room 700, Bethesda, MD 20814-4408, (301) 504-0980

Environmental Protection Agency
Chief, Headquarters Accounting Operations Branch, Financial Management Division (3303), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-5116

Export-Import Bank of the United States
General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, NW., Room 947, Washington, DC 20571, (202) 665-8334

Equal Employment Opportunity Commission
Director, Financial Management Division, 1801 L Street, NW., Room 2002, Washington, DC 20507, (202) 663-4224

Farm Credit Administration
Chief, Fiscal Management Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 889-4122

Federal Deposit Insurance Corporation
Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, (202) 998-3696

Federal Election Commission
Accounting Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20443, (202) 376-5270
Federal Emergency Management Agency
Office of General Counsel, General Law Division, 500 C Street, SW., Washington, DC 20472, (202) 646-4105

Federal Labor Relations Authority
Director of Personnel, Federal Labor Relations Authority, 607 14th Street, NW., Suite 430, Washington, DC 20424, (202) 646-6690

Federal Maritime Commission
Director of Personnel or Deputy Director of Personnel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523-5773

Federal Mediation and Conciliation Service
General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, (202) 653-5305

Federal Retirement Thrift Investment Board
Payments to Board employees:
Director of Administration, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005, (202) 942-1670

Benefits from the Thrift Savings Fund:
General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005, (202) 942-1662

Federal Trade Commission
Garnishment orders for employees of the Federal Trade Commission should be sent to:
Chief, Payroll Operations Division, Attn.: Code D-2605, Bureau of Reclamation, Administrative Services Center, Department of the Interior, 7201 West Mansfield Avenue, Denver, CO 80227-9030, (303) 969-7739

General Services Administration
Director, Kansas City Finance Division—6BC, 1500 East Bannister Road—Room 1107, Kansas City, MO 64131, (816) 926-7625.

Institute of Peace
Garnishment orders for employees of the Institute of Peace should be sent to:
General Services Administration, Director, Finance Division—(8BC), 1500 E. Bannister Road, Room 1107, Kansas City, MO 64131, (816) 926-1666

International Trade Commission
Director, Office of Finance and Budget, 500 E Street, SW., Suite 316, Washington, DC 20430, (202) 205-2676

Merit Systems Protection Board
Director, Financial and Administrative Management Division 1120 Vermont Avenue, NW., Washington, DC 20419, (202) 653-7263.

National Aeronautics and Space Administration
NASA Headquarters
Associate General Counsel (General), Attention: SN Code GG, NASA Headquarters, 300 E Street, SW., Washington, DC 20546, (202) 358-2465

NASA Field Installations
Chief Counsel, Ames Research Center, Moffett Field, CA 94035, (415) 694-5055
Chief Counsel, Dryden Flight Research Center, Edwards, CA 93523, (661) 256-2627
Chief Counsel, Goddard Space Flight Center, (including Wallops Flight Center), Greenbelt, MD 20771, (301) 286-9181
Chief Counsel, Johnson Space Center, Houston, TX 77058, (713) 483-3021
Chief Counsel, Kennedy Space Center, Kennedy Space Center, F.L. 32999, (407) 867-2550
Chief Counsel, Langley Research Center, Hampton, VA 23665, (757) 864-3221
Chief Counsel, Lewis Research Center, Cleveland, OH 44135, (216) 433-2318
Chief Counsel, Marshall Space Flight Center, Marshall Space Flight Center, AL 35812, (205) 544-0032
Chief Counsel, Kennedy Space Center, Kennedy Space Center, Stennis Space Center, MS 39529-6000, (601) 688-2164

National Archives and Records Administration
General Counsel (NSL), Room 305 Archives Building, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Washington, DC 20004, (202) 501-5535

National Capital Planning Commission
Administrative Officer, National Capital Planning Commission, 1325 G Street, NW., Washington, DC 20576, (202) 724-0170

National Credit Union Administration
General Counsel, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314, (703) 518-6540

National Endowment for the Arts
General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 522, Washington, DC 20506, (202) 682-5418

National Endowment for the Humanities
General Counsel, National Endowment for the Humanities, Room 530, Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 606-8322
Office of Personnel Management

National Labor Relations Board
Director of Personnel, National Labor Relations Board, 1099 14th Street, NW., Room 6700, Washington, DC 20570-0001, (202) 273-3004

National Mediation Board
Administrative Officer, National Mediation Board, 1301 K Street, NW., Suite 250 East, Washington, DC 20572, (202) 523-5950

National Railroad Adjustment Board
Staff Director/Grievances, National Railroad Adjustment Board, 175 West Jackson Boulevard, Chicago, IL 60604, (312) 886-7300

National Science Foundation
General Counsel, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306-1600

National Security Agency
General Counsel, National Security Agency, 9800 Savage Road, Ft. Meade, MD 20755-6000, (301) 688-6054

National Transportation Safety Board
Director, Personnel and Training Division, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, DC 20594, ATTN: AD-30, (202) 382-6718

Navajo and Hopi Indian Relocation Commission
Attorney, Navajo and Hopi Indian Relocation Commission, 201 East Birch, Room 11, P.O. Box KK, Flagstaff, AZ 86002, (602) 779-2721

Nuclear Regulatory Commission
Controller, Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-0349

Office of Personnel Management

Payments to OPM employees:
General Counsel, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 606-1700

Payments of retirement benefits under the Civil Service Retirement System and the Federal Employees Retirement System:
Associate Director for Retirement and Insurance, Office of Personnel Management, Court Ordered Benefits Branch, PO Box 17, Washington, DC 20044, (202) 606-0218.

Overseas Private Investment Corporation
Director, Human Resources Management, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527, (202) 336-8524

Panama Canal Commission
Secretary, Office of the Secretary, International Square, 1825 I Street, NW., Suite 1050, Washington, DC 20006-5402, (202) 634-6441

Pension Benefit Guaranty Corporation
General Counsel or Deputy General Counsel, 1200 K Street, NW., Washington, DC 20005-4026, (202) 326-4020

Railroad Retirement Board
Deputy General Counsel, Bureau of Law, 844 North Rush Street, Chicago, IL 60611, (312) 751-4035

Securities and Exchange Commission

Selective Service System
General Counsel, 1515 Wilson Boulevard, Arlington, VA 22209-2425, (703) 235-2050

Small Business Administration
District Director, Birmingham District Office, 908 South 20th Street, Birmingham, AL 35205, (205) 254-1344

District Director, Anchorage District Office, 1016 West 6th Avenue, Anchorage, AK 99501, (907) 271-4022

District Director, Phoenix District Office, 800 North Central Avenue, Phoenix, AZ 85002, (602) 266-3611

District Director, Little Rock District Office, 611 Gaines Street, Little Rock, AR 72201, (501) 379-5071

District Director, Los Angeles District Office, 1900 S. Figueroa Street, Los Angeles, CA 90071, (213) 688-2956

District Director, San Diego District Office, 880 Front Street, San Diego, CA 92101, (619) 291-5440

District Director, San Francisco District Office, 211 Main Street, San Francisco, CA 94105, (415) 575-7400

District Director, Denver District Office, 721 19th Street, Denver, CO 80202, (303) 877-2607

District Director, Hartford District Office, One Financial Plaza, Hartford, CT 06103, (203) 244-3600

District Director, Washington District Office, 1100 15th Street, NW., Washington DC 20417, (202) 365-4000

District Director, Jacksonville District Office, 400 West Bay Street, Jacksonville, FL 32202, (904) 791-3702

District Director, Miami District Office, 222 Ponce De Leon Blvd., Coral Gables, FL 33134, (305) 350-3521

District Director, Atlanta District Office, 1720 Peachtree Street, NW., Atlanta, GA 30309, (404) 347-2441

District Director, Honolulu District Office, 300 Ala Moana, Honolulu, HI 96850, (808) 546-8950
District Director, Boise District Office, 1005 Main Street, Boise, ID 83701, (208) 384-1096
District Director, Des Moines District Office, 210 Walnut Street, Des Moines, IA 50309, (515) 284-4433
District Director, Chicago District Office, 219 South Dearborn Street, Chicago, IL 60604, (312) 253-4526
District Director, Indianapolis District Office, 575 N. Pennsylvania Street, Indianapolis, IN 46204, (317) 269-7272
District Director, Wichita District Office, 110 East Waterman Street, Wichita, KS 67202, (316) 267-6571
District Director, Louisville District Office, 600 Federal Place, Louisville, KY 40201, (502) 582-5078
District Director, New Orleans District Office, 1001 Howard Avenue, New Orleans, LA 70113, (504) 589-6685
District Director, Augusta District Office, 40 Western Avenue, Augusta, ME 04330, (207) 622-6717
District Director, Baltimore District Office, 8600 LaSalle Road, Towson, MD 21204, (301) 862-4392
District Director, Boston District Office, 150 Causeway Street, Boston, MA 02114, (617) 223-2100
District Director, Detroit District Office, 477 Michigan Avenue, Detroit, MI 48216, (313) 226-6075
District Director, Minneapolis District Office, 12 South 8th Street, Minneapolis, MN 55402, (612) 725-2392
District Director, Jackson District Office, 101 West Capitol Street, Suite 400, Jackson, MS 39201, (601) 965-5371
District Director, Kansas City District Office, 1150 Grand Avenue, Kansas City, MO 64106, (816) 374-3416
District Director, St. Louis District Office, One Mercantile Center, St. Louis, MO 63101, (314) 425-4191
District Director, Helena District Office, 301 South Park Avenue, Helena, MT 59601, (406) 449-5381
District Director, Omaha District Office, 19th & Farnum Street, Omaha, NE 68102, (402) 221-4691
District Director, Las Vegas District Office, 301 East Stewart, Las Vegas, NV 89101, (702) 385-6611
District Director, Concord District Office, 55 Pleasant Street, Concord, NH 03301, (603) 224-4041
District Director, Newark District Office, 970 Broad Street, Newark, NJ 07102, (201) 645-2634
District Director, Albuquerque District Office, 5000 Marble Avenue NE, Albuquerque, NM 87110, (505) 766-3430
District Director, New York District Office, 26 Federal Plaza, New York, NY 10007, (212) 264-4355
District Director, Syracuse District Office, 100 South Clinton Street, Syracuse, NY 13202, (315) 423-5383
District Director, Charlotte District Office, 230 South Tryon Street, Charlotte, NC 28202, (704) 371-6111
District Director, Fargo District Office, 657 2nd Avenue, North, Fargo, ND 58102, (701) 237-5771
District Director, Sioux Falls District Office, 101 South Main Avenue, Sioux Falls, SD 57102, (605) 336-2000
District Director, Cleveland District Office, 1240 East 9th Street, Cleveland, OH 44114, (216) 322-4100
District Director, Columbus District Office, 85 Marconi Boulevard, Columbus, OH 43215, (614) 469-6680
District Director, Oklahoma City District Office, 200 NW 5th Street, Oklahoma City, OK 73102, (405) 231-4301
District Director, Portland District Office, 1220 S.W. Third Avenue, Portland, OR 97204, (503) 221-2662
District Director, Philadelphia District Office, 231 St. Asaphs Road, Bala Cynwyd, PA 19004, (215) 997-3311
District Director, Pittsburgh District Office, 1000 Liberty Avenue, Pittsburgh, PA 15222, (412) 644-2780
District Director, Hato Rey District Office, Chardon & Bolivia Streets, Hato Rey, PR 00918, (809) 753-4572
District Director, Providence District Office, 57 Eddy Street, Providence, RI 02903, (401) 529-4580
District Director, Columbus District Office, 1835 Assembly Street, Columbus, SC 29201, (803) 765-5376
District Director, Nashville District Office, 404 James Robertson Parkway, Nashville, TN 37219, (615) 251-5881
District Director, Dallas District Office, 1100 Commerce Street, Dallas, TX 75242, (214) 767-0005
District Director, Houston District Office, 500 Dallas Street, Houston, TX 77002, (713) 226-4341
District Director, Lower Rio Grande Valley District Office, 222 East Van Buren Street, Harlingen, TX 78550, (512) 423-4534
District Director, Lubbock District Office, 1205 Texas Avenue, Lubbock, TX 79401, (806) 762-7466
District Director, San Antonio District Office, 727 East Durango Street, San Antonio, TX 78206, (210) 229-6250
District Director, Salt Lake City District Office, 125 South State Street, Salt Lake City, UT 84130, (314) 425-5800
District Director, Montpelier District Office, 87 State Street, Montpelier, VT 05602, (802) 229-0538
District Director, Richmond District Office, 400 North 8th Street, Richmond, VA 23240, (804) 782-2617
District Director, Seattle District Office, 915 Second Avenue, Seattle, WA 98174, (206) 442-5534
Office of Personnel Management

District Director, Spokane District Office, West 920 Riverside Avenue, Spokane, WA 99210, (509) 456-5310

District Director, Clarksburg District Office, 100 North 3rd Street, Clarksburg, WV 26301, (304) 623-5631

District Director, Madison District Office, 212 East Washington Avenue, Madison, WI 53703, (608) 264-5261

District Director, Casper District Office, 100 East B Street, Casper, WY 82602, (307) 265-5266

Tennessee Valley Authority

Payments to TVA employees:
Chairman, Board of Directors, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902, (423) 632-2101

Payments of retirement benefits under the TVA Retirement System:
Chairman, Board of Directors, TVA Retirement System, 500 West Summit Hill Drive, Knoxville, TN 37902, (423) 632-0202

Trade and Development Agency

Effective August 3, 1998, garnishment orders for employees of the United States Trade and Development Agency should be sent to: Chief, Payroll Operations Division, Attn.: Code D-2640, Bureau of Reclamation, Administrative Services Center, Department of the Interior, P.O. Box 272030, Denver, CO 80227-9030, (303) 969-7739.

United States Information Agency

Counsel, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 485-7976

United States Soldiers’ & Airmen’s Home

Assistant General Counsel for Garnishment Operations, Defense Finance and Accounting Service, Cleveland Center, Code L (DFAS-CL-L), P.O. Box 998002, Cleveland, OH 44199-8002, (216) 522-5301

III. United States Postal Service and Postal Rate Commission

United States Postal Service and Postal Rate Commission

Manager, Payroll Processing Branch, 1 Federal Drive, Ft. Snelling, MN 55111-9650, (612) 293-6300

IV. The District of Columbia, American Samoa, Guam, and the Virgin Islands

The District of Columbia
Assistant City Administrator for Financial Management, The District Building, Room 422, 14th and Pennsylvania Avenue, NW, Washington, DC 20004, (202) 727-6979

American Samoa

Director of Administrative Service, American Samoa government, Pago Pago, American Samoa 96799, (684) 633-4155

Guam

Attorney General, PO Box DA, Agana, Guam 96910, 472-6841 (Country Code 671)

The Virgin Islands

Attorney General, PO Box 280, St. Thomas, VI 00803, (309) 774-1163

V. Instrumentality

Smithsonian Institution

For service of process in garnishment proceedings for child support and/or alimony of present Smithsonian Institution employees:
General Counsel, The Smithsonian Institution, MRC 012, 100 Jefferson Drive, SW., Washington, DC 20560, (202) 357-2583

For service of process in garnishment proceedings for child support and/or alimony involving retirement annuities of former trust fund employees of the Smithsonian Institution:
General Counsel, Teachers Insurance and Annuity Association of America, College Retirement Equity Fund (TIAA/CREF), 730 Third Avenue, New York, NY 10017, (212) 490-9000

VI. Executive Office of the President

Executive Office of the President

Garnishment orders for civilian employees of the Executive Office of the President should be sent to: Assistant General Counsel for Garnishment Operations, Defense Finance and Accounting Service, Cleveland Center—Code L (DFAS-CL-L), P.O. Box 998002, Cleveland, OH 44199-8002, (216) 522-5301.


APPENDIX B TO PART 581—LIST OF AGENTS DESIGNATED TO FACILITATE THE SERVICE OF LEGAL PROCESS ON FEDERAL EMPLOYEES

(The agents designated to accept legal process for the garnishment of the remuneration for employment due from the United States are listed in appendix A to part 581. Appendix B to part 581 lists the agents designated to assist in the service of legal process in civil actions pursuant to orders of State courts to establish paternity and to establish or to enforce support obligations by making Federal employees and members of the Uniformed Services available for service of process, regardless of the location of the...
employee's workplace or of the member's duty station. Agents are listed in appendix B only for those executive agencies where the designations differ from those found in appendix A to part 581.)

Department of Defense

The Department of Defense officials identified pursuant to Executive Order 12953, section 302, shall facilitate an employee's or member's availability for service of process. Additionally, these officials shall be responsible for answering inquiries about their respective organization's service of process rules. Such officials are not responsible for actual service of process and will not accept requests to make such service.

Office of the Secretary of Defense
Personnel Management Specialist, DoD Civilian Personnel Management Service, 1400 Key Blvd., Level A, Arlington, VA 22209

Department of the Army

Members of the uniformed service, active, reserve, and retired.


Federal civilian employees of the Army, both appropriated fund and nonappropriated fund.

Deputy Assistant Secretary, (Civilian Personnel Policy/Director of Civilian Personnel), 111 Army Pentagon, Washington, DC 20310-0111, (703) 695-4237

Active duty, reserve, and appropriated fund and nonappropriated fund employees of the Department of the Army employed within the United States.

Appropriated fund and nonappropriated fund Federal civilian employees employed in Panama.


Department of the Navy

In order to locate, or determine the cognizant command and mailing address of a Navy Member:


In order to obtain assistance in the service of legal process in civil actions pursuant to orders of State courts:

Bureau of Naval Personnel, Office of Legal Counsel (Pers 06), 2 Navy Annex, Washington, DC 20370-5006, (703) 614-4110

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Members of the Marine Corps

For assistance in service of process on Department of the Navy civilian employees:

Department of the Navy, Office of Civilian Personnel Mgmt., Office of Counsel (Code OL), 900 N. Quincy Street, Arlington, VA 2203, (703) 696-4717

Department of the Air Force
For all military and civilian personnel:

AFLSAJ ACA, 420 Air Force Pentagon, Washington, DC 20330-4200, (703) 695-2450

Defense Intelligence Agency

Defense Mapping Agency
Defense Mapping Agency, Office of Legal Services, 3200 South Second Street, St. Louis, MO 63118

Defense Nuclear Agency
Associate General Counsel, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22301-3398, (703) 325-7681

On-Site Inspection Agency
General Counsel, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310-3398, (703) 325-7681

Department of Housing and Urban Development

Headquarters
Chief, Systems Support Branch, Technology Support Division, 451 7th Street, SW., Room 2256, Washington, DC 20410, (202) 708-0241

New England (Massachusetts, Maine, Vermont, New Hampshire, Rhode Island, and Connecticut)

Human Resources Officer, Thomas P. O'Neill, Jr., Federal Building, 10 Causeway Street, Room 375, Boston, MA 02222, (617) 565-5435

New York, New Jersey

Human Resources Officer, 26 Federal Plaza, New York, NY 10278, (212) 264-0782

Mid-Atlantic (Pennsylvania, Maryland, Washington, DC, West Virginia, Virginia, and Delaware)

Human Resources Officer, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107, (215) 696-0993
Office of Personnel Management

Southwest (Georgia, North Carolina, Kentucky, Tennessee, South Carolina, Alabama, Mississippi, Puerto Rico, and Florida)
Human Resources Officer, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA 30303, (404) 331-4078

Midwest (Illinois, Minnesota, Wisconsin, Michigan, Ohio, and Indiana)
Human Resources Officer, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604, (312) 353-5960

Southwest (Texas, Oklahoma, Arkansas, Louisiana, and New Mexico)
Human Resources Officer, Throckmorton, Post Office Box 2905, Fort Worth, TX 76113, (817) 885-5471

Great Plains (Kansas, Missouri, Iowa, and Nebraska)
Human Resources Officer, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101, (913) 551-5419

Rocky Mountain (Colorado, Montana, North Dakota, South Dakota, Wyoming, and Utah)
Human Resources Officer, First Interstate Tower North, 633 17th Street, Denver, CO 80202, (303) 672-5259

Pacific/Hawaii (California, Nevada, Arizona, and Hawaii)
Human Resources Officer, Phillip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, CA 94102, (415) 556-7142

Northwest/Alaska (Washington, Oregon, Idaho, and Alaska)
Human Resources Officer, Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104, (206) 220-5125

Department of Transportation
HPT-1 (FHWA), Room 4317, Department of Transportation, Washington, DC 20590
G-P-C (USCG), Room 410E, CGHQ, Department of Transportation, Washington, DC 20590
RAD-10 (FRA), Room 8292, Department of Transportation, Washington, DC 20590
NAD-20 (NHTSA), Room 503E, Department of Transportation, Washington, DC 20590
TAD-30 (FTA), Room 7103, Department of Transportation, Washington, DC 20590
DMA-12 (RSPA), Room 8401, Department of Transportation, Washington, DC 20590
J M-20 (OIG), Room 7410, Department of Transportation, Washington, DC 20590
MAR-360 (MARAD), Room 8101, Department of Transportation, Washington, DC 20590
Personnel Officer (SLSDC), 180 Andrews Street, Masena, NY 13662-1763

AHR-1 (FAA), FOB-10A, Room 500E, Department of Transportation, Washington, DC 20590

Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh St., SW., Room 5424, Washington, DC 20590

Department of Veterans Affairs

Alabama
Human Resources Management Officer, Birmingham Medical Center, 700 South 19th Street, Birmingham, AL 35233, (205) 933-4478
Montgomery Regional Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140

Human Resources Management Officer, Montgomery Medical Center, 250 Perry Hill Road, Montgomery, AL 36109-3798, (334) 272-4670

Human Resources Management Officer, Tuskegee Medical Center, 2400 Hospital Road, Tuskegee, AL 36083-5001, (334) 727-0550

Human Resources Management Officer, Tuscaloosa Medical Center, 3701 Loop Road, Tuscaloosa, AL 35404, (205) 554-2000, ext. 2542

Fort Mitchell National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 2400 Hospital Road, Tuskegee, AL 36083-5001, (334) 727-0550

Mobile Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, 400 Veterans Blvd., Biloxi, MS 35531, (601) 388-5541, ext. 5780

Alaska
Fort Richardson (Sitka) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center & Regional Office, 2025 DeBarr Road, Anchorage, AK 99508-2989, (907) 257-4750

Human Resources Management Officer, Anchorage Medical Center & Regional Office, 2025 DeBarr Road, Anchorage, AK 99508-2989, (907) 257-4750

Arizona
Human Resources Management Officer, Prescott Medical Center, 500 N. Highway 89, Prescott, AZ 86333-5000, (520) 776-6000

Prescott National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 500 N. Highway 89, Prescott, AZ 86333-5000, (520) 776-6015

Human Resources Management Officer, Phoenix Medical Center, 650 E. Indian School Road, Phoenix, AZ 85012, (602) 277-5551, ext. 7594

Human Resources Management Officer, Tucson Medical Center, 3601 South Sixth Avenue, Tucson, AZ 85723-0003, (520) 629-1803
Arkansas
Fayetteville National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1100 N. College Avenue, Fayetteville, AR 72703, (501) 444-5020
Fort Smith National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1100 N. College Avenue, Fayetteville, AR 72703, (501) 444-5020
Little Rock National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4300 West 7th Street, Little Rock, AR 72114, (501) 370-6677
Little Rock Regional Office, Send to: VA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140
Human Resources Management Officer, Little Rock Medical Center, 4300 West 7th Street, Little Rock, AR 72114, (501) 370-6677
Human Resources Management Officer, Fayetteville Medical Center, 1100 N. College Avenue, Fayetteville, AR 72703, (501) 444-5020

California
Human Resources Management Officer, Loma Linda Medical Center, 12201 Benton Street, Loma Linda, CA 92357-0002, (909) 825-7084, ext. 3058
San Diego Regional Office, Send to: VA Western Area Human Resources Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C-300, Lakewood, CA 90715, (303) 231-5855
Sepulveda VCS Western Region, Send to: Human Resources Management Officer, VA Medical Center, 16111 Plummer Street, Sepulveda, CA 91343-2099, (818) 895-9377
Human Resources Management Officer, San Francisco Medical Center, 4150 Clement Street, San Francisco, CA 94121-1598, (415) 750-2107
Human Resources Management Officer, San Diego Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161-0001, (619) 552-8585
Oakland Regional Office, Send To: VBA Western Area Human Resources Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C-300, Lakewood, CA 90715, (303) 231-5855
Human Resources Management Officer, Sepulveda Medical Center, 16111 Plummer Street, Sepulveda, CA 91343-2099, (818) 895-9377
Human Resources Management Officer, Los Angeles, Medical Center, Wilshire & Sawtelle Blvds., Los Angeles, CA 90073, (310) 824-3153
Los Angeles Field Office of Audit, Send to: Human Resources Management Officer, VA Medical Center, Wilshire & Sawtelle Blvds., Los Angeles, CA 90073, (310) 824-3153
Los Angeles Regional Office of Audit, Send to: Human Resources Management Officer, VA Medical Center, Wilshire & Sawtelle Blvds., Los Angeles, CA 90073, (310) 824-3153
Human Resources Management Officer, Los Angeles Outpatient Clinic, 351 E. Temple St., Los Angeles, CA 90012-3328, (213) 253-2677
Human Resources Management Officer, Long Beach Medical Center, 5901 E. Seventh Street, Long Beach, CA 90882-5201, (310) 484-5662
Los Angeles Regional Office, Send To: VBA Western Area Human Resources Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C-300, Lakewood, CA 90715, (303) 231-5855
San Bruno (Golden Gate) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4150 Clement Street, San Francisco, CA 94121-1598, (415) 750-2107
Fort Rosecrans National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 350 La Jolla Village Drive, San Diego, CA 92161-0001, (619) 552-8585
Los Angeles National Cemetery, Send to Human Resources Management Office, VA Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161-0001, (619) 552-8585
Los Angeles Regional Office, Send To: VBA Western Area Human Resources Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C-300, Lakewood, CA 90715, (303) 231-5855
San Joaquin Valley National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 2635 E. Clinton Avenue, Fresno, CA 93703-2223, (209) 225-6100, ext. 5005
Riverside National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 11201 Benton Street, Loma Linda, CA 92357-0002, (909) 825-7084, ext. 3058
San Francisco National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4150 Clement Street, San Francisco, CA 94121-1598, (415) 750-2107

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Office of Personnel Management

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San Diego Outpatient Clinic, Send to:
Human Resources Management Officer, VA Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161-0001, (619) 552-8585

Colorado

Human Resources Management Officer, Grand Junction Medical Center, 2121 North Avenue, Grand Junction, CO 81501, (970) 252-0731, ext. 2062

Human Resources Management Officer, Denver Medical Center, 1055 Clermont Street, Denver, CO 80220-0166, (303) 393-2815

Denver Regional Office, Send to: VBA Western Area Human Resources Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C-300, Lakewood, CO 80215, (303) 231-5855

Human Resources Management Officer, Fort Lyon Medical Center, Fort Lyon, CO 81038-5000, (719) 384-3190

Fort Logan National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220-0166, (303) 393-2815

Denver National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220-0166, (303) 393-2815

VBA Western Area Human Resources Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C-300, Lakewood, CO 80215, (303) 231-5855

VBA Civilian Health and Medical Program (CHAMPVA), Human Resources Management Officer, 300 S. Jackson St., Denver, CO 80206, (303) 331-7514

Denver Distribution Center, Send to: VBA Western Area Human Resources Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C-300, Lakewood, CO 80215 (303) 231-5855

Connecticut

Hartford Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202-2004, (410) 962-4090

Human Resources Management Officer, Newington Medical Center, 555 Willard Avenue, Newington, CT 06111, (203) 667-6710

Human Resources Management Officer, West Haven Medical Center, 950 Campbell Avenue, West Haven, CT 06516, (203) 932-5711

District of Columbia

Human Resources Management Officer, Washington DC Medical Center, 50 Irving Street, N.W., Washington, DC 20422, (202) 745-8200

Director, Central Office Human Resources Management Service, VA Central Office, 810 Vermont Ave., N.W., Washington, DC 20420, (202) 273-4950

Washington DC Regional Office, Send to:
Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202-2004, (410) 962-4090

Delaware

Human Resources Management Officer, Wilmington Medical and Regional Office Center, 1601 Kirkwood Highway, Wilmington, DE 19805, (302) 633-5340

Florida

Pensacola (Barrancas) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 400 Veterans Blvd., Biloxi, MS 39531, (601) 388-5541, ext. 5780

Human Resources Management Officer, Bay Pines Medical Center, 10000 Bay Pines Blvd., Bay Pines, FL 33704, (813) 398-6661, ext. 4116

Florida National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 13000 Bruce B. Downs Blvd., Tampa, FL 33612, (813) 972-7524

Riviera Beach Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 1201 Northwest 16th Street, Miami, FL 33125, (305) 324-4455, ext. 3943

Orlando Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 13000 Bruce B. Downs Blvd., Tampa, FL 33612, (813) 972-7524

Miami VA Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 30213, (601) 965-4140

Jacksonville VA Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 30213, (601) 965-4140

Jacksonville Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 1601 SW Archer Road, Gainesville, FL 32608-1197, (904) 374-6045

Daytona Beach Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 1601 SW Archer Road, Gainesville, FL 32608-1197, (904) 374-6045

Jacksonville Vet Center, Send to: Human Resources Management Officer, VA Medical Center, 1601 SW Archer Road, Gainesville, FL 32608-1197, (904) 374-6045

Human Resources Management Officer, Tampa Medical Center, 13000 Bruce B. Downs Blvd., Tampa, FL 33632, (813) 972-7524

Bay Pines National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 10000 Bay Pines Blvd., Bay Pines, FL 33704, (813) 398-6661, ext. 4116

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Human Resources Management Officer, Gainesville Medical Center, 1601 SW Archer Road, Gainesville, FL 32608-1197, (904) 374-6045
St. Petersburg Regional Office, Send to: VBA Southern Area Human Resources Management Office, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140
Human Resources Management Officer, Palm Beach Gardens Medical Center, P.O. Box 33207, Palm Beach Gardens, FL 33420, (407) 691-9251
Human Resources Management Officer, Miami Medical Center, 1201 Northwest 16th Street, Miami, FL 33125, (305) 324-4455, ext. 3346
Human Resources Management Officer, Lake City Medical Center, 801 S. Marion Street, Lake City, FL 32025-5886, (904) 755-3036

Georgia
Marietta National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 728-7636
Atlanta Veterans Canteen Service Field Office, Send to: Human Resources Management Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 728-7636
Human Resources Management Officer, Augusta Medical Center, 1 Freedom Way, Augusta, GA 30004-6285, (706) 923-3655
Human Resources Management Officer, Dublin Medical Center, 1826 Veterans Blvd., Dublin, GA 31021, (912) 277-2753
Atlanta Field Office of Audit, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6908 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140
Atlanta National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 728-7636
Human Resources Management Officer, Atlanta Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 728-7636
Income Verification Match Center, Send to: Human Resources Management Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 728-7636
Atlanta Regional Office, Send to: VBA Southern Area Human Resources, Management Office, Human Resources Management Director, 6908 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140

