

§ 530.204

5 CFR Ch. I (1–1–10 Edition)

(e) An agency may not defer or discontinue nondiscretionary payments for any period of time to make a discretionary payment that would otherwise cause an employee's pay to exceed the applicable aggregate limitation. An agency may not defer or discontinue basic pay under any circumstance.

(f) If, after an agency defers discretionary payments as required by paragraph (d) of this section, the estimated aggregate compensation to which an employee is entitled exceeds the applicable aggregate limitation, the agency must defer all nondiscretionary payments (other than basic pay) as necessary to avoid payments in excess of that limitation. An agency must defer all nondiscretionary payments at the time when otherwise continuing to pay such payments would cause an employee's estimated aggregate compensation for that calendar year to exceed the applicable aggregate limitation. An agency must pay any portion of a nondiscretionary payment deferred under this paragraph at a later date, as provided in § 530.204.

(g)(1) If an agency determines that it underestimated an employee's aggregate compensation at an earlier date in the calendar year, or the aggregate limitation applicable to the employee is reduced during the calendar year, the sum of the employee's remaining payments of basic pay may exceed the difference between the aggregate compensation the employee has actually received to date in that calendar year and the applicable aggregate limitation. In such cases, the employee will become indebted to the Federal Government for any amount paid in excess of the applicable aggregate limitation. The head of the agency may waive the debt under 5 U.S.C. 5584, if warranted.

(2) To the extent that any excess amount is attributable to amounts that should have been deferred and would have been payable at the beginning of the next calendar year, an agency must extinguish the excess amount on January 1 of the next calendar year. As part of the correction of the error, the agency must deem the excess amount to have been paid on January 1 of the next calendar year (when the debt was extinguished) as if it were a deferred excess payment, as

described in § 530.204, and must consider this deemed deferred excess payment to be part of the employee's aggregate compensation for the new calendar year.

(h) If an agency determines that it overestimated an employee's aggregate compensation at an earlier date in the calendar year, which caused the agency to defer payments unnecessarily under this section, or the aggregate limitation applicable to the employee is increased during the calendar year, the agency may make appropriate corrective payments to the employee during the calendar year, notwithstanding § 530.204.

[69 FR 70360, Dec. 6, 2004, as amended at 70 FR 25740, May 13, 2005]

§ 530.204 Payment of excess amounts.

(a) An agency must pay the amounts that were deferred because they were in excess of the aggregate limitation (as described in § 530.203) as a lump-sum payment at the beginning of the following calendar year, except as otherwise provided in this section. This payment is part of the employee's aggregate compensation for the new calendar year.

(b) If a lump-sum payment under paragraph (a) of this section causes an employee's estimated aggregate compensation to exceed the aggregate limitation in the current calendar year, an agency must consider only the employee's basic pay that is expected to be paid in the current year in determining the extent to which the lump-sum payment may be paid. An agency must defer all other payments, as provided in § 530.203, in order to pay as much of the lump-sum excess amount as possible. Any payments deferred under this paragraph, including any portion of the lump-sum excess amount that was not payable, are 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, the gaining agency is responsible for making any lump-sum payment required by paragraph (a) of this section. The previous employing agency must provide the gaining agency with documentation regarding the employee's excess amount, as provided

in § 530.205. The previous employing agency must provide a fund transfer equal to the total cost of the lump-sum payment to the gaining agency through the Department of the Treasury's Intra-Governmental Payment and Collection System. If an employee leaves Federal service, the employing agency is responsible for making the lump-sum payment to the employee as provided in paragraph (d) of this section.

(d) An agency must pay any excess amount regardless of the calendar year limitation under the following conditions:

(1) If an employee dies, the employing agency must pay the entire excess amount as part of the settlement of accounts, in accordance with 5 U.S.C. 5582.

(2) If an employee separates from Federal service, the employing agency must pay the entire excess amount following a 30-day break in service. If the individual is reemployed in the Federal service within the same calendar year as the separation, any previous payment of an excess amount must be considered part of that year's aggregate compensation for the purpose of applying the aggregate limitation for the remainder of the calendar year.

§ 530.205 Records.

An agency must maintain appropriate records to administer this subpart and must transfer such records to any agency to which an employee may transfer. An agency must make such records available to any agency that may employ the employee later during the same calendar year. An agency's records must document the source of any deferred excess amount remaining to the employee's credit at the time of separation from the agency. In the case of an employee who separates from Federal service for at least 30 days, the agency records also must document any payment of a deferred excess amount made by the agency after separation.

Subpart C—Special Rate Schedules for Recruitment and Retention

SOURCE: 70 FR 31287, May 31, 2005, unless otherwise noted.

GENERAL PROVISIONS

§ 530.301 Purpose and applicability.

(a) *Purpose.* This subpart contains OPM regulations implementing 5 U.S.C. 5305, which authorizes the establishment of special rates of pay for Federal employees in executive agencies to address significant recruitment or retention problems. This subpart also contains rules for determining an employee's rate of pay when a special rate schedule is established, increased, decreased, or discontinued, or when conditions for coverage under a special rate schedule are changed. All other pay actions for special rate employees are governed by the pay-setting rules in 5 CFR parts 531 and 536.

(b) *Applicability.* Except as explained in § 530.303(a), this subpart applies only to GS employees.

§ 530.302 Definitions.

In this subpart:

Agency means an executive agency as defined in 5 U.S.C. 105.

Authorized agency official means the head of the agency or an official who is authorized to act for the head of the agency in the matter concerned.

Employee has the meaning given that term in 5 U.S.C. 2105.

General Schedule or *GS* means the classification and pay system established under 5 U.S.C. chapter 51 and subchapter III of chapter 53. It also refers to the pay schedule of GS rates established under 5 U.S.C. 5332, as adjusted under 5 U.S.C. 5303 or other law (including GS rates payable to GM employees). Law enforcement officers (LEOs) receiving LEO special base rates are covered by the GS classification and pay system, but receive higher base rates of pay in lieu of GS rates at grades GS-3 through GS-10.

GM employee has the meaning given that term in 5 CFR 531.203.

GS rate means a rate of basic pay within the General Schedule, excluding