

## § 9901.372

the temporary promotion (prior to conversion) or may set pay according to the promotion rules under § 9901.354 to provide a greater increase. Upon expiration of the temporary promotion, pay will be set as specified in § 9901.354(c) or paragraph (k)(4) of this section, as applicable.

(ii) The increase described in paragraph (k)(3)(i) of this section may also apply to an employee who is on a temporary promotion at the time that temporary promotion position converts to NSPS, even if the employee's permanent position of record has not yet converted. In this case, upon expiration of the temporary promotion, pay will be set under the rules of the applicable pay system.

(4) *Temporary placement becomes permanent.* If a temporary reassignment or promotion to an NSPS position under this paragraph (k) becomes permanent with no break, the employee's base salary will not change, but will continue at the rate received at the end of the temporary reassignment or promotion.

(1) *Special increases equivalent to GS promotion increase.* (1) During the first 12 months following conversion, employees who are not eligible for the Accelerated Compensation for Developmental Positions (ACDP) under § 9901.345 are eligible to receive (at the discretion of an authorized management official) a one-time base salary increase equivalent to a noncompetitive promotion increase the employee would have received but for conversion to NSPS. This paragraph may be applied only when the grade level of the promotion is encompassed within the same pay band, the employee's performance warrants the pay increase, and the promotion would have otherwise occurred during that period.

(2) An employee who is selected for a non-NSPS position that subsequently becomes covered by NSPS before the effective date of the employee's placement in the position is eligible to receive (at the discretion of an authorized management official) a one-time base salary increase equivalent to the increase the employee would have received had the placement been effected prior to the position becoming covered by NSPS. This paragraph may be applied only when the employee is not al-

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ready in an NSPS-covered position on the effective date of the placement, and the effective date is within 12 months of the position becoming covered by NSPS. An employee who receives an increase under this paragraph is not eligible for the WGI adjustment described in paragraph (j) of this section.

(m) *Adjustment for physicians and dentists.* For a GS physician or dentist who was regularly receiving a physicians' comparability allowance or premium pay, the Component may increase the base salary after conversion to NSPS to account for the loss of such allowance or premium pay (since such payments are not authorized for physicians and dentists under NSPS). The Component must also consider the additional pay represented by any applicable targeted local market supplement in determining the rate at which the base salary should be set under this paragraph.

### § 9901.372 Conversion or movement out of NSPS pay system.

(a) *General.* (1) This section applies to the conversion or movement of employees out of the NSPS pay system to a different pay system. Under this section, when an NSPS employee is converted or moved to a GS position, a GS virtual grade and rate is established for the NSPS employee so that the employee is treated as a GS employee in applying GS pay-setting rules.

(2) For the purpose of this section (unless otherwise specified)—

(i) The terms "convert," "converted," "converting," and "conversion" refer to NSPS employees who become covered by a different pay system without a change in position (as a result of a determination made by the Secretary under § 9901.102(e) or as otherwise provided by law); and

(ii) The terms "move," "moved," "moving," and "movement" refer to NSPS employees who become covered by a different pay system through a change in position, rather than by conversion.

(b) *Classification of converted position.* Prior to converting an employee out of NSPS, an authorized management official, as defined by the Component, will review the duties of the employee's

current permanent position of record and classify the position's duties in accordance with Office of Personnel Management (OPM) classification guidance and/or other appropriate criteria to determine the appropriate title, series, and grade or pay band of the position in the new pay system. Employees occupying positions classified to NSPS-unique occupational series at the time of conversion out cannot be retained in those series, but must be assigned to the series that most closely represents the employee's current duties (*i.e.*, the duties of the former NSPS position).

(c) *Determining pay under new pay system.* When converting or moving an employee out of NSPS to another pay system, the pay-setting rules of the gaining system will apply. For the purpose of applying those rules, the employee's final pay under NSPS is determined based on the employee's NSPS permanent position of record (including band), official worksite, and pay as of the day immediately before the date of conversion or movement out of NSPS. An employee on a temporary reassignment or temporary promotion will be returned to his or her permanent position of record prior to conversion or movement. No personnel or pay action that, but for the conversion or movement out of NSPS, would have occurred under NSPS on the date of conversion or movement may be considered. Any personnel or pay action occurring on the date of conversion or movement must be processed under the rules of the gaining system. In the case of a conversion or movement to the General Schedule (GS) pay system, the supplemental rules in paragraph (d) of this section must be followed to determine a virtual GS grade and rate (as of the date before the employee's conversion or movement out of NSPS) that will be used in apply GS pay-setting rules.