Hawaii
Human Resources Management Officer, Honolulu Medical and Regional Office Center, 300 Ala Moana Blvd., P.O. Box 50188, Honolulu, HI 96850, (808) 566-1470
Pacific Memorial National Cemetery, Send to: Human Resources Management Officer, VA Medical and Regional Office Center, 300 Ala Moana Blvd., P.O. Box 50188, Honolulu, HI 96850, (808) 566-1470

Idaho
Human Resources Management Officer, Boise Medical Center, 500 W. Fort Street, Boise, ID 83702-4598, (208) 338-7218
Boise Regional Office, Send to: VBA Western Area Human Resources Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C-300, Lakewood, CO 80215, (303) 231-5855

Illinois
Human Resources Management Officer, North Chicago Medical Center, 3001 Green Bay Road, North Chicago, IL 60064, (708) 576-3763
Human Resources Management Office, Hines Medical Center, Edward Hines Jr. Hospital, 5th Avenue & Roosevelt Road, Hines, IL 60141, (708) 216-2601
Rock Island National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, Highway 6 West, Iowa City, IA 52246, (319) 338-0581, ext. 7720
Danville National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1900 E. Main Street, Danville, IL 61832, (217) 431-6548
Human Resources Management Officer, Chicago Lakeside Medical Center, 333 E. Huron Street, Chicago, IL 60611, (312) 943-6600
Camp Butler National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1900 E. Main Street, Danville, IL 61832, (217) 431-6548
Hines Systems Delivery Center, Send to: Human Resources Management Officer, Hines Benefits Delivery Center, PO Box 27 (901A1), Hines, IL 60141, (708) 681-6680
Human Resources Management Officer, Chicago Medical Center, 820 South Damen Avenue, PO Box 8195, Chicago, IL 60680, (312) 633-2174
Chicago Regional Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953-8800
Human Resources Management Officer, Marion Medical Center, 2401 W. Main Street, Marion, IL 62959, (618) 997-5311, ext. 4116
Hines Finance Center, Send to: Human Resources Management Officer, Hines Benefits Delivery Center, PO Box 27 (901A1), Hines, IL 60141, (708) 681-6680
Human Resources Management Officer, Danville Medical Center, 1900 E. Main Street, Danville, IL 61832, (217) 431-6548
Hines National Acquisition Center, Send to: Human Resources Management Officer, Hines Benefits Delivery Center, PO Box 27 (901A1), Hines, IL 60141, (708) 681-6680
Office of Personnel Management

Hines Benefits Delivery Center, Human Resources Management Officer, PO Box 27 (901A), Hines, IL 60141, (708) 681-6680
Alton National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, Jefferson Barracks, St. Louis, MO 63106, (314) 894-6620
Mound City National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 2401 W. Main Street, Marion, IL 62959, (618) 997-5311, ext. 4116
Quincy National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, Highway 6 West, Iowa City, IA 52246, (319) 338-0581, ext. 7720

Indiana
Marion National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1700 East 38th, Marion, IN 46953-4589, (317) 677-3101
Human Resources Management Officer, Marion Medical Center, 1700 East 38th, Marion, IN 46953-4589, (317) 677-3101
Human Resources Management Officer, Indianapolis Medical Center, 1401 West 10th Street, Indianapolis, IN 46202, (317) 267-8758
Human Resources Management Officer, Fort Wayne Medical Center, 2121 Lake Avenue, Fort Wayne, IN 46805-5100, (219) 460-1342
Indianapolis Regional Office, Send to: VBA Central Area Human Resources Management Officer, VA Medical Center, 1481 West 10th Street, Indianapolis, IN 46202, (317) 267-8758

Human Resources Management Officer, Indianapolis Medical Center, 3600 30th Street, Des Moines, IA 50310, (515) 271-5812
Human Resources Management Officer, Iowa City Medical Center, Highway 6 West, Iowa City, IA 52246, (319) 338-0581, ext. 7720

Kansas
Human Resources Management Officer, Topeka Medical Center, 2200 Gage Blvd., Topeka, KS 66622, (913) 271-4310
Human Resources Management Officer, Leavenworth Medical Center, 4101 S. 4th St. Trafficway, Leavenworth, KS 66048, (913) 682-2000, ext. 2500
Leavenworth National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4101 S. 4th St. Trafficway, Leavenworth, KS 66048, (913) 682-2000, ext. 2500

Kentucky
Nicholasville (Camp Nelson) National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 2250 Leestown Road, Lexington, KY 40511-1093, (606) 895-3401, ext. 5866

New Albany National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40206, (502) 895-3401, ext. 5866
Evansville Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, 2401 W. Main Street, Marion, IL 62959, (618) 997-5311, ext. 4116
Indianapolis National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1481 West 10th Street, Indianapolis, IN 46202, (317) 267-8758

Louisville Regional Office, Send to: VBA Central Area Human Resources Management Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40206, (502) 895-3401, ext. 5866

Zachary Taylor National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40206, (502) 895-3401, ext. 5866
Lebanon National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40206, (502) 895-3401, ext. 5866

Human Resources Management Officer, Louisville Medical Center, 800 Zorn Avenue, Louisville, KY 40206, (502) 895-3401, ext. 5866

Human Resources Management Officer, Lexinton Medical Center, 2250 Leestown Road, Lexington, KY 40511-1093, (606) 895-3401, ext. 5866

Human Resources Management Officer, Fort Scott National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4101 S. 4th St. Trafficway, Leavenworth, KS 66048, (913) 682-2000, ext. 2500

Ft. Leavenworth National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 4101 S. 4th St. Trafficway, Leavenworth, KS 66048, (913) 682-2000, ext. 2500

Human Resources Management Officer, Wichita and Regional Office Center, 901 George Washington Blvd., Wichita, KS 67211, (316) 651-3625
Fort Scott National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4101 S. 4th St. Trafficway, Leavenworth, KS 66048, (913) 682-2000, ext. 2500
Leavenworth National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4101 S. 4th St. Trafficway, Leavenworth, KS 66048, (913) 682-2000, ext. 2500

Iowa
Des Moines Regional Office, Send to: VBA Central Area Human Resources Management Officer, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953-8830
Keokuk National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, Highway 6 West, Iowa City, IA 52246, (319) 338-0581, ext. 7720
Human Resources Management Officer, Knoxville Medical Center, 1515 W. Pleasant Street, Knoxville, IA 50130, (515) 842-3010, ext. 6219
Human Resources Management Officer, Des Moines Medical Center, 3600 30th Street, Des Moines, IA 50310, (515) 271-5812
Human Resources Management Officer, Iowa City Medical Center, Highway 6 West, Iowa City, IA 52246, (319) 338-0581, ext. 7720

Human Resources Management Officer, Topeka Medical Center, 2200 Gage Blvd., Topeka, KS 66622, (913) 271-4310
Human Resources Management Officer, Leavenworth Medical Center, 4101 S. 4th St. Trafficway, Leavenworth, KS 66048, (913) 682-2000, ext. 2500
Leavenworth National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4101 S. 4th St. Trafficway, Leavenworth, KS 66048, (913) 682-2000, ext. 2500

Human Resources Management Officer, Wichita Medical and Regional Office Center, 901 George Washington Blvd., Wichita, KS 67211, (316) 651-3625
Fort Scott National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4101 S. 4th St. Trafficway, Leavenworth, KS 66048, (913) 682-2000, ext. 2500
Leavenworth National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4101 S. 4th St. Trafficway, Leavenworth, KS 66048, (913) 682-2000, ext. 2500

Human Resources Management Officer, Ft. Leavenworth National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 4101 S. 4th St. Trafficway, Leavenworth, KS 66048, (913) 682-2000, ext. 2500

Fort Scott National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4101 S. 4th St. Trafficway, Leavenworth, KS 66048, (913) 682-2000, ext. 2500

Leavenworth National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4101 S. 4th St. Trafficway, Leavenworth, KS 66048, (913) 682-2000, ext. 2500
Road, Lexington, KY 40511-1093, (606) 281-3924

Danville National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 2250 Leestown Road, Lexington, KY 40511-1093, (606) 281-3924

Lexington National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 2250 Leestown Road, Lexington, KY 40511-1093, (606) 281-3924

Nancy National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 2250 Leestown Road, Lexington, KY 40511-1093, (606) 281-3924

Perryville National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 2250 Leestown Road, Lexington, KY 40511-1093, (606) 281-3924

Louisiana

Human Resources Management Officer, New Orleans Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 589-0811
Port Hudson (Zachary) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 589-0811
Human Resources Management Officer, Alexandria Medical Center, Highway 171, Alexandria, LA 71301, (318) 473-0010, ext. 2262
Human Resources Management Officer, Shreveport Medical Center, 510 E. Stoner Avenue, Shreveport, LA 71101-4066, (318) 424-6028
Alexandria (Pinesville) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, Highway 171, Alexandria, LA 71301, (318) 473-0010, ext. 2262
New Orleans Regional Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 608 Dogwood Parkway, Suite E, Jackson, MS 30213, (601) 965-4140
Baton Rouge National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 589-0811
Shreveport VA Office, Send to: Human Resources Management Officer, VA Medical and Regional Office Center, Togus, ME 04330, (207) 623-5713

Maryland

Human Resources Management Officer, Ft. Howard Medical Center, 9600 N. Point Road, Ft. Howard, MD 21052, (410) 687-8343
Ft. Howard VCS Eastern Region, Send to: Human Resources Management Officer, VA Medical Center, 9600 N. Point Road, Ft. Howard, MD 21052, (410) 687-8343
Baltimore Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202-2004, (410) 962-4090
Human Resources Management Officer, Baltimore Medical Center, 10 N. Greene Street, Baltimore, MD 21201, (410) 605-7200
Baltimore National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 10 N. Greene Street, Baltimore, MD 21201, (410) 605-7200
Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202-2004, (410) 962-4090
Human Resources Management Officer, Perry Point Medical Center, Building 101, Perry Point, MD 21902, (410) 642-2411, ext. 5193
Baltimore Rehabilitation, Research and Development Center, Send to: Human Resources Management Officer, VA Medical Center, 10 N. Greene Street, Baltimore, MD 21201, (410) 605-7200
Annapolis National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 10 N. Greene Street, Baltimore, MD 21201, (410) 605-7200
Baltimore Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 10 N. Greene Street, Baltimore, MD 21201, (410) 605-7200
Hyattsville Field Office of Audit, Send to: Director, CO Human Resources Management Service, VA Central Office, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273-4656

Massachusetts

Human Resources Management Officer, Boston Medical Center, 150 S. Huntington Ave., Boston, MA 02130, (617) 338-9600, ext. 5561
Human Resources Management Officer, Northampton Medical Center, Northampton, MA 01060-1288, (413) 592-3027
Boston Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202-2004, (410) 962-4090
Office of Personnel Management

Human Resources Management Officer, Bedford Medical Center, 200 Springs Road, Bedford, MA 01730, (617) 275-7500, ext. 2367

Bourne National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 940 Belmont Street, Brockton, MA 02401, (508) 583-4500, ext. 3260

Human Resources Management Officer, Brockton Medical Center, 940 Belmont Street, Brockton, MA 02401, (508) 583-4500, ext. 3260

Boston Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 700 Attleboro Road, Boston, MA 02130, (617) 774-3300, ext. 2367

Human Resources Management Officer, Southfield & Outer Drive, Allen Park, MI 48101, (313) 562-6000, ext. 3323

Michigan

Fort Custer National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 5500 Armstrong Rd., Battle Creek, MI 49016, (616) 966-5600, ext. 3600

Grand Rapids Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 5500 Armstrong Rd., Battle Creek, MI 49016, (616) 966-5600, ext. 3600

Detroit Regional Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953-8830

Human Resources Management Officer, Battle Creek Medical Center, 5500 Armstrong Rd., Battle Creek, MI 49016, (616) 966-5600, ext. 3600

Human Resources Management Officer, Saginaw Medical Center, 1500 Weiss Street, Saginaw, MI 48602, (517) 793-2340, ext. 3070

VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953-8830

VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140

Human Resources Management Officer, Biloxi Medical Center, 400 Veterans Blvd., Biloxi, MS 39531, (601) 388-5941, ext. 5790

Biloxi National Cemetery, Human Resources Management Office, VA Medical Center, 400 Veterans Blvd., Biloxi, MS 39531, (601) 388-5941, ext. 5790

Jackson Regional Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140

Human Resources Management Officer, Jackson Medical Center, 1500 E. Woodrow Wilson Blvd., Jackson, MS 39216, (601) 364-1239

Minnesota

St. Paul Regional Office and Insurance Center, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953-8830

Fort Snelling National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, One Veterans Drive, Minneapolis, MN 55417, (612) 725-2061

Fort Snelling Debt Management Center, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953-8830

Human Resources Management Officer, Minneapolis Medical Center, One Veterans Drive, Minneapolis, MN 55417, (612) 725-2061

Human Resources Management Officer, St. Cloud Medical Center, 4801 8th Street North, St. Cloud, MN 56303, (612) 255-6031

St. Paul Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, One Veterans Drive, Minneapolis, MN 55417, (612) 725-2061

Mississippi

Corinth National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523-8990, ext. 5928

VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140

Human Resources Management Officer, Biloxi Medical Center, 400 Veterans Blvd., Biloxi, MS 39531, (601) 388-5941, ext. 5790

Biloxi National Cemetery, Human Resources Management Office, VA Medical Center, 400 Veterans Blvd., Biloxi, MS 39531, (601) 388-5941, ext. 5790

Jackson Regional Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140

Human Resources Management Officer, Jackson Medical Center, 1500 E. Woodrow Wilson Blvd., Jackson, MS 39216, (601) 364-1239
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Natchez National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1500 E. Woodrow Wilson Blvd., Jackson, MS 36216, (601) 364-1239

Missouri

Human Resources Management Officer, St. Louis Medical Center, Jefferson Bks., St. Louis, MO 63106, (314) 994-6620

Human Resources Management Officer, Poplar Bluff Medical Center, 1500 N. Westwood Blvd., Poplar Bluff, MO 63901, (314) 686-4151, ext. 328

St. Louis Records Processing Center, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953-8830

Human Resources Management Officer, Kansas City Medical Center, 4001 Linwood Blvd., Kansas City, MO 64128, (816) 861-4700, ext. 6926

Jefferson Barracks National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 800 Hospital Drive, Columbia, MO 65201, (314) 443-2511, ext. 6261

Human Resources Management Officer, Columbia Medical Center, 800 Hospital Drive, Columbia, MO 65201, (314) 443-2511, ext. 6261

St. Louis Regional Office, Send to: VBA Central Area Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953-8830

Veterans Canteen Service Field Office, Send to: Human Resources Management Officer, VA Medical Center, Jefferson Barracks, St. Louis, MO 63106, (314) 894-6620

Springfield National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1100 N. College Avenue, Fayetteville, AR 72703, (501) 444-5020

Nebraska

Human Resources Management Officer, Fort Harrison Medical Center and Regional Office, Fort Harrison, MT 59636, (406) 447-7933

Human Resources Management Officer, Miles City Medical Center, 210 South Winchester, Miles City, MT 59301-4798, (406) 232-0827

Lincoln Regional Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953-8830

Human Resources Management Officer, Lincoln Medical Center, 600 South 70th Street, Lincoln, NE 68510, (402) 489-3802, ext. 7819

Human Resources Management Officer, Grand Island Medical Center, 2201 N. Broadwell Ave., Grand Island, NE 68803, (308) 389-5177

Maxwell (Fort McPherson) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 2201 N. Broadwell Ave., Grand Island, NE 68803, (308) 389-5177

Human Resources Management Officer, Omaha Medical Center, 4101 Woolworth Avenue, Omaha, NE 68105, (402) 489-0634

Nevada

Human Resources Management Officer, Reno Medical Center, 1000 Locust Street, Reno, NV 89520-0111, (702) 328-1260

Reno Regional Office, Send to: VBA Western Area Human Resources Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C-300, Lakewood, CO 80215, (303) 231-5855

Las Vegas Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 1000 Locust Street, Reno, NV 89520-0111, (702) 328-1260

Henderson Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 1000 Locust Street, Reno, NV 89520-0111, (702) 328-1260

New Hampshire

Manchester Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202-2004, (410) 962-4000

Human Resources Management Officer, Manchester Medical Center, 718 Smyth Road, Manchester, NH 03104, (603) 624-4366, ext. 6608

New Jersey

Beverly National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, University & Woodland Avenue, Philadelphia, PA 19104, (215) 823-4088

New Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202-2004, (410) 962-4000

Human Resources Management Officer, East Orange Medical Center, 385 Tremont Avenue, East Orange, NJ 07018-0195, (201) 676-1000, ext. 1366

James J. Howard Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, University & Woodland Avenue, East Orange, NJ 07018-0195, (201) 676-1000, ext. 1366

Newark Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 385 Tremont Avenue, East Orange, NJ 07018-0195, (201) 676-1000, ext. 1366

Human Resources Management Officer, Lyons Medical Center, Knollcroft Road, Lyons, NJ 07939, (908) 647-0180, ext. 4002

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Office of Personnel Management

New Mexico
Albuquerque Regional Office, Send to: VBA Western Area Human Resources Management Officer, Human Resources Management Director, 126000 W. Colfax Ave., Suite C-300, Lakewood, CO 80215, (303) 231-5855
Santa Fe National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 2100 Ridgecrest Dr., SE., Albuquerque, NM 87108-5135, (505) 256-5702

New York
Human Resources Management Officer, Bath Medical Center, Bath, NY 14810, (607) 776-2111, ext. 1299
Human Resources Management Officer, Brooklyn Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630-3600
Human Resources Management Officer, Montrose Medical Center, P.O. Box 100, Montrose, NY 10548-0100, (914) 737-4400, ext. 2553
Human Resources Management Officer, Syracuse Medical Center, 900 Irving Avenue, Syracuse, NY 13210-2799, (315) 477-4531
Human Resources Management Officer, Bronx Medical Center, 130 W. Kingsbridge Road, Bronx, NY 10468, (718) 594-9000, ext. 6590
Human Resources Management Officer, New York Medical Center, 423 East 23rd Street, New York, NY 10010, (212) 686-7500, ext. 7635
Human Resources Management Officer, Northport Medical Center, 79 Middleville Road, Northport, NY 11768, (516) 261-4400, ext. 2715
Human Resources Management Officer, Albany Medical Center, 113 Holland Avenue, Albany, NY 12208, (518) 462-3311, ext. 2231
Calverton National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 79 Middleville Road, Northport, NY 11768, (516) 261-4400, ext. 2715
Human Resources Management Officer, Buffalo Medical Center, 3455 Bailey Avenue, Buffalo, NY 14215, (716) 862-3060
New York Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202-2004, (410) 962-4090

North Carolina
Human Resources Management Officer, Fayetteville Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 822-7005
Raleigh National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 508 Fulton Street, Durham, NC 27705, (919) 286-6901
Human Resources Management Officer, Asheville Medical Center, 1100 Tunnel Road, Asheville, NC 28805, (704) 299-2935
New Bern National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 822-7005

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Salisbury National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1601 Brenner Avenue, Salisbury, NC 28144, (704) 638-3432

Human Resources Management Officer, Salisbury Medical Center, 1601 Brenner Avenue, Salisbury, NC 28144, (704) 638-3432

Winston-Salem Regional Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140

Human Resources Management Officer, Winston-Salem Regional Office, 6508 Dogwood Parkway, Jackson, MS 39213, (601) 965-4140

Winston-Salem Outpatient Regional Office, Send to: Human Resources Management Officer, VA Medical Center, 1601 Brenner Avenue, Salisbury, NC 28144, (704) 638-3432

North Dakota

Human Resources Management Officer, Fargo Medical and Regional Office Center, 565 First Avenue, Fargo, ND 58102, (701) 232-3241

Ohio

Human Resources Management Officer, Columbus Outpatient Clinic, 2000 Kenny Road, Columbus, OH 43221, (614) 257-2501

Cleveland Regional Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 3500 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953-8830

Dayton National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4100 W. Third Street, Dayton, OH 45428, (513) 262-2107

Human Resources Management Officer, Cincinnati VA Office, 300 Vine Street, Cincinnati, OH 45220, (513) 559-5051

Cincinnati VA Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 3500 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953-8830

Columbus VA Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 3500 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953-8830

Human Resources Management Officer, Dayton Medical Center, 4100 W. Third Street, Dayton, OH 45428, (513) 262-2107

Human Resources Management Officer, Cleveland Medical Center, 10000 Brecksville Rd., Brecksville, OH 44141, (216) 526-3030, ext. 7900

Human Resources Management Officer, Chillicothe Medical Center, 17273 State Route 104, Chillicothe, OH 45601, (614) 773-1141, ext. 7538

Oklahoma

Fort Gibson National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, Honor Heights Drive, Muskogee, OK 74401, (918) 683-3261, ext. 404

Human Resources Management Officer, Oklahoma City Medical Center, 921 NE 13th Street, Oklahoma City, OK 73104, (405) 270-5157

Muskogee Regional Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140

Human Resources Management Officer, Muskogee Medical Center, Honor Heights Drive, Muskogee, OK 74401, (918) 683-3261, ext. 404

Oklahoma City VA Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140

Portland Regional Office, Send to: VBA Western Area Human Resources Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C-300, Lakewood, CO 80215, (303) 232-3241

Ohio

Human Resources Management Officer, Columbus Outpatient Clinic, 2000 Kenny Road, Columbus, OH 43221, (614) 257-2501

Cleveland Regional Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 3500 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953-8830

Dayton National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4100 W. Third Street, Dayton, OH 45428, (513) 262-2107

Human Resources Management Officer, Cincinnati VA Office, 300 Vine Street, Cincinnati, OH 45220, (513) 559-5051

Cincinnati VA Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 3500 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953-8830

Columbus VA Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 3500 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953-8830

Human Resources Management Officer, Dayton Medical Center, 4100 W. Third Street, Dayton, OH 45428, (513) 262-2107

Human Resources Management Officer, Cleveland Medical Center, 10000 Brecksville Rd., Brecksville, OH 44141, (216) 526-3030, ext. 7900

Human Resources Management Officer, Chillicothe Medical Center, 17273 State Route 104, Chillicothe, OH 45601, (614) 773-1141, ext. 7538

Pennsylvania

Human Resources Management Officer, Pittsburgh Medical Center, University Drive C, Pittsburgh, PA 15240, (412) 692-3240

Philadelphia Benefits Delivery Center, Send to: Human Resources Management Liaison, VA Regional Office, 5000 Wissahickon Avenue, P.O. Box 13399, Philadelphia, PA 19101, (215) 953-5334

Human Resources Management Officer, Wilkes-Barre Medical Center, 1111 East End Boulevard, Wilkes-Barre, PA 18711, (717) 821-7209
Office of Personnel Management

Philadelphia Systems Development Center, Send to: Human Resources Management Liaison, VA Regional Office, 5000 Wissahickon Avenue, P.O. Box 13399, Philadelphia, PA 19101, (215) 951-5534
Philadelphia National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104, (215) 823-4088

Annville (Indiantown Gap) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1700 S. Lincoln Avenue, Lebanon, PA 17042, (717) 272-6621, ext. 4055

Harrisburg Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, 1700 S. Lincoln Avenue, Lebanon, PA 17042, (717) 272-6621, ext. 4055

Human Resources Management Officer, Philadelphia Medical Center, University & Woodland Avenues, Philadelphia, PA 19104, (215) 823-4088

Human Resources Management Officer, Altoona Medical Center, 2907 Pleasant Valley Blvd., Altoona, PA 16602-4377, (814) 945-8164, ext. 7039
Human Resources Management Officer, Lebanon Medical Center, 1700 S. Lincoln Avenue, Lebanon, PA 17042, (717) 272-6621, ext. 4055
Human Resources Management Officer, Pittsburgh (HD) Medical Center, 7180 Highland Drive, Pittsburgh, PA 15206-1297, (412) 365-4755
Human Resources Management Officer, Butler Medical Center, 325 New Castle Road, Butler, PA 16001-2480, (412) 477-5051

Pittsburgh Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202-2004, (410) 962-4000

Philadelphia Regional Office, Human Resources Management Liaison, 5000 Wissahickon Avenue, P.O. Box 13399, Philadelphia, PA 19101, (215) 951-5534
Human Resources Management Officer, Erie Medical Center, 135 East 38th Street, Erie, PA 16604, (814) 866-6006

Philippines
Manila Regional Office Outpatient Clinic, Manila Regional Office Center, Send to: Director, Department of Veterans Affairs, APO, San Francisco, CA 96528, 031-632-521-7116

Puerto Rico
Puerto Rico National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, One Veterans Plaza, San Juan, PR 00927-5800, (809) 766-5485

Human Resources Management Officer, San Juan Medical Center, One Veterans Plaza, San Juan, PR 00927-5800, (809) 766-5485
Mayaguez Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, One Veterans Plaza, San Juan, PR 00927-5800, (809) 766-5485
San Juan Regional Office, Send to: VBA Southern Area Human Resources Management Officer, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140

Rhode Island
Human Resources Management Officer, Providence Medical Center, 830 Chalkstone Avenue, Providence, RI 02908-4799, (401) 457-3072

Providence Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202-2004, (410) 962-4000

South Carolina
Florence National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 6439 Garners Ferry Rd., Columbia, SC 29010-1639, (803) 695-6835

Human Resources Management Officer, Columbia Medical Center, 6439 Garners Ferry Rd., Columbia, SC 29010-1639, (803) 695-6835
Greenville Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, 6439 Garners Ferry Rd., Columbia, SC 29010-1639, (803) 695-6835

Human Resources Management Officer, Hot Springs Medical Center, 500 North 5th Street, Hot Springs, AR 71701, (501) 623-7000
Hot Springs National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 500 North 5th Street, Hot Springs, AR 71701, (501) 623-7000

Human Resources Management Officer, Fort Meade Medical Center, 135 Comanche Road, Fort Meade, MD 20742, (301) 445-7600

Fort Meade (Black Hills) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 113 Comanche Road, Fort Meade, SD 57741, (605) 347-7090

Human Resources Management Officer, Sioux Falls Medical and Regional Office Center, PO Box 5046, 2501 W. 22nd St., Sioux Falls, SD 57117, (605) 333-6852

Tennessee

Mountain Home National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 3400 Lebanon Road, Murfreesboro, TN 37129-1236, (615) 893-1360, ext. 3317

Knoxville National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 3400 Lebanon Road, Murfreesboro, TN 37129-1236, (615) 893-1360, ext. 3317

Beaumont Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77030, (713) 794-7458

Lufkin Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 113 Comanche Road, Fort Meade, SD 57741, (605) 347-7090

Human Resources Management Officer, San Antonio VA Office, Send to: VBA South Central Region, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140

San Antonio VA Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140

Human Resources Management Officer, Big Spring Medical Center, 2400 Gregg St., Big Spring, TX 79720, (915) 264-4820

Austin Systems Development Center, Send to: Human Resources Management Officer, Austin Automation Center, 1615 E. Woodard Street, Austin, TX 78772, (512) 336-6054

Human Resources Management Officer, McAllen Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (210) 617-5300, ext. 6752

Human Resources Management Officer, Temple Medical Center, 1003 S. 1st Street, Temple, TX 76504, (817) 776-4811, ext. 4429

Human Resources Management Officer, Austin Automation Center, 1615 E. Woodard Street, Austin, TX 78772, (512) 336-6054

Human Resources Management Officer, Waco Medical Center, 4800 Memorial Drive, Waco, TX 76711, (254) 752-6581, ext. 6346

Waco Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 4800 Memorial Drive, Waco, TX 76711, (254) 752-6581, ext. 6346

Human Resources Management Officer, Dallas Medical Center, 4500 S. Lancaster Road, Dallas, TX 75216, (214) 372-7032

Human Resources Management Officer, Houston Medical Center, 2002 Holcombe Blvd., Houston, TX 77030, (713) 794-7458

Lufkin Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77030, (713) 794-7458

Human Resources Management Officer, Austin Automation Center, 1615 E. Woodard Street, Austin, TX 78772, (512) 336-6054

Human Resources Management Officer, McAllen Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (210) 617-5300, ext. 6752

Human Resources Management Officer, Temple Medical Center, 1003 S. 1st Street, Temple, TX 76504, (817) 776-4811, ext. 4429

Human Resources Management Officer, Austin Automation Center, 1615 E. Woodard Street, Austin, TX 78772, (512) 336-6054

Human Resources Management Officer, Amarillo Medical Center, 6010 Amarillo Blvd. West, Amarillo, TX 79106, (806) 354-7827
Human Resources Management Officer, Human Resources Management Officer, Salt Lake City Regional Office, Send to: Human Resources Management Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (210) 617-5300, ext. 6732

Kerrville National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 6508 Dogwood Parkway, Kerrville, TX 78028, (210) 792-2518

Human Resources Management Officer, Fort Sam Houston National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 126000 W. Colfax Ave., Suite 1200, Lakewood, CO 80215, (303) 231-5855

Human Resources Management Officer, Austin Finance Center, Send to: Human Resources Management Officer, VA Medical Center, 1615 E. Woodard Street, Austin, TX 78772, (512) 326-6054

Human Resources Management Officer, Human Resources Management Officer, Marie Curie National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1201 Broad Rock Blvd., Richmond, VA 23249, (804) 230-1305

Human Resources Management Officer, Quantico National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1305 Rock Blvd., Richmond, VA 23249, (804) 230-1305

Human Resources Management Officer, Alexandria National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1201 Broad Rock Blvd., Richmond, VA 23249, (804) 230-1305

Human Resources Management Officer, Winchester National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1201 Broad Rock Blvd., Richmond, VA 23249, (804) 230-1305

Human Resources Management Officer, Richmond National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1201 Broad Rock Blvd., Richmond, VA 23249, (804) 230-1305

Human Resources Management Officer, Hampton National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 100 Emancipation Road, Hampton, VA 23667, (804) 722-9961, ext. 3160

Human Resources Management Officer, Hampton National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1016 Ward Street, Marlinton, WV 26741, (304) 231-5855

Human Resources Management Officer, Monticello National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140

Human Resources Management Officer, Human Resources Management Director, 1200 W. Colfax Ave., Suite C-300, Lakewood, CO 80215, (303) 231-5855

Human Resources Management Officer, Salt Lake City Regional Office, Send to: Human Resources Management Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77030, (713) 794-7482

Human Resources Management Officer, Human Resources Management Officer, Austin, TX 78772, (512) 326-6054

Human Resources Management Officer, Human Resources Management Officer, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140

Human Resources Management Officer, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965-4140

