

nullified on January 1 of the next calendar year. As part of the correction of the error, the excess amount will be deemed 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 paragraph (c)(3) of this section and must be considered part of the employee's aggregate compensation for the new calendar year.

(d) *Payment of excess amounts.* (1) Except for physicians and dentists (in occupational series 0602 and 0680, respectively), any amount that is not paid to an employee because of the annual aggregate compensation limitation under this section must be paid in a lump-sum payment at the beginning of the following calendar year. Any amount paid the following calendar year will be taken into account for purposes of applying the limitations with respect to such calendar year. For physicians and dentists (in occupational series 0602 and 0680, respectively), payments that exceed the limitation under paragraph (a)(2) of this section may not be made at any time.

(2) If a lump-sum payment causes an employee's estimated aggregate compensation to exceed the applicable limitation under this section, the Department must consider only the employee's adjusted salary and payments that are creditable for retirement purposes (e.g., LEAP or standby pay) in determining the extent to which the lump-sum payment may be paid and will defer all other payments, 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, will become payable at the beginning of the next calendar year.

(3) If an employee moves to another Federal agency or to another position within the Department not covered by NSPS, and, at the time of the move, the employee has received payments in excess of the aggregate limitation under 5 U.S.C. 5307, the employee's indebtedness for the excess amount received will be deferred from the effective date of the transfer until the beginning of the next calendar year. Effective January 1 of the new calendar year, the debt will be nullified and the

excess amount will be considered in applying that year's aggregate limitation.

(4) If an employee transfers to another agency and, at the time of transfer, the employee has excess payments deferred to the next calendar year, the provisions of 5 U.S.C. 5307 are applicable.

(5) The following conditions permit payment of excess aggregate compensation without regard to the calendar year limitation:

(i) 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.

(ii) If an employee separates from Federal service, the entire excess amount is payable following a 30-day break in service. If the individual is re-employed in the Department under NSPS in the same calendar year as separation, any previous payment of an excess amount will be considered part of that year's aggregate compensation for the purpose of applying the limitations described in this section for the remainder of the calendar year.

**§ 9901.314 National security compensation comparability.**

(a) To the maximum extent practicable, for fiscal years 2004 through 2012, the overall amount allocated for compensation of the DoD civilian employees who are included in the NSPS may not be less than the amount that would have been allocated for compensation of such employees for such fiscal years if they had not been converted to the NSPS, based on, at a minimum—

(1) The number and mix of employees in such organizational or functional units prior to conversion of such employees to the NSPS; and

(2) Adjustments for normal step increases and rates of promotion that would have been expected, had such employees remained in their previous pay schedule.

(b) To the maximum extent practicable, implementing issuances will provide a formula for calculating the overall amount to be allocated for fiscal years beyond fiscal year 2012 for compensation of the civilian employees included in the NSPS. The formula will

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ensure that, in the aggregate, employees are not disadvantaged in terms of the overall amount of compensation available as a result of conversion to the NSPS, while providing flexibility to accommodate changes in the function of the organization and other changed circumstances that might impact compensation levels.

(c) For the purpose of this section, “compensation” for civilian employees means adjusted salary, taking into account any applicable locality payment under 5 U.S.C. 5304, special rate supplement under 5 U.S.C. 5305, local market supplement under § 9901.332, or equivalent supplement under other legal authority.

### RATE RANGES AND GENERAL SALARY INCREASES

#### § 9901.321 Structure.

(a) Subject to § 9901.105, the Secretary will establish ranges of base salary rates for pay bands, with minimum and maximum rates set and adjusted as provided in § 9901.322.

(b) For each pay band within a career group, the Secretary will establish a common rate range that applies in all locations.

(c) The Secretary may establish and adjust control points within a pay band to manage compensation (e.g., limitations on pay setting and pay progression within a pay band that apply to specified positions). The Secretary may consider only the following factors in developing control points: mission requirements, labor market conditions, and benchmarks against duties, responsibilities, competencies, qualifications, and performance.

#### § 9901.322 Setting and adjusting rate ranges.

(a) Subject to § 9901.105, the Secretary may set and adjust the rate ranges (*i.e.*, range minimums and maximums) established under § 9901.321. In determining the rate ranges, the Secretary may consider mission requirements, labor market conditions, availability of funds, pay adjustments received by employees of other Federal agencies, and any other relevant factors.

(b) The Secretary may determine the effective date of newly set or adjusted

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band rate ranges. Established rate ranges will be reviewed for possible adjustment at least annually.

(c) The Secretary may establish different rate ranges and provide different rate range adjustments for different pay bands.

(d) The Secretary may adjust the minimum and maximum rates of a pay band by different percentages.

(e) The maximum rate of each band must be adjusted at the time of a general salary increase under § 9901.323(a)(1) by no less than the percentage amount of the General Schedule annual adjustment under 5 U.S.C. 5303.

#### § 9901.323 Eligibility for general salary increase.

(a) Employees with a current rating of record above “unacceptable” (Level 1) and employees who do not have a current rating of record for the most recently completed appraisal period are eligible to receive an approved general salary increase in their base salary rate subject to the following requirements:

(1) A general salary increase must be provided to eligible employees in all NSPS pay bands at the same time that a General Schedule annual adjustment takes effect under 5 U.S.C. 5303. The amount of such general salary increase is determined by the Secretary but may not be less than 60 percent of the General Schedule annual adjustment under 5 U.S.C. 5303 (unless a lesser percentage is allowed by law). Such general salary increase must be the same percentage amount for all eligible employees under NSPS, except that the increase for employees receiving a retained rate is limited to the lowest permitted amount (*i.e.*, 60 percent of the General Schedule annual adjustment under 5 U.S.C. 5303 unless a lesser percentage is allowed by law).

(2) In addition to the general salary increase under paragraph (a)(1) of this section, and subject to § 9901.105, a targeted general salary increase may be provided to all eligible employees (excluding employees receiving a retained rate under § 9901.356) in a designated occupational series or specialty in a pay band if the Secretary determines that