(d) *Virtual GS grade and rate*—(1) *Virtual GS grade.* (i) Before an employee converts or moves out of NSPS under this paragraph, a virtual GS grade will be established for the purpose of applying GS pay-setting rules (e.g., a promotion increase if the actual GS grade is higher than the virtual GS grade). This virtual GS grade will be based on a comparison of the NSPS employee's

current adjusted salary to the highest applicable GS rate range that would apply to the employee's NSPS permanent position of record considering only those GS grade levels and associated rate ranges that are included in the employee's assigned NSPS pay band. For the purpose of this section, a highest applicable GS rate range includes the following rate ranges: The GS locality rate schedule for the locality pay area in which the employee's NSPS official worksite is located; the special rate schedule based on the employee's position of record, official worksite, or other established conditions; the law enforcement officer special base rate schedule; or the GS base pay schedule. The grade-band conversion tables established in DoD's NSPS implementing issuances for the purpose of converting employees into NSPS must be used in determining which GS grades are covered by the employee's assigned NSPS pay band. For two-grade interval occupations, conversion may not be made to an intervening (even) grade level below GS-11.

(ii) If the employee's pay band covers one GS grade, the employee's virtual grade will be that grade.

(iii) For an employee in a pay band encompassing more than one GS grade, if the employee's adjusted salary equals or exceeds the step 4 rate of the highest applicable GS rate range for the highest GS grade encompassed within his or her assigned NSPS pay band, the employee's virtual grade will be that grade. If the employee's adjusted salary is lower than the step 4 rate, the adjusted salary is compared with the step 4 rate of the highest applicable GS rate range for the second highest GS grade encompassed within the employee's pay band. If the employee's adjusted salary equals or exceeds the step 4 rate of the second highest grade, the employee's virtual grade will be that grade. This process is repeated for each successively lower grade encompassed within the assigned band until a grade is found at which the employee's adjusted salary equals or exceeds the step 4 rate of the highest applicable GS rate range for that grade.

(iv) Notwithstanding paragraph (d)(1)(iii) of this section, if the employee's adjusted salary exceeds the maximum rate of the highest applicable GS rate range for the assigned GS grade determined under paragraph (d)(1)(iii) of this section but fits in the highest applicable GS rate range for the next higher grade (*i.e.*, is greater than or equal to the rate for step 1 but less than the rate for step 4), then the employee's virtual GS grade will be that higher grade.

(v) Notwithstanding paragraph (d)(1)(iii) of this section, an employee's virtual GS grade may not be less than the permanently assigned GS grade the employee held upon conversion into NSPS (for an employee who was converted as described in § 9901.371), unless, since that time, the employee has undergone—

(A) A voluntary reduction in band or reduction in base salary;

(B) An involuntary reduction in band or reduction in base salary based on unacceptable performance and/or conduct; or

(C) A reduction in band based on a reduction in force (RIF) or classification action.

(vi) If the employee's adjusted salary exceeds the maximum rate of the highest applicable GS rate range for the highest grade encompassed by his or her assigned pay band, the employee's virtual grade will be that highest GS grade.

(vii) If the employee's adjusted salary is less than the step 4 rate of the highest applicable GS rate range for the lowest GS grade encompassed within his or her assigned NSPS pay band, the employee's virtual grade will be the lowest GS grade in the band.

(2) *Virtual GS rate.* (i) Once a virtual GS grade has been established, a virtual GS rate will be set (before any pay-related action that would take effect on the date of the employee's conversion or movement out of NSPS). As of the day before the date of conversion or movement out of NSPS, the employee's NSPS adjusted salary will be compared to the highest applicable GS rate range for the established virtual grade. If the employee's adjusted salary rate falls within that range, the virtual rate will be set equal to that adjusted sal-

ary rate. (Since this virtual GS rate is used only as a basis for setting the employee's rate in a new non-NSPS position, it is not necessary to set it at a GS step rate at this stage.) If an employee's adjusted salary is less than the minimum rate of the highest applicable GS rate range for the virtual GS grade, his or her virtual rate will be set at the minimum step rate. If the employee's adjusted salary is greater than the maximum rate of the highest applicable GS rate range for the virtual GS grade, his or her virtual rate will be set at the maximum step rate or at a retained rate set using GS pay retention rules in 5 CFR part 536 (if the employee is eligible for pay retention under those rules).