Human Resources Management Officer, Lubbock Outpatient Clinic, Send to: Human Resources Management Office, VA Medical Center, 6010 Amarillo Blvd. West, Amarillo, TX 79106, (806) 354-7827

Human Resources Management Officer, Austin Finance Center, Send to: Human Resources Management Officer, Austin Automation Center, 1615 E. Woodward Street, Austin, TX 78772, (512) 326-6054

Human Resources Management Officer, Human Resources Management Officer, White River Junction Medical and Regional Office Center, White River Junction, VT 05009, (802) 205-9363, ext. 3350

Virginia

Human Resources Management Officer, Richmond Medical Center, 1201 Broad Rock Blvd., Richmond, VA 23249, (804) 230-1305

Human Resources Management Officer, Hampton Medical Center, 100 Emancipation Road, Hampton, VA 23667, (804) 722-9961, ext. 3160

Richmond National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1201 Broad Rock Blvd., Richmond, VA 23249, (804) 230-1305

Quantico National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745-8200

Hampton National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 100 Emancipation Road, Hampton, VA 23667, (804) 722-9961, ext. 3160

Culpepper National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, Route 9, Martinsburg, WV 25401, (304) 263-0611, ext. 3237

Roanoke Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 1305 Rock Blvd., Richmond, VA 23249, (804) 230-1305

Human Resources Management Officer, Salem Medical Center, 1970 Roanoke Blvd., Salem, VA 24153, (703) 962-2463, ext. 2812

Danville National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1970 Roanoke Blvd., Salem, VA 24153, (703) 962-2463, ext. 2812

Alexandria National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745-8200

Lee'sburg National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745-8200

Mechanicsville National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1201 Broad Rock Blvd., Richmond, VA 23249, (804) 230-1305

Landstown National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1201 Broad Rock Blvd., Richmond, VA 23249, (804) 230-1305

Staunton National Cemetery Area Office, Send to: Human Resources Management Office, VA Medical Center, 1201 Broad Rock Blvd., Richmond, VA 23249, (804) 230-1305

Human Resources Management Officer, VBA Southern Texas VA Office, Send to: Human Resources Management Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (210) 617-5300, ext. 6732

Human Resources Management Officer, Human Resources Management Officer, Lubbock Outpatient Clinic, Send to: Human Resources Management Office, VA Medical Center, 6010 Amarillo Blvd. West, Amarillo, TX 79106, (806) 354-7827

Human Resources Management Officer, Austin Finance Center, Send to: Human Resources Management Officer, Austin Automation Center, 1615 E. Woodward Street, Austin, TX 78772, (512) 326-6054

Utah

Salt Lake City Regional Office, Send to: VBA Western Area Human Resources Management Office, 7400 Merton Minter Blvd., Salt Lake City, UT 84148-0001, (801) 584-1284

Vermont

Human Resources Management Officer, White River Junction Medical and Regional Office Center, White River Junction, VT 05009, (802) 205-9363, ext. 3350

Virginia
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Officer, VA Medical Center, 1970 Roanoke Blvd., Salem, VA 24153, (703) 982-2463, ext. 2812

Winchester National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, Route 9, Martinsburg, WV 25401, (304) 263-0811, ext. 3237

Washington

Seattle Regional Office, Send to: VBA Western Area Human Resources, Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C-300, Lakewood, CO 80215, (303) 231-5655

Human Resources Management Officer, Walla Walla Medical Center, 77 Wainwright Drive, Walla Walla, WA 99362-3070, (509) 527-3453

Human Resources Management Officer, Seattle Medical Center, 1660 S. Columbian Way, Seattle, WA 98108-1597, (206) 764-2135

Seattle Outpatient Clinic (Vet Center), Send to: Human Resources Management Officer, VA Medical Center, 1660 S. Columbian Way, Seattle, WA 98108-1597, (206) 764-2135

Human Resources Management Officer, Tacoma Medical Center, American Lake, Tacoma, WA 98493, (206) 582-8440, ext. 6054

Human Resources Management Officer, Spokane Medical Center, 4815 North Assembly Street, Spokane, WA 99205-6197, (509) 327-0242

West Virginia

Human Resources Management Officer, Huntington Medical Center, 5100 Spring Valley Road, Huntington, WV 25704, (304) 429-6755, ext. 2343

Human Resources Management Officer, Beckley Medical Center, 200 Veterans Avenue, Beckley, WV 25801, (304) 259-2121, ext. 4461

Human Resources Management Officer, Clarksburg, Medical Center, 1 Medical Center Dr., Clarksburg, WV 26301, (304) 623-7697

Human Resources Management Officer, Martinsburg Medical Center, Route 9, Martinsburg, WV 25401, (304) 263-0811, ext. 3237

Human Resources Management Officer, Clarksburg, Medical Center, 1 Medical Center Dr., Clarksburg, WV 26301, (304) 623-7697

Human Resources Management Officer, Madison Medical Center, 2500 Overlook Terrace, Madison, WV 55705, (304) 262-7026

Human Resources Management Officer, Huntington Medical Center, 1868 Fort Road, Sheridan, WV 22801-5500, (307) 672-1673

Human Resources Management Officer, Cheyenne Medical and Regional Office Center, 2960 East Pershing Blvd., Cheyenne, WY 82003, (307) 775-7353

II. AGENCIES

American Battle Monuments Commission
Chief, Administration, Room 5127, Pulaski Building, 20 Massachusetts Avenue, NW., Washington, DC 20314-0001, (202) 761-0533

Architectural and Transportation Barriers Compliance Board

American Battle Monuments Commission

Chief, Administration, Room 5127, Pulaski Building, 20 Massachusetts Avenue, NW., Washington, DC 20314-0001, (202) 761-0533

Equal Employment Opportunity Commission
Management Director, Office of Management, 1801 L Street, NW., Washington, DC 20507, (202) 663-4411

Export-Import Bank of the United States
Associate General Counsel, 811 Vermont Avenue, NW., Room 955, Washington, DC 20571, (202) 595-3432

Federal Credit Administration
Chief, Human Resources Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4122

Federal Communications Commission
Chief, Payroll/Personnel Support Branch, 2191 M Street, NW., Room C-212, Washington, DC 20554, (202) 481-0136

Federal Deposit Insurance Corporation
Chief, Operations Section, Office of Personnel Management, 550 17th Street, NW., PA-1730-5018, Washington, DC 20429, (202) 591-3401

Federal Election Commission
Assistant General Counsel—Administrative Law, 999 E Street, NW., Washington, DC 20443, (202) 219-3630

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Federal Energy Regulatory Commission
Chief, Payroll Branch, Department of Energy, GTN Building, Room E-259, Washington, DC 20585, (301) 903-4012

Federal Housing Finance Board
Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, (202) 408-2685 or (202) 408-2686

Federal Retirement Thrift Investment Board
Director of Personnel, 1250 H Street, NW., Suite 400, Washington, DC 20005, (202) 942-1680

Federal Trade Commission
Director, Division of Personnel, 6th Street & Pennsylvania Avenue, NW., Room H-148, Washington, DC 20580, (202) 326-2022

General Accounting Office
Comptroller General, Attention: Chief, Payroll/Personnel Systems Branch, Personnel, Room 1180, 441 G Street, NW., Washington, DC 20415, (202) 512-5811

Institute of Peace
Personnel and Benefits Manager, 1550 M Street, NW., Suite 700, Washington, DC 20005, (202) 429-3801

Inter-American Foundation
General Counsel, 901 N. Stuart Street, 10th Floor, Arlington, VA 22203, (703) 841-3894

JFK Assassination Records Review Board
General Counsel, 600 E Street, NW., Washington, DC 20530

National Archives & Records Administration
Supervisory Personnel Staffing Specialist, Personnel Operations Branch, 9700 Page Avenue, Room 2002, St. Louis, MO 63132, (314) 538-4963

National Capital Planning Commission
General Counsel, 801 Pennsylvania Avenue, NW, Suite 301, Washington, DC 20576, (202) 724-0174

Nuclear Regulatory Commission
Chief, Policy and Labor Relations, Office of Personnel, Washington, DC 20555, (301) 415-7526

Nuclear Waste Technical Review Board
Administrative Officer, 1100 Wilson Blvd., Suite 910, Arlington, VA 22209, (703) 225-4473

Office of Special Counsel
Director of Management and Associate Special Counsel for Planning and Advice, 1730 M Street, NW., Suite 201, Washington, DC 20036-4505, (202) 653-9485

Peace Corps
Associate General Counsel, 1990 K Street, NW., Room 8300, Washington, DC 20526, (202) 606-3114

Resolution Trust Corporation
Payroll Specialist/Paralegal Specialist, 1717 H Street, NW., Washington, DC 20434, (202) 736-3095

Securities and Exchange Commission
Personnel Management Specialist, Office of Administrative & Personnel Management, 450 5th Street, NW. (Stop 2-3), Washington, DC 20549

Small Business Administration
Chief, Personnel/Payroll Systems Branch or Payroll Analyst, 409 3rd Street, SW., Suite 4200, Washington, DC 20416, (202) 205-6149 or (202) 205-6213

The United States Postal Service will cooperate with process servers in the service of process regarding private civil or criminal matters only when service is attempted in person on the subject employee at the employee’s place of employment, in accordance with the provisions of 39 CFR 243.2(g). Service of summonses and complaints, in private matters, by mail to either the agent or employees at their workstations is not permitted.

The Postal Service agent will attempt to facilitate and assist personnel of child support enforcement agencies within the limitations imposed by the Privacy Act, 5 U.S.C. 552a and relevant Postal regulations. The requester must furnish the name and social security number of the person who is the subject of the inquiry.

Manager, Payroll Processing Branch, 1 Federal Drive, Ft. Snelling, MN 55111-9650, (612) 293-6300


PART 582—COMMERCIAL GARNISHMENT OF FEDERAL EMPLOYEES’ PAY

Subpart A—Purpose, Definitions, and Exclusions

Sec. 582.101 Purpose.
582.102 Definitions.
582.103 Exclusions.
§ 582.101

Subpart B—Service of Legal Process

582.201 Agent to receive process.
582.202 Service of legal process.
582.203 Information minimally required to accompany legal process.
582.204 Electronic disbursement.

Subpart C—Compliance With Legal Process

582.301 Suspension of payment.
582.302 Notification of employee-obligor.
582.303 Response to legal process or interrogatories.
582.304 Nonliability for disclosure.
582.305 Honoring legal process.
582.306 Lack of entitlement by the employee-obligor to pay from the agency served with legal process.

Subpart D—Consumer Credit Protection Act Restrictions

582.401 Aggregate disposable earnings.
582.402 Maximum garnishment limitations.

Subpart E—Implementation by Agencies

582.501 Rules, regulations, and directives by agencies.

Appendix A to Part 582—List of Agents Designated to Accept Legal Process


Source: 60 FR 13030, Mar. 10, 1995, unless otherwise noted.

Subpart A—Purpose, Definitions, and Exclusions

§ 582.101 Purpose.

Section 5520a of title 5 of the United States Code provides that with certain exceptions set forth in this part, pay from an agency to an employee is subject to legal process in the same manner and to the same extent as if the agency were a private person. The purpose of this part is to implement the objectives of section 5520a as they pertain to each executive agency of the United States Government, except with regard to employees of the United States Postal Service, the Postal Rate Commission, and the General Accounting Office.

§ 582.102 Definitions.

In this part—(1) Agency means each agency of the executive branch of the Federal Government, excluding the United States Postal Service, the Postal Rate Commission, and the General Accounting Office; agency does not include the government of the District of Columbia or the territories and possessions of the United States. (Section 5520a(j)(1) of title 5 of the United States Code provides that separate implementing regulations shall be promulgated by the legislative branch and the judicial branch; section 5520a(k) provides that separate implementing regulations shall be promulgated with regard to members of the uniformed services; and Executive Order 12897 provides that separate implementing regulations shall be promulgated with regard to employees of the United States Postal Service. The regulations promulgated for employees of the United States Postal Service also apply to employees of the Postal Rate Commission.)

(2) Employee or employee-obligor means an individual who is employed by an agency as defined in this section, including reemployed annuitants and retired members of the uniformed services who are employed by an agency. Employee does not include a retired employee, member of the uniformed services, or an individual whose service is based on a contract, including individuals who provide personal services based on a contract with an agency.

(3) Legal process means any writ, order, summons, or other similar process in the nature of garnishment, which may include an attachment, writ of execution, court ordered wage assignment, or tax levy from a State or local government, which—

(i) Is issued by:

(A) A court of competent jurisdiction, including Indian tribal courts, within any State, territory, or possession of the United States, or the District of Columbia. As stated in §582.101, pay is subject to legal process in the same manner and to the same extent as if the agency were a private person. There is, therefore, no requirement in this part that, for example, legal process be signed by a judge; or.
§ 582.103 Exclusions.

In determining the amount of pay subject to garnishment under this part, there shall be excluded amounts which:

(a) Are owed by the employee-obligor to the United States;

(b) Are required by law to be deducted from the employee-obligor’s pay, including, but not limited to amounts deducted in compliance with the Federal Insurance and Contributions Act (FICA), including amounts deducted for Medicare and for Old Age, Survivor, and Disability Insurance (OASDI);

(c) Are properly withheld for Federal, State, or local income tax purposes, if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the employee-obligor claimed all dependents to which the employee-obligor were entitled. The withholding of additional amounts pursuant to section 3402(i) of title 26 of the United States Code may be permitted only when the employee-obligor presents evidence of a tax obligation which supports the additional withholding;

(d) Are deducted as health insurance premiums;

(e) Are deducted as normal retirement contributions, not including amounts deducted for supplementary coverage. For purposes of this section, all amounts contributed under sections 8351 and 8432(a) of title 5 of the United States Code to the Thrift Savings Fund are deemed to be normal retirement contributions. Except as provided in this paragraph, amounts voluntarily contributed toward additional retirement benefits are considered to be supplementary;

(f) Are deducted as normal life insurance premiums from salary or other remuneration for employment, not including amounts deducted for supplementary coverage. Federal Employees’ Group Life Insurance premiums for “Basic Life” coverage are considered to be normal life insurance premiums; all optional Federal Employees’ Group Life Insurance premiums and any life insurance premiums paid for by allotment are considered to be supplementary.

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(g) Amounts withheld in compliance with legal process based on child support and/or alimony indebtedness are not exclusions.

Subpart B—Service of Legal Process

§ 582.201 Agent to receive process.

(a) Except as provided in appendix A to this part, appendix A to 5 CFR part 581 lists agents designated to accept service of process under part 581 and this part.

(b) United States Attorneys are not considered appropriate agents to accept service of process.

§ 582.202 Service of legal process.

(a) A person using this part shall serve interrogatories and legal process on the agent to receive process as explained in § 582.201. Where the legal process is directed to an agency, and the purpose of the legal process is to compel an agency to garnish an employee's pay, the legal process need not expressly name the agency as a garnishee.

(b) Service of legal process may be accomplished by certified or registered mail, return receipt requested, or by personal service only upon the agent to receive process as explained in § 582.201, or if no agent has been designated, then upon the head of the employee-obligor's employing agency. The designated agent shall note the date and time of receipt on the legal process.

Subpart C—Compliance With Legal Process

§ 582.301 Suspension of payment.

Upon proper service of legal process as specified in §§ 582.202 and 582.203, the agency shall suspend, i.e., withhold, payment of such moneys for the amount necessary to permit compliance with the legal process in accordance with this part.
§ 582.302 Notification of employee-obligor.

(a) As soon as possible, but not later than 15 calendar days after the date of valid service of legal process, the agent designated to accept legal process shall send to the employee-obligor, at his or her duty station or last known home address, written notice that such process has been served, including a copy of the legal process;

(b) The agency may provide the employee-obligor with the following additional information:

(1) Copies of any other documents submitted in support of or in addition to the legal process;

(2) Notice that the United States does not represent the interests of the employee-obligor in the pending legal proceedings; and

(3) Advice that the employee-obligor may wish to consult legal counsel regarding defenses to the legal process that he or she may wish to assert.

§ 582.303 Response to legal process or interrogatories.

(a) Whenever the designated agent is validly served with legal process, the agent shall respond within 30 calendar days after receipt, or within such longer period as may be prescribed by applicable State or local law. The agent shall also respond within this time period to interrogatories which accompany legal process. Notwithstanding State law, an agent need only respond once to legal process.

(b) If State or local law authorizes the issuance of interrogatories prior to or after the issuance of legal process, the agent shall respond to the interrogatories within 30 calendar days after being validly served, or within such longer period as may be prescribed by applicable State or local law.

§ 582.304 Nonliability for disclosure.

(a) No agency employee whose duties include responding to interrogatories pursuant to § 582.303(b), shall be subject to any disciplinary action or civil or criminal liability or penalty for any disclosure of information made in connection with the carrying out of any duties pertaining directly or indirectly to answering such interrogatories.

(b) However, an agency would not be precluded from taking disciplinary action against an employee who consistently or purposely failed to provide correct information requested by interrogatories.

§ 582.305 Honoring legal process.

(a) The agency shall comply with legal process, except where the process cannot be complied with because:

(1) It is not regular on its face.

(2) The legal process would require the withholding of funds not deemed pay as described in § 582.102(a)(5).

(3) It does not comply with section 5520a of title 5 of the United States Code or with the mandatory provisions of this part; or

(4) An order of a court of competent jurisdiction enjoining or suspending the operation of the legal process has been served on the agency.

(b) While an agency will not comply with legal process which, on its face, indicates that it has expired or is otherwise no longer valid, legal process will be deemed valid notwithstanding the fact that the underlying debt and/or the underlying judgment arose prior to the effective date of section 5520a of title 5 of the United States Code.

(c)(1) The filing of an appeal by an employee-obligor will not generally delay the processing of a garnishment action. If the employee-obligor establishes to the satisfaction of the employee-obligor's agency that the law of the jurisdiction which issued the legal process provides that the processing of the garnishment action shall be suspended during an appeal, and if the employee-obligor establishes that he or she has filed an appeal, the employing agency shall comply with the applicable law of the jurisdiction and delay or suspend the processing of the garnishment action.

(c)(2) Notwithstanding paragraph (c)(1) of this section, the employing agency shall not be required to establish an escrow account to comply with the legal process even if the applicable law of the jurisdiction requires private employers to do so.

(d) Under the circumstances set forth in § 582.305(a) or (b), or where the agency is directed by the Justice Department not to comply with the legal
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process, the agency shall respond directly to the court, or other authority, setting forth its reasons for non-compliance with the legal process. In addition, the agency shall inform the person who caused the legal process to be served, or the person’s representative, that the legal process will not be honored. Thereafter, if litigation is initiated or appears imminent, the agency shall immediately refer the matter to the United States Attorney for the district from which the legal process issued. To ensure uniformity in the executive branch, agencies which have statutory authority to represent themselves in court shall coordinate their representation with the United States Attorney.

(e) In the event that an agency is served with more than one legal process or garnishment order with respect to the same payments due or payable to the same employee, the agency shall satisfy such processes in priority based on the time of service: Provided, That in no event will the total amount garnished for any pay or disbursement cycle exceed the applicable limitation set forth in §582.402. Provided further, that processes which are not limited in time shall preserve their priority based on time of service until fully satisfied. Generally, a modified order will retain its original priority while a time limited order will lose its priority after it has expired.

(f) Legal process to which an agency is subject under sections 459, 461, and 462 of the Social Security Act (42 U.S.C. 659, 661, and 662) for the enforcement of an employee’s legal obligation to provide child support or to make alimony payments, including child support or alimony arrearages, shall have priority over any legal process to which an agency is subject under this part. In addition to having priority, compliance with legal process to which an agency is subject under sections 459, 461, and 462 of the Social Security Act may exhaust the moneys available for compliance with legal process under this part. See §582.402(a).

(g)(1) Neither the United States, and executive agency, nor any disbursing officer shall be liable for any payment made from moneys due from, or payable by, the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this part.

(2) Neither the United States, an executive agency, nor any disbursing officer shall be liable under this part to pay money damages for failure to comply with the legal process.

(h) Agencies affected by legal process served under this part shall not be required to vary their normal pay or disbursement cycles to comply with the legal process. However, legal process, valid at the time of service, which is received too late to be honored during the disbursement cycle in which it is received, shall be honored, to the extent that the legal process may be satisfied, during the next disbursement cycle within the limits set forth in §582.402. The fact that the legal process may have expired during this period would not relieve the agency of its obligation to honor legal process which was valid at the time of service. If, in the next disbursement cycle, no further payment will be due from the agency to the employee-obligor, the agency shall follow the procedures set forth in §582.306.

(i) Agencies need not establish escrow accounts in order to comply with legal process. Therefore, even if the amount garnished by an agency in one disbursement cycle is not sufficient to satisfy the entire indebtedness, the agency need not retain those funds until the amount retained would satisfy the entire indebtedness. On the contrary, agencies will, in most instances, remit the garnished amount after each disbursement cycle. Agencies need not pro-rate payments for less than a full disbursement cycle.

(j) If an agency receives legal process which is regular on its face, the agency shall not be required to ascertain whether the authority which issued the legal process had obtained personal jurisdiction over the employee-obligor.

(k) At the discretion of the executive agency, the agency’s administrative costs in executing a garnishment may be added to the garnishment amount and the agency may retain costs recovered as offsetting collections. To facilitate recovery of these administrative costs.
costs, an administrative fee may be assessed for each legal process that is received and processed by an agency, provided that the fee constitutes the agency’s administrative costs in executing the garnishment action.

(l) Where an employee-obligor has filed a bankruptcy petition under section 301 or 302 of title 11 of the United States Code, or is the debtor named in an involuntary petition filed under section 303 of title 11, the agency must cease garnishment proceedings affected by the automatic stay provision, section 362(a) of title 11. Upon filing a petition in bankruptcy or upon learning that he or she is the debtor named in an involuntary petition, the employee-obligor should immediately notify the agency. To enable the agency to determine if the automatic stay applies, the employee-obligor should provide the agency with a copy of the filing or a letter from counsel stating that the petition was filed, and indicating the court and the case number, the chapter under which the petition was filed, whether State or federal exemptions were elected, and the nature of the claim underlying the garnishment order.

(m) Within 30 days following the collection of the amount required in the garnishment order, the creditor may submit a final statement of interest that accrued during the garnishment process, and the employing agency shall process the statement for payment, provided the garnishment order authorizes the collection of such interest. This final statement of interest should be accompanied by a statement of account showing how the interest was computed.

§ 582.401 Aggregate disposable earnings.

In accordance with the Consumer Credit Protection Act, the aggregate disposable earnings under this part are the employee-obligor's pay less those amounts excluded in accordance with § 582.103.

§ 582.402 Maximum garnishment limitations.

Pursuant to section 1673(a)(1) of title 15 of the United States Code (the Consumer Credit Protection Act, as amended) and the Department of Labor regulations to title 29, Code of Federal Regulations, part 870, the following limitations are applicable:

(a) Unless a lower maximum limitation is provided by applicable State or local law, the maximum part of an employee-obligor's aggregate disposable
§ 582.501 Rules, regulations, and directives by agencies.

Appropriate officials of all agencies shall, to the extent necessary, issue implementing rules, regulations, or directives that are consistent with this part or as are otherwise in accordance with statutory law.

[63 FR 14788, Mar. 26, 1998]

APPENDIX A TO PART 582—LIST OF AGENTS DESIGNATED TO ACCEPT LEGAL PROCESS

NOTE: The agents designated to accept legal process are listed in appendix A to part 581 of this chapter. This appendix A to part 582 provides listings only for those executive agencies where the designations differ from those found in appendix A to part 581 of this chapter.

I. Departments

Department of Defense. Defense Finance and Accounting Service, Cleveland Center, Office of General Counsel, Attention: Code L, P.O. Box 998002, Cleveland, OH 44199-8002, (216) 522-5301.

Agents for receipt of all legal process for all Department of Defense civilian employees except where another agent has been designated as set forth below.
Office of Personnel Management

For requests that apply to employees of the Army and Air Force Exchange Service or to civilian employees of the Defense Contract Audit Agency (DCAA) and the Defense Logistics Agency (DLA) who are employed outside the United States: See appendix A to part 581 of this chapter.

For requests that apply to civilian employees of the Army Corps of Engineers, the National Security Agency, the Defense Intelligence Agency, and non-appropriated fund civilian employees of the Air Force, serve the following offices:

Army Corps of Engineers, U.S. Army Corps of Engineers, Omaha District, Central Payroll Office, Attn: Garnishments, P.O. Box 1439 DTS, Omaha, NE 68101-1439, (402) 221-4060.


For civilian employees of the Army, Navy and Marine Corps who are employed outside the United States, serve the following offices:


Army Civilian Employees in Korea. Commander, 17th Finance and Accounting Office, Korea, Attn: EAFC-F0 (Civilian Pay), Unit 15300, APO AP 96205-0073, 011-822-791-4599, DSN 723-4599.


For non-civil service civilian personnel of the Navy Exchanges or related nonappropriated fund instrumentalities administered by the Navy Exchange Service Command: Commander, Navy Exchange Service Command, Attn: Human Resources Beverly Building, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23453-5274, (804) 631-3675.

For non-civil service civilian personnel of Marine Corps nonappropriated fund instrumentalities, process may be served on the Commanding Officer of the employing activity Attn: Morale, Welfare and Recreation Director.

Department of the Interior. Chief, Payroll Operations Division Attn: Code: D-2605, Bureau of Reclamation, Administrative Service Center, Department of the Interior, P.O. Box 272030, 7201 West Mansfield Avenue, Denver, CO 80227-9030, (303) 969-7739.

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart A—Uniform Allowances

Sec. 591.101 Purpose.
591.102 Definitions.
591.103 Governmentwide maximum uniform allowance rate.
591.104 Higher initial maximum uniform allowance rate.
§ 591.101 Purpose.

This subpart prescribes the regulations authorized by section 5903 of title 5, United States Code, for the payment of uniform allowances.

§ 591.102 Definitions.


Employee means an employee in or under an agency.

Category of employees means any group of employees designated by an agency that has the same basic uniform requirements.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Uniform means a specified article or articles of clothing that may include, but is not limited to, such items as shoes, boots, hats, shirts, slacks, skirts, or outerwear an employee is required by an agency to wear to provide a distinctive and easily identifiable appearance in performing his or her job. A “uniform” does not include protective equipment required for the employee’s safety under 5 U.S.C. 7903 or normal business or work attire purchased at the discretion of the employee.

Year means any period of 12 consecutive months designated by an agency as the basis for applying the maximum uniform allowance rates established under this part.

§ 591.103 Governmentwide maximum uniform allowance rate.

Unless a higher initial maximum uniform allowance rate is payable under § 591.104 to an employee who is required by statute, regulation, or an agency’s written administrative procedures to wear a uniform, the head of each agency concerned, out of funds available, shall—
§ 591.201 Definitions.

In this subpart—

Agency means an Executive agency as defined in section 105 of title 5, United States Code, but does not include Government-controlled corporations. For the purposes of §591.212, “agency” also means:

(a) Pay an allowance for a uniform not to exceed $400 a year; or

(b) Furnish a uniform at a cost not to exceed $400 a year.

§ 591.104 Higher initial maximum uniform allowance rate.

(a) The head of an agency may establish one or more initial maximum uniform allowance rates greater than the Governmentwide maximum uniform allowance rate established under §591.103.

(b) A higher initial maximum uniform allowance rate established under this section may not exceed the average total uniform cost for the minimum basic uniform for the affected employees and, except as provided in paragraph (c) of this section, applies only to the year in which the employee becomes subject to a requirement to wear the uniform.

(c) An agency that establishes one or more higher initial maximum uniform allowance rates under this section may divide the cost of the minimum basic uniform and continue a higher initial maximum uniform allowance for the year following the year the employee first becomes subject to the requirement to wear the uniform.

(d) Before establishing a higher initial maximum uniform allowance rate under this section, an agency shall publish in the FEDERAL REGISTER for notice and comment—

(1) A description and justification of the circumstances requiring a higher initial maximum uniform allowance rate;

(2) An estimate of the number of employees affected;

(3) The specific items required for the basic uniform and the average total uniform cost for the affected employees;

(4) The amount of the proposed higher initial maximum uniform allowance rate to be paid during the year the employee first becomes subject to the uniform requirement;

(5) The proposed effective date of the higher initial maximum uniform allowance rate; and,

(6) The intent of the agency (if any) to divide the cost of a minimum basic uniform and continue to make higher initial maximum basic uniform allowance payments in the year following the year the employee first becomes subject to the uniform requirement.

(e) So that OPM can evaluate agencies’ use of this authority and provide the Congress and others with information regarding the use of a higher initial maximum uniform allowance rate, each agency concerned shall maintain such other records and submit to OPM such other reports and data as OPM shall require.

(f) When OPM determines that an agency is using this authority inappropriately, OPM may require its prior approval before that agency establishes any future higher initial maximum uniform allowance rate.

(g) An agency may increase a higher initial maximum uniform allowance rate only as a result of an increase in the average total uniform cost for the affected employees. Before effecting an increase under this paragraph, an agency shall follow the notice and comment procedures required by paragraph (d) of this section.

(h) To establish a higher initial maximum uniform allowance rate applicable to the initial year a new style or type of minimum basic uniform is required for a category of employees, an agency shall use the higher initial maximum uniform allowance procedures provided under this section.

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas


Source: 55 FR 1373, Jan. 16, 1990, unless otherwise noted.

§ 591.201 Definitions.

In this subpart—

Agency means an Executive agency as defined in section 105 of title 5, United States Code, but does not include Government-controlled corporations. For the purposes of §591.212, “agency” also means:
includes the United States Postal Service.

Allowance area means a geographic area for which an allowance has been authorized. There may be more than one allowance area within a nonforeign area. Allowance areas are listed in §591.204 of this part.

Day or calendar day means any day of the year. Fractional days are considered whole days.

Differential area means a geographic area for which a post differential has been authorized. Differential areas are listed in §591.208 of this part.

Nonforeign allowance or allowance means a cost-of-living allowance established by the Office of Personnel Management and payable under section 5941 of title 5, United States Code, at a location in a nonforeign area where living costs are substantially higher than those in the Washington, DC, area.

Nonforeign area means the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, territories and possessions of the United States, and any additional areas located outside the contiguous United States that the Secretary of State designates as being within the scope of Part II of Executive Order 10,000, as amended. Nonforeign areas are listed in §591.202 of this part.

Nonforeign differential or differential means a post differential established by the Office of Personnel Management and payable under section 5941 of title 5, United States Code, at a location in a nonforeign area if conditions of environment differ substantially from conditions of environment in the contiguous United States and warrant its payment as a recruitment incentive.

Official duty station means the duty station for an employee's position of record as indicated on his or her most recent notification of personnel action. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the temporary duty station associated with that assignment is the employee's official duty station.

