

§ 536.302

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, such as upward mobility, apprenticeship, and career intern programs; 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),

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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]

§ 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

round the result to the fourth decimal place; and

(4) Multiply the factor resulting from paragraph (b)(3) of this section by the employee's former retained rate and round to the nearest whole dollar (for an annual rate) or the nearest whole cent (for an hourly rate) to derive the employee's converted retained rate at the new official worksite.

[70 FR 31310, May 31, 2005, as amended at 73 FR 66155, Nov. 7, 2008]

§ 536.304 Determining an employee's pay retention entitlement.

(a) *General.* (1) When an employee becomes entitled to pay retention under § 536.301 or 536.302 or undergoes a change in his or her position of record or pay schedule while receiving a retained rate (when the terminating conditions for pay retention under § 536.308 do not apply), the agency must determine the employee's pay retention entitlement following the rules in this section.

(2) Any general pay adjustment (including a retained rate adjustment under § 536.305) that takes effect on the same date as an action described in paragraph (a)(1) of this section must be processed first, before any other pay action and before applying the rules in paragraphs (a)(3), (a)(4), (b), or (c) of this section, as applicable.

(3) If the location of an employee's official worksite changes in conjunction with an action that may provide initial entitlement to pay retention, the agency must apply the geographic conversion rule under § 536.303(a) before applying the rules in paragraph (b) of this section. The converted rate of basic pay must be treated as the employee's existing payable rate of basic pay in applying those rules.

(4) If the location of an employee's official worksite changes while he or she is receiving a retained rate, the agency must apply the geographic conversion rule under § 536.303(b) before applying the rules in paragraph (c) of this section. The converted retained rate must be treated as the employee's existing retained rate in applying those rules.

(5) When an employee's pay retention entitlement is established or redetermined under this section on the same