

## § 536.301

## 5 CFR Ch. I (1–1–18 Edition)

the employee's placement in another position; or

(3) At the end of the last day of the pay period in which the employee—

(i) Declines a reasonable offer;

(ii) Elects to terminate grade retention benefits (except that, if an employee's election specifically provides that the termination will take effect at the end of a later pay period, the election is considered to be made effective on the last day of that later pay period for the purpose of applying this paragraph); 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) If an employee's entitlement to grade retention terminates under this section, the employee's rate of basic pay must be set in accordance with the pay-setting rules and pay rates applicable to the employee's position of record (e.g., 5 CFR part 531, subpart B, for GS positions). An employee is not entitled to pay retention under subpart C of this part based on a reduction in basic pay resulting from waiver of the employee's grade retention entitlement under paragraph (a)(5) or (b) of § 536.207.

[70 FR 31305, May 31, 2005, as amended at 73 FR 66155, Nov. 7, 2008]

### Subpart C—Pay Retention

SOURCE: 70 FR 31310, May 31, 2005, unless otherwise noted.

#### § 536.301 Mandatory pay retention.

(a) Subject to the requirements in § 536.102 and this section, an agency must provide pay retention to an employee who moves between positions under a covered pay system or from a position not under a covered pay system to a position under a covered pay system and whose payable rate of basic pay otherwise would be reduced (after application of any applicable geographic conversion under § 536.303(a)) as a result of—

(1) The expiration of the 2-year period of grade retention under subpart B of this part;

(2) A reduction in force or reclassification action that places an employee

in a lower-graded position when the employee does not meet the eligibility requirements for grade retention under subpart B of this part;

(3) A management action that places an employee in a non-special rate position or in a lower-paid special rate position from a special rate position;

(4) A management action that places an employee under a different pay schedule;

(5) A management action that places an employee in a formal employee development program generally utilized Governmentwide (e.g., Recent Graduates Program); or

(6) A reduction or elimination of scheduled rates, special schedules, or special rate schedules, excluding—

(i) A statutory reduction in scheduled rates of pay under the General Schedule, including a reduction authorized under 5 U.S.C. 5303(b); or

(ii) A statutory reduction in a prevailing rate schedule established under 5 U.S.C. chapter 53, subchapter IV, and 5 CFR part 532.

(b) An agency must establish a retained rate when application of a promotion increase rule for General Schedule or prevailing rate employees results in a payable rate of basic pay that exceeds the maximum rate of the highest applicable rate range for the employee's new position. (See the promotion increase rules in 5 U.S.C. 5334(b) and 5 CFR 531.214 for GS employees and in 5 CFR 532.407 for prevailing rate employees—in particular, the special provisions in these promotion increase rules on establishing a retained rate equal to an employee's existing rate when that existing rate exceeds the applicable range maximum.) Once established, such a retained rate is governed by the provisions of this subpart.

(c) If an employee's official worksite changes in conjunction with an action that may entitle the employee to pay retention under paragraph (a) of this section, the agency must apply the geographic conversion rule in § 536.303(a) before determining whether an employee's rate of basic pay otherwise would be reduced.

(d) An employee is considered "placed" under paragraph (a)(2), (3), (4), and (5) of this section only when the

employee remains in a position in the same agency. Optional pay retention under § 536.302 may apply when an employee transfers to a different agency as a result of a reduction in force or reclassification action or is selected by a different agency to fill a position under a formal employee development program, if all other qualifying conditions are met.

(e) Eligibility for pay retention under this section ceases under the conditions specified in § 536.308.

[70 FR 31310, May 31, 2005, as amended at 73 FR 66155, Nov. 7, 2008; 77 FR 28223, May 11, 2012]

#### § 536.302 Optional pay retention.

(a) Subject to the requirements in § 536.102 and this section, an authorized agency official may provide pay retention to an employee not entitled to pay retention under § 536.301, but whose payable rate of basic pay otherwise would be reduced (after application of any applicable geographic conversion under § 536.303(a)) as the result of a management action. This includes a management action to move an employee's position, without a break in service of more than 3 days, from a Department of Defense or Coast Guard nonappropriated fund instrumentality (as defined in 5 U.S.C. 2105(c)) to a position under a covered pay system in the same agency.

(b) If an employee's official worksite changes in conjunction with an action that may entitle the employee to pay retention under paragraph (a) of this section, the agency must apply the geographic conversion rule in § 536.303(a) before determining whether an employee's rate of basic pay otherwise would be reduced.

(c) Eligibility for pay retention under this section ceases under the conditions specified in § 536.308.

#### § 536.303 Geographic conversion.

(a) *Geographic conversion at time of action that may provide initial entitlement to pay retention.* If, in conjunction with a pay action that may entitle the employee to pay retention under §§ 536.301 or 536.302, an employee's official worksite is changed to a new location where different pay schedules apply, the agency must convert the employee's rate(s)

of basic pay to the applicable pay schedule(s) in the new location before applying the pay retention rules in this subpart or any other simultaneous pay action (other than a general pay adjustment). The agency must identify the highest applicable rate range that would apply to the employee's position of record before the pay action as if that position were stationed at the new official worksite and determine the employee's converted payable rate of basic pay based on the step (or relative position in range for a GM employee) in that range that corresponds to the employee's step (or relative position in range for a GM employee) before the pay action. A reduction in an employee's payable rate of basic pay resulting from this geographic conversion is not a basis for entitlement to pay retention. The pay retention rules in this subpart must be applied as if the employee's payable rate of basic pay after geographic conversion is the employee's existing payable rate of basic pay in effect immediately before the action.

(b) *Geographic conversion when a retained rate employee's official worksite is changed.* When an employee is receiving a retained rate and the employee's official worksite is changed to a new location where different pay schedules apply, the agency must apply the following rules (after applying any simultaneous general pay adjustment under § 536.305) to derive the converted retained rate that will be used as the existing retained rate in determining the employee's pay retention entitlement in the new position of record and at the new official worksite:

(1) Identify the maximum rate for the highest applicable rate range that applies to the employee's former position of record based on the former official worksite;

(2) Identify the maximum rate for the highest applicable rate range that would apply to the employee's former position of record if the employee were stationed at the official worksite for the new position of record;

(3) Divide the maximum rate identified in paragraph (b)(2) of this section by the maximum rate identified in paragraph (b)(1) of this section and