Rate of basic pay means the rate of pay fixed by statute for the position held by an individual before any deductions and exclusive of additional pay of any kind, such as overtime pay, night differential, extra pay for work on holidays, or allowances and differential, except that straight-time pay for regular overtime hours for firefighters under 5 U.S.C. 5545b (as provided in §550.1305(b) of this chapter) is included as basic pay.

Washington, DC, area or Washington area means the District of Columbia and all other areas in Maryland and Virginia included in the Washington DC-MD-VA Metropolitan Statistical Area as defined by the Office of Management and Budget.

§ 591.202 Areas covered.

The following areas are nonforeign areas:

(a) Alaska (including all the Aleutian islands east of longitude 167 degrees east of Greenwich).

(b) American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoa group east of longitude 171 degrees west of Greenwich, together with Swains Island).

(c) Canton and Enderbury Islands.

(d) Commonwealth of Puerto Rico.

(e) Virgin Islands of the United States.

(f) Guam.

(g) Commonwealth of the Northern Mariana Islands.

(h) Hawaii (including Ocean or Kure Island).

(i) Howland, Baker, and Jarvis Islands.

(j) Johnston Island and Sand Island.

(k) Kingman Reef.

(l) Midway Islands.

(m) Navassa Island.

(n) Palmyra Atoll.

(o) Wake Island.

(p) Any small guano islands, rocks, or keys that, in pursuance of action taken under the Act of Congress, August 18, 1856, are considered as appertaining to the United States.

(q) Any other islands to which the U.S. Government reserves claim, such as Christmas Island.
§ 591.203 Employees covered.

(a) This subpart applies to civilian employees whose rates of basic pay are fixed by statute and who are employed by an agency. The following pay plans are covered by this subpart:

1. General Schedule.
2. Veterans Health Services and Research Administration (Department of Veterans Affairs).
3. Foreign Service (including the Senior Foreign Service).
6. Senior Executive Service (including the Federal Bureau of Investigation—Drug Enforcement Administration Senior Executive Service).
7. Senior-level and scientific and professional positions paid under 5 U.S.C. 5376.

(b) This subpart may be applied, at the sole discretion of the employing agency, to civilian employees in other positions authorized by specific law applicable to such positions, consistent with the intent of 5 U.S.C. 5941.

§ 591.204 Establishment of allowance areas.

(a) The Office of Personnel Management (OPM) designates within nonforeign areas allowance areas where employees are eligible to receive a cost-of-living allowance by virtue of living costs that are substantially higher than those in the Washington, DC area. In establishing the limits of allowance areas, OPM considers:

1. The existence of a well defined economic community;
2. The availability of consumer goods and services;
3. The concentration of Federal employees covered by this supart; and
4. Unique circumstances related to a specific location.

(b) The following allowance areas have been established where an allowance is authorized to be paid:

4. The U.S. Virgin Islands.
5. Territory of Guam and Commonwealth of the Northern Mariana Islands.

(c) The head of a department or agency will submit requests in writing to OPM for the establishment or revision of allowance areas.

§ 591.205 Comparative cost index.

(a) OPM calculates allowance rates for each area by comparing costs of four categories of expenses in the area to those in the Washington, DC area. Two allowance rates are calculated for each area; Local Retail and Commissary/Exchange (see § 591.207 of this part). The four categories of expenses are:

1. Consumption goods and services.
2. Transportation.
3. Housing.
4. Miscellaneous expenses.

(b) Costs are determined for several income levels and home occupancy types (renter or owner), and averaged.

1. The cost of consumption goods and services (excluding transportation and housing) will be estimated from appropriate consumer expenditure data at several income levels for a standard family size. The cost of goods and services in the Washington, DC area will be adjusted by a price index reflecting the estimated price difference between the allowance area and the Washington, DC area.

(i) Goods and services surveyed. The types and amounts of consumption goods and services to be surveyed at each income level will be derived from appropriate consumer expenditure surveys. Whenever possible, exact brands...
§ 591.206 Establishment of allowance rates.

(a) OPM uses the comparative cost indexes for each allowance area to determine the allowance rates for that area. The range of values within which the index value falls determines the appropriate allowance rate, expressed as a percentage of the rate of basic pay for that category of eligible employee.

(b) The following table shows the comparative index range and corresponding allowance rate to be established for an allowance category under § 591.207 of this part:

<table>
<thead>
<tr>
<th>Index range</th>
<th>Allowance rate (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 105.0</td>
<td>0</td>
</tr>
<tr>
<td>105.0 to 106.2</td>
<td>5</td>
</tr>
<tr>
<td>106.3 to 108.7</td>
<td>7.5</td>
</tr>
<tr>
<td>108.8 to 111.2</td>
<td>10</td>
</tr>
<tr>
<td>111.3 to 113.7</td>
<td>12.5</td>
</tr>
<tr>
<td>113.8 to 116.2</td>
<td>15</td>
</tr>
<tr>
<td>116.3 to 118.7</td>
<td>17.5</td>
</tr>
<tr>
<td>118.8 to 121.2</td>
<td>20</td>
</tr>
<tr>
<td>121.3 to 123.7</td>
<td>22.5</td>
</tr>
<tr>
<td>123.8 and over</td>
<td>25</td>
</tr>
</tbody>
</table>

(c) Allowance area survey summaries, category indexes, and allowance rates are published as notices in the Federal Register.
Office of Personnel Management

§ 591.207 Allowance categories, eligibility, and adjustments.

(a) Section 205(b) of Executive Order 10,000, as amended, requires adjustments to allowance payments where warranted because of Federal quarters or special purchasing privileges. These adjustments occur only when the quarters or purchasing privileges are made available as a result of Federal civilian employment and result in substantially lower costs when compared to local area costs.

(1) Special purchasing privileges. Adjustments for access to commissaries and exchanges are incorporated into the comparative index calculations and the resulting allowance rates.

(2) Federal quarters. If the rent charged an employee by an agency for quarters is less than the net reasonable value rent, after appropriate adjustments, established as prescribed by the Office of Management and Budget, the difference between the rent charged and the reasonable value rent will be deducted from the allowance paid by the employing agency up to, but not exceeding, the amount of the allowance.

(b) The allowance categories that are established in each area are—

(1) “Local Retail,” which applies to those Federal employees who purchase goods and services from private retail establishments.

(2) “Commissary/Exchange,” which applies to those Federal employees who shop at private retail establishments, but who, as a result of their Federal civilian employment, also have unlimited access to commissary and exchange facilities. This category is established only in those allowance areas that have these facilities.

(c) Eligibility for access to commissary and exchange facilities is determined by the appropriate military department. Agencies shall obtain the information needed from employees to determine the applicable allowance category.

§ 591.208 Post differential.

(a) The post differential is based on:

(1) Extraordinarily difficult living conditions;

(2) Excessive physical hardship; or

(3) Notably unhealthful conditions.

(b) The places at which differentials are paid are—

(1) American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoa group east of longitude 171 degrees west of Greenwich, together with Swains Island);

(2) Guam;

(3) The Commonwealth of the Northern Mariana Islands;

(4) Johnston Island and Sand Island; and

(5) Midway Islands and Wake Island.

(c) New or revised post differential rates are published as notices in the Federal Register.


§ 591.209 Eligibility for a differential.

A department or agency will determine employee eligibility to receive a differential as follows:

(a) To be eligible to receive a differential:

(1) The employee must be a citizen or national of the United States;

(2) The employee’s residence in the area where the differential applies must be attributable to employment by the United States; and

(3) Any prior residence in the area must be because of employment by the United States or by U.S. firms, interests, or organizations.

(b) Subject to paragraph (a) of this section, the classes of persons eligible to receive differentials include, but are not limited to—

(1) Those recruited or transferred from outside the area where the differential applies.

(2) Those employed in the area where the differential applies but who—

(i) Were originally recruited from outside the area and have been in substantially continuous employment by other Federal agencies, contractors of Federal agencies, or international organizations in which the U.S. Government participates, and whose conditions of employment provide for their return transportation to places outside the differential area concerned; or

(ii) Were at the time of employment temporarily present in the differential area concerned for travel or formal
study and maintained residence outside the area during that period.

(3) Those who are not normally residents of the area where the differential applies and who are discharged from the military service of the United States in the area to accept employment there with an agency of the Federal Government.

§ 591.210 Payment of allowances and differentials.

(a) Allowances and differentials under this subpart are payable to an employee whose official duty station is in a nonforeign area for which an allowance or differential is authorized.

(b) Payment of an allowance or differential will begin on the effective date of the change in the employee's official duty station to a duty station within the allowance or differential area or on the effective date of the appointment in the case of local recruitment. An employee who is detailed for temporary duty in a nonforeign area (i.e., the employee's official duty station is outside the nonforeign area) is eligible for a differential, but not an allowance, except that payment of a differential shall not begin until after 42 consecutive calendar days of temporary duty in the differential area. Payment of an allowance or differential will cease—

(1) On separation;

(2) On the effective date of assignment or transfer to a new official duty station outside the allowance or differential area; or

(3) On the ending date of a detail, in the case of an employee on detail to temporary duty in a differential area.

(c)(1) Except as provided in paragraph (b)(2) of this section, allowances and differentials shall be calculated and paid as a percentage of an employee's hourly rate of basic pay, including a retained rate of pay under 5 U.S.C. 3594(c) or 5363, for those hours for which the employee receives basic pay, including all periods of paid leave, detail, or travel status outside the allowance or differential area. Allowances and differentials that an employee is receiving in accordance with this subpart at the time of separation or death shall be included in any lump-sum payment for accumulated and current accrued annual leave issued under sections 5551 or 5552 of title 5, United States Code.

(2) Payment of a differential during periods of paid leave or travel outside the differential area continues for the first 42 consecutive calendar days of the absence. Payment of allowances and differentials while absent from the post continues only if the employee returns to duty status in the area, unless the agency determines that—

(i) It is in the public interest not to return the employee to the duty station; or

(ii) The employee's failure to return to the duty station was due to compelling personal reasons or to circumstances over which the employee had no control.

(d) An employee assigned to an official duty station for which both an allowance and a differential are authorized under this subpart and eligible for both will receive the full amount of the allowance, plus so much of the differential as will not cause the combined total of allowance and differential to exceed 25 percent of the hourly rate of basic pay.

(e)(1) An allowance or a differential is not part of an employee's rate of basic pay for the purpose of computing entitlements to overtime pay, retirement, life insurance, or any other additional pay, allowance, or differential under title 5, United States Code.

(2) An allowance or differential is included in an employee's regular rate of pay for computing overtime pay entitlement under the Fair Labor Standards Act of 1938, as amended.

(f) Payment of an allowance or a differential is not an equivalent increase in pay within the meaning of 5 U.S.C. 5335.

§ 591.211 Periodic review.

In accordance with Executive Order 10,000, OPM reviews from time to time, but at least annually, the places designated, the rates fixed, and the regulations in this subpart that are prescribed for payment of allowances and differentials. This review is to make
warranted changes to ensure that payments under this subpart will continue only during the continuance of conditions justifying payment of allowances and differentials and will not in any instance exceed the amount justified. However, if program or methodology revisions would substantially reduce an established differential or allowance rate, then the rate of such additional compensation may be reduced gradually.

§ 591.212 COLA Partnership Pilot Project.

(a) Purpose and duration of COLA Partnership Pilot Project. The COLA Partnership Pilot Project is designed to assess the efficacy of a plan to increase agency and employee involvement in the allowance program. The pilot project shall be in effect for a period not to exceed 2 years from November 21, 1996.

(b) Purpose and establishment of committees. To assist OPM in reviewing and improving the allowance program and to help OPM, affected agencies, and their employees better understand issues relating to the compensation of Federal employees in the allowance areas, OPM may establish one or more COLA partnership committees in the allowance areas and in the Washington, DC, area. Committees established under this section function at the discretion of OPM and may be dissolved at any time. A committee may represent agencies and employees in more than one allowance area and will meet from time to time as requested by OPM.

(c) Composition of committees. Each committee shall be composed of one or more representatives of Federal agencies and labor organizations. All committee members shall be current full-time Federal employees performing official business of the Federal Government and will serve at their agencies’ and OPM’s discretion. All non-OPM committee members shall be from the area represented by the committee. The representatives shall be selected as follows:

(1) Agency representatives. (i) OPM will identify the largest agencies in terms of allowance recipients in the area represented by the committee. For the Washington, DC, area committee, if established, OPM will identify the largest agencies in terms of allowance recipients in all of the allowance areas. OPM will invite up to four agencies each to designate a representative to serve on the committee. In areas where a Federal Executive Association (FEA) or Federal Executive Board (FEB) is located, OPM will invite the FEA or FEB to nominate an FEA or FEB member employed by an agency not otherwise represented on the committee, and OPM will select the nominee in consultation with the nominee’s employing agency. In areas where there is no FEA or FEB, or where an FEA or EB declines to participate, OPM will invite one additional agency selected from among the other agencies in each committee area to designate a representative to serve on the committee on a 1-year rotational basis. To select this agency, OPM will use sampling with probability proportional to the size of the agency. If mutually agreeable among the agencies, they may select representatives using other means and may rotate committee positions among agencies on other than a 1-year rotational basis.

(ii) OPM will appoint one or more of its employees to serve on each COLA partnership committee.

(2) Employee representatives. OPM will identify the largest labor organizations (in terms of allowance recipients) in the area represented by the committee. For the Washington, DC, area committee, if established, OPM will identify the largest labor organizations in terms of allowance recipients in all of the allowance areas. OPM will invite up to four labor organizations each to nominate a representative to serve on the committee. OPM will further invite one additional labor organization selected from among the other labor organizations in each committee area to nominate a representative to serve on the committee on a 1-year rotational basis. To select this labor organization, OPM will use sampling with probability proportional to the size of the labor organization. If mutually agreeable among the labor organizations, they may nominate representatives using other means and may rotate
committee positions among labor organizations on other than a 1-year rotational basis. OPM will select committee members from among the nominees in consultation with the nominees' employing agencies.

(3) Postal Service. No committee shall have a representative from the United States Postal Service (USPS) unless USPS labor organizations have the opportunity to participate as provided by paragraph (g) of this section. No committee shall have more than one employee representative from USPS labor organizations.

(4) Other members. In consultation with the committee members, OPM may invite other current full-time Federal employees to serve on the committees. OPM will coordinate such invitations with the employing agencies.

(d) Functions of committees. COLA partnership committees may—

(1) Advise and assist OPM in planning living-cost surveys;

(2) Provide or arrange for observers for data collection during living-cost surveys;

(3) Advise and assist OPM in the review of survey data;

(4) Advise OPM on its administration of the COLA program, including survey methodology and other issues relating to the compensation of Federal employees in the allowance areas; and

(5) Assist OPM in the dissemination of information to affected employees about the living-cost surveys and the COLA program.

(e) Data collection observers. In consultation with the committees, OPM will determine the number of observers required to accompany OPM officials during the collection of living-cost data. All observers shall be from the local area and shall be full-time Federal employees performing official business of the Federal Government. The committees will nominate observers, and OPM will select from among these nominations in consultation with the nominees' employing agencies.

(f) Subcommittees. In consultation with the committees, OPM may establish one or more subcommittees to advise the committee on issues relating to the allowance areas and survey areas within the geographic area represented by the committee. If such subcommittees are established, they shall be composed of up to two agency representatives and two employee representatives from the local area, as well as one or more OPM representatives. OPM may, in consultation with the committee and subcommittee, invite additional Federal employees to serve on the subcommittee. Subcommittee agency and employee representatives shall be nominated and appointed in the same manner as committee members. All subcommittee members shall be current full-time Federal employees performing official business of the Federal Government.

(g) Agency release of employees for committee/subcommittee activities. Employers shall cooperate and release nominated employees for committee/subcommittee proceedings and activities unless the employers can demonstrate that exceptional circumstances directly related to the accomplishment of the work units' missions require their presence on their regular jobs. Employees serving as committee or subcommittee members are considered to be on official assignment to an interagency function, rather than on leave.

[61 FR 59177, Nov. 21, 1996]

APPENDIX A OF SUBPART B—PLACES AND RATES AT WHICH ALLOWANCES SHALL BE PAID

<table>
<thead>
<tr>
<th>Geographic coverage/ allowance category</th>
<th>Authorized allowance rate (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>State of Alaska</td>
<td></td>
</tr>
<tr>
<td>City of Anchorage and 80-kilometer (50-mile) radius by road:</td>
<td></td>
</tr>
<tr>
<td>All Employees</td>
<td>25.0</td>
</tr>
<tr>
<td>City of Fairbanks and 80-kilometer (50-mile) radius by road:</td>
<td></td>
</tr>
<tr>
<td>All Employees</td>
<td>25.0</td>
</tr>
<tr>
<td>City of Juneau and 80-kilometer (50-mile) radius by road:</td>
<td></td>
</tr>
<tr>
<td>All Employees</td>
<td>25.0</td>
</tr>
<tr>
<td>Rest of the State:</td>
<td></td>
</tr>
<tr>
<td>All Employees</td>
<td>25.0</td>
</tr>
<tr>
<td>State of Hawaii</td>
<td></td>
</tr>
<tr>
<td>City and County of Honolulu:</td>
<td></td>
</tr>
<tr>
<td>All Employees</td>
<td>25.0</td>
</tr>
<tr>
<td>County of Hawaii:</td>
<td></td>
</tr>
<tr>
<td>All Employees</td>
<td>15.0</td>
</tr>
<tr>
<td>County of Kauai:</td>
<td></td>
</tr>
<tr>
<td>All Employees</td>
<td>22.5</td>
</tr>
<tr>
<td>County of Maui and County of Kalawao:</td>
<td></td>
</tr>
<tr>
<td>All Employees</td>
<td>22.5</td>
</tr>
</tbody>
</table>
Definitions of Allowance Categories

The following are definitions of the allowance categories used in the tables in this appendix.

All Employees: This category covers all Federal employees eligible for an allowance under 5 U.S.C. 5941.

Local Retail: This category covers all Federal employees eligible for an allowance who do not have unlimited access to commissary and exchange facilities by virtue of their Federal civilian employment.

Commissary/Exchange: This category covers all Federal employees eligible for an allowance who have unlimited access to commissary and exchange facilities by virtue of their Federal civilian employment.

Note: Eligibility for access to military commissary and exchange facilities is determined by the appropriate military department. If an employee is furnished with these privileges for reasons associated with his or her Federal civilian employment, he or she will receive an identification card that authorizes access to such facilities. Possession of such an identification card is sufficient evidence that the employee uses the facilities.

[63 FR 56431, Oct. 21, 1998]

Appendix B of Subpart B—Places and Rates at Which Differentials Shall Be Paid

This appendix lists the places where a post differential has been approved and shows the differential rate to be paid to eligible employees. The differential percentage rate shown is paid as a percentage of an employee's rate of basic pay.

<table>
<thead>
<tr>
<th>Geographic coverage</th>
<th>Percentage differential rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoa group east of longitude 171° west of Greenwich, together with Swains Island)</td>
<td>25.0</td>
</tr>
<tr>
<td>Johnston Island and Sand Island</td>
<td>25.0</td>
</tr>
<tr>
<td>Midway Islands</td>
<td>25.0</td>
</tr>
</tbody>
</table>

Subpart C—Allowance Based on Duty at Remote Worksites


Source: 44 FR 55134, Sept. 25, 1979, unless otherwise noted.

§ 591.301 Purpose.

This subpart prescribes the regulations required by section 5942 of title 5, United States Code, for the payment of an allowance based on duty at remote worksites.

§ 591.302 Coverage.

(a) Agencies. This subpart applies to executive departments as defined in section 101 of title 5, United States Code, and to independent establishments as defined in section 104 of title 5, United States Code, but does not apply to Government corporations as defined in section 103 of title 5, United States Code.

(b) Employee. This subpart applies to each employee assigned to a permanent duty station at or within a designated remote duty post, except an employee who is a permanent or temporary resident at the remote duty post, and except foreign nationals employed at remote duty posts in foreign countries.

§ 591.303 Responsibilities of agencies and the Office of Personnel Management.

(a) Each agency is responsible for:

(1) Establishing and subsequently adjusting, in accordance with the provisions of this subpart, an allowance for each remote duty post at which the agency has employees and which meets the criteria in paragraph (a)(1) of § 591.304, as restricted by paragraph (b) of § 591.304;
(2) Advising the Office of Personnel Management of each establishment or adjustment of an allowance under paragraph (a)(1) of this section, and of the basis for such establishment or adjustment;

(3) Submitting a recommendation to the Office of Personnel Management to establish or adjust an allowance for each remote duty post at which the agency has employees and which meets the criteria in paragraph (a)(2) or (a)(3) or paragraph (c) of §591.304; and

(4) Advising the Office of Personnel Management in a timely manner of any changes in a duty post or commuting conditions or other factors that may affect an allowance that has been authorized by the Office of Personnel Management under paragraph (b) of this section.

(b) The Office of Personnel Management is responsible for:

(1) Establishing and subsequently adjusting, in accordance with the provisions of this subpart, an allowance for each remote duty post which does not meet the criteria in paragraph (a)(1) of §591.304, but does meet the criteria in paragraph (a)(2) or (a)(3) or paragraph (c) of §591.304;

(2) Reviewing each establishment or adjustment of an allowance by an agency under paragraph (a)(1) of this section to determine if such establishment or adjustment is in accordance with the provisions of this subpart; and

(3) Directing the termination or adjustment of any allowance determined by the Office to be not in accordance with the provisions of this subpart, which termination or adjustment shall be implemented by the agency without delay.

c) Each allowance which has been authorized by the Office of Personnel Management or the Civil Service Commission on or before February 1, 1979, and which is authorized for a remote duty post which meets the criteria in paragraph (a)(1) of §591.304, shall be subject to further adjustment by the agency under paragraph (a)(1) of this section as if such allowance had been initially authorized by the agency under that paragraph.

§ 591.304 Criteria for determining remoteness.

(a) Except as provided by paragraphs (b) and (c) of this section, a duty post shall be determined to be a remote duty post for basic allowance eligibility purposes when:

(1) Normal ground transportation (e.g., automobile, train, bus) is available on a daily basis and the duty post is 80 kilometers (50 miles), or more, one way from the nearest established community or suitable place of residence. Distance shall be computed in road or rail kilometers (miles) over the most direct route traveled from the center of the city, or other appropriate point for large cities or areas; or

(2) Daily commuting is impractical because the location of the duty post and available transportation are such that agency management requires employees to remain at the duty post for their workweek as a normal and continuing part of the conditions of employment; or

(3) Transportation may be accomplished only by boat, aircraft, or unusual conveyance, or under extraordinary conditions, and the distance, time, and commuting conditions result in expense, inconvenience, or hardship significantly greater than that encountered in metropolitan area commuting. A determination may only be made on an individual location basis.

(b) Except when the criteria in paragraph (a)(2) or (a)(3) of this section are met, the criteria in paragraph (a)(1) of this section are not met:

(1) When the duty post is within the boundary of a metropolitan area, a developed urban area, or community of sufficient size to provide adequate consumer facilities; and

(2) When the duty post is within 80 kilometers (50 miles) of the center of, or other appropriate point for large cities or areas, a metropolitan area, a developed urban area, or community of sufficient size to provide adequate consumer facilities. (This generally excludes a post of duty within 80 kilometers (50 miles) of any city of 5,000 or more population.)

(c) A determination of remoteness for a duty post outside the 50 United States will be made on an individual
Office of Personnel Management § 591.305

location basis, taking into consideration the distance, time, and commuting conditions, and the extent to which these factors result in significant expense, inconvenience, or hardship.

[44 FR 55134, Sept. 25, 1979, as amended by 58 FR 32278, June 9, 1993]

§ 591.305 Allowance rates.

(a) General. An allowance rate may not exceed $10 a day. An allowance rate shall be established for each post of duty determined to be remote under §591.304, and shall be terminated or adjusted as warranted. In determining the amount of the allowance rate, the following shall be considered:

(1) Transportation expenses incurred in commuting to the remote post of duty as compared to transportation expenses (including cost of public transportation service) representative of those incurred in metropolitan areas within the United States or overseas as appropriate as periodically determined by the Office of Personnel Management.

(2) Expenses incurred for lodging, meals, other services, and miscellaneous expenses when it is not feasible for an employee to commute daily as at duty posts determined under §591.304(a)(2).

(3) Inconvenience or hardship associated with commuting to the remote duty post taking into account such factors as travel time, road conditions and terrain, type and quality of vehicle, and climate conditions, and conditions that exist at those duty posts determined by the Office of Personnel Management to meet the criteria in §591.304(a)(2).

(4) Operational or workload demands, weather conditions, or other situations which require an employee to report to or remain at this post of duty substantially beyond his or her normal arrival or departure time with respect to those duty posts meeting the criteria in §591.304(a)(2).

(b) Authorized allowance rates. Each authorized allowance rate for each duty post may consist of up to three parts, separately stated as appropriate, and the authorized allowance rate shall be paid as provided in §591.306, but no employee may be paid more than $10 a day. The parts which make up the authorized allowance rate are:

(1) Transportation allowance—(i) Commuting by private motor vehicle. A transportation allowance schedule showing the daily transportation expense rate to be paid under the distances and conditions described, when commuting by private motor vehicle is set out as appendix A to this subpart and is incorporated in and made part of this section.

(ii) Travel by commercial or Government-provided transportation. The transportation allowance shall be limited to the cost of the service less normal cost for public transportation service in metropolitan areas.

(2) Inconvenience or hardship allowance. An allowance rate to compensate for hardship or inconvenience may not be considered unless the travel time normally exceeds one hour one way between the closest established community or suitable place or residence and the remote duty post. An allowance schedule covering land travel by motor vehicle, showing the daily rates to be paid under the time factors and conditions described, for inconvenience or hardship combined, is set out as appendix B to this subpart and is incorporated in and made part of this section.

(3) Other commuting situations. Notwithstanding paragraphs (b)(1) and (b)(2) of this section, when commuting is by boat, aircraft or an unusual conveyance, or under extraordinary conditions by motor vehicle, or involving factors or conditions unique to the duty post, the Office of Personnel Management shall establish the allowance based on the facts and circumstances of that individual remote duty post.

(4) Miscellaneous. When daily commuting is impractical as determined under §591.304(a)(2):

(i) The Office of Personnel Management may authorize a miscellaneous allowance, the amount to depend on such factors as miscellaneous expenses, living conditions that exist at the duty post, or inconvenience or hardship that may be associated with this type of employment environment. When employees are required to pay a fee for lodging, meals, or other services at the
§ 591.306 Employee eligibility for an allowance.

(a) An authorized allowance rate shall be paid to each employee with a permanent duty station at or within a remote post of duty approved under § 591.304, regardless of type of appointment or work schedule, only (1) when the employee travels the prescribed minimum distance and time, or is subject to prescribed minimum inconvenience or hardship factors, while commuting from the nearest established community or suitable place of residence and the remote duty post, or (2) the employee remains at the worksite at the direction of management because daily commuting is impractical.

(b) An employee shall be paid an authorized allowance rate for those days on which he or she incurs unusual expense in commuting to a remote post of duty or for those days on which he or she is subject to extraordinary inconvenience or hardship during the commuting.

(c) An employee who resides permanently, or temporarily for his or her own convenience at a remote duty post is not eligible for an authorized allowance rate during his or her period of residence.

§ 591.307 Payment of allowance rate.

(a) An authorized allowance rate is earned on a daily basis; however, where appropriate for administrative convenience, the rate may be averaged taking into consideration the number of non-commuting days over a period of time, and paid for each workday, excluding days in a nonpay status and period of extended absence.

(b) The transportation allowance is paid only when expense is incurred and at the lowest rate consistent with available transportation.

(c) The inconvenience or hardship allowance is paid regardless of eligibility for the transportation expense part of the allowance when the employee is otherwise eligible.

(d) Except as provided under § 591.305(b)(4)(ii), when the necessity for remaining at the post of duty for the workweek is the basis for the allowance under § 591.304(a)(2), the allowance rate is paid for each full day, or prorated for each part of a day, that the employee remains at the duty post.

(e) The transportation allowance prescribed by paragraph (b)(1)(i) of § 591.305, or other allowance as may be prescribed for commuting by private motor vehicle, may not be paid unless the officially approved work schedule of the employee precludes use of the transportation services that may be available at lower cost.

(f) An employee, who normally commutes on a daily basis, will not be disqualified from receiving an authorized allowance when he or she is officially required to remain overnight at the remote duty post, for one or more days on a temporary basis, because of the schedule of operations or the nature of assigned work.

(g) When a remote duty post is determined by the Office of Personnel Management under paragraph (a)(3) or (c) of § 591.304 as being basically eligible for an allowance, the Office of Personnel Management will determine the basis for payment of the allowance rate taking into consideration the facts and circumstances associated with commuting to the remote duty post.

§ 591.308 Relationship to additional pay payable under other statutes.

An allowance authorized under this subpart is in addition to any additional pay or allowances payable under other statutes. It shall not be considered part of the employee's rate of basic pay in computing additional pay or allowances payable under other statutes.

§ 591.309 Effective date for payment of allowances.

When an allowance is authorized for a remote duty post, the authorization shall specify the effective date that an
agency shall begin paying the allowance to its employees, except that a date earlier than January 8, 1971, may not be specified.

§591.310 Effect of regulations in this subpart on allowances established under previous statutes.

Regulations in this subpart do not require a reduction in the allowance rates authorized under previous statutes unless an adjustment is determined to be warranted on the basis of a change in facts and circumstances on which that previous allowance was established.

