

## Subpart E—Pay for Senior-Level and Scientific or Professional Positions

SOURCE: 79 FR 12357, Mar. 5, 2014, unless otherwise noted.

### § 534.501 Purpose.

This subpart provides rules for setting and adjusting rates of basic pay for senior-level (SL) and scientific or professional (ST) employees under 5 U.S.C. 5376, as amended by section 2 of the Senior Professional Performance Act of 2008 (Pub. L. 110-372, October 8, 2008), promotes performance-based pay by enabling an agency that attains certification of a performance appraisal system covering senior professionals to fix rates of basic pay for those employees up to the rate payable for level II of the Executive Schedule. Under 5 U.S.C. 5307(d) and subpart D of part 430 of this chapter, the Office of Personnel Management (OPM), with Office of Management and Budget (OMB) concurrence, grants certification only to a performance appraisal system that, in its design and application, makes meaningful distinctions based upon relative performance. This subpart implements the purpose of the law by providing for pay determinations for SL and ST employees to be based on individual performance, contributions to the agency's performance, or both, as determined through administration of the agency's performance management system(s) for SL and ST employees.

### § 534.502 Coverage.

(a) This subpart implements 5 U.S.C. 5376 and applies to—

(1) Senior-level (SL) positions classified above GS-15 pursuant to 5 U.S.C. 5108; and

(2) Scientific or professional (ST) positions established under 5 U.S.C. 3104.

(b) This subpart does not apply to—

(1) Senior Executive Service positions established under 5 U.S.C. 3132, unless the incumbent of the position declined to convert to the SES and, under § 317.303 of this chapter, remained at grade GS-16, 17, or 18 (now the SL pay system) or under the ST pay system;

(2) Positions in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, Defense Intelligence Executive Service, or Senior Cryptologic Executive Service; or

(3) Positions for which pay is fixed by administrative action and is limited to level IV of the Executive Schedule under 5 U.S.C. 5373.

### § 534.503 Definitions.

In this subpart—

*Agency* means—

(1) An Executive agency as defined in 5 U.S.C. 105;

(2) The Library of Congress; and

(3) Any other entity that is not part of an Executive agency, for which OPM has approved establishment of one or more scientific or professional positions under 5 U.S.C. 3104.

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

*Certified* means having the certification that OPM, with OMB concurrence, grants under 5 U.S.C. 5307(d) and part 430, subpart D of this chapter only to a performance appraisal system that makes, in its design and application, meaningful distinctions based on relative performance. In this subpart, the term “certified” refers to a performance appraisal system that has this certification, including a performance appraisal system for which certification has been reinstated after suspension under § 430.405(h) of this chapter.

*Movement* means a change of an SL or ST employee from one SL or ST position to a different SL or ST position without a break in service under procedures that meet applicable requirements for staffing positions in the competitive service and excepted service. As used in this subpart, the term “movement” applies only to an appointment, not a detail, and is used without reference to the pay consequences of an action. Unless otherwise specified, the term refers to position changes both within and between agencies.

*Not certified* means lacking the certification that OPM, with OMB concurrence, grants under 5 U.S.C. 5307(d) and

part 430, subpart D of this chapter only to a performance appraisal system that makes, in its design and application, meaningful distinctions based on relative performance. In this subpart, the term “not certified” refers to a performance appraisal system that does not have this certification, or for which a previously granted certification has expired or is suspended under § 430.405(h) of this chapter.

*Off-cycle pay increase* means any increase in a senior professional’s rate of basic pay that becomes effective on a date other than the date specified in § 534.507(a)(1).

*OMB* means the Office of Management and Budget.

*OPM* means the Office of Personnel Management.

*Performance appraisal system* means the policies, practices, and procedures an agency establishes under 5 U.S.C. chapter 43 and 5 CFR part 430, subpart B, or other applicable legal authority, for planