

decision to be made retroactive, the employee must file the initial request for review with either the agency or the Office not later than 15 calendar days after the effective date of the reclassification action.

(2) However, if the appellate decision raises the grade of the position above the original grade, retroactivity will apply only to the extent of restoration to the original grade.

(3) The right to a retroactive effective date provided by this section is preserved on subsequent appeals from an agency or Office classification decision when the subsequent appeal is filed not later than 15 calendar days following receipt of written notification of a final agency administrative decision or 15 calendar days after the effective date of the action taken as a result of the classification decision, whichever is later.

(c) *Grade change based on new duties and responsibilities.* Retroactivity may be based only on duties and responsibilities existing at the time of demotion and cannot be based on duties and responsibilities assigned later.

(d) *Retroactivity when time limits are extended.* The right to a retroactive effective date provided by this section may be preserved at the discretion of the Office, on a showing by the employee that he or she was not notified of the applicable time limit and was not otherwise aware of it, or that circumstances beyond his or her control prevented filing an appeal within the prescribed time limit.

PART 530—PAY RATES AND SYSTEMS (GENERAL)

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AUTHORITY: 5 U.S.C. 5305 and 5307; subpart C also issued under 5 U.S.C. 5338, sec. 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103–89), 107 Stat. 981, and sec. 1918 of Public Law 111–84, 123 Stat. 2619.

Subpart A [Reserved]

Subpart B—Aggregate Limitation on Pay

SOURCE: 69 FR 70360, Dec. 6, 2004, unless otherwise noted.

§ 530.201 Purpose.

This subpart establishes regulations for limiting an employee's aggregate annual compensation. An employee's aggregate compensation received in any given calendar year may not exceed the rate of pay for level I of the Executive Schedule or the rate payable to the Vice President at the end of the calendar year, whichever is applicable to the employee based on the certification status under 5 CFR part 430, subpart D, of the performance appraisal system covering that employee. These regulations must be applied in conjunction with 5 U.S.C. 5307.

§ 530.202 Definitions.

In this subpart:

Agency means an executive agency as defined at 5 U.S.C. 105.

Aggregate compensation means the total of—

(1) Basic pay received as an employee of the executive branch or as an employee outside the executive branch to whom the General Schedule applies;

(2) Premium pay under 5 U.S.C. chapter 53, subchapter IV;

(3) Premium pay under 5 U.S.C. chapter 55, subchapter V;

(4) Incentive awards and performance-based cash awards under 5 U.S.C. chapters 45 and 53;

(5) Recruitment and relocation incentives under 5 U.S.C. 5753 and retention incentives under 5 U.S.C. 5754;

(6) Extended assignment incentives under 5 U.S.C. 5757;

(7) Supervisory differentials under 5 U.S.C. 5755;

(8) Post differentials under 5 U.S.C. 5925;

(9) Danger pay allowances under 5 U.S.C. 5928;

(10) Post differentials based on environmental conditions for employees stationed in nonforeign areas under 5 U.S.C. 5941(a)(2);

(11) Physicians' comparability allowances under 5 U.S.C. 5948;

(12) Continuation of pay under 5 U.S.C. 8118;

(13) Lump-sum payments in excess of the aggregate limitation on pay as required by § 530.204; and

(14) Other similar payments authorized under title 5, United States Code, excluding—

(i) Overtime pay under the Fair Labor Standards Act of 1938, as amended, and 5 CFR part 551;

(ii) Severance pay under 5 U.S.C. 5595;

(iii) Lump-sum payments for accumulated and accrued annual leave upon separation under 5 U.S.C. 5551 or 5552;

(iv) Back pay awarded to an employee under 5 U.S.C. 5596 because of an unjustified personnel action;

(v) Student loan repayments under 5 U.S.C. 5379; and

(vi) Nonforeign area cost-of-living allowances under 5 U.S.C. 5941(a)(1).

Aggregate limitation means the limitation on aggregate compensation received in any given calendar year as established by 5 U.S.C. 5307. For an executive branch employee (including employees in Senior Executive Service positions paid under 5 U.S.C. 5383 and employees in senior-level or scientific or professional positions paid under 5

U.S.C. 5376), a General Schedule employee in the legislative branch, or General Schedule employee in the judicial branch (excluding those paid under 28 U.S.C. 332(f), 603, and 604), the limitation on aggregate compensation is equal to the rate for level I of the Executive Schedule in effect at the end of the applicable calendar year. For an employee in a Senior Executive Service position paid under 5 U.S.C. 5383 and an employee in a senior-level or scientific or professional position paid under 5 U.S.C. 5376 covered by an applicable performance appraisal system that has been certified under 5 CFR part 430, subpart D, the limitation on aggregate compensation is equal to the total annual compensation payable to the Vice President under 3 U.S.C. 104 at the end of a calendar year.