APPENDIX A OF SUBPART C—DAILY TRANSPORTATION ALLOWANCE SCHEDULE, COMMUTING OVER LAND BY PRIVATE MOTOR VEHICLE TO REMOTE DUTY POSTS

SCHEDULE I—Effective January 8, 1971, Through July 12, 1975

<table>
<thead>
<tr>
<th>Round trip distance in excess of 50 miles</th>
<th>Degree A commuting conditions</th>
<th>Degree B commuting conditions</th>
<th>Degree C commuting conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>up to 9 miles</td>
<td>$0.20</td>
<td>$0.22</td>
<td>$0.24</td>
</tr>
<tr>
<td>10 to 19</td>
<td>0.70</td>
<td>0.77</td>
<td>0.84</td>
</tr>
<tr>
<td>20 to 29</td>
<td>1.20</td>
<td>1.32</td>
<td>1.44</td>
</tr>
<tr>
<td>30 to 39</td>
<td>1.70</td>
<td>1.87</td>
<td>2.04</td>
</tr>
<tr>
<td>40 to 49</td>
<td>2.20</td>
<td>2.42</td>
<td>2.64</td>
</tr>
<tr>
<td>50 to 59</td>
<td>2.70</td>
<td>2.97</td>
<td>3.24</td>
</tr>
<tr>
<td>60 to 69</td>
<td>3.20</td>
<td>3.52</td>
<td>3.84</td>
</tr>
<tr>
<td>70 to 79</td>
<td>3.70</td>
<td>4.07</td>
<td>4.44</td>
</tr>
<tr>
<td>80 to 89</td>
<td>4.20</td>
<td>4.62</td>
<td>5.04</td>
</tr>
<tr>
<td>90 to 99</td>
<td>4.70</td>
<td>5.17</td>
<td>5.64</td>
</tr>
</tbody>
</table>

SCHEDULE II—Effective on or after July 13, 1975

<table>
<thead>
<tr>
<th>Round trip distance in excess of 50 miles</th>
<th>Degree A commuting conditions</th>
<th>Degree B commuting conditions</th>
<th>Degree C commuting conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>up to 9 miles</td>
<td>$0.30</td>
<td>$0.32</td>
<td>$0.34</td>
</tr>
<tr>
<td>10 to 19</td>
<td>1.10</td>
<td>1.12</td>
<td>1.19</td>
</tr>
<tr>
<td>20 to 29</td>
<td>1.80</td>
<td>1.92</td>
<td>2.04</td>
</tr>
<tr>
<td>30 to 39</td>
<td>2.55</td>
<td>2.72</td>
<td>2.89</td>
</tr>
<tr>
<td>40 to 49</td>
<td>3.30</td>
<td>3.52</td>
<td>3.74</td>
</tr>
<tr>
<td>50 to 59</td>
<td>4.13</td>
<td>4.32</td>
<td>4.68</td>
</tr>
<tr>
<td>60 to 69</td>
<td>4.80</td>
<td>5.12</td>
<td>5.44</td>
</tr>
<tr>
<td>70 to 79</td>
<td>5.55</td>
<td>5.92</td>
<td>6.29</td>
</tr>
<tr>
<td>80 to 89</td>
<td>6.30</td>
<td>6.72</td>
<td>7.14</td>
</tr>
<tr>
<td>90 to 99</td>
<td>7.05</td>
<td>7.52</td>
<td>7.99</td>
</tr>
</tbody>
</table>

SCHEDULE III—Effective on or after December 28, 1980

<table>
<thead>
<tr>
<th>Round-trip distance in excess of 80 kilometers (50 miles)</th>
<th>Degree A commuting conditions</th>
<th>Degree B commuting conditions</th>
<th>Degree C commuting conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 15 km (up to 9 mi)</td>
<td>$0.40</td>
<td>$0.42</td>
<td>$0.44</td>
</tr>
<tr>
<td>16 to 31 km (10 to 19 mi)</td>
<td>1.40</td>
<td>1.47</td>
<td>1.54</td>
</tr>
<tr>
<td>32 to 47 km (20 to 29 mi)</td>
<td>2.40</td>
<td>2.52</td>
<td>2.64</td>
</tr>
<tr>
<td>48 to 63 km (30 to 39 mi)</td>
<td>3.40</td>
<td>3.57</td>
<td>3.74</td>
</tr>
<tr>
<td>64 to 79 km (40 to 49 mi)</td>
<td>4.40</td>
<td>4.62</td>
<td>4.84</td>
</tr>
<tr>
<td>80 to 95 km (50 to 59 mi)</td>
<td>5.40</td>
<td>5.67</td>
<td>5.94</td>
</tr>
<tr>
<td>96 to 111 km (60 to 69 mi)</td>
<td>6.40</td>
<td>6.72</td>
<td>7.04</td>
</tr>
<tr>
<td>112 to 127 km (70 to 79 mi)</td>
<td>7.40</td>
<td>7.77</td>
<td>8.14</td>
</tr>
<tr>
<td>128 to 144 km (80 to 89 mi)</td>
<td>8.40</td>
<td>8.82</td>
<td>9.24</td>
</tr>
<tr>
<td>145 to 160 km (90 to 99 mi)</td>
<td>9.40</td>
<td>9.87</td>
<td>10.00</td>
</tr>
<tr>
<td>161 to 176 km (100 to 109 mi)</td>
<td>10.00</td>
<td>10.00</td>
<td>10.00</td>
</tr>
<tr>
<td>177 to 192 km (110 to 119 mi)</td>
<td>10.00</td>
<td>10.00</td>
<td>10.00</td>
</tr>
<tr>
<td>193 to 208 km (120 to 129 mi)</td>
<td>10.00</td>
<td>10.00</td>
<td>10.00</td>
</tr>
<tr>
<td>209 to 224 km (130 to 139 mi)</td>
<td>10.00</td>
<td>10.00</td>
<td>10.00</td>
</tr>
<tr>
<td>225 to 240 km (140 to 149 mi)</td>
<td>10.00</td>
<td>10.00</td>
<td>10.00</td>
</tr>
<tr>
<td>241 to 256 km (150 to 159 mi)</td>
<td>10.00</td>
<td>10.00</td>
<td>10.00</td>
</tr>
<tr>
<td>257 to 272 km (160 to 169 mi)</td>
<td>10.00</td>
<td>10.00</td>
<td>10.00</td>
</tr>
</tbody>
</table>

1 Under the statute, $10 a day is the maximum allowance.
Degree A Commuting Conditions
Good paved roads; climatic conditions cause intermittent driving difficulty.

Degree B Commuting Conditions
Roads typically fair but may be good for part of distance or may be unpaved for short distances; climatic conditions during part of a season, in relation to terrain, contribute to additional cost.

Degree C Commuting Conditions
Fair to poor roads; unpaved for part of distance, or travel over range; hilly or mountainous terrain; climatic conditions during most of a season contribute to additional cost.


APPENDIX B OF SUBPART C—DAILY INCONVENIENCE OR HARDSHIP ALLOWANCE SCHEDULE, COMMUTING OVER LAND BY MOTOR VEHICLE TO REMOTE DUTY POSTS

<table>
<thead>
<tr>
<th>Round trip distance in excess of 2 hours</th>
<th>Degree A commuting conditions</th>
<th>Degree B commuting conditions</th>
<th>Degree C commuting conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>up to 15 minutes</td>
<td>$0.50</td>
<td>$0.63</td>
<td>$0.75</td>
</tr>
<tr>
<td>16 to 30</td>
<td>1.00</td>
<td>1.25</td>
<td>1.50</td>
</tr>
<tr>
<td>31 to 45</td>
<td>1.50</td>
<td>1.88</td>
<td>2.25</td>
</tr>
<tr>
<td>46 to 60</td>
<td>2.00</td>
<td>2.50</td>
<td>3.00</td>
</tr>
<tr>
<td>61 to 75</td>
<td>2.50</td>
<td>3.13</td>
<td>3.75</td>
</tr>
<tr>
<td>76 to 90</td>
<td>3.00</td>
<td>3.75</td>
<td>4.50</td>
</tr>
<tr>
<td>91 to 105</td>
<td>3.50</td>
<td>4.38</td>
<td>5.25</td>
</tr>
<tr>
<td>106 to 120</td>
<td>4.00</td>
<td>5.00</td>
<td>6.00</td>
</tr>
<tr>
<td>121 to 135</td>
<td>4.50</td>
<td>5.63</td>
<td>6.75</td>
</tr>
<tr>
<td>136 to 150</td>
<td>5.00</td>
<td>6.25</td>
<td>7.50</td>
</tr>
<tr>
<td>151 to 165</td>
<td>5.50</td>
<td>6.88</td>
<td>8.25</td>
</tr>
<tr>
<td>166 to 180</td>
<td>6.00</td>
<td>8.13</td>
<td>9.00</td>
</tr>
</tbody>
</table>

Degree A Commuting Conditions
Good paved roads; climatic conditions, in relation to type and quality of vehicle, cause minimal discomfort during trip.

Degree B Commuting Conditions
Roads typically fair, but may be good for part of distance and possibly unpaved for short distances; climatic conditions during part of a season, in relation to type and quality of vehicle, result in moderate discomfort during trip.

Degree C Commuting Conditions
Fair to poor roads, unpaved for part of distance, climatic conditions during most of a season, in combination with such factors as type and quality of vehicle and terrain, result in unusual discomfort during trip.

§ 591.401 Purpose and applicability.
(a) Purpose. This subpart prescribes the regulations required by section 5942a of title 5, United States Code, to authorize payment of a separate maintenance allowance to assist an employee assigned to Johnston Island to meet the additional expenses of maintaining family members elsewhere who would normally reside with him or her because they cannot accompany the employee to Johnston Island. This subpart provides rules for determining which employees are eligible to receive the separate maintenance allowance, who qualifies as family members under the program, the method of payment, and payment amounts.

(b) Applicability. This subpart applies to an employee (as defined in 5 U.S.C. 2305) in an executive department (as defined in section 101 of title 5, United States Code) or an independent establishment (as defined in section 104 of title 5, United States Code) who is assigned to a post of duty at Johnston Island.


§ 591.402 Definitions.
Adult, a term used in the Department of State Standardized Regulations (Government Civilians, Foreign Areas), means a family member who is 21 years of age or older.

Family member means one or more of the following relatives of an employee who would normally reside with the employee except for circumstances warranting the granting of a separate maintenance allowance, but who does not receive from the Government an allowance similar to that granted to the employee and who is not deemed to be a family member of another employee for the purpose of determining the amount of a separate maintenance allowance or similar allowance.
(1) Children who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support, including natural children, step and adopted children, and those under legal guardianship or custody of the employee or the spouse when they are expected to be under such legal guardianship or custody at least until they reach 21 years of age and when dependent upon and normally residing with the guardian;
(2) Parents (including step and legally adoptive parents) of the employee or of the spouse when such parents are at least 51 percent dependent on the employee for support;
(3) Sisters and brothers (including step or adoptive sisters and brothers) of the employee or of the spouse, when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support; or
(4) Spouse, excluding a spouse independently entitled to and receiving a similar allowance.

Johnston Island, also called Johnston Atoll, is a possession of the United States located 717 nautical miles southwest of Honolulu, Hawaii.

Separate maintenance allowance means an allowance to assist an employee assigned to Johnston Island who is compelled by reason of dangerous, notably unhealthful, or excessively adverse living conditions at Johnston Island, or for the convenience of the Government, to meet the additional expense of maintaining family members at a location other than Johnston Island.

§ 591.406 Method of payment.
(a) Separate maintenance allowance rates are paid from the employee's date of arrival at Johnston Island to the employee's date of departure from Johnston Island. No deductions are necessary for days away from Johnston Island or for partial days. The separate maintenance allowance shall be computed and paid at daily rates as follows:
(1) Divide the annual rate of payment by the number of days in the applicable calendar year to obtain a daily rate (counting one half-cent and over as a whole cent);
(2) Multiply the daily rate by 14 to obtain a biweekly rate; and
(3) Multiply the daily rate by the number of days involved to obtain the rate for any period.
(b) A separate maintenance allowance is not part of an employee's rate of basic pay for any purpose.
(c) The rate for any pay period shall be computed at the daily rate applicable on the first day of that pay period.

§ 591.405 Responsibilities of agencies.
Agencies with employees stationed at Johnston Island may require reasonable verification of relationship and dependency.

§ 591.406 Records and reports.
So that the Office of Personnel Management can evaluate agencies' use of this authority and provide the Congress and others with information regarding the use of a nonforeign separate maintenance allowance, each
agency shall maintain such records and submit to the Office of Personnel Management reports and data as requested.

**PART 595—PHYSICIANS’ COMPARABILITY ALLOWANCES**

Sec.
595.101 General.
595.102 Coverage and exclusions.
595.103 Establishment of categories of physicians.
595.104 Determination of recruitment and retention problem.
595.105 Determination of amount of comparability allowance.
595.106 Termination of service agreement.
595.107 Approval of agency plans.
595.108 Reports.


_Source:_ 44 FR 40876, July 13, 1979, unless otherwise noted.

§ 595.101 General.

Section 5948 of title 5, United States Code, authorizes the payment of allowances to certain eligible Federal physicians who enter into service agreements with their agencies. These allowances are paid only in the case of categories of physicians for which the agency is experiencing recruitment and retention problems, and are fixed at the minimum amounts necessary to deal with such problems. The President has delegated regulatory responsibility for this program to the Director of the Office of Personnel Management, acting in consultation with the Director of the Office of Management and Budget. This part contains the regulations, criteria, and conditions which the Director of the Office of Personnel Management, acting in consultation with the Director of the Office of Management and Budget, has prescribed for the administration of the physicians’ comparability allowance program. This part supplements and implements the provisions of 5 U.S.C. 5948, and must be read together with that section of law.

§ 595.102 Coverage and exclusions.

(a) Subsection (g)(1) of 5 U.S.C. 5948 defines those covered by the physicians’ comparability allowance program as individuals employed as physicians under certain Federal pay systems listed in that section. For the purposes of this part, an individual is “employed as a physician” only if he or she is serving in a position the duties and responsibilities of which could not be satisfactorily performed by an incumbent who is not a physician.

(b) Subsection (b) of 5 U.S.C. 5948 prohibits the payment of physicians’ comparability allowances to certain physicians, including physicians who are reemployed annuitants. For the purpose of that subsection, a “reemployed annuitant” means an individual who is receiving or has title to and has applied for an annuity under any retirement program of the Government of the United States, or the government of the District of Columbia, on the basis of service as a civilian employee in the civil service.

§ 595.103 Establishment of categories of physicians.

(a) Under subsection (c) of 5 U.S.C. 5948, the head of each agency employing physicians is required to determine categories of physician positions for which there is a significant recruitment and retention problem, and physicians’ comparability allowances may be paid only to physicians serving in positions in such categories.

(b) In determining categories of physician positions, the head of each agency must, as a minimum, establish as separate categories the following types of positions:

1. Positions primarily involving the practice of medicine or direct service to patients, involving the performance of diagnostic, preventive, or therapeutic services to patients in hospitals, clinics, public health programs, diagnostic centers, and similar settings, but not including positions described in paragraph (b)(3) of this section;
2. Positions primarily involving the conduct of medical research and experimental work, including the conduct of medical work pertaining to food, drugs, cosmetics, and devices (or the review or evaluation of such medical research and experimental work), or the identification of causes or sources of disease or disease outbreaks;
3. Positions primarily involving the evaluation of physical fitness, or the
Office of Personnel Management

§ 595.105 Determination of amount of comparability allowance.

(a) The amount of the comparability allowance payable for each category of physician position established under §595.103 of this part must be the minimum amount necessary to deal with the recruitment and retention problem identified under §595.104 of this part for that category of position. In determining this amount, the agency head shall consider the relative earnings, responsibilities, expenses, workload, working conditions, conditions of employment, and personnel benefits for physicians in each category and for comparable physicians inside and outside the Federal Government.

(b) Under the subsection (a) of 5 U.S.C. 5948, the comparability allowance payable to any Government physician may not exceed $14,000 per annum for a physician who has served as a Government physician for 24 months or less, or $20,000 per annum for a physician who has served as a Government physician for more than 24 months. For the purpose of determining a physician’s length of service for this requirement, prior service as a Government physician need not have been continuous, but any periods of leave without pay may not be counted as service.

(c) Subsection (a) of 5 U.S.C. 5948 allows that for the purpose of determining length of service as a Government physician, service as a physician in the Veterans Administration, under sections 4104 or 4114 of title 38, or active service as a medical officer in the Commissioned Corps of the Public Health Service, under title II of the Public Health Service Act (42 U.S.C. ch. 6A), would be deemed service as a Government physician. Physicians currently employed under title 38 in the Veterans Administration or under title 42 as Commissioned Corps officers of the Public Health Service are not eligible for the allowances provided in 5 U.S.C. 5948.

(d) Under subsection (b)(1) of 5 U.S.C. 5948, a physician who is employed on less than a half-time or intermittent basis is excluded from the physicians’ comparability allowance program altogether. A physician who is employed on a regularly scheduled part-time basis
§ 595.106 Termination of service agreement.

(a) Under subsection (f) of 5 U.S.C. 5948, each service agreement entered into by an agency and a physician under the comparability allowance program may prescribe the terms under which the agreement may be terminated and the amount of allowance, if any, required to be refunded by the physician for each reason for termination. In the case of each service agreement covering a period of service of more than one year, the service agreement must include a provision that, if the physician completes more than one year of service pursuant to the agreement, but fails to complete the full period of service specified in the agreement either voluntarily or because of misconduct by the physician, the physician shall be required to refund the amount of allowance he or she has received under the agreement for the 26 weeks of service immediately preceding the termination (or for a longer period, if specified in the agreement).

§ 595.107 Approval of agency plans.

(a) An agency may not enter into any service agreement under 5 U.S.C. 5948 until the agency’s plan for implementing the physicians’ comparability allowance program has been submitted to and approved by the Office of Management and Budget in accordance with this section and such instructions as the Office of Management and Budget may prescribe.

(b) The agency shall submit to the Office of Management and Budget a complete description of its plan for implementing the physicians’ comparability allowance program, including the following:

1. An identification of the categories of physician positions that the agency has established under §595.103 of this part, and of the basis for such categories;

2. An explanation of the determination that a recruitment and retention problem exists for each such category, in accordance with the criteria in §595.104 of this part; and

3. An explanation of the basis for the amount of comparability allowance determined necessary for each category of physician position under §595.105 of this part.

(c) The Office of Management and Budget shall review each agency’s description of its plan for implementing the physicians’ comparability allowance program and determine if the plan is consistent with the provisions of 5 U.S.C. 5948 and the requirements of this part, and shall advise the agency within 45 calendar days of receipt of the agency’s plan by the Office of Management and Budget whether the plan is so consistent or what changes need to be made in the agency’s plan to make it so consistent.


§ 595.108 Reports.

(a) Because of the experimental and temporary nature of the physicians’ comparability allowance program, it will be necessary for the Office of Personnel Management to collect information on the administration of the program by the agencies, and on the effects the program has on the recruitment and retention of Government physicians. The Office of Personnel Management will prescribe the number, contents, timing, and format of the reports necessary to collect this information, and every agency using the physicians’ comparability allowance program is required to submit such reports as the Office may prescribe.
Office of Personnel Management

These reports must include, among other things, the following:

(1) A listing of the amount of allowance actually paid to the agency's physicians; and

(2) An assessment of the effect of the physicians' comparability allowance program on the agency's recruitment and retention of physicians.

(b) The Central Intelligence Agency and the National Security Agency are not subject to the requirements of this section.

PART 610—HOURS OF DUTY

Subpart A—Weekly and Daily Scheduling of Work

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610.102 Definitions.

WORKWEEK

610.111 Establishment of workweeks.

WORK SCHEDULES

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610.122 Variations in work schedules for educational purposes.
610.123 Travel on official time.

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610.202 Determining the holiday.

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610.302 Policy statement.
610.303 Definitions.
610.304 Coverage.
610.305 Standards.
610.306 Supplemental regulations.

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610.403 Definitions.
610.404 Requirement for time-accounting method.
610.405 Holiday for part-time employees on flexible work schedules.
610.406 Holiday for employees on compressed work schedules.
610.407 Premium pay for holiday work for employees on compressed work schedules.
610.408 Use of credit hours.
§ 610.111 Establishment of workweeks.

(a) The head of each agency, with respect to each full-time employee to whom this subpart applies, shall establish by regulation:

(1) A basic workweek of 40 hours which does not extend over more than 6 of any 7 consecutive days. Except as provided in paragraphs (b), (c), and (d) of this section, the regulation shall specify the days and hours within the administrative workweek that constitute the basic workweek.

(2) A regularly scheduled administrative workweek that consists of the 40-hour basic workweek established in accordance with paragraph (a)(1) of this section, plus the period of regular overtime work, if any, required of each employee. Except as provided in paragraphs (b), (c), and (d) of this section, the regulation, for purposes of leave and overtime pay administration, shall specify by days and hours of each day the periods included in the regularly scheduled administrative workweek that do not constitute a part of the basic workweek.

(b) When it is impracticable to prescribe a regular schedule of definite hours of duty for each workday of a regularly scheduled administrative workweek, the head of an agency may establish the first 40 hours of duty performed within a period of not more than 6 days of the administrative workweek as the basic workweek. A first 40-hour tour of duty is the basic workweek without the requirement for specific days and hours within the administrative workweek. All work performed by an employee within the first 40 hours is considered regularly scheduled work for premium pay and hours of duty purposes. Any additional hours of officially ordered or approved work within the administrative workweek are overtime work.

(c)(1) When an employee is paid additional pay under section 5545(c)(1) of title 5, United States Code, his regularly scheduled administrative workweek is the total number of regularly scheduled hours of duty a week.

(2) When an employee has a tour of duty which includes a period during which he remains at or within the confines of his station in a standby status rather than performing actual work his regularly scheduled administrative workweek is the total number of regularly scheduled hours of duty a week, including time in a standby status except that allowed for sleep and meals by regulation of the agency.

(d) When the head of an agency establishes a flexible or compressed work schedule under section 6122 or section 6127 of title 5, United States Code, he or she shall establish a basic work requirement for each employee as defined in section 6121 of title 5, United States Code. A flexible or compressed work schedule is a scheduled tour of duty and all work performed by an employee within the basic work requirement is considered regularly scheduled work for premium pay and hours of duty purposes.

(5 U.S.C. 5548 and 6101(c))


§ 610.121 Establishment of work schedules.

(a) Except when the head of an agency determines that the agency would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he or she shall provide that—

(1) Assignments to tours of duty are scheduled in advance of the administrative workweek over periods of not less than 1 week;

(2) The basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive;

(3) The working hours in each day in the basic workweek are the same;
Office of Personnel Management § 610.201

(4) The basic nonovertime workday may not exceed 8 hours;
(5) The occurrence of holidays may not affect the designation of the basic workweek; and
(6) Breaks in working hours of more than 1 hour may not be scheduled in a basic workday.

(b)(1) The head of an agency shall schedule the work of his or her employees to accomplish the mission of the agency. The head of an agency shall schedule an employee's regularly scheduled administrative workweek so that it corresponds with the employee's actual work requirements.

(2) When the head of an agency knows in advance of an administrative workweek that the specific days and/or hours of a day actually required of an employee in that administrative workweek will differ from those required in the current administrative workweek, he or she shall reschedule the employee's regularly scheduled administrative workweek to correspond with those specific days and hours. The head of the agency shall inform the employee of the change, and he or she shall record the change on the employee's time card or other agency document for recording work.

(3) If it is determined that the head of an agency should have scheduled a period of work as part of the employee's regularly scheduled administrative workweek and failed to do so in accordance with paragraphs (b)(1) and (2) of this section, the employee shall be entitled to the payment of premium pay for that period of work as regularly scheduled work under subpart A of part 550 of this chapter. In this regard, it must be determined that the head of the agency: (i) Had knowledge of the specific days and hours of the work requirement in advance of the administrative workweek, and (ii) had the opportunity to determine which employee had to be scheduled, or rescheduled, to meet the specific days and hours of that work requirement.

§ 610.122 Variations in work schedules for educational purposes.

(a) Notwithstanding §610.121, the head of an agency may authorize a special tour of duty of not less than 40 hours to permit an employee to take one or more courses in a college, university, or other educational institution when it is determined that:

(1) The courses being taken are not training under chapter 41 of title 5, United States Code;

(2) The rearrangement of the employee's tour of duty will not appreciably interfere with the accomplishment of the work required to be performed;

(3) Additional costs for personal services will not be incurred; and

(4) Completion of the courses will equip the employee for more effective work in the agency.

(b) The agency may not pay to the employee any premium pay solely because the special tour of duty authorized under this section causes the employee to work on a day, or at a time during the day, for which premium pay would otherwise be payable.

(c) OPM may from time to time request an agency to report on the use of this authority.

§ 610.123 Travel on official time.

Insofar as practicable travel during nonduty hours shall not be required of an employee. When it is essential that this be required and the employee may not be paid overtime under §550.112(e) of this chapter the official concerned shall record his reasons for ordering travel at those hours and shall, upon request, furnish a copy of his statement to the employee concerned.

Subpart B—Holidays


§ 610.201 Identification of holidays.

In this subpart, “holiday” has the same meaning given that word in section 2(a) of Executive Order 11582.

[42 FR 3297, J an. 18, 1977]
§ 610.202 Determining the holiday.

For purposes of pay and leave, the day to be treated as a holiday is determined as follows:

(a) When a holiday falls on a workday in an employee's basic workweek (as defined in §610.102), that workday is his or her holiday.

(b) When a holiday falls on a non-workday outside an employee's basic workweek, the day to be treated as his or her holiday is determined in accordance with sections 6103 (b) and (d) of title 5, United States Code, and Executive Order 11582.

(c) When an agency determines the holiday in accordance with section 6103(d) of title 5, United States Code, for an employee under a compressed work schedule, the agency shall select a workday for the holiday that is in the same biweekly pay period as the date of the actual holiday designated under 5 U.S.C. 6103(a) or in the biweekly pay period immediately preceding or following that pay period.


Subpart C—Administrative Dismissals of Daily, Hourly, and Piecework Employees


§ 610.301 Purpose.

The purpose of this subpart is to provide uniform and equitable standards under which regular employees paid at daily, hourly, or piecework rates may be relieved from duty without charge to leave or loss of pay.

§ 610.302 Policy statement.

The authority in this subpart may be used only to the extent warranted by good administration for short periods of time not generally exceeding 3 consecutive work days in a single period of excused absence. This authority may not be used in situations of extensive duration or for periods of interrupted or suspended operations such as ordinarily would be covered by the scheduling of leave, furlough, or the assignment of other work. Insofar as practicable, each administrative order issued under this subpart shall provide benefits for regular employees paid at daily, hourly, or piecework rates similar to those provided for employees paid at annual rates.

§ 610.303 Definitions.

In this subpart:

Administrative order means an order issued by an authorized official of an agency relieving regular employees from active duty without charge to leave or loss of pay.

Regular employees means employees paid at daily, hourly, or piecework rates who have a regular tour of duty, and whose appointments are not limited to 90 days or less or who have been currently employed for a continuous period of 90 days under one or more appointments without a break in service.

§ 610.304 Coverage.

This subpart applies to regular employees of the Federal Government paid at daily, hourly, or piecework rates. This subpart does not apply to experts and consultants.

§ 610.305 Standards.

An administrative order may be issued under this subpart when:

(a) Normal operations of an establishment are interrupted by events beyond the control of management or employees;

(b) For managerial reasons, the closing of an establishment or portions thereof is required for short periods; or

(c) It is in the public interest to relieve employees from work to participate in civil activities which the Government is interested in encouraging.

(d) The circumstances are such that an administrative order under paragraph (a), (b), or (c) of this section is not appropriate and the agency under its regulations excuses, or is authorized to excuse, without charge to leave or loss of pay, employees paid on an annual basis.

[33 FR 12474, Sept. 4, 1968, as amended at 34 FR 2479, Feb. 21, 1969]
§ 610.306 Supplemental regulations.
Each agency is authorized to issue supplemental regulations not inconsistent with this subpart.
[33 FR 12474, Sept. 4, 1968, as amended at 34 FR 2479, Feb. 21, 1969]

Subpart D—Flexible and Compressed Work Schedules

Authority: 5 U.S.C. 6131(a).
Source: 48 FR 44060, Sept. 27, 1983, unless otherwise noted.

§ 610.401 General.
This subpart contains regulatory requirements prescribed by the Office of Personnel Management to implement certain provisions of subchapter 11 of chapter 61 of title 5, United States Code. These regulations supplement that subchapter and must be read together with it.

§ 610.402 Coverage.
The regulations contained in this subpart apply only to flexible work schedules and compressed work schedules established under subchapter 11 of chapter 61 of title 5, United States Code.

§ 610.403 Definitions.
In this subpart, Agency, Credit Hours, and Employee have the meaning given these terms in section 6121 of title 5, United States Code.
[58 FR 58262, Nov. 1, 1993]

§ 610.404 Requirement for time-accounting method.
An agency that authorizes a flexible work schedule or a compressed work schedule under this subpart shall establish a time-accounting method that will provide affirmative evidence that each employee subject to the schedule has worked the proper number of hours in a biweekly pay period.

§ 610.405 Holiday for part-time employees on flexible work schedules.
If a part-time employee is relieved or prevented from working on a day within the employee’s scheduled tour of duty that is designated as a holiday by Federal statute or Executive order, the employee is entitled to basic pay with respect to the holiday for the number of hours the employee is scheduled to work on that day, not to exceed 8 hours. When a holiday falls on a non-workday of a part-time employee, he or she is not entitled to an in-lieu-of day for that holiday.

§ 610.406 Holiday for employees on compressed work schedules.
(a) If a full-time employee is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, the employee is entitled to basic pay for the number of hours of the compressed work schedule on that day.
(b) If a part-time employee is relieved or prevented from working on a day within the employee’s scheduled tour of duty that is designated as a holiday by Federal statute or Executive order, the employee is entitled to basic pay for the number of hours of the compressed work schedule on that day. When a holiday falls on a non-workday of a part-time employee, he or she is not entitled to an in-lieu-of day for that holiday.

§ 610.407 Premium pay for holiday work for employees on compressed work schedules.
An employee on a compressed schedule who performs work on a holiday is entitled to basic pay, plus premium pay at a rate equal to basic pay, for the work that is not in excess of the employee’s compressed work schedule for that day. For hours worked on a holiday in excess of the compressed work schedule, a full-time employee is entitled to overtime pay under applicable provisions of law and a part-time employee is entitled to straight time pay or overtime pay, depending on whether the excess hours are nonovertime hours or overtime hours.

§ 610.408 Use of credit hours.
Members of the Senior Executive Service (SES) may not accumulate credit hours under an alternative work schedule. Any credit hours accumulated in the SES prior to December 1, 1993, must be used within 6 months of that date.
[58 FR 58262, Nov. 1, 1993]
PART 630—ABSENCE AND LEAVE

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Source: 33 FR 12475, Sept. 4, 1968, unless otherwise noted.

Subpart A—General Provisions

630.101 Responsibility for administration.

The head of an agency having employees subject to this part is responsible for the proper administration of this part so far as it pertains to employees under his jurisdiction, and for maintaining an account of leave for each employee in accordance with methods prescribed by the General Accounting Office.

[34 FR 13655, Aug. 26, 1969]

Subpart B—Definitions and General Provisions for Annual and Sick Leave

630.201 Definitions.

(a) In section 6301(2)(iii) of title 5, United States Code, the term temporary employee engaged in construction work at an hourly rate means an employee hired on a temporary basis solely for the purpose of work on a specific construction project and paid on an hourly rate.

(b) In subparts B through G of this part:

Accrued leave means the leave earned by an employee during the current leave year that is unused at any given time in that year.

Accumulated leave means the unused leave remaining to the credit of an employee at the beginning of the leave year.

Employee means an employee to whom subchapter I of chapter 63 of title 5, United States Code, applies.

