

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

any LEO special base rate and additional pay of any kind such as locality payments or special rate supplements. A rate payable to a GM employee is considered a GS rate.

Highest applicable rate range means the rate range applicable to an employee's position that provides the highest rates of basic pay, excluding any retained rates. For example, a rate range of special rates may exceed an applicable locality rate range. In certain circumstances, the *highest applicable rate range* may consist of two types of pay rates from different pay schedules—e.g., a range where special rates (based on a fixed dollar supplement) are higher in the lower portion of the range and locality rates are higher in the higher portion of the range.

Law enforcement officer or *LEO* has the meaning given that term in 5 CFR 550.103.

LEO special base rate means a special base rate established for GS law enforcement officers at grades GS-3 through GS-10 under section 403 of the Federal Employees Pay Comparability Act of 1990 (section 529 of Pub. L. 101-509, November 5, 1990, as amended) which is used in lieu of a GS rate.

Locality payment has the meaning given that term in 5 CFR 531.602.

Locality rate means a GS rate or an LEO special base rate, if applicable, plus any applicable locality payment.

Official worksite means the official location of an employee's position of record as determined under 5 CFR 531.605. *Official worksite* is synonymous with the term "official duty station" as used in 5 U.S.C. 5305(i).

OPM means the Office of Personnel Management.

Pay schedule means a set of rate ranges established for GS employees under a single authority—i.e., the General Schedule, an LEO special base rate schedule (for grades GS-3 through 10), a locality rate schedule based on GS rates, a locality rate schedule based on LEO special base rates (for grades GS-3 through 10), a special rate schedule under this subpart, or a similar schedule under 38 U.S.C. 7455. A pay schedule applies to or covers a defined category of employees based on established coverage conditions (e.g., official worksite, occupation). A pay schedule is

considered to apply to or cover an employee who meets the established coverage conditions even when a rate under that schedule is not currently payable to the employee because of a higher pay entitlement under another pay schedule.

Position of record means an employee's official position (defined by grade, occupational series, employing agency, LEO status, and any other condition that determines coverage under a pay schedule (other than official worksite)), as documented on the employee's most recent Notification of Personnel Action (Standard Form 50 or equivalent) and current position description. A position to which an employee is temporarily detailed is not documented as a position of record. For an employee whose change in official position is followed within 3 workdays by a reduction in force resulting in the employee's separation before he or she is required to report for duty in the new position, the position of record in effect immediately before the position change is deemed to remain the position of record through the date of separation.

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, including a GS rate, an LEO special base rate, a locality rate, a special rate under this subpart or a similar rate under 38 U.S.C. 7455, or a retained rate, but excluding additional pay of any other kind.

Rate range or *range* means the range of rates of basic pay for a grade within an established pay schedule, excluding any retained rate. A rate range may consist of GS rates, LEO special base rates, locality rates, special rates, or similar rates under other legal authority.

Retained rate means a rate above the maximum rate of the rate range applicable to the employee which is payable under 5 CFR part 536 or, for a former member of the Senior Executive Service, under 5 CFR 359.705.

Special rate means a rate of pay within a special rate schedule established under this subpart.

Special rate schedule means a pay schedule established under this subpart

to provide higher rates of pay for specified categories of GS positions or employees at one or more grades. An increased or decreased special rate schedule refers to an increase or decrease in one or more rate ranges within that schedule.

Special rate supplement means the portion of a special rate paid above an employee's GS rate. However, for a law enforcement officer receiving an LEO special base rate who is also entitled to a special rate, the special rate supplement equals the portion of the special rate paid above the officer's LEO special base rate. When a special rate schedule covers both LEO positions and other positions, the value of the special rate supplement will be less for law enforcement officers receiving an LEO special base rate (since that rate is higher than the corresponding GS rate). The payable amount of a special rate supplement is subject to the Executive Schedule level IV limitation on special rates, as provided in § 530.304(a).

[70 FR 31287, May 31, 2005, as amended at 73 FR 66151, Nov. 7, 2008]

§ 530.303 Coverage.

(a) Under 5 U.S.C. 5305, OPM may establish special rates for employees paid under a statutory pay system (as defined in 5 U.S.C. 5302(1)) or any other pay system established by or under Federal statute for civilian positions in the executive branch. Special rates apply only to GS employees unless the approved schedule coverage criteria specifically state otherwise. OPM will establish special rate schedules covering employees under a non-GS pay system only at the request of the agency responsible for administering that system. For employees covered by a non-GS pay system, the responsible agency is subject to the requirements in 5 U.S.C. 5305. To the extent the statutory or regulatory provisions governing the non-GS pay system differ from the regulatory provisions of this subpart, the responsible agency must follow policies that are consistent as possible with this subpart.

(b) An employee's coverage under a special rate schedule is subject to the coverage conditions established by OPM for that schedule, except as provided in paragraph (c) of this section.

The coverage conditions for a special rate schedule may be based on occupation, grade, employing agency, geographic location of official worksite, or other factors OPM may determine to be appropriate. An agency determination as to whether an employee meets the coverage conditions for a special rate schedule must be based on the employee's position of record and official worksite. An agency also may be required to consider other employee-specific factors established by OPM to determine special rate coverage, such as special qualifications or certifications.

(c) An agency must pay the applicable special rate to any employee who meets the coverage conditions established by OPM with respect to a special rate schedule unless an authorized agency official determines that a category of employees of the agency will not be covered by a proposed or existing special rate schedule, subject to the following requirements:

(1) An authorized agency official may determine that a category of employees of the agency will not be covered by a special rate request or a proposed new special rate schedule. The official must provide written notice to OPM that identifies the specific category or categories of employees who will not be covered by the special rate schedule. The notice must be received by OPM before the effective date of the new special rate schedule.

(2) An authorized agency official may remove a category of employees of the agency from coverage under an existing special rate schedule. The official must provide written notice to OPM that identifies the specific category or categories of employees who will not be covered by the special rate schedule. The loss of coverage under a special rate schedule will become effective on the first day of the first pay period beginning on or after the date of the notice to OPM.

(d) An employee covered by a special rate schedule is not entitled to a special rate for any purpose with respect to any period during which the employee is entitled to a higher rate of basic pay under any other legal authority. For example, an employee is not entitled to a special rate if he or she is