Basic pay means the total amount of pay received at a rate fixed by law or administrative action for the position held by an employee, including any special rate under 5 CFR part 530, subpart C, or any locality-based comparability payment under 5 CFR part 531, subpart F, or other similar payment under other legal authority, before any deductions. *Basic pay* includes night and environmental differentials for prevailing rate employees under 5 U.S.C. 5343(f) and 5 CFR 532.511. *Basic pay* excludes additional pay of any other kind.

Discretionary payment means a payment an agency has discretion to make to an employee. Payments that are authorized to be made to an employee under the terms of a service agreement or preauthorized to be made to an employee at a regular fixed rate each pay period are not *discretionary payments*.

Employee has the meaning given that term in 5 U.S.C. 2105.

Estimated aggregate compensation means the agency's projection of the aggregate compensation an employee actually would receive during a calendar year but for application of the aggregate limitation to future payments. This projection must be based upon known factors. Estimated aggregate compensation includes—

(1) The total amount of basic pay the employee will receive during the calendar year;

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(2) Any lump-sum payment of excess amounts from a previous calendar year, as described in § 530.204;

(3) The total amount of nondiscretionary payments the employee would be entitled to receive during the calendar year; and

(4) The total amount of discretionary payments the employee would be authorized to receive during the calendar year.

[69 FR 70360, Dec. 6, 2004, as amended at 70 FR 25739, May 13, 2005; 72 FR 67837, Dec. 3, 2007]

§ 530.203 Administration of aggregate limitation on pay.

(a) Except as provided in paragraph (b) of this section, no executive branch employee or General Schedule employee in the legislative branch (or General Schedule employee in the judicial branch, excluding those paid under 28 U.S.C. 332(f), 603, and 604), may receive any allowance, differential, bonus, award, or other similar cash payment under title 5, United States Code, in any calendar year which, in combination with the employee's basic pay (whether received under title 5, United States Code, or otherwise), would cause the employee's aggregate compensation to exceed the rate for level I of the Executive Schedule on the last day of that calendar year (*i.e.*, the aggregate limitation).

(b)(1) Subject to paragraph (b)(2) of this section, an employee in a Senior Executive Service position paid under 5 U.S.C. 5383 and an employee in a senior-level or scientific or professional position paid under 5 U.S.C. 5376 may not receive any allowance, differential, bonus, award, or other similar cash payment under title 5, United States Code, in any calendar year which, in combination with the employee's basic pay, would cause the employee's aggregate compensation to exceed the rate of pay for level I of the Executive Schedule.

(2) An employee covered by a performance appraisal system that has been certified under 5 CFR part 430, subpart D, may not receive any allowance, differential, bonus, award, or other similar cash payment under title 5, United States Code, in any calendar year which, in combination with the

employee's basic pay, would cause the employee's aggregate compensation to exceed the total annual compensation payable to the Vice President under 3 U.S.C. 104 on the last day of that calendar year (*i.e.*, the aggregate limitation).

(3) An agency must make corrective actions as provided in paragraphs (g) and (h) of this section if the agency underestimated or overestimated an employee's aggregate compensation in a calendar year as a result of receiving or losing certification of its applicable performance appraisal system under 5 CFR part 430, subpart D.

(c) The aggregate limitations described in paragraphs (a) and (b) of this section apply to the aggregate compensation an employee actually received during the calendar year without regard to when the compensation was earned.

(d) When an agency authorizes a discretionary payment for an employee, the agency must defer any portion of such payment that, when added to the estimated aggregate compensation the employee is projected to receive, would cause the employee's aggregate compensation during the calendar year to exceed the applicable aggregate limitation. Any portion of a discretionary payment deferred under this paragraph must be available for payment as provided in § 530.204. When a discretionary payment is authorized but not required to be paid in the current calendar year, an agency official's decision to set the payment date in the next calendar year is not considered a deferral under this paragraph.

(e) An agency may not defer or discontinue nondiscretionary payments for any period of time to make a discretionary payment that would otherwise cause an employee's pay to exceed the applicable aggregate limitation. An agency may not defer or discontinue basic pay under any circumstance.

(f) If, after an agency defers discretionary payments as required by paragraph (d) of this section, the estimated aggregate compensation to which an employee is entitled exceeds the applicable aggregate limitation, the agency must defer all nondiscretionary payments (other than basic pay) as necessary to avoid payments in excess of