Family member means the following relatives of the employee: (1) Spouse, and parents thereof; (2) Children, including adopted children and spouses thereof; (3) Parents; (4) Brothers and sisters, and spouses thereof; and (5) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Health care provider has the meaning given that term in § 630.1202.

Leave year means the period beginning with the first day of the first complete pay period in a calendar year and
§ 630.202 Full biweekly pay period; leave earnings.

(a) Full-time employees. A full-time employee earns leave during each full biweekly pay period while in a pay status or in a combination of a pay status and a nonpay status.

(b) Part-time employees. Hours in a pay status in excess of an agency's basic working hours in a pay period are disregarded in computing the leave earnings of a part-time employee.

§ 630.203 Pay periods other than biweekly.

An employee paid on other than a biweekly pay period basis earns leave on a pro rata basis for a full pay period.

§ 630.204 Fractional pay periods.

When an employee's service is interrupted by a non-leave-earning period, he earns leave on a pro rata basis for each fractional pay period that occurs within the continuity of his employment.

§ 630.205 [Reserved]

§ 630.206 Minimum charge.

(a) Unless an agency establishes a minimum charge of less than one hour, or establishes a different minimum charge through negotiations, the minimum charge for leave is one hour, and additional charges are in multiples thereof. If an employee is unavoidably or necessarily absent for less than one hour, or tardy, the agency, for adequate reason, may excuse him without charge to leave.

(b) When an employee is charged with leave for an unauthorized absence or tardiness, the agency may not require him to perform work for any part of the leave period charged against his account.

§ 630.207 Travel time.

The travel time granted an employee under section 6303(d) of title 5, United States Code, is inclusive of the time necessarily occupied in traveling to and from his post of duty and (a) the United States, or (b) his place of residence, which is outside the area of employment, in the Commonwealth of Puerto Rico or the territories or possessions of the United States. The employee shall designate his place of residence in his request for leave under section 6303(d) of title 5, United States Code.

§ 630.208 Reduction in leave credits.

(a) When the number of hours in a nonpay status in a full-time employee's leave year equals the number of basepay hours in a pay period, the agency shall reduce his credits for leave by an amount equal to the amount of leave the employee earns during the pay period. When the employee's number of hours of nonpay status does not require a reduction of leave credits, the agency shall drop
§ 630.211 Exclusion of Presidential appointees.

(a) Authority. (1) Section 6301(2)(xi) of title 5, United States Code, authorizes the President to exclude certain Presidential appointees in the executive branch or the government of the District of Columbia from the annual and sick leave provisions of subchapter I of chapter 63 of title 5, United States Code, and from the related provisions of this part.

(2) The President, by Executive Order 10540, as amended, has delegated to the Office of Personnel Management the responsibility for making exclusions under section 6301(2)(xi), and the Office of Personnel Management has delegated responsibility to the head of each agency consistent with the provisions of this section.

(3) Presidential appointees in positions where the rate of basic pay is equal to or exceeds the rate for level V of the Executive Schedule are already excluded from the annual and sick leave provisions by 5 U.S.C. 6301(2)(x). Therefore, no further action by an
agency is necessary to exclude these appointees.

(b) Criteria for exclusions. The head of an agency may exclude an officer in the agency from the annual and sick leave provisions only if the officer meets all of the following criteria:

1. The officer is a Presidential appointee;
2. The officer is not a United States attorney or United States marshal; and
3. The officer’s responsibilities for carrying out the duties of the position continue outside normal duty hours and while away from the normal duty post.

(c) Revocation of exclusion. The head of an agency may revoke an exclusion from the annual and sick leave provisions which was made under this section.

(d) Reports. The head of an agency must report any exclusion, or revocation of an exclusion, authorized under this section to the Office of Personnel Management.

(e) Continuation of previous authorizations. Any officer in an agency who was excluded by action of the President or the Civil Service Commission prior to February 15, 1979, from the annual and sick leave provisions under the authority of 5 U.S.C. 6301(2)(xi) shall continue to be excluded from annual and sick leave unless the exclusion is revoked by the agency under the provisions of this section.

§ 630.212 Use of annual leave to establish initial eligibility for retirement or continuation of health benefits.

(a) An employee may elect to use annual leave and remain on the agency’s rolls in order to establish initial eligibility for immediate retirement under 5 U.S.C. 8336, 8412, or 8414, and/or to establish initial eligibility under 5 U.S.C. 8905 to continue health benefits coverage into retirement, as provided in:

1. Section 351.606(b)(1) for an employee who would otherwise have been separated by reduction in force procedures under part 351 of this chapter; or
2. Section 351.606(b)(2) of this chapter for an employee who would otherwise have been separated by adverse action procedures under authority of part 752 of this chapter because of the employee’s decision to decline relocation (including transfer of function).

(b)(1) Annual leave that may be used for the purposes described in paragraph (a) of this section includes all accumulated, accrued, and restored annual leave to the employee's credit prior to the effective date of the reduction in force or relocation (including transfer of function) and annual leave earned by an employee while in a paid leave status after the effective date of the reduction in force or relocation (including transfer of function).

(2) Annual leave that is advanced to an employee under 5 U.S.C. 6302(d), including any advance annual leave that may be credited to an employee’s leave account after the effective date of the reduction in force or relocation (including transfer of function), may not be used for purpose of this section.

(c) For purposes of this section, the employing agency may approve the use of any or all annual leave donated to an employee under part 630, subpart I, of this chapter (Voluntary Leave Transfer Program), or made available to the employee under part 630, subpart J, of this chapter (Voluntary Leave Bank Program), as of the effective date of the reduction in force or relocation.

62 FR 10683, Mar. 10, 1997
Office of Personnel Management

§ 630.302 Maximum annual leave accumulation—forty-five day limitation.

(a) The effective date on which an employee (otherwise eligible thereunder) becomes subject to section 6304(b) of title 5, United States Code, is the:

(1) Date of his entry on duty when he is employed locally;
(2) Date of his arrival at a post of regular assignment for duty; or
(3) Date on which he begins to perform duty in an area outside the United States and the area of recruitment or from which transferred, when the employee is required to perform duty en route to his post of regular assignment for duty.

(b) Subject to section 6304(c) of title 5, United States Code, the maximum amount of annual leave that may be carried forward into the next leave year by an employee who is transferred or reassigned to a position in which he

(1) Annual leave credited to an employee shall be based on the amount of annual leave accumulated by the employee as of the end of the pay period preceding the first pay period beginning after October 13, 1994. The credited leave shall exclude—

(i) Any annual leave restored to the employee under 5 U.S.C. 6304(d); and
(ii) Any annual leave advanced to the employee under 5 U.S.C. 6302(d) that had not yet been earned.

(2) Annual leave credited to an employee that is in excess of 90 days (720 hours) shall be subject to reduction in the same manner as provided in 5 U.S.C. 6304(c) until the employee’s accumulated annual leave is equal to or less than 90 days (720 hours). For the 1994 leave year, 5 U.S.C. 6304(c) shall be applied only for leave earned and used between the start of the first pay period beginning after October 13, 1994, and the end of the 1994 leave year.

(e) Agencies shall notify affected employees and maintain records on the accumulated annual leave credited to each employee under paragraph (d) of this section and on any reductions in the credited annual leave made under 5 U.S.C. 6304(c). If the employee transfers to another agency, such records shall be provided to the gaining agency.

[59 FR 65705, Dec. 21, 1994, as amended at 60 FR 33328, June 28, 1995]
§ 630.303 Part-time employees; earnings.

A part-time employee for whom there has been established in advance a regular tour of duty on 1 or more days during each administrative workweek, and a part-time employee on a flexible work schedule for whom there has been established only a biweekly work requirement, earn annual leave as follows:

(a) An employee with less than 3 years of service earns 1 hour of annual leave for each 20 hours in a pay status.

(b) An employee with 3 but less than 15 years of service earns 1 hour of annual leave for each 13 hours in a pay status.

(c) An employee with 15 years or more of service earns 1 hour of annual leave for each 10 hours in a pay status.


§ 630.304 Accumulation limitation for part-time employees.

A part-time employee may accumulate not more than 240 or 360 hours' annual leave on the same basis that a full-time employee may accumulate not more than 30 or 45 days' annual leave.

§ 630.305 Designating agency official to approve exigencies.

Before annual leave may be restored under 5 U.S.C. 6304, the determination that an exigency is of major importance and that therefore annual leave may not be used by employees to avoid forfeiture must be made by the head of the agency or someone designated to act for him or her on this matter. Except where made by the head of the agency, the determination may not be made by any official whose leave would be affected by the decision.

[53 FR 42933, Oct. 25, 1988]

§ 630.306 Time limit for use of restored annual leave.

(a) Except as otherwise authorized under paragraphs (b) and (c) of this section or other regulation, annual leave restored under 5 U.S.C. 6304(d) must be scheduled and used not later than the end of the leave year ending 2 years after:
Office of Personnel Management § 630.309

(1) The date of restoration of the annual leave forfeited because of administrative error; or
(2) The date fixed by the agency head, or his or her designee, as the termination date of the exigency of the public business that resulted in forfeiture of the annual leave; or,
(3) The date the employee is determined to be recovered and able to return to duty if the leave was forfeited because of sickness.

(b) Annual leave restored to an employee under 5 U.S.C. 6304(d)(3) must be scheduled and used within the time limits prescribed in paragraphs (b)(1) and (b)(2) of this section:

(1) A full-time employee shall schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date the employee is no longer subject to 5 U.S.C. 6304(d)(3). The agency shall extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof.

(2) A part-time employee shall schedule and use excess annual leave in an amount equal to or less than 20 percent of the number of hours in the employee's scheduled annual tour of duty by the end of the leave year in progress 2 years after the date the employee is no longer subject to 5 U.S.C. 6304(d)(3). The agency shall extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the number of hours in the employee's scheduled annual tour of duty.

(c) The time limits established under paragraphs (a) and (b) of this section for using restored annual leave accounts shall not apply for the entire period during which an employee is subject to 5 U.S.C. 6304(d)(3). When coverage under 5 U.S.C. 6304(d)(3) terminates during a leave year, the employee shall make a reasonable effort to comply with the scheduling requirement in paragraph (a) of this section. The head of the agency or his or her designee may exempt employees from the advance scheduling requirement in paragraph (a) of this section if coverage under 6304(d)(3) terminated during the leave year and the employee was unable to comply with the advance scheduling requirement due to circumstances beyond his or her control.


§ 630.308 Scheduling of annual leave.

(a) Except as provided in paragraph (b) of this section, before annual leave forfeited under section 6304 of title 5, United States Code, may be considered for restoration under that section, use of the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year.

(b) The requirement for advance scheduling of annual leave in paragraph (a) of this section shall not apply to an employee who is covered by 5 U.S.C. 6304(d)(3). When coverage under 5 U.S.C. 6304(d)(3) terminates during a leave year, the employee shall make a reasonable effort to comply with the scheduling requirement in paragraph (a) of this section. The head of the agency or his or her designee may exempt employees from the advance scheduling requirement in paragraph (a) of this section if coverage under 6304(d)(3) terminated during the leave year and the employee was unable to comply with the advance scheduling requirement due to circumstances beyond his or her control.


§ 630.309 Time limit for use of restored annual leave—extended exigency of the public business.

(a) Annual leave restored under 5 U.S.C. 6304(d)(3) because of an extended exigency, as defined in paragraph (b) of this section, must be scheduled and used within a time period that equals twice the number of full calendar years, or parts thereof, that the exigency existed. This time period begins at the beginning of the leave year following the leave year in which the exigency is declared to be ended.

(b) An extended exigency means an exigency of such significance as to—

(1) Threaten the national security, safety, or welfare;
(2) Last more than 3 calendar years;
§ 630.401  Grant of sick leave.

(a) Subject to paragraphs (b) through (e) of this section, an agency shall grant sick leave to an employee when the employee—

(1) Receives medical, dental, or optical examination or treatment;

(2) Is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth;

(3) Provides care for a family member who is incapacitated as the result of physical or mental illness, injury, pregnancy, or childbirth or who receives medical, dental or optical examination or treatment;

(4) Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;

(5) Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or

(6) Must be absent from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

(b) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraphs (a)(3) and (4) of this section may not exceed a total of 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's scheduled tour of duty each week), the employee concerned shall retain in his or her sick leave account a balance of at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount equal to twice the average number of hours in the employee's scheduled tour of duty each week). No sick leave may be advanced under 5 U.S.C. 6307(d) for the purpose of meeting the requirement to retain a minimum sick leave balance or for using additional sick leave for the purposes described in paragraphs (a)(3) and (4) of this section when such use would otherwise cause the employee's sick leave balance to fall below the minimum required.

(d) When sick leave is granted to an employee under the condition specified in paragraph (c) of this section, the amount of sick leave retained in the employee's sick leave account shall, in each instance, be at least equal to the minimum prescribed by paragraph (c) of this section after deducting the amount to be used for the purposes described in paragraphs (a)(3) and (4) of this section.

(e) If the number of hours in the employee's tour of duty is changed during the leave year, the employee's entitlement to use sick leave for the purposes described in paragraphs (a)(3) and (4) of this section shall be recalculated based on the employee's new tour of duty.

§ 630.402  Application for sick leave.

An employee shall file a written application for sick leave within such time limits as the agency may require. An employee shall request advance approval for sick leave for the purposes of receiving medical, dental, or optical examination or treatment and, to the extent possible, for the purposes described in §630.401(a)(3), (4), and (6).

§ 630.403 Supporting evidence.

An agency may grant sick leave only when supported by evidence administratively acceptable. Regardless of the duration of the absence, an agency may consider an employee's certification as to the reason for his or her absence as evidence administratively acceptable. However, for an absence in excess of 3 workdays, or for a lesser period when determined necessary by an agency, the agency may also require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the purposes described in §630.401(a).

[59 FR 62271, Dec. 2, 1994]

§ 630.404 Limitation on advance sick leave.

When an employee is serving under a limited appointment or one which will be terminated on a specified date, an agency may advance sick leave to him up to the total sick leave which he would otherwise earn during the term of his appointment. For the purposes of this section, an employee serving a probationary or trial period is not serving under a limited appointment.

§ 630.405 Use of sick leave during annual leave or to become eligible for donated leave.

(a) Subject to §630.401(b) through (e), an agency may grant sick leave during a period of annual leave for any of the purposes described in §630.401(a).

(b) An employee's entitlement to use sick leave to care for a family member under §630.401 shall be considered as available paid leave for the purpose of determining an employee's eligibility to become a leave recipient under the voluntary leave transfer and leave bank program established under subchapters III and IV of title 5, United States Code, if the medical emergency involves a family member of the employee. This determination shall be made for any application to be a leave recipient approved on or after December 2, 1994.

(c) In the case of an employee already in a shared leave status on December 2, 1994, under the voluntary leave transfer or leave bank programs established under subchapters III and IV of title 5, United States Code, any sick leave available to care for a family member under §630.401 shall be used, if the medical emergency involves a family member of the employee, before continuing to use transferred annual leave or annual leave withdrawn from a leave bank.

[59 FR 62271, Dec. 2, 1994]

§ 630.406 Part-time employees; earnings.

A part-time employee earns 1 hour of sick leave for each 20 hours in a pay status.

§ 630.407 Sick leave used in computation of annuity.

Sick leave which is used in the computation of annuity for an employee shall be charged against his sick leave account and may not thereafter be used, transferred, or recredited.

[34 FR 17617, Oct. 31, 1969]

§ 630.408 Records and reports.

(a) Beginning with leave year 1995, each agency shall maintain records concerning the use of sick leave to care for a family member or to make arrangements for or attend the funeral of a family member under §630.401(a) (3) and (4) and shall report such information as may be required by the Office of Personnel Management (OPM) for the purpose of evaluating the use of sick leave.

(b) Beginning with leave year 1995, each agency shall maintain the following information by leave year for each employee using sick leave for the purpose described in §630.401(a) (3) or (4):

(1) The grade or pay level and gender of each employee;

(2) The total number of hours of sick leave used by each employee—

(i) For the purposes described in §630.401(a) (3) or (4); and

(ii) For all other purposes described in §630.401(a); and

(3) Any additional information OPM may require.

[59 FR 62271, Dec. 2, 1994]
§ 630.409 Substitution of sick leave for annual leave for adoption-related purposes.

(a) Upon the written request of an employee under the procedures set forth in paragraph (b) of this section, an individual who is employed by the Federal Government on September 30, 1994, or who is reemployed by the Federal Government on or after September 30, 1994, in a position covered by subchapter I of chapter 63 of title 5, United States Code, may elect to substitute his or her accrued and accumulated sick leave for all or any portion of any annual leave used for purposes relating to the adoption of a child between September 30, 1991, and September 30, 1994.

(b) An employee's written request under paragraph (a) of this section to substitute any accrued and accumulated sick leave for annual leave used for adoption-related purposes must be submitted to his or her employing agency by September 30, 1996. The employee's written request shall—

1. Specify the period(s) and amount(s) of annual leave involved;

2. Include copies of any available contemporaneous earnings and leave statement(s) or other contemporaneous documentation acceptable to the agency that specifies the period(s) and amount(s) of annual leave used by the employee for purposes relating to the adoption of a child between September 30, 1991, and September 30, 1994;

3. Specify the amount(s) of accrued and accumulated sick leave to be substituted under paragraph (a)(1) of this section; and

4. Include evidence of the adoption that is administratively acceptable to the employing agency.

(c) In the absence of a written request by the employee that meets the requirements of paragraph (b) of this section, no substitution of sick leave may be approved under this section.

(d) Within a reasonable period of time after receiving an employee's written request that meets the requirements set forth in paragraph (b) of this section, the employing agency shall—

1. Deduct from the employee's sick leave account any amount(s) of accrued and accumulated sick leave the employee elects to substitute for annual leave used for adoption-related purposes between September 30, 1991, and September 30, 1994, that is supported by written documentation acceptable to the employing agency; and

2. Credit the employee's annual leave account with an amount of annual leave equal to the amount of sick leave the employee elects to substitute under paragraphs (a) and (b) of this section.

(e) If the agency determines that insufficient written documentation exists to honor the employee's request, the employing agency shall inform the employee of this determination in writing.

(f) Any annual leave credited to an employee's current annual leave account under paragraph (d)(2) of this section shall be available for use by the employee on or after the date the annual leave is credited in the same manner and for the same purposes as the employee's current accrued and accumulated annual leave. The annual leave credited to an employee under this section may not be substituted for any period of otherwise paid leave or leave without pay used prior to the date the annual leave is credited to the employee's annual leave account under paragraph (d)(2) of this section.

[59 FR 62274, Dec. 2, 1994]

Subpart E—Recredit of Leave

§ 630.501 Annual leave recredit.

(a) When an employee transfers between positions under subchapter I of chapter 63 of title 5, United States Code, the agency from which he transfers shall certify his annual leave account to the employing agency for credit or charge.

(b) When annual leave is transferred between different leave systems under section 6308 of title 5, United States Code, or is recredited under a different leave system as the result of a refund under section 6306 of that title, 7 calendar days of annual leave are deemed equal to 5 workdays of annual leave.

[35 FR 18581, Dec. 8, 1970]

§ 630.502 Sick leave recredit.

(a) When an employee transfers between positions under subchapter I of chapter 63 of title 5, United States
§ 630.503 Leave from former leave systems.

An employee who earned leave under the leave acts of 1936 or any other leave system merged under subchapter I of chapter 63 of title 5, United States Code, is entitled to a recredit of that leave under that subchapter if he would have been entitled to recredit for it on reentering the leave system under which it was earned. However, this section does not revive leave already forfeited.

§ 630.504 Reestablishment of leave account after military service.

(a) When an employee leaves his or her civilian position to enter the military service, the employing agency shall certify his or her leave account for credit or charge.

(b) If the employee returns to a civilian position following military service, the agency to which the employee returns shall reestablish the certified leave account as a credit or charge (without regard to the date he or she left the civilian position) when the employee is—

(1) Restored in accordance with a right of restoration after separation from active military duty or hospitalization continuing thereafter as provided by law or in accordance with the mandatory provisions of a statute, Executive order, or regulation; or

(2) Reemployed in a position under subchapter I of chapter 63 of title 5, United States Code, on or after December 2, 1994.

(c) For the purpose of documenting a returning employee's entitlement to a
§ 630.505
Recredit of sick leave under this section, the documentation criteria established in § 630.502(g) shall apply.
[59 FR 62272, Dec. 2, 1994]

§ 630.505 Restoration after appeal.
When an employee is restored to an agency as a result of an appeal, the agency shall reestablish his leave account as a credit or charge as it was at the time of separation.

§ 630.506 Minimum unit.
(a) When an employee moves between positions under subchapter I of chapter 63 of title 5, United States Code, in different agencies, only his leave in whole hour units may be transferred.
(b) When an employee moves between positions under subchapter I of chapter 63 of title 5, United States Code, covered by different leave charging systems within the same agency, his leave is transferable in accordance with paragraph (a) of this section, unless the agency establishes a different policy making fractions of an hour of leave transferable.
[38 FR 18446, July 11, 1973; 38 FR 26601, Sept. 24, 1973]

Subpart F—Home Leave

§ 630.601 Definitions.
In this subpart:
Home leave means leave authorized by section 6305(a) of title 5, United States Code, and earned by service abroad for use in the United States, in the Commonwealth of Puerto Rico, or in the territories or possessions of the United States.
Month means a period which runs from a given day in 1 month through the date preceding the numerically corresponding day in the next month.
Service abroad means service on and after September 6, 1960, by an employee at a post of duty outside the United States and outside the employee’s place of residence if his place of residence is in the Commonwealth of Puerto Rico or a territory or possession of the United States.

§ 630.602 Coverage.
An employee who meets the requirements of section 6304(b) of title 5, United States Code, for the accumulation of a maximum of 45 days of annual leave earns and may be granted home leave in accordance with section 6305(a) of that title and this subpart.

§ 630.603 Computation of service abroad.
For the purpose of this subpart, service abroad:
(a) Begins on the date of the employee’s arrival at a post of duty outside the United States, or on the date of his entrance on duty when recruited abroad;
(b) Ends on the date of the employee’s departure from the post for separation or for assignment in the United States, or on the date of his separation from duty when separated abroad; and
(c) Includes (1) absence in a nonpay status up to a maximum of 2 workweeks within each 12 months of service abroad, (2) authorized leave with pay, (3) time spent in the Armed Forces of the United States which interrupts service abroad (but only for eligibility, not leave-earning, purposes), and (4) a period of detail.
In computing service abroad, full credit is given for the day of arrival and the day of departure.

§ 630.604 Earning rates.
(a) For each 12 months of service abroad, an employee earns home leave at the following rate:
(1) An employee who accepts an appointment to, or occupies, a position for which the agency has prescribed the requirement that the incumbent accept assignments anywhere in the world as the needs of the agency dictate—15 days.
(2) An employee who is serving with a U.S. mission to a public international organization—15 days.
(3) An employee who is serving at a post for which payment of a foreign or nonforeign (but not a tropical) differential of 20 percent or more is authorized by law or regulation—15 days.
(4) An employee not included in paragraph (a) (1), (2), or (3) of this section who is serving at a post for which payment of a foreign or territorial (but not a tropical) differential of at least 10 percent but less than 20 percent is authorized by law or regulation—10 days.

(5) An employee not included in paragraph (a) (1), (2), (3), or (4) of this section—5 days.

(6) An employee included under (a) (1) through (5) of this section whose civilian service abroad is interrupted by a tour of duty in the Armed Forces of the United States, for the duration of such tour—0 (zero) days.

(b) An agency shall credit home leave to an employee's leave account, as earned, in multiples of 1 day.


§ 630.605 Computation of home leave.

(a) For each month of service abroad, an employee earns home leave under the rates fixed by §630.604(a) in the amounts set forth in the following table:

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<th>Months of service abroad</th>
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(b) When an employee moves between different home leave-earning rates during a month of service abroad, or when a change in the differential during a month of service abroad results in a different home leave-earning rate, the agency shall credit the employee with the amount of home leave for the month at the rate to which he was entitled before the change in his home leave-earning rate.

§ 630.606 Grant of home leave.

(a) Entitlement. Except as otherwise authorized by statute, an employee is entitled to home leave only when he has completed a basic service period of 24 months of continuous service abroad. This basic service period is terminated by (1) a break in service of 1 or more workdays, or (2) an assignment (other than a detail) to a position in which an employee is no longer subject to section 6305(a) of title 5, United States Code.

(b) Agency authority. A grant of home leave is at the discretion of an agency. An agency may grant home leave in combination with other leaves of absence in accordance with established agency policy.

(c) Limitations. An agency may grant home leave only:

(1) For use in the United States, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and

(2) During an employee's period of service abroad, or within a reasonable period after his return from service abroad when it is contemplated that he will return to service abroad immediately or on completion of an assignment in the United States.

Home leave not granted during a period named in paragraph (c)(2) of this section may be granted only when the employee has completed a further substantial period of service abroad. This further substantial period of service abroad may not be less than the tour of duty prescribed for the employee's post of assignment, except when the agency determines that an earlier grant of home leave is warranted in an individual case.

(d) Charging of home leave. The minimum charge for home leave is 1 day and additional charges are in multiples thereof.

(e) Refund for home leave. An employee is indebted for the home leave used by him when he fails to return to service abroad after the period of home leave, or after the completion of an assignment in the United States. However, a refund for this indebtedness is not required when (1) the employee has completed not less than 6 months' service in an assignment in the United States following the period of home
§ 630.607 Transfer and recredit of home leave.

An employee is entitled to have his home leave account transferred or recredited to his account when he moves between agencies or is reemployed without a break in service of more than 90 days.

Subpart G—Shore Leave

Authority: 5 U.S.C. 6305.

§ 630.701 Coverage.

This subpart applies to an employee as defined in section 6301 of title 5, United States Code, who is regularly assigned to duties aboard an oceangoing vessel. An employee is considered to be regularly assigned when his continuing duties are such that all or a significant part of them require that he serve aboard an oceangoing vessel. Temporary assignments of a shore-based employee, such as for limited work projects or for training, do not constitute a regular assignment.

§ 630.702 Definitions.

Extended voyage means a voyage of not less than 7 consecutive calendar days duration.

Oceangoing vessel means a vessel in use on the high seas or the Great Lakes; but does not include a vessel which operates primarily on rivers, other lakes, bays, sounds or within the 3-nautical-mile limit of the coastal area of the 48 contiguous States, except when used in mapping, charting, or surveying operations or when in or sailing to or from foreign, territorial, Hawaiian, or Alaskan waters, or waters outside its normal area of operations or outside the 3-nautical-mile limit.

Shore leave means leave authorized by section 6305(c) of title 5, United States Code, and this subpart.

Voyage means the sailing of an oceangoing vessel from one port and its return to that port or the final port of discharge.

[33 FR 12475, Sept. 4, 1968, as amended at 60 FR 67287, Dec. 29, 1995]

§ 630.703 Computation of shore leave.

(a) An employee earns shore leave at the rate of 1 day of shore leave for each 15 calendar days of absence on one or more extended voyages.

(b) (1) For an employee who is an officer or crewmember, a voyage begins either on the date he assumes his duties aboard an oceangoing vessel to begin preparation for a voyage or on the date he comes aboard when a voyage is in progress. The voyage terminates on the date he ceases to be an officer or crewmember of the oceangoing vessel or on the date on which he is released from assignment of his duties relating to that voyage aboard the oceangoing vessel at the port of origin or port of final discharge, whichever is earlier.

(2) For an employee other than an officer or crewmember, a voyage begins on the date of sailing and terminates on the date the oceangoing vessel returns to a port at which the employee will disembark in completion of his assignment aboard the vessel, or on the date he is released from his assignment aboard the vessel, whichever is earlier.

(c) In computing days of absence, an agency shall include (1) the beginning date of a voyage and the termination date of a voyage; (2) the days an employee spends traveling to join an oceangoing vessel to which assigned when the vessel is at a place other than the port of origin; (3) the days an employee spends traveling between oceangoing vessels when the employee is assigned from one vessel to another; (4) the period representing the number of days within which an employee is reasonably expected to return to the port of origin when his oceangoing vessel's voyage is terminated, or his employment as an officer or crewmember is terminated, at a port other than the port of origin; (5) for an employee who is an officer or crewmember, the days on which he is on sick leave when he

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becomes sick during a voyage (whether or not continued as a member of the crew) but not beyond the termination date of the voyage of the oceangoing vessel or his repatriation to the port of origin, whichever is earlier; (6) for an employee other than an officer or crew-member, the days on which he is carried on sick leave but not beyond the date on which he returns to the port of origin or the termination date of the voyage, whichever is earlier; and (7) the days of approved leave from a vessel (paid or unpaid) during a voyage.

§ 630.704 Granting shore leave.

(a) Authority. (1) An employee has an absolute right to use shore leave, subject to the right of the head of the agency to fix the time at which shore leave may be used.

(2) Shore leave may be granted during a voyage only when requested by an employee.

(3) An employee shall submit his request for shore leave in writing and whenever an employee's request for shore leave is denied, the denial shall be in writing.

(b) Accumulation. Shore leave is in addition to annual leave and may be accumulated for future use without limitation.

(c) Charge for shore leave. The minimum charge for shore leave is one day and additional charges are in multiples thereof.

(d) Lump-sum payment. Shore leave may not be the basis for lump-sum payment on separation from the service.

(e) Terminal leave. (1) Except as provided by paragraph (e)(2) of this section, an agency shall not grant shore leave to an employee as terminal leave. For the purpose of this paragraph terminal leave is approved absence immediately before an employee’s separation when an agency knows the employee will not return to duty before the date of his separation.

(2) An agency shall grant shore leave as terminal leave when the employee’s inability to use shore leave was due to circumstances beyond his control and not due to his own act or omission.

(f) Forfeiture of shore leave. Shore leave not granted before (1) separation from the service, or (2) official assignment (other than by temporary detail) to a position in which the employee does not earn shore leave, is forfeited. When an official assignment will result in forfeiture of shore leave, the agency to the extent administratively practicable shall give an employee an opportunity to use the shore leave he has to his credit either before the reassignment or not later than 6 months after the date of his reassignment when the agency is unable to grant the shore leave before the reassignment.

Subpart H—Funeral Leave

SOURCE: 34 FR 13655, Aug. 26, 1969, unless otherwise noted.

§ 630.801 Applicability.

This subpart and section 6326 of title 5, United States Code, apply to the granting of funeral leave to an employee in connection with the funeral of, or memorial service for, his immediate relative who died as a result of wounds, disease, or injury incurred while serving as a member of the armed forces in a combat zone.

§ 630.802 Coverage.

This subpart applies to:

(a) An employee as defined in section 2105 of title 5, United States Code, who is employed by an executive agency as defined in section 105 of title 5, United States Code; and

(b) An individual who is employed by the government of the District of Columbia.

