

lower grade (e.g., as a result of a reduction in force or when his or her position is reduced in grade as a result of a reclassification) is entitled to retain the grade held immediately before the reduction for a period of 2 years under the circumstances prescribed in this part. Under 5 U.S.C. 5363, an employee whose rate of basic pay otherwise would be reduced as a result of a management action is entitled to retain his or her rate of basic pay under the circumstances prescribed in this part.

#### § 536.102 Coverage.

(a) Subject to the exclusions in paragraphs (b) through (e) of this section, this part covers any employee who, at the time this part is applied—

(1) Is in a covered pay system; or

(2) Is moving to a position under a covered pay system from a position not under a covered pay system, as long as the individual was an *employee* as defined in 5 CFR 536.103 while serving in the position in a noncovered pay system.

(b) An agency may not provide grade or pay retention under this part to an employee who—

(1) Is reduced in grade or pay for personal cause or at the employee's request;

(2) Was employed on a temporary or term basis immediately before the action causing the reduction in grade or pay;

(3) Does not satisfactorily complete the probationary period prescribed by 5 U.S.C. 3321(a)(2), and, as a result, is removed from a supervisory or managerial position;

(4) Is entitled to receive a saved rate of basic pay under 5 U.S.C. 3594(c) and 5 CFR 359.705 because of removal from the Senior Executive Service and placement in a civil service position (other than a Senior Executive Service position) under 5 U.S.C. 3594(b)(2);

(5) Moves from an Executive Schedule position paid under 5 U.S.C. chapter 53, subchapter II, or a position whose rate of pay is fixed by law at a rate equal to a rate for the Executive Schedule;

(6) Moves between positions not under a covered pay system or from a position under a covered pay system to

a position not under a covered pay system;

(7) Moves to a nonappropriated fund position as described in 5 U.S.C. 2105(c) (except a position occupied by a prevailing rate employee);

(8) Moves from a nonappropriated fund position as described in 5 U.S.C. 2105(c) (except a position occupied by a prevailing rate employee) to a position in a covered pay system, unless covered by § 536.302(a); or

(9) Is reduced in pay upon termination of a critical position pay authority under 5 CFR part 535.

(c) An agency may not provide grade or pay retention under this part based on the grade or rate of basic pay held by the employee during a temporary promotion or temporary reassignment. However, a temporary promotion or temporary reassignment does not affect an employee's preexisting entitlement to grade or pay retention.

(d) An agency may not provide grade retention under subpart B of this part to an employee who moves from a position not under a covered pay system to a position under a covered pay system.

(e) An employee loses eligibility for or entitlement to grade or pay retention under the conditions specified in §§ 536.207, 536.208, and 536.308.

[70 FR 31305, May 31, 2005, as amended at 73 FR 50183, Aug. 26, 2008]

#### § 536.103 Definitions.

For the purpose of this part:

*Authorized agency official* means the head of the agency or an official who is authorized to act for the head of the agency in the matter concerned.

*Comparison rate* means—

(1) For the purpose of comparing grades that are under different covered pay systems under § 536.105 and after applying any applicable geographic conversion under § 536.105(b) for positions with different official worksites—

(i) The highest rate of basic pay that applies to the fourth step of the grade for a position covered by the General Schedule; and

(ii) The highest rate of basic pay that applies to the second step of the grade of a position under a regular prevailing rate system established under 5 U.S.C. chapter 53, subchapter IV, or, in the case of a prevailing rate position with

a single rate, the single rate of basic pay for that position; and

(2) For the purpose of comparing grades or levels of work in making reasonable offer determinations when one of the grades or levels of work is not under a covered pay system and after applying any applicable geographic conversion rules under § 536.105(b) for positions with different official worksites—

(i) The maximum payable rate of basic pay that applies to the grade of a position covered by the General Schedule;

(ii) The maximum payable rate of basic pay that applies to the grade of a position under a regular prevailing rate system established under 5 U.S.C. chapter 53, subchapter IV, or in the case of a prevailing rate position with a single rate, the single rate of basic pay for that position; and

(iii) The maximum payable rate of basic pay that applies to the grade or level of work in the case of a position not covered by paragraph (2)(i) or (ii) of this definition. In the case of a position with a single rate under such a schedule, the single rate of basic pay for that position is the comparison rate.