(ii) If the virtual rate derived under paragraph (d)(2)(i) of this section is an adjusted salary rate that includes a locality payment or special rate supplement, an employee's virtual GS base salary rate will be derived based on that adjusted salary rate.

(iii) The virtual GS grade and rates established under this paragraph (d) will be used in applying GS pay administration rules in setting pay in the new GS position (*e.g.*, the GS promotion rules, pay retention rules, and the maximum payable rate rule). (Since the NSPS system did not continue coverage under the grade retention provision in 5 U.S.C. 5362, grade retention is not applicable to NSPS employees who convert or move to a GS position.) As required by paragraph (c) of this section, any pay action effective on the date of conversion or movement from NSPS to the GS pay system will be processed under GS pay administration rules.

(e) *GS within-grade increases.* Service under NSPS is creditable for within-grade increase purposes upon conversion or movement to a GS position under this section to the extent provided under 5 CFR part 531, subpart D.

(f) *Comparison of rates of basic pay.* For the purpose of determining whether the conversion or movement out of NSPS under this section is an adverse action for reduction of pay under 5 U.S.C. chapter 75, subchapter II (dealing with adverse actions), an employee's rate of basic pay includes 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. This comparison is made before any pay-related action (e.g., geographic movement) under the gaining system that takes effect on the date of conversion or movement.

### Subpart D—Performance Management

#### § 9901.401 Purpose.

(a) This subpart establishes a performance management system as authorized by 5 U.S.C. 9902.

(b) The performance management system established under this subpart is designed to promote and sustain a high-performance culture. The implementation and operation of the system will provide for the following elements:

(1) Adherence to merit principles set forth in 5 U.S.C. 2301;

(2) A fair, credible, and transparent employee performance appraisal system;

(3) A link between the performance management system and DoD's strategic plan;

(4) A means for ensuring employee involvement in the design and implementation of the system;

(5) Adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the performance management system;

(6) A process for ensuring ongoing performance feedback and dialogue among supervisors, managers, and employees throughout the appraisal period, and setting timetables for review;

(7) Effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance;

(8) A means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the performance management system; and

(9) A pay-for-performance evaluation system to better link individual pay to performance and provide an equitable method for appraising and compensating employees.

#### § 9901.402 Coverage.

(a) This subpart applies to eligible employees and positions in the categories listed in paragraph (b) of this section, subject to a determination by the Secretary under §9901.102.

(b) The following employees and positions in organizational and functional units are eligible for coverage under this subpart:

(1) Employees and positions that would otherwise be covered by 5 U.S.C. chapter 43;

(2) Employees and positions excluded from chapter 43 by OPM under 5 CFR 430.202(d) prior to the date of coverage of this subpart; and

(3) Such others designated by the Secretary as DoD may be authorized to include under 5 U.S.C. 9902.

(c) Except as provided in §9901.408, this subpart does not apply to employees who have been, or are expected to be, employed in an NSPS position for less than a minimum period (as described in §9901.407) during a single 12-month period.

#### § 9901.403 Waivers.

When a specified category or group of employees is covered by the performance management system established under this subpart, the provisions of 5 U.S.C. chapter 43 are waived with respect to that category of employees.

#### § 9901.404 Definitions.

In this subpart—

*Appraisal* means the review and evaluation of an employee's performance.

*Appraisal period* has the meaning given that term in §9901.103.

*Competencies* has the meaning given that term in §9901.103.

*Contribution* has the meaning given that term in §9901.103.

*Contributing Factors* has the meaning given that term in §9901.103.

*Job Objectives* has the meaning given that term in §9901.103.

*Minimum period* means the period of time during which an employee will perform under one or more approved NSPS performance plans before receiving a rating of record.

*Pay-for-performance evaluation system* means the performance management system established under this subpart to link individual pay to performance