§ 630.803 Definitions.

Armed forces means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

Combat zone means those areas determined by the President in accordance with section 112 of the Internal Revenue Code.

Employee means an employee or individual covered by § 630.802.

Funeral leave means leave authorized by section 6326 of title 5, United States Code, and this subpart.

Immediate relative means the following relatives of the deceased member of the armed forces:

(1) Spouse, and parents thereof;

(2) Children, including adopted children, and spouses thereof;
§ 630.804 Granting of funeral leave.

(a) An agency shall grant an employee such funeral leave as is needed and requested by him, not to exceed 3 workdays, without loss of or reduction in pay, leave to which he is otherwise entitled, or credit for time or service, and without adversely affecting his performance or efficiency rating. Funeral leave is granted to allow an employee to make arrangements for, or to attend, the funeral or memorial service for an immediate relative who died as the result of a wound, disease, or injury incurred while serving as a member of the armed forces in a combat zone. The 3 days need not be consecutive but if not, the employee shall furnish the approving authority satisfactory reasons justifying a grant of funeral leave for nonconsecutive days.

(b) An agency may grant funeral leave only from a prescribed tour of duty, including regularly scheduled overtime, or, in the case of a substitute employee in the postal field service, from a period during which, except for absence on funeral leave, the employee would have worked.

Subpart I—Voluntary Leave Transfer Program

SOURCE: 59 FR 67125, Dec. 29, 1994, unless otherwise noted.

§ 630.901 Purpose and applicability.

(a) Purpose. The purpose of this subpart is to set forth procedures and requirements for a voluntary leave transfer program under which the unused accrued annual leave of one agency officer or employee may be transferred for use by another agency officer or employee who needs such leave because of a medical emergency.

(b) Applicability. This subpart applies to officers and employees to whom subchapter I of chapter 63 of title 5, United States Code, applies.

§ 630.902 Definitions.

Agency means—

(a) An Executive agency, as defined in 5 U.S.C. 105;

(b) A military department, as defined in 5 U.S.C. 102; or

(c) Any other entity of the Federal Government that employs officers or employees to whom subchapter I of chapter 63 of title 5, United States Code, applies. Agency does not include the Central Intelligence Agency; the Defense Intelligence Agency; the National Security Agency; the Federal Bureau of Investigation; or any other Executive agency or unit thereof, as determined by the President, whose principal function is the conduct of foreign intelligence or counterintelligence activities.

Available paid leave means accrued or accumulated annual or sick leave under subchapter I of chapter 63 of title 5, United States Code, and recredited and restored annual or sick leave under subpart E of this part. Available paid leave does not include annual or sick leave advanced to an employee under 5 U.S.C. 6302(d) or 6307(c) or any annual or sick leave accrued under § 630.907(a) that has not been transferred to the appropriate leave account under § 630.907(c).

Employee has the meaning given that term in 5 U.S.C. 6301(2), except an individual employed by the government of the District of Columbia.

Family member means the following relatives of the employee:

(a) Spouse, and parents thereof;

(b) Children, including adopted children, and spouses thereof;

(c) Parents;

(d) Brothers and sisters, and spouses thereof; and

(e) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Leave donor means an employee whose voluntary written request for transfer of annual leave to the annual leave account of a leave recipient is approved by his or her own employing agency.
Leave recipient means a current employee for whom the employing agency has approved an application to receive annual leave from the annual leave accounts of one or more leave donors.

Medical emergency means a medical condition of an employee or a family member of such employee that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

Paid leave status under subchapter I means the administrative status of an employee while the employee is using annual or sick leave accrued or accumulated under subchapter I of chapter 63 of title 5, United States Code.

Shared leave status means the administrative status of an employee while the employee is using transferred leave under this subpart or leave transferred from a leave bank under subpart J of this part.

§ 630.903 Administrative procedures.
Each Federal agency shall establish and administer procedures to permit the voluntary transfer of annual leave consistent with this subpart.

§ 630.904 Application to become a leave recipient.
(a) An employee may make written application to his or her employing agency to become a leave recipient. If an employee is not capable of making application on his or her own behalf, a personal representative of the potential leave recipient may make written application on his or her behalf.

(b) Each application shall be accompanied by the following information concerning each potential leave recipient:

(1) The name, position title, and grade or pay level of the potential leave recipient;

(2) The reasons transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency, and if it is a recurring one, the approximate frequency of the medical emergency affecting the potential leave recipient;

(3) Certification from one or more physicians, or other appropriate experts, with respect to the medical emergency, if the potential leave recipient's employing agency so requires; and

(4) Any additional information that may be required by the potential leave recipient's employing agency.

(c) If the potential leave recipient's employing agency requires that a potential leave recipient obtain certification from two or more sources under paragraph (b)(3) of this section, the potential leave recipient's employing agency shall ensure, either by direct payment to the expert involved or by reimbursement, that the potential leave recipient is not required to pay for the expenses associated with obtaining certification from more than one source.

§ 630.905 Approval of application to become a leave recipient.
(a) The potential leave recipient's employing agency shall review an application to become a leave recipient under procedures established by the employing agency for the purpose of determining that the potential leave recipient is or has been affected by a medical emergency.

(b) Before approving an application to become a leave recipient, the potential leave recipient's employing agency shall determine that the absence from duty without available paid leave because of the medical emergency is (or is expected to be) at least 24 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, at least 30 percent of the average number of hours in the employee's biweekly scheduled tour of duty).

(c) In making a determination as to whether a medical emergency is likely to result in a substantial loss of income, an agency shall not consider factors other than whether the absence from duty without available paid leave is (or is expected to be) at least 24 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, at least 30 percent of the average number of hours in the employee's biweekly scheduled tour of duty).

(d) If the application is approved, the employing agency shall notify the
§ 630.906 Transfer of annual leave.

(a) An employee may submit a voluntary written request to his or her own employing agency that a specified number of hours of his or her accrued annual leave be transferred from his or her annual leave account to the annual leave account of a specified leave recipient. Except as provided in paragraph (f) of this section, annual leave may be transferred only to a leave recipient employed by the leave donor’s employing agency.

(b) Except as provided in paragraph (d) of this section and subject to the limitations on the amount of annual leave that may be donated by a leave donor under §630.908, all or any portion of the annual leave requested under paragraph (a) of this section may be transferred to the annual leave account of the specified leave recipient under procedures established by the leave recipient’s employing agency.

(c) An agency having employees who earn and use annual leave on the basis of an uncommon tour of duty shall establish procedures for administering the transfer of annual leave to or from such employees under this subpart.

(d) A leave recipient’s employing agency shall not transfer annual leave to a leave donor’s immediate supervisor.

(e) Annual leave transferred under this section may be substituted retroactively for period of leave without pay (LWOP) or used to liquidate an indebtedness for advanced annual or sick leave granted on or after a date fixed by the leave recipient’s employing agency as the beginning of the period of medical emergency for which LWOP or advanced annual or sick leave was granted.

(f) A leave recipient’s employing agency shall accept the transfer of annual leave from leave donors employed by one or more other agencies when—

(1) A family member of a leave recipient is employed by another agency and requests the transfer of annual leave to the leave recipient;

(2) In the judgment of the leave recipient’s employing agency, the amount of annual leave transferred from leave donors employed by the leave recipient’s employing agency may not be sufficient to meet the needs of the leave recipient; or

(3) In the judgment of the leave recipient’s employing agency, acceptance of leave transferred from another agency would further the purpose of the voluntary leave transfer program.

(g) The employing agency of a leave donor who wishes to donate annual leave to a leave recipient in another agency shall verify the availability of annual leave in the leave donor’s annual leave account, determine that the amount of annual leave to be donated does not exceed the limitations in §630.908, and ascertain that the leave recipient’s employing agency has made any determination that may be required under paragraph (f) of this section. Upon satisfying these requirements, the leave donor’s employing agency shall—

(1) Reduce the amount of annual leave credited to the leave donor’s annual leave account, as appropriate; and

(2) Notify the leave recipient’s employing agency in writing of the
Office of Personnel Management § 630.908

amount of annual leave to be credited to the leave recipient's annual leave account.

§ 630.907 Accrual of annual and sick leave.

(a) Except as otherwise provided in this section, while an employee is in a shared leave status, annual and sick leave shall accrue to the credit of the employee at the same rate as if the employee were then in a paid leave status under subchapter I of chapter 63 of title 5, United States Code, except that—

(1) The maximum amount of annual leave that may be accrued by an employee while in a shared leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's weekly scheduled tour of duty); and

(2) The maximum amount of sick leave that may be accrued by an employee while in a shared leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's weekly scheduled tour of duty).

(b) Any annual or sick leave accrued by an employee under this subpart and subpart J of this part—

(1) Shall be credited to an annual or sick leave account, as appropriate, separate from any leave account of the employee under subchapter I of chapter 63 of title 5, United States Code; and

(2) Shall not become available for use by the employee and may not otherwise be taken into account under subchapter I of chapter 63 of title 5, United States Code, until it is transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code, as provided in paragraph (c) of this section.

(c) Any annual or sick leave accrued by an employee under this section shall be transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code, and shall become available for use—

(1) As of the beginning of the first pay period beginning on or after the date on which the employee's medical emergency terminates as described in §630.910(a)(2) or (3); or

(2) If the employee's medical emergency has not yet terminated, once the employee has exhausted all leave made available to such employee under this subpart or subpart J of this part.

(d) If the leave recipient's employing agency advances at the beginning of the leave year the amount of annual leave the employee normally would accrue during the entire leave year under 5 U.S.C. 6302(d)—

(1) The leave recipient's employing agency shall establish procedures to ensure that 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's weekly scheduled tour of duty) of annual leave are placed in a separate annual leave account and made available for use by the employee as described in paragraph (c) of this section; and

(2) The employee shall continue to accrue annual leave while in a shared leave status to the extent necessary for the purpose of reducing any indebtedness caused by the use of annual leave advanced at the beginning of the leave year.

(e) If the employee's medical emergency terminates as described in §630.910(a)(1), no leave shall be credited to the employee under this section.


§ 630.908 Limitations on donation of annual leave.

(a) In any one leave year, a leave donor may donate no more than a total of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made.

(b) In the case of a leave donor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under 5 U.S.C. 6304(a), the maximum amount of annual leave that may be donated during the leave year shall be the lesser of—
§ 630.909 Use of transferred annual leave.

(a) A leave recipient may use annual leave transferred to his or her annual leave account under § 630.906 only for the purpose of a medical emergency for which the leave recipient was approved.

(b) Except as provided in § 630.907, during each biweekly pay period that a leave recipient is affected by a medical emergency, he or she shall use any accrued annual leave (and sick leave, if applicable) before using transferred annual leave.

(c) The approval and use of transferred annual leave shall be subject to all of the conditions and requirements imposed by chapter 63 of title 5, United States Code, part 630 of this chapter, and the employing agency on the approval and use of annual leave accrued under 5 U.S.C. 6303, except that transferred annual leave may accumulate without regard to the limitation imposed by 5 U.S.C. 6304(a).

(d) Transferred annual leave may be substituted retroactively for any period of leave without pay or used to liquidate an indebtedness for any period of advanced leave that began on or after the date fixed by the agency as the beginning of the medical emergency.

(e) Transferred annual leave may not be

(1) Transferred to another leave recipient under this subpart, except as provided in § 630.911(e)(3);

(2) Included in a lump-sum payment under 5 U.S.C. 5551 or 5552;

(3) Made available for recredit under 5 U.S.C. 6306 upon reemployment by a Federal agency.

§ 630.910 Termination of medical emergency.

(a) The medical emergency affecting a leave recipient shall terminate—

(1) When the leave recipient's Federal service is terminated;

(2) At the end of the biweekly pay period in which the leave recipient's employing agency determines, after written notice from the agency and an opportunity for the leave recipient (or, if appropriate, a personal representative of the leave recipient) to answer orally or in writing, that the leave recipient is no longer affected by a medical emergency;

(3) At the end of the biweekly pay period in which the leave recipient's employing agency receives written notice from the leave recipient or from a personal representative of the leave recipient that the leave recipient is no longer affected by a medical emergency;

(4) At the end of the biweekly pay period in which the leave recipient's employing agency receives notice that the Office of Personnel Management has approved an application for disability retirement for the leave recipient under the Civil Service Retirement System or the Federal Employees' Retirement System.

(b) The leave recipient's employing agency shall continuously monitor the status of the medical emergency affecting the leave recipient to ensure that the leave recipient continues to be affected by a medical emergency.

(c) When the medical emergency affecting a leave recipient terminates, no further requests for transfer of annual leave to the leave recipient may be granted, and any unused transferred annual leave remaining to the credit of the leave recipient shall be restored to the leave donors under § 630.911.

(d) An agency may deem a medical emergency to continue for the purpose of providing a leave recipient an adequate period of time within which to receive donations of annual leave.
§ 630.911 Restoration of transferred annual leave.

(a) Under procedures established by the leave recipient’s employing agency, any transferred annual leave remaining to the credit of a leave recipient when the medical emergency terminates shall be restored, as provided in paragraphs (b) and (c) of this section and to the extent administratively feasible, by transfer to the annual leave accounts of leave donors who, on the date leave restoration is made, are employed by a Federal agency and subject to chapter 63 of title 5, United States Code.

(b) The amount of unused transferred annual leave to be restored to each leave donor shall be determined as follows:

(1) Divide the number of hours of unused transferred annual leave by the total number of hours of annual leave transferred to the leave recipient;

(2) Multiply the ratio obtained in paragraph (b)(1) of this section by the number of hours of annual leave transferred by each leave donor eligible for restoration under paragraph (a) of this section; and

(3) Round the result obtained in paragraph (b)(2) of this section to the nearest increment of time established by the leave donor’s employing agency to account for annual leave.

(c) If the total number of eligible leave donors exceeds the total number of hours of annual leave to be restored, no unused transferred annual leave shall be restored. In no case shall the amount of annual leave restored to a leave donor exceed the amount transferred to the leave recipient by the leave donor.

(d) If the leave donor retires from Federal service, dies, or is otherwise separated from Federal service before the date unused transferred annual leave can be restored, the employing agency of the leave recipient shall not restore the unused transferred annual leave.

(e) At the election of the leave donor, unused transferred annual leave restored to the leave donor under paragraph (a) of this section may be restored by—

(1) Crediting the restored annual leave to the leave donor’s annual leave account in the current leave year;

(2) Crediting the restored annual leave to the leave donor’s annual leave account effective as of the first day of the first leave year beginning after the date of election; or

(3) Donating such leave in whole or part to another leave recipient.

(f) If a leave donor elects to donate only part of his or her restored leave to another leave recipient under paragraph (e)(3) of this section, the donor may elect to have the remaining leave credited to the leave donor’s annual leave account under paragraph (e)(1) or (e)(2) of this section.

(g) Transferred annual leave restored to the account of a leave donor under paragraph (e)(1) or (2) of this section shall be subject to the limitation imposed by 5 U.S.C. 6304(a) at the end of the leave year in which the restored leave is credited to the leave donor’s annual leave account.

(h) If a leave recipient elects to buy back annual leave as a result of claim for an employment-related injury approved by the Office of Workers’ Compensation Programs under 20 CFR 10.202 and 10.310, and the annual leave was leave transferred under § 630.906, the amount of annual leave bought back by the leave recipient shall be restored to the leave donor(s).


§ 630.912 Prohibition of coercion.

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section, the term “intimidate, threaten, or coerce” includes promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

§ 630.913 Records and reports.

(a) Each agency shall maintain records concerning the administration
§ 630.1001 Purpose and applicability.

(a) Purpose. The purpose of this subpart is to establish procedures and requirements for a voluntary leave bank program under which the unused accrued annual leave of an employee may be contributed to a leave bank for use by a leave bank member who needs such leave because of a medical emergency.

(b) Applicability. This subpart applies to officers and employees—

(1) To whom subchapter I of chapter 63 of title 5, United States Code applies; and

(2) Who are employed in agencies and their organizational subunits operating a voluntary leave bank program under this subpart.

§ 630.1002 Definitions.

Agency means an “Executive agency,” as defined in 5 U.S.C. 105, or a “military department,” as defined in 5 U.S.C. 102. “Agency” does not include the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the Federal Bureau of Investigation, or any other Executive agency or subunit thereof, as determined by the President, whose principal function is the conduct of foreign intelligence or counterintelligence activities.

Available paid leave has the meaning given that term in subpart I of this part.

Employee has the meaning given that term in subpart I of this part.

Family member has the meaning given that term in subpart I of this part.

Leave bank means a pooled fund of annual leave established by an agency under § 630.1003.

Leave bank member means a leave contributor who has contributed, in an open enrollment period (or individual enrollment period, as applicable) of the current leave year, at least the minimum amount of annual leave required by § 630.1004.

Leave contributor means an employee who contributes annual leave to a leave bank under § 630.1004.

Leave recipient means a leave bank member whose application to receive contributions of annual leave from a leave bank has been approved under § 630.1007.

Medical emergency has the meaning given that term in subpart I of this part.

Paid leave status under subchapter I has the meaning given that term in subpart I of this part.

Shared leave status has the meaning given that term in subpart I of this part.

§ 630.1003 Establishing leave banks and leave bank boards.

(a) Each agency that participates in the voluntary leave bank program shall, in accordance with this subpart—

(1) Develop written policies and procedures for establishing and administering leave banks and leave bank boards;

(2) Establish one or more leave bank boards to perform the duties authorized by this subpart; and

(3) Establish and begin operating one or more leave banks.

(b) No more than one leave bank board may be established for each leave bank.

(c) Each leave bank board shall consist of three members. At least one member shall represent a labor organization or employee group.

(d) Each leave bank board shall—
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(1) Establish its internal decision-making procedures;
(2) Review and approve or disapprove each application to become a leave contributor under § 630.1004 and a leave recipient under §§ 630.1006 and 630.1007;
(3) Monitor the status of each leave recipient's medical emergency;
(4) Monitor the amount of leave in the leave bank and the number of applications to become a leave recipient;
(5) Maintain an adequate amount of annual leave in the leave bank to the greatest extent practicable in accordance with § 630.1004; and
(6) Perform other functions prescribed in this subpart.
(e) Annual leave may not be borrowed, contributed, or otherwise transferred between leave banks.

§ 630.1004 Application to become a leave contributor and leave bank member.

(a) An employee may make voluntary written application to the leave bank board to become a leave contributor. The application shall specify the number of hours of annual leave to be contributed and any other information the leave bank board may reasonably require.
(b) An employee may request that annual leave be contributed to a specified bank member other than the leave contributor's immediate supervisor.
(c) A leave contributor shall become a leave bank member for a particular leave year if he or she submits an application meeting the requirements of this section during an open enrollment period established by the leave bank board under paragraphs (d) and (e) of this section (or where applicable, during an individual enrollment period established under paragraph (f) of this section).
(d) The leave bank board shall establish at least one open enrollment period for each leave year of leave bank operation.
(e) An open enrollment period shall last at least 30 calendar days. The agency shall take appropriate action to inform employees of each open enrollment period.
(f) An employee entering the agency or participating organizational subunit or returning from an extended absence outside an open enrollment period may become a leave bank member for the leave year by submitting an application meeting the requirements of this section during an individual enrollment period lasting at least 30 calendar days, beginning on the date the employee entered or returned to the agency or organizational subunit.
(g) Except as provided in paragraph (h) of this section, the minimum contribution required to become a leave bank member for a leave year shall be—
(1) 4 hours of annual leave for an employee who has less than 3 years of service at the time he or she submits an application to contribute annual leave;
(2) 6 hours of annual leave for an employee who has at least 3 but less than 15 years of service at the time he or she submits an application to contribute annual leave; and
(3) 8 hours of annual leave for an employee who has 15 or more years of service at the time he or she submits an application to contribute annual leave.
(h) The leave bank board may—
(1) Decrease the minimum contribution required by paragraph (g) of this section for the following leave year when the leave bank board determines that there is a surplus of leave in the bank;
(2) Increase the minimum contribution required by paragraph (g) of this section for the following leave year when the leave bank board determines that such action is necessary to maintain an adequate balance of annual leave in the leave bank; or
(3) Eliminate the requirement for a minimum contribution under paragraph (g) of this section when a leave bank member transfers within his or her employing agency to an organization covered by a different leave bank.
(i) If a leave recipient does not have sufficient available accrued annual leave to his or her credit to make the full minimum contribution required by this section, he or she shall be deemed to have made the minimum contribution.
(j) The leave bank board shall deposit all contributions of annual leave under this subpart in the leave bank. Except
§ 630.1005 Limitations on contribution of annual leave.

(a) In any one leave year, a leave contributor may contribute no more than a total of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the contribution is made.

(b) In the case of a leave contributor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under 5 U.S.C. 6304(a), the maximum amount of annual leave that may be contributed during the leave year shall be the lesser of—

(1) One-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the contribution is made; or

(2) The number of hours remaining in the leave year (as of the date of the contribution) for which the leave contributor is scheduled to work and receive pay.

(c) The agency shall establish written criteria permitting a leave bank board to waive the limitations on contributing annual leave under paragraphs (a) and (b) of this section. Any such waiver shall be documented in writing.

(d) The limitations in this section shall apply to the total amount of annual leave donated or contributed during the leave year under subparts I and J of this part.

§ 630.1006 Application to become a leave recipient.

(a) A leave bank member may make written application to the leave bank board to become a leave recipient. If a leave bank member is not capable of making application on his own behalf, a personal representative may make written application on his or her behalf.

(b) The leave bank board may require leave bank members to submit applications under this section within a prescribed period of time following the termination of a medical emergency.

(c) An application by a leave bank member to become a leave recipient shall be accompanied by the following information concerning the potential leave recipient:

(1) The leave bank member’s name, position title, and grade or pay level;

(2) The reasons leave is needed, including a brief description of the nature, severity, anticipated duration, and if it is a recurring one, the approximate frequency of the medical emergency affecting the leave bank member;

(3) Certification from one or more physicians, or other appropriate experts, with respect to the medical emergency, if the leave bank board so requires; and

(4) Any additional information that may be required by the leave bank board.

(d) If the leave bank board requires a leave bank member to submit certification from two or more sources under paragraph (b)(3) of this section, the agency shall ensure, either by direct payment to the expert involved or by reimbursement, that the leave bank member is not required to pay for the expenses associated with obtaining certification from more than one source.

§ 630.1007 Approval of application to become a leave recipient.

(a) The leave bank board shall review an employee’s application to become a leave recipient under procedures established by the agency for the purpose of determining whether the employee is a leave bank member who is or has been affected by a medical emergency.

(b) Before approving an application to become a leave recipient, the leave bank board shall determine that the absence from duty without available paid leave because of the medical emergency is (or is expected to be) at least 24 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, at least 30 percent of the average number of hours in the employee’s biweekly scheduled tour of duty).

(c) In making a determination as to whether a medical emergency is likely
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§ 630.1008 Accrual of annual and sick leave.

(a) Except as otherwise provided in this section, while an employee is in a shared leave status, annual and sick leave shall accrue to the credit of the employee at the same rate as if the employee were then in a paid leave status under subchapter I of chapter 63 of title 5, United States Code, except that—

(1) The maximum amount of annual leave that may be accrued by a leave recipient while in a shared leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee’s weekly scheduled tour of duty); and

(2) The maximum amount of sick leave that may be accrued by a leave recipient while in a shared leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee’s weekly scheduled tour of duty).

(b) Any annual or sick leave accrued by an employee under this subpart and subpart I of this part—

(1) Shall be credited to an annual or sick leave account, as appropriate, separate from any leave account of the employee under subchapter I of chapter 63 of title 5, United States Code; and

(2) Shall not become available for use by the employee and may not otherwise be taken into account under subchapter I of chapter 63 of title 5, United States Code, until it is transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code, as provided in paragraph (c) of this section.

(c) Any annual or sick leave accrued by an employee under this section shall be transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code, and shall become available for use—

(1) As of the beginning of the first pay period beginning on or after the date on which the employee’s medical emergency terminates as described in §630.1010(a)(3) or (4); or

(2) If the employee’s medical emergency has not yet terminated, once the employee has exhausted all leave made available to such employee under this subpart of subpart I of this part.

(d) If the leave recipient’s employing agency advances at the beginning of the leave year the amount of annual leave the employee normally would accrue during the entire leave year under 5 U.S.C. 6302(d)—

(1) The leave recipient’s employing agency shall establish procedures to ensure that 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee’s weekly scheduled tour of duty) of annual leave are placed in a separate annual leave account and made available for use by the employee as described in paragraph (c) of this section; and

(2) The employee shall continue to accrue annual leave while using annual leave withdrawn from a leave bank to the extent necessary for the purpose of reducing an indebtedness caused by the use of annual leave advanced at the beginning of the leave year.

(e) If the leave recipient’s medical emergency terminates as described in
§ 630.1009 Use of annual leave withdrawn from a leave bank.

(a) A leave recipient may use annual leave withdrawn from a leave bank only for the purpose of medical emergency for which the leave recipient was approved.

(b) Except as provided in §630.1008, during each biweekly pay period that a leave recipient is affected by a medical emergency, he or she shall use any accrued annual leave (and sick leave, if applicable) before using annual leave withdrawn from a leave bank.

(c) The approval and use of annual leave withdrawn from a leave bank shall be subject to all of the conditions and requirements imposed by chapter 63 of title 5, United States Code, part 630 of this chapter, and the agency on the approval and use of annual leave accrued under 5 U.S.C. 6303, except that annual leave withdrawn from a leave bank may accumulate without regard to any limitation imposed by 5 U.S.C. 6304(a).

(d) Annual leave withdrawn from a leave bank may be substituted retroactively for any period of leave without pay or used to liquidate an indebtedness for any period of advanced leave that began on or after the date fixed by the leave bank board as the beginning of the medical emergency.

(e) Annual leave withdrawn from a leave bank may not be—

1. Included in a lump-sum payment under 5 U.S.C. 5551 or 5552; or

(f) An agency having employees who earn and use annual leave on the basis of an uncommon tour of duty shall establish procedures for administering the contribution and withdrawal of annual leave by such employees under this subpart.

§ 630.1010 Termination of medical emergency.

(a) The medical emergency affecting a leave recipient shall terminate—

1. When the leave recipient's Federal service terminates;
2. When the leave recipient leaves the agency or participating organizational subunit, if the bank board so determines;
3. At the end of the biweekly pay period in which the leave bank board receives written notice from the leave recipient or from a personal representative of the leave recipient that the leave recipient is no longer affected by a medical emergency;
4. At the end of the biweekly pay period in which the leave bank board determines, after written notice from the bank board and an opportunity for the leave recipient (or, if appropriate, a personal representative of the leave recipient) to answer orally or in writing, that the leave recipient is no longer affected by a medical emergency; or
5. At the end of the biweekly pay period in which the agency receives notice that the Office of Personnel Management has approved an application for disability retirement for the leave recipient under the Civil Service Retirement System or the Federal Employees Retirement System.

(b) The leave bank board shall ensure that annual leave withdrawn from the leave bank and not used before the termination of a leave recipient’s medical emergency shall be returned to the leave bank.

(c) The leave bank board may deem a medical emergency to continue for the purpose of providing a leave recipient an adequate period of time within which to receive contributions of annual leave.

(d) If a leave recipient elects to buy back annual leave as a result of a claim for an employment-related injury approved by the Office of Workers’ Compensation Programs under 20 CFR 10.202 and 10.310, the amount of annual leave withdrawn from the leave bank that is bought back by the leave recipient shall be restored to the leave bank.

§ 630.1011 Prohibition of coercion.

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for
the purpose of interfering with any right such employee may have with respect to contributing, withdrawing, or using annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section—

(1) The term “employee” has the meaning given that term in 5 U.S.C. 6301(2), excluding an individual employed by the District of Columbia; and

(2) The term “intimidate, threaten, or coerce” includes promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

[59 FR 67125, Dec. 29, 1994, as amended at 60 FR 26979, May 22, 1995]

§ 630.1012 Records and reports.

(a) Each agency shall maintain records concerning the administration of the voluntary leave bank program and may be required by the Office of Personnel Management to report any information necessary to evaluate the effectiveness of the program.

(b) An agency shall maintain the following information for each leave bank:

(1) The number of leave bank members for each leave year;

(2) The number of applications approved for medical emergencies affecting the employee and the number of applications approved for medical emergencies affecting an employee’s family member;

(3) The grade or pay level of each leave contributor and the total amount of annual leave he or she contributed to the bank;

(4) The grade or pay level and gender of each leave recipient and the total amount of annual leave he or she actually used; and

(5) Any additional information OPM may require.

§ 630.1013 Participation in voluntary leave transfer and leave bank programs.

(a) If an agency or organizational subunit establishes a voluntary leave bank program under this subpart—

(1) A covered employee may also participate in a voluntary leave transfer program under subpart I of this part;

(2) Except as provided in paragraphs (b) and (c) of this section, any annual leave previously transferred to an employee under the voluntary leave transfer program shall remain to the credit of the employee who later becomes a leave recipient in a leave bank and shall become subject to the agency’s policies and procedures for administering this subpart; and

(3) The agency or organizational subunit shall establish policies or procedures governing the use of donated or transferred leave for any leave recipient who receives leave under both a voluntary leave transfer program and a voluntary leave bank program for the same medical emergency.

(b) Upon termination of a leave recipient’s medical emergency, any annual leave previously transferred under the voluntary leave transfer program and remaining to the credit of a leave recipient shall be restored under § 630.911(a) through (d).

(c) Transferred annual leave restored to the account of a leave donor under paragraph (b) of this section shall be subject to the limitation imposed by 5 U.S.C. 6304(a) at the end of the leave year in which the annual leave is restored.

§ 630.1014 Movement between voluntary leave bank programs.

If an employee moves between an agency or organizational subunit operating a leave bank to an agency or organizational subunit operating a different leave bank, the following procedures shall apply:

(a) On the date of the employee’s move, he or she shall become subject to the policies and procedures of the voluntary leave bank program of the new agency or organizational subunit; and

(b) Nothing in § 630.1010(a)(2) or (b) shall interfere with the employee's right to submit an application to become a leave contributor or leave recipient in accordance with the policies and procedures of the voluntary leave bank program of the new agency or organizational subunit.
§ 630.1015 Movement between voluntary leave bank and leave transfer programs.

If an employee moves between an agency or organizational subunit covered by a voluntary leave bank program under this subpart and an agency or organizational subunit covered by a voluntary leave transfer program under subpart I of this part, the following procedures shall apply.

(a) On the date of the employee's move, he or she shall become subject to the policies and procedures of the voluntary leave transfer and voluntary leave bank program (if applicable) of the new agency or organizational subunit; and

(b) Nothing in §630.1010(a)(2) or (b) shall interfere with the employee's right to submit an application to become a leave donor (or leave contributor, as applicable) or leave recipient under the voluntary leave transfer or voluntary leave bank program (as applicable) of the new agency or organizational subunit.