*Covered pay system* means a covered pay schedule as defined in 5 U.S.C. 5361(5)—*i.e.*, the General Schedule pay system established under 5 U.S.C. chapter 53, subchapter III; a prevailing rate system established under 5 U.S.C. chapter 53, subchapter IV; or a special occupational pay system established under 5 U.S.C. chapter 53, subchapter IX. The various prevailing rate systems under 5 U.S.C. chapter 53, subchapter IV, are considered separate systems if they have separate job grading structures.

*Employed on a temporary or term basis* means employment under an appointment having a definite time limitation or designated as temporary or term.

*Employee* has the meaning given that term in 5 U.S.C. 2105, except that *employee* also includes—

(1) An individual employed by the U.S. Postal Service or the Postal Rate Commission who would be considered an employee under 5 U.S.C. 2105 but for the exclusion in section 2105(e); and

(2) An individual employed by a Department of Defense or Coast Guard nonappropriated fund instrumentality

(as described in 5 U.S.C. 2105(c)) who is moved without a break in service of more than 3 days from employment in such an instrumentality to a position under a covered pay system in the same agency.

*FEPCA* means the Federal Employees Pay Comparability Act of 1990 (section 529 of Pub. L. 101–509, November 5, 1990, as amended).

*General Schedule* or *GS* means the classification and pay system established under 5 U.S.C. chapter 51 and subchapter III of chapter 53. This term also refers to the pay schedule established under 5 U.S.C. 5332.

*Highest applicable rate range* means the rate range applicable to an employee based on a given position of record and official worksite that provides the highest rates of basic pay, excluding any retained rates. For example, a rate range of special rates under 5 U.S.C. 5305 may exceed an applicable locality rate range under 5 U.S.C. 5304 for General Schedule employees. In certain circumstances, the *highest applicable rate range* may consist of two types of pay rates from different pay schedules—*e.g.*, a range where special rates are higher in the lower portion of the range and locality rates are higher in the higher portion of the range.

*Management action* means an action (not for personal cause) by an agency official not initiated or requested by an employee which may adversely affect the employee's grade or rate of basic pay. However, an employee's placement in or transfer to a position under a formal employee development program established by an agency for recruitment and employee advancement purposes (*e.g.*, Career Intern Program) is considered a management action even though the employee initiates or requests such placement or transfer.

*Official worksite* means the official location of the employee's position of record as determined under the rules of the applicable pay system (*e.g.*, 5 CFR 531.605 for General Schedule employees). *Official worksite* is synonymous with the term "official duty station" as used in 5 U.S.C. 5363(c).

*OPM* means the Office of Personnel Management.

*Payable rate* means the highest rate of basic pay to which an employee is

entitled based on the employee's position of record, official worksite, and step (or relative position in range for a GM employee) or, if applicable, a retained rate.

*Pay schedule* means a set of rate ranges established under a single authority—i.e., the General Schedule, a law enforcement officer special base rate schedule (for grades GS-3 through 10) under section 403 of FEPCA; a prevailing rate schedule (including a special schedule or special rate schedule) under 5 U.S.C. chapter 53, subchapter IV; a locality rate schedule under 5 U.S.C. 5304 based on GS rates; a locality rate schedule under 5 U.S.C. 5304 based on law enforcement officer special base rates (for grades GS-3 through 10); or a special rate schedule under 5 U.S.C. 5305 or similar authority. A pay schedule applies to or covers a defined category of employees based on established coverage conditions (e.g., official worksite, occupation). A pay schedule is considered to apply to or cover an employee who meets the established coverage conditions even when a rate under that schedule is not currently payable to the employee because of a higher pay entitlement under another pay schedule.

*Position of record* means an employee's official position (defined by grade, occupational series, employing agency, LEO status, and any other condition that determines coverage under a pay schedule (other than official worksite)), as documented on the employee's most recent Notification of Personnel Action (Standard Form 50 or equivalent) and current position description. A position to which an employee is temporarily detailed is not documented as a position of record. For an employee whose change in official position is followed within 3 workdays by a reduction in force resulting in the employee's separation before he or she is required to report for duty in the new position, the position of record in effect immediately before the position change is deemed to remain the position of record through the date of separation.

*Prevailing rate employee* has the meaning given that term in 5 U.S.C. 5342(a)(2) and refers to an employee in a position covered by a prevailing rate

system or schedule established under 5 U.S.C. chapter 53, subchapter IV.

