Space Administration, when the employee fulfills the 1-year service requirement in the position for which qualifications pay was paid or in a successor position.

(b) Non-GS employees who move to the GS pay system. When an employee performs service under a non-GS pay system for Federal employees and that service is potentially creditable towards a GS within-grade increase waiting period, an equivalent increase is considered to occur at the time of any of the following personnel actions in the non-GS pay system:

(1) A promotion to a higher grade or work level within the non-GS pay system (unless the promotion is cancelled and the employee’s rate of basic pay is redetermined as if the promotion had not occurred); or

(2) An opportunity to receive a within-level or within-range increase that results in forward movement in the applicable range of rates of basic pay (including an increase granted immediately upon movement to the non-GS pay system from another pay system—e.g., to account for the value of accrued within-grade increases under the former pay system or to provide a promotion-equivalent increase), where “forward movement in the applicable range” means any kind of increase in the employee’s rate of basic pay other than an increase that is directly and exclusively linked to—

(i) A general structural increase in the employee’s basic pay schedule or rate range (including the adjustment of a range minimum or maximum); or

(ii) The employee’s placement under a new basic pay schedule within the same pay system, when such placement results in a nondiscretionary basic pay increase to account for occupational pay differences.

(c) Locality rates and special rates. Since locality rates under subpart F of this part and special rates under 5 CFR part 530, subpart C, and similar rates under other legal authority (e.g., 38 U.S.C. 7455) are not rates of basic pay for the purpose of this subpart, increases in pay resulting from an adjustment in an employee’s locality payment or special rate supplement or from placement on a new locality rate or special rate schedule are not considered in making equivalent increase determinations.


§ 531.408 [Reserved]

§ 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:

(i) 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 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 eligi-
ble 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 com-
petence determination has been de-
layed under this subpart:
(i) The employee shall be informed
that his or her determination is post-
poned and the appraisal period ex-
tended and shall be told of the specific
requirements for performance at an ac-
ceptable level of competence.
(ii) An acceptable level of com-
petence determination shall then be
made based on the employee’s rating of
record completed at the end of the ex-
tended appraisal period.

(iii) If, following the delay, the em-
ployee’s performance is determined to
be at an acceptable level of com-
petence, the within-grade increase will
be granted retroactively to the begin-
ning of the pay period following com-
pletion of the applicable waiting pe-
riod.

(d) Waiver of requirement for deter-
novation. (1) An acceptable level of
competence determination shall be
waived and a within-grade increase
granted when an employee has not
served in any position for the min-
imum period under an applicable agen-
cy performance appraisal program dur-
ding the final 52 calendar weeks of the
waiting period for one or more of the
following reasons:
(i) Because of absences that are cred-
itable service in the computation of a
waiting period or periods under § 531.406
of this subpart;
(ii) Because of paid leave;
(iii) Because the employee received
service credit under the back pay pro-
visions of subpart H of part 550 of this
chapter;
(iv) Because of details to another
agency or employer for which no rating
has been prepared;
(v) Because the employee has had ins-
sufficient time to demonstrate an ac-
ceptable level of competence due to au-
thorized activities of official interest
to the agency not subject to appraisal
under part 430 of this chapter (includ-
ing, but not limited to, labor-manage-
ment partnership activities under sec-
tion 2 of Executive Order 12871 and
serving as a representative of a labor
organization under chapter 71 of title 5,
United States Code); or
(vi) Because of long-term training.

(2) When an acceptable level of com-
petence determination has been 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 mini-
num 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 writ-
ning 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 em-
ployee’s performance is not at an ac-
ceptable level of competence, the nega-
tive determination shall be commu-
nicated to the employee in writing and
shall:
(i) Set forth the reasons for any nega-
tive 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 nega-
tive determination.

(a) When an agency head, or his or
her designee, issues a negative deter-
mation the following procedures are
established in accordance with section
5335(c) of title 5, United States Code for
reconsideration of the negative deter-
mination:

(i) An employee or an employee’s
personal representative may request
reconsideration of a negative deter-
mination by filing, not more than 15
days after receiving notice of deter-
mation, a written response to the
negative determination setting forth