§ 630.1016 Termination of a voluntary leave bank program.

(a) An agency may terminate a voluntary leave bank program only after it gives at least 30 calendar days advance written notice to current leave bank members.

(b) If an agency terminates a voluntary leave bank program before the termination of the medical emergency affecting a leave bank recipient, annual leave transferred to a leave bank recipient shall remain available for use under the rules set forth in subpart I of this part.

(c) An agency that terminates a voluntary leave bank program shall make provisions for the timely and equitable distribution of any leave remaining in the leave bank. The agency may allocate the leave to current leave recipients, recredit the leave to the accounts of the voluntary leave bank members, or a combination of both. The agency may distribute the leave immediately or may delay the distribution, in whole or part, until the beginning of the following leave year.

Subpart K—Reservist Leave Bank Program

SOURCE: 56 FR 20518, May 6, 1991, unless otherwise noted.

§ 630.1101 Purpose and applicability.

(a) Purpose. The purpose of this subpart is to establish procedures and requirements for a reservist leave bank program in Executive agencies under which an employee may contribute unused accrued annual leave to a leave bank established by the Office of Personnel Management (OPM) for use by eligible returnees who have been members of the Armed Forces of the United States serving on active duty during the Persian Gulf War and who return to civilian employment with their agencies.

(b) Applicability. This subject applies to officers and employees—

(1) To whom subchapter IV of chapter 63 of title 5, United States Code, applies; and

(2) Who are employed in Executive agencies.

§ 630.1102 Definitions.

In this subpart:


Contribution period means a period of at least 6 weeks beginning on a date to be established by OPM. The Director of OPM may extend the contribution period, if necessary, to meet the requirements of the legislation.

Eligible returnee means an employee who has been a member of the U.S. Armed Forces serving on orders issued under 10 U.S.C. 672(a), 672(g), 673, 673b, 674, 675, or 688 during the Persian Gulf War, and who has returned to, or will return to Federal employment with his or her agency. An employee who, after completing his or her active duty military service, does not return to Federal employment for any reason is not eligible to receive leave contributed to the reservist leave bank.

Employee has the meaning given that term in 5 U.S.C. 6361(1).

Persian Gulf War means the period beginning on August 2, 1990, and ending on a date thereafter prescribed by Presidential proclamation or by law. OPM will advise agencies of the ending date for eligibility to receive leave under this program.

Reservist leave bank means the leave bank established by OPM for the purpose of this subpart.

§ 630.1103 Identifying eligible returnees.

(a) Each agency shall identify and list all eligible returnees within the agency.

(b) Each agency shall report the number of eligible returnees identified to OPM. Negative reports are required.

§ 630.1104 Receipt, processing, and transfer of leave.

(a) Each agency shall accept annual leave contributed to the reservist leave bank by leave contributors during the contribution period (open season).

(b) Each agency shall determine the procedures under which to collect, process, and transfer leave contributed under this subpart. Leave contributed to the reservist leave bank must be debited from the contributor’s annual leave account during the pay period in which it is contributed.

(c) Each agency shall report the aggregate amount of annual leave contributed to the reservist leave bank to OPM. (See § 630.1109(b)(1) of this subpart.)

§ 630.1105 Limitations on contribution of annual leave.

(a) A leave contributor may not contribute leave for the use of a specific eligible returnee.

(b) A leave contributor may contribute only accrued unused annual leave to the reservist leave bank.

(c) A leave contributor may not contribute less than 1 hour of annual leave, nor more than the lesser of—

1. One-half the amount of annual leave he or she would be entitled to accrue during the leave year in which the contribution is made; or

2. One-half his or her annual leave balance at the time the contribution is made.

(d) Annual leave contributed to the reservist leave bank shall not be applied against the limitations on annual leave that may be donated under the voluntary leave transfer and leave bank programs established under 5 U.S.C. 6332 and 6362, respectively.

§ 630.1106 Prohibition of coercion.

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any rights such employee may have with respect to contributing, or not contributing, annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section, the term “intimidate, threaten, or coerce” includes promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

§ 630.1107 Crediting annual leave accounts of eligible returnees.

(a) OPM shall divide the contributed annual leave equally among eligible returnees without regard to any factor (e.g., full- or part-time status, duty station during the Persian Gulf War, or time spent on active duty) other than each employee’s status as an eligible returnee.

(b) The amount of annual leave each eligible returnee receives shall be rounded to the next higher quarter-hour. An employing agency may not reduce the amount of leave credited to an eligible returnee by any fraction of an hour, but may grant leave recipients excused absence for the remainder of the hour or charge leave by the quarter-hour for the purpose of this program.

(c) OPM shall notify each agency of the amount of annual leave that shall be credited to each eligible returnee.

(d) Each agency shall credit the annual leave accounts of eligible returnees who have returned to Federal employment as soon as possible, but not later than the end of the second pay period beginning on or after the date the agency is notified of the amount of
§ 630.1108 Use of annual leave contributed under this program.

(a) The annual leave credited to the account of an eligible returnee may be used in the same manner and for the purposes as if the leave had accrued under 5 U.S.C. 6303.

(b) An eligible returnee who has returned to Federal employment may use the leave credited under §630.1107 of this subpart immediately, subject to supervisory approval.

(c) Annual leave creditable to an eligible returnee who has not yet returned to Federal employment shall be held in abeyance by the employing agency that identified such employee until his or her return.

(d) Annual leave held in abeyance for an eligible returnee who does not return to Federal employment shall be forfeited.

§ 630.1109 Records and reports.

(a) Each agency shall maintain records and report pertinent information concerning the administration of the reservist leave bank program.

(b) Each agency shall maintain the following information:

1. The grade or pay level of each leave contributor and the amount of leave contributed by leave contributors at each grade or pay level (Each agency is required to report to OPM the aggregate amount of annual leave contributed to the reservist leave bank under §630.1104(c) of this subpart.);

2. The grade or pay level of each eligible returnee;

3. The number of eligible returnees to whom the contributed annual leave was credited immediately;

4. The number of eligible returnees for whom the contributed annual leave was held in abeyance;

5. The estimated direct and indirect costs of administering the reservist leave bank program; and

6. Any additional information OPM may require.

(c) Each agency shall report the information specified in paragraph (b) of this section to OPM.

(d) OPM shall identify the dates by which each agency shall report the information gathered pursuant to §§630.1103(b) and 630.1104(c) of this subpart and paragraph (b) of this section.

Subpart L—Family and Medical Leave

SOURCE: 58 FR 39602, July 23, 1993, unless otherwise noted.

§ 630.1201 Purpose, applicability, and administration.

(a) Purpose. This subpart provides regulations to implement sections 6381 through 6387 of title 5, United States Code. This subpart must be read together with those sections of law. Sections 6381 through 6387 of title 5, United States Code, provide a standard approach to providing family and medical leave to Federal employees by prescribing an entitlement to a total of 12 administrative workweeks of unpaid leave during any 12-month period for certain family and medical needs, as specified in §630.1203(a) of this part.

(b) Applicability. (1) Except as otherwise provided in this paragraph, this subpart applies to any employee who—

(i) Is defined as an “employee” under 5 U.S.C. 6301(2), excluding employees covered under paragraph (b)(2) of this section; and

(ii) Has completed at least 12 months of service (not required to be 12 recent or consecutive months) as—

(A) An employee, as defined under 5 U.S.C. 6301(2), excluding employees covered under paragraph (b)(2) of this section;

(B) An employee in the Veterans Health Administration of the Department of Veterans Affairs who is appointed under section 7401(1) of title 38, United States Code.

(C) A “teacher” or an individual holding a “teaching position,” as defined in section 901 of title 20, United States Code; or

(D) An employee identified in section 2105(c) of title 5, United States Code, who is paid from nonappropriated funds.

(2) This subpart does not apply to—

(i) An individual employed by the government of the District of Columbia;
(ii) An employee serving under a temporary appointment with a time limitation of 1 year or less; 
(iii) An intermittent employee, as defined in 5 CFR 340.401(c); or 
(iv) Any employee covered by Title I or Title V of the Family and Medical Leave Act of 1993 (Pub. L. 103-3, February 5, 1993). The Department of Labor has issued regulations implementing Title I at 29 CFR part 825.

(3) For the purpose of applying sections 6381 through 6387 of title 5, United States Code—

(i) An employee in the Veterans Health Administration of the Department of Veterans Affairs who is appointed under section 7401(1) of title 38, United States Code, shall be governed by the terms and conditions of regulations prescribed by the Secretary of Veterans Affairs; 
(ii) A "teacher" or an individual holding a "teaching position," as defined in section 901 of title 20, United States Code, shall be governed by the terms and conditions of regulations prescribed by the Secretary of Defense; and 
(iii) An employee identified in section 2105(c) of title 5, United States Code, who is paid from nonappropriated funds shall be governed by the terms and conditions of regulations prescribed by the Secretary of Defense or the Secretary of Transportation, as appropriate.

(4) The regulations prescribed by the Secretary of Veterans Affairs, Secretary of Defense, or Secretary of Transportation under paragraph (b)(3) of this section shall, to the extent appropriate, be consistent with the regulations prescribed in this subpart and the regulations prescribed by the Secretary of Labor to carry out Title I of the Family and Medical Leave Act of 1993 at 29 CFR part 825.

(c) Administration. The head of an agency having employees subject to this subpart is responsible for the proper administration of this subpart.


§ 630.1202 Definitions.

In this subpart:

Accrued leave has the meaning given that term in §630.201 of this part.

Accumulated leave has the meaning given that term in §630.201 of this part.

Administrative workweek has the meaning given that term in §610.102 of this chapter.

Adoption refers to a legal process in which an individual becomes the legal parent of another's child. The source of an adopted child—e.g., whether from a licensed placement agency or otherwise—is not a factor in determining eligibility for leave under this subpart.

Employee means an individual to whom this subpart applies.

Essential functions means the fundamental job duties of the employee's position, as defined in 29 CFR 1630.2(n). An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

Family and medical leave means an employee's entitlement to 12 administrative workweeks of unpaid leave for certain family and medical needs, as prescribed under sections 6381 through 6387 of title 5, United States Code.

Foster care means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement by the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family to take the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

Health care provider means—

(1) A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this subpart; 
(2) Any health care provider recognized by the Federal Employees Health Benefits Program or who is licensed or certified under Federal or State law to provide the service in question; 
(3) A health care provider as defined in paragraph (2) of this definition who practices in a country other than the United States.

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(2) Any health care provider recognized by the Federal Employees Health Benefits Program or who is licensed or certified under Federal or State law to provide the service in question; 
(3) A health care provider as defined in paragraph (2) of this definition who practices in a country other than the United States.
United States, who is authorized to practice in accordance with the laws of that country, and who is performing within the scope of his or her practice as defined under such law;

(4) A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or

(5) A Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders who practices traditional healing methods as believed, expressed, and exercised in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, consistent with Public Law 95-314, August 11, 1978 (92 Stat. 469), as amended by Public Law 103-344, October 6, 1994 (108 Stat. 3125).

In loco parentis refers to the situation of an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

Incapacity means the inability to work, attend school, or perform other regular daily activities because of a serious health condition or treatment for or recovery from a serious health condition.

Intermittent leave or leave taken intermittently means leave taken in separate blocks of time, rather than for one continuous period of time, and may include leave periods of 1 hour to several weeks. Leave may be taken for a period of less than 1 hour if agency policy provides for a minimum charge for leave of less than 1 hour under §630.206(a).

Leave without pay means an absence from duty in a nonpay status. Leave without pay may be taken only for those hours of duty comprising an employee's basic workweek.

Parent means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a son or daughter. This term does not include parents "in law."

Reduced leave schedule means a work schedule under which the usual number of hours of regularly scheduled work per workday or workweek of an employee is reduced. The number of hours by which the daily or weekly tour of duty is reduced are counted as leave for the purpose of this subpart.

Regularly scheduled has the meaning given that term in §610.102 of this chapter.

Regularly scheduled administrative workweek has the meaning given that term in §610.102 of this chapter.

Serious health condition. (1) Serious health condition means an illness, injury, impairment, or physical or mental condition that involves—

(i) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

(ii) Continuing treatment by a health care provider that includes (but is not limited to) examinations to determine if there is a serious health condition and evaluations of such conditions if the examinations or evaluations determine that a serious health condition exists. Continuing treatment by a health care provider may include one or more of the following—

(A) A period of incapacity of more than 3 consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves—

(1) Treatment two or more times by a health care provider, by a health care provider under the direct supervision of the affected individual's health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider (e.g., a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition).

(B) Any period of incapacity due to pregnancy, or for prenatal care, even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.
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(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition that—

(1) Requires periodic visits for treatment by a health care provider or by a health care provider under the direct supervision of the affected individual's health care provider.

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). The condition is covered even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

(D) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The affected individual must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer's, severe stroke, or terminal stages of a disease).

(E) Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity or more than 3 consecutive calendar days in the absence of medical intervention or treatment (e.g., chemotherapy/radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease).

(2) A serious health condition does not include routine physical, eye, or dental examinations; a regimen of continuing treatment that includes the taking of over-the-counter medications, bed-rest, exercise, and other similar activities that can be initiated without a visit to the health care provider; a condition for which cosmetic treatments are administered, unless inpatient hospital care is required or unless complications develop; or an absence because of an employee's use of an illegal substance, unless the employee is receiving treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease are not serious health conditions. Allergies, restorative dental or plastic surgery after an injury, removal of cancerous growth, or mental illness resulting from stress may be serious health conditions only if such conditions require inpatient care or continuing treatment by a health care provider.

Son or daughter means a biological, adopted, or foster child; a step child; a legal ward; or a child of a person standing in loco parentis who is—

(1) Under 18 years of age; or

(2) 18 years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADL’s) or “instrumental activities of daily living” (IADL’s). Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using the telephones and directories, using a post office, etc. A “physical or mental disability” refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined in 29 CFR 1630.2 (h), (i) and (j).

Spouse means an individual who is a husband or wife pursuant to a marriage that is a legal union between one man and one woman, including common law marriage between one man and one woman in States where it is recognized.

Tour of duty has the meaning given that term in § 610.102 of this chapter.

§ 630.1203 Leave entitlement.

(a) An employee shall be entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

(1) The birth of a son or daughter of the employee and the care of such son or daughter;

(2) The placement of a son or daughter with the employee for adoption or foster care;

(3) The care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition; or

(4) A serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of his or her position.

(b) An employee shall invoke his or her entitlement to family or medical leave under paragraph (a) of this section, subject to the notification and medical certification requirements in §§ 630.1206 and 630.1207. An employee may take only the amount of family and medical leave that is necessary to manage the circumstances that prompted the need for leave under paragraph (a) of this section.

(c) The 12-month period referred to in paragraph (a) of this section begins on the date an employee first takes leave for a family or medical need specified in paragraph (a) of this section and continues for 12 months. An employee is not entitled to 12 additional workweeks of leave until the previous 12-month period ends and an event or situation occurs that entitles the employee to another period of family or medical leave. (This may include a continuation of a previous situation or circumstance.)

(d) The entitlement to leave under paragraphs (a)(1) and (2) of this section shall expire at the end of the 12-month period beginning on the date of birth or placement. Leave for a birth or placement must be concluded within this 12-month period. Leave taken under paragraphs (a)(1) and (2) of this section, may begin prior to or on the actual date of birth or placement for adoption or foster care, and the 12-month period, referred to in paragraph (a) of this section begins on that date.

(e) Leave under paragraph (a) of this section is available to full-time and part-time employees. A total of 12 administrative workweeks will be made available equally for a full-time or part-time employee in direct proportion to the number of hours in the employee's regularly scheduled administrative workweek. The 12 administrative workweeks of leave will be calculated on an hourly basis and will equal 12 times the average number of hours in the employee's regularly scheduled administrative workweek. If the number of hours in an employee's workweek varies from week to week, a weekly average of the hours scheduled over the 12 weeks prior to the date leave commences shall be used as the basis for this calculation.

(f) If the number of hours in an employee's regularly scheduled administrative workweek is changed during the 12-month period of family and medical leave, the employee's entitlement to any remaining family and medical leave will be recalculated based on the number of hours in the employee's current regularly scheduled administrative workweek.

(g) Each agency shall inform its employees of their entitlements and responsibilities under this subpart, including the requirements and obligations of employees.

(h) An agency may not subtract leave from an employee's entitlement to leave under paragraph (a) of this section unless the agency has obtained confirmation from the employee of his or her intent to take leave under § 630.1206. An employee's notice of his or her intent to take leave under § 630.1206 may suffice as the employee's confirmation.


§ 630.1204 Intermittent leave or reduced leave schedule.

(a) Leave under § 630.1203(a)(1) or (2) of this part shall not be taken intermittently or on a reduced leave schedule unless the employee and the agency agree to do so.

(b) Leave under § 630.1203(a)(3) or (4) of this part may be taken intermittently or on a reduced leave schedule
§ 630.1205 Substitution of paid leave.

(a) Except as provided in paragraph (b) of this section, leave taken under §630.1203(a) of this part shall be leave without pay.

(b) An employee may elect to substitute the following paid leave for any or all of the period of leave without pay to be taken under §630.1203(a)—

(1) Accrued or accumulated annual or sick leave under subchapter I of chapter 63 of title 5, United States Code, consistent with current law and regulations governing the granting and use of annual or sick leave;

(2) Advanced annual or sick leave approved under the same terms and conditions that apply to any other agency employee who requests advanced annual or sick leave; and

(3) Leave made available to an employee under the Voluntary Leave Transfer Program or the Voluntary Leave Bank Program consistent with subparts I and J of part 630 of this chapter.

(c) An agency may not deny an employee's right to substitute paid leave under paragraph (b) of this section for any or all of the period of leave without pay to be taken under §630.1203(a), consistent with current law and regulations.

(d) An agency may not require an employee to substitute paid leave under paragraph (b) of this section for any or all of the period of leave without pay to be taken under §630.1203(a).

(e) An employee shall notify the agency of his or her intent to substitute paid leave for leave without pay previously taken under §630.1203(a) prior to the date such paid leave commences. An employee may not retroactively substitute paid leave for leave without pay previously taken under §630.1203(a).

§ 630.1206 Notice of leave.

(a) If leave taken under §630.1203(a) of this part is foreseeable based on an expected birth, placement for adoption or
§ 630.1207 foster care, or planned medical treat-
ment, the employee shall provide no-
tice to the agency of his or her inten-
tion to take leave not less than 30 days
before the date the leave is to begin. If
the date of birth or placement or
planned medical treatment requires
leave to begin within 30 days, the em-
ployee shall provide such notice as is
practicable.

(b) If leave taken under §630.1203(a)
(3) or (4) of this part is foreseeable
based on planned medical treatment,
the employee shall consult with the
agency and make a reasonable effort to
schedule medical treatment so as not
to disrupt unduly the operations of the
agency, subject to the approval of the
health care provider. The agency may,
for justifiable cause, request that an
employee reschedule medical treat-
ment, subject to the approval of the
health care provider.

(c) If the need for leave is not fore-
seeable—e.g., a medical emergency or
the unexpected availability of a child
for adoption or foster care, and the em-
ployee cannot provide 30 days' notice of
his or her need for leave, the employee
shall provide notice within a reason-
able period of time appropriate to the
circumstances involved. If necessary,
notice may be given by an employee's
personal representative (e.g., a family
member or other responsible party). If
the need for leave is not foreseeable
and the employee is unable, due to cir-
cumstances beyond his or her control,
to provide notice of his or her need for
leave, the leave may not be delayed or
denied.

(d) If the need for leave is foresee-
able, and the employee fails to give 30
days' notice without reasonable excuse
for the delay of notification, the agen-
cy may delay the taking of leave under
§630.1203(a) of this part until at least 30
days after the date the employee pro-
vides notice of his or her need for fam-
ily and medical leave.

(e) An agency may waive the notice
requirements under paragraph (a) of
this section and instead impose the
agency's usual and customary policies
or procedures for providing notifica-
tion of leave. The agency's policies or
procedures for providing notification of
leave must not be more stringent than
the requirements in this section. How-
ever, an agency may not deny an em-
ployee's entitlement to leave under
§630.1203(a) of this part if the employee
fails to follow such agency policies or
procedures.

(f) An agency may require that a re-
quest for leave under §630.1203(a) (1)
and (2) be supported by evidence that is
administratively acceptable to the
agency.

§ 630.1207 Medical certification.

(a) An agency may require that a re-
quest for leave under §630.1203(a) (3) or
(4) be supported by written medical
certification issued by the health care
provider of the employee or the health
care provider of the spouse, son, daugh-
ter, or parent of the employee, as ap-
propriate. An employee shall provide
the written medical certification to
the agency in a timely manner. An
agency may waive the requirement for
an initial medical certificate in a sub-
sequent 12-month period if the leave
under §630.1203(a) (3) or (4) is for the
same chronic or continuing condition.

(b) The written medical certification
shall include—

(1) The date the serious health condi-
tion commenced;

(2) The probable duration of the seri-
ous health condition or specify that
the serious health condition is a chron-
ic or continuing condition with an un-
known duration and whether the pa-
tient is presently incapacitated and the
likely duration and frequency of epi-
sodes of incapacity;

(3) The appropriate medical facts
within the knowledge of the health
care provider regarding the serious
health condition, including a general
statement as to the incapacitation, ex-
amination, or treatment that may be
required by a health care provider;

(4) For the purpose of leave taken
under §630.1203(a)(3) of this part—

(i) A statement from the health care
provider that the spouse, son, daugh-
ter, or parent of the employee requires
psychological comfort and/or physical
care; needs assistance for basic medi-
cal, hygienic, nutritional, safety, or
transportation needs or in making ar-
rangements to meet such needs; and
would benefit from the employee's care or presence; and

(ii) A statement from the employee on the care he or she will provide and an estimate of the amount of time needed to care for his or her spouse, son, daughter, or parent;

(5) For the purpose of leave taken under § 630.1203(a)(4), a statement that the employee is unable to perform one or more of the essential functions of his or her position or requires medical treatment for a serious health condition based on written information provided by the agency on the essential functions of the employee's position or, if not provided, discussion with the employee about the essential functions of his or her position; and

(6) In the case of certification for intermittent leave or leave on a reduced leave schedule under § 630.1203(a)(3) or (4) for planned medical treatment, the dates (actual or estimates) on which such treatment is expected to be given, the duration of such treatment, and the period of recovery, if any, or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

(c) The information on the medical certification shall relate only to the serious health condition for which the current need for family and medical leave exists. The agency may not require any personal or confidential information in the written medical certification other than that required by paragraph (b) of this section. If an employee submits a completed medical certification signed by the health care provider, the agency may not request new information from the health care provider. However, a health care provider representing the agency, including a health care provider employed by the agency or under administrative oversight of the agency, may contact the health care provider who completed the medical certification, with the employee's permission, for purposes of clarifying the medical certification.

(d) If the agency doubts the validity of the original certification provided under paragraph (a) of this section, the agency may require, at the agency's expense, that the employee obtain the opinion of a second health care provider designated or approved by the agency concerning the information certified under paragraph (b) of this section. Any health care provider designated or approved by the agency shall not be employed by the agency or be under the administrative oversight of the agency on a regular basis unless the agency is located in an area where access to health care is extremely limited—e.g., a rural area or an overseas location where no more than one or two health care providers practice in the relevant specialty, or the only health care providers available are employed by the agency.

(e) If the opinion of the second health care provider differs from the original certification provided under paragraph (a) of this section, the agency may require, at the agency's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the agency and the employee concerning the information certified under paragraph (b) of this section. The opinion of the third health care provider shall be binding on the agency and the employee.

(f) If the employee is unable to provide the requested medical certification before leave begins, or if the agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the agency shall grant provisional leave pending final written medical certification.

(h) If, after the leave has commenced, the employee fails to provide the requested medical certification, the agency may—

(1) Charge the employee as absent without leave (AWOL); or
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(2) Allow the employee to request that the provisional leave be charged as leave without pay or charged to the employee's annual and/or sick leave account, as appropriate.

(i) For leave taken for the purposes of pregnancy, chronic conditions, or long-term conditions under the continuing supervision of a health care provider, as these terms are defined in §630.1202 in the definition of “serious health condition” under paragraphs (2)(ii), (iii), and (iv), the agency may require, at the agency's expense, subsequent medical recertification from the health care provider on a periodic basis, but not more than every 30 calendar days. For leave taken for all other serious health conditions and including leave taken on an intermittent or reduced leave schedule, if the health care provider has specified on the medical certification a minimum duration of the period of incapacity, the agency may not request recertification until that period has passed. An agency may require subsequent medical recertification more frequently than every 30 calendar days, or more frequently than the minimum duration of the period of incapacity specified on the medical certification, if the employee requests that the original leave period be extended, the circumstances described in the original medical certification have changed significantly, or the agency receives information that casts doubt upon the continuing validity of the medical certification.

(j) To ensure the security and confidentiality of any written medical certification under §§630.1207 or 630.1208(h) of this part, the medical certification shall be subject to the provisions for safeguarding information about individuals under subpart A or part 293 of this chapter.


§ 630.1208 Protection of employment and benefits.

(a) Any employee who takes leave under §630.1203(a) of this part shall be entitled, upon return to the agency, to be returned to—

(1) The same position held by the employee when the leave commenced; or

(2) An equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

(b) For the purpose of applying paragraph (a)(2) of this section, an equivalent position must be in the same commuting area and must carry or provide at a minimum—

(1) The same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority;

(2) An equivalent grade or pay level, including any applicable locality-based comparability payment under 5 U.S.C. 5304; special rate of pay for law enforcement officers or special pay adjustment for law enforcement officers under section 403 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), respectively; continued rate of pay under subpart G of part 531 of this chapter; or special salary rate under 5 U.S.C. 5305 or similar provision of law;

(3) The same type of appointment, work schedule, status, and tenure;

(4) The same employment benefits made available to the employee in his or her previous position (e.g., life insurance, health benefits, retirement coverage, and leave accrual);

(5) The same or equivalent opportunity for a within-grade increase, performance award, incentive award, or other similar discretionary and non-discretionary payments, consistent with applicable laws and regulations; however, the entitlement to be returned to an equivalent position does not extend to intangible or unmeasurable aspects of the job;

(6) The same or equivalent opportunity for premium pay consistent with applicable law and regulations under 5 CFR part 550, subpart A, or 5 CFR part 551, subpart E; and

(7) The same or equivalent opportunity for training or education benefits consistent with applicable laws and regulations, including any training that an employee may be required to complete to qualify for his or her previous position.

(c) As a result of taking leave under §630.1203(a) of this part, an employee shall not suffer the loss of any employment benefit accrued prior to the date on which the leave commenced.
(d) Except as otherwise provided by or under law, a restored employee shall not be entitled to—

(1) The accrual of any employment benefits during any period of leave; or

(2) Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(e) For the purpose of applying paragraph (d) of this section, the same entitlements and limitations in law and regulations that apply to the position, pay, benefits, status, and other terms and conditions of employment of an employee in a leave without pay status shall apply to any employee taking leave without pay under this part, except where different entitlements and limitations are specifically provided in this subpart.

(f) An employee is not entitled to be returned to the same or equivalent position under paragraph (a) of this section if the employee would not otherwise have been employed in that position at the time the employee returns from leave.

(g) An agency may not return an employee to an equivalent position where written notification has been provided that the equivalent position will be affected by a reduction in force if the employee's previous position is not affected by a reduction in force.

(h) As a condition to returning an employee who takes leave under §630.1203(a)(4), an agency may suspend a uniformly applied practice or policy that requires all similarly-situated employees (i.e., same occupation, same serious health condition) to obtain written medical certification from the health care provider of the employee that the employee is able to perform the essential functions of his or her position. An agency may delay the return of an employee until the medical certification is provided. The same conditions for verifying the adequacy of a medical certification in §630.1207(c) shall apply to the medical certification to return to work. No second or third opinion on the medical certification to return to work may be required. An agency may not require a medical certificate to return to work during the period the employee takes leave intermittently or under a reduced leave schedule under §630.1204.

(i) If an agency requires an employee to obtain written medical certification under paragraph (h) of this section before he or she returns to work, the agency shall notify the employee of this requirement before leave commences, or to the extent practicable in emergency medical situations, and pay the expenses for obtaining the written medical certification. An employee's refusal or failure to provide written medical certification under paragraph (h) of this section may be grounds for appropriate disciplinary or adverse action, as provided in part 752 of this chapter.

(j) An agency may require an employee to report periodically to the agency on his or her status and intention to return to work. An agency's policy requiring such reports must take into account all of the relevant facts and circumstances of the employee's situation.

(k) An employee's decision to invoke FMLA leave under §630.1203(a) does not prohibit an agency from proceeding with appropriate actions under part 432 or part 752 of this chapter.

§ 630.1209 Health benefits.

An employee enrolled in a health benefits plan under the Federal Employees Health Benefits Program (established under chapter 89 of title 5, United States Code) who is placed in a leave without pay status as a result of entitlement to leave under §630.1203(a) of this part may continue his or her health benefits enrollment while in the leave without pay status and arrange to pay the appropriate employee contributions into the Employees Health Benefits Fund (established under section 8909 of title 5, United States Code). The employee shall make such contributions consistent with 5 CFR 890.502.

§ 630.1210 Greater leave entitlements.

(a) An agency shall comply with any collective bargaining agreement or any agency employment benefit program or plan that provides greater family or

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§ 630.1211 Records and reports.

(a) So that OPM can evaluate the use of family and medical leave by Federal employees and provide the Congress and others with information about the use of this entitlement, each agency shall maintain records on employees who take leave under this subpart and submit to OPM such records and reports as OPM may require.

(b) At a minimum, each agency shall maintain the following information concerning each employee who takes leave under this subpart:

1. The employee's rate of basic pay, as defined in 5 CFR 550.103;
2. The occupational series for the employee's position;
3. The number of hours of leave taken under §630.1203(a), including any paid leave substituted for leave without pay under §630.1205(b); and
4. Whether leave was taken—
   (i) Under §630.1203(a) (1), (2) or (3) of this part; or
   (ii) Under §630.1203(a)(4) of this part.

(c) When an employee transfers to a different agency, the losing agency shall provide the gaining agency with information on leave taken under §630.1203(a) of this part by the employee during the 12 months prior to the date of transfer. The losing agency shall provide the following information:

1. The beginning and ending dates of the employee's 12-month period, as determined under §630.1203(c) of this part; and
2. The number of hours of leave taken under §630.1203(a) of the part during the employee's 12-month period, as determined under §630.1203(c) of this part.

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## List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the Federal Register since January 1, 1986, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.


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