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions, including a General Schedule rate under 5 U.S.C. 5332; a law enforcement officer special base rate under section 403 of FEPCA; a special rate under 5 CFR part 530, subpart C, or similar payment under other legal authority; a locality rate under 5 CFR part 531, subpart F, or similar payment under other legal authority; a prevailing rate under 5 U.S.C. 5343; or a retained rate under this part, but excluding additional pay of any other kind (such as premium payments, differentials, and allowances).

*Rate range* or *range* means the range of rates of basic pay for a grade within an established pay schedule, excluding any retained rate.

*Reasonable offer* means an offer that meets the conditions in § 536.104.

*Reduced in grade or pay at the employee's request* means a reduction in grade or rate of basic pay that is initiated by the employee for his or her benefit, convenience, or personal advantage. A reduction in grade or pay that is caused or influenced by a management action is not considered to be at an employee's request, except that the voluntary reduction in grade or pay of an employee in response to a management action directly related to personal cause is considered to be at the employee's request.

*Reduced in grade or pay for personal cause* means a reduction in grade or rate of basic pay based on the conduct, character, or unacceptable performance of an employee. In situations in which an employee is reduced in grade or pay for inability to perform the duties of his or her position because of a medical or physical condition beyond the employee's control, the reduction in grade or pay is not considered to be for personal cause.

*Reorganization* means the planned elimination, addition, redistribution, or restructuring of functions or duties either wholly within an agency or between agencies.

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*Retained rate* means a rate above the maximum rate of the employee's highest applicable rate range that is payable under subpart C of this part.

*Temporary promotion* means a promotion that has a definite time limitation or is otherwise designated as temporary when the affected employee is informed in advance.

*Temporary reassignment* means a reassignment that has a definite time limitation or is otherwise designated as temporary when the affected employee is informed in advance.

*Where different pay schedules apply* means, in the context of applying the geographic conversion rule, that an employee's official worksite is changed to a new location that would cause the employee to lose or gain coverage under a location-based pay schedule if the employee were to remain in the same position of record.

[70 FR 31305, May 31, 2005, as amended at 73 FR 66154, Nov. 7, 2008]

### § 536.104 Reasonable offer.

(a) For the purpose of determining whether grade retention eligibility or entitlement must be terminated under § 536.207 or 536.208, the offer of a position is a reasonable offer if the position's grade is equal to or higher than the retained grade and if all the conditions in paragraph (c) of this section are met. If the offered position is in a different pay system, § 536.105 must be applied to determine whether the grade of the offered position is equal to or greater than the retained grade.

(b) For the purpose of determining whether pay retention eligibility or entitlement must be terminated under § 536.308, the offer of a position is a reasonable offer if the employee's rate of basic pay in the position would be equal to or greater than the rate to which the employee is or would be entitled under the pay retention provisions and if all the conditions in paragraph (c) of this section are met.

(c) An offer of a position must meet the following additional conditions to qualify as a reasonable offer:

(1) The offer must be in writing and must include an official position description of the offered position;

(2) The offer must inform the employee that entitlement to grade or

pay retention will terminate if the offer is declined and that the employee may appeal the reasonableness of the offer as provided in § 536.402;

(3) The offered position must be of equal or greater tenure than the employee's position before the action resulting in the grade or pay retention entitlement;

(4) The offered position must be full-time, unless the employee's position immediately before the action resulting in entitlement to grade or pay retention was less than full-time, in which case the offered position must have a work schedule providing for no fewer hours of work per week or per pay period than the position held before the action; and

(5) The offered position must be in the same commuting area as the employee's position immediately before the offer, unless the employee is subject to a mobility agreement or a published agency policy that requires employee mobility.

### § 536.105 Comparing grades under different pay systems.

(a) *General.* An agency must compare the comparison rates (as defined in § 536.103) of the applicable grades to determine whether a grade of a position is equal to, higher than, or lower than the grade of another position when—

(1) Determining eligibility for grade retention upon movement from a position under a covered pay system to a lower-graded position under a different covered pay system (including determinations under § 536.203 that involve different covered pay systems);

(2) Determining whether grade retention eligibility is lost or grade retention is terminated when an employee is placed in a lower-graded position under a different covered pay system and the action is taken for personal cause or at the employee's request;

(3) Determining whether grade retention eligibility is lost or grade retention is terminated based on movement to a position under a different covered pay system with an equal or higher grade;

(4) Determining whether grade retention eligibility is lost or grade retention is terminated based on declination of a reasonable offer of a position under