§ 531.217 Special conversion rules for certain non-GS employees.

When an employee moves (without a break in service) to a GS position from a non-GS system under an authority in 5 U.S.C. chapters 47, 95, or similar provision of law, and that authority provides that an employee will be converted to GS-equivalent rates immediately before leaving the non-GS system, the employee is considered a GS employee in applying the provisions of this subpart.

USING A HIGHEST PREVIOUS RATE UNDER THE MAXIMUM PAYABLE RATE RULE

§ 531.221 Maximum payable rate rule.

(a) General. (1) An agency may apply the maximum payable rate rule as described in this section to determine an employee’s payable rate of basic pay at the move.

(2) For an employee covered by paragraph (d)(1) of this section, the agency may set the initial payable rate of basic pay at any of the following rates, unless the employee is entitled to receive a higher rate of basic pay under paragraph (d)(1) of this section:

(i) The lowest step rate within the highest applicable rate range for the employee’s GS position of record and official worksite that equals or exceeds the employee’s NAFI highest previous rate, or any lower step rate (consistent with the method prescribed in paragraphs (c)(1) and (2) of this section);

(ii) A rate determined under the maximum payable rate rule in § 531.221 (using non-NAFI rates of basic pay); or

(iii) A rate determined under the authority to grant pay retention in 5 CFR 536.302(a).

(3) For the purpose of this paragraph (d), “moved involuntarily” means the movement of the incumbent of an NAFI position in the Department of Defense or the Coast Guard with the position when it is moved to the civil service employment system of the Department of Defense or the Coast Guard, respectively.
rate upon reemployment, transfer, reassignment, promotion, demotion, change in type of appointment, termination of a critical position pay authority under 5 CFR part 535, movement from a non-GS pay system, or termination of grade or pay retention under 5 CFR part 536. (Note: Special rules for GM employees are provided in § 531.247.) A payable rate set under this section must take effect on the effective date of the action involved. This section may not be used to set an employee’s rate of basic pay retroactively unless a retroactive action is required to comply with a nondiscretionary agency policy.

(2) At its discretion, an agency may set an employee’s rate(s) of basic pay at the maximum rate identified under this section or at a lower rate. However, the employee’s rate may not be lower than the rate to which he or she is entitled under any other applicable pay-setting rule.

(3) In applying this section, an agency must use applicable annual rates of pay or, if a rate under a non-GS system is an hourly rate, convert the hourly rate to an annual rate.

(4) In applying this section, an agency must treat a critical position pay rate under 5 CFR part 535 as if it were a rate under a non-GS pay system, as described in paragraph (d) of this section.

(5) In applying this section, an agency must treat an adjusted GS rate that includes market pay under 38 U.S.C. 7431(c) as if it were a rate under a non-GS pay system, as described in paragraph (d) of this section.

(b) When highest previous rate is based on a GS rate or LEO special base rate. When an employee’s highest previous rate (as determined under §531.222) is based on a GS rate or an LEO special base rate paid under the GS pay system, an agency must determine the maximum payable rate of basic pay that may be paid to the employee as follows:

(1) Compare the employee’s highest previous rate with the GS rates for the grade in which pay is currently being set. For this comparison, use the schedule of GS rates in effect at the time the highest previous rate was earned. In applying this paragraph to an employee who was a law enforcement officer receiving an LEO special base rate when the highest previous rate was earned, compare the highest previous rate to the applicable LEO special base rates in lieu of GS rates if the grade in which pay is currently being set is one of the grades from GS–3 through GS–10.

(2) Identify the lowest step in the grade at which the GS rate (or LEO special base rate, if applicable) was equal to or greater than the employee’s highest previous rate. If the employee’s highest previous rate was greater than the maximum GS rate (or LEO special base rate, if applicable) for the grade, identify the step 10 rate (i.e., maximum rate of the grade).

(3) Identify the rate on the currently applicable range of GS rates or LEO special base rates for the employee’s current position of record and grade that corresponds to the step identified in paragraph (b)(2) of this section. This rate is the maximum payable GS rate or LEO special base rate the agency may pay the employee under this section.

(4) After setting the employee’s GS or LEO special base rate within the rate range for the grade (not to exceed the maximum payable rate identified in paragraph (b)(3) of this section), the agency must determine the employee’s payable rate of basic pay based on the employee’s GS or LEO special base rate.

(c) When highest previous rate is based on a GS employee’s special rate. When a GS employee is reassigned under the conditions described in §531.222(c), the employee’s former special rate in effect immediately before the reassignment may be used as the employee’s highest previous rate. If the employee’s former special rate schedule is being adjusted on the effective date of the employee’s reassignment, the agency must determine what the employee’s special rate would have been on that adjusted schedule (before any other simultaneous action) and treat the resulting special rate as the employee’s former special rate in applying paragraph (c)(1) and (2) of this section. The agency must apply the maximum payable rate rule as follows:
§ 531.222 Rates of basic pay that may be used as the highest previous rate.

(a)(1) Subject to the conditions in this section and § 531.223, the highest previous rate used in applying § 531.221 is—

(i) The highest rate of basic pay previously received by an individual while employed in a civilian position in any part of the Federal Government (including service with the government of the District of Columbia for employees first employed by that government before October 1, 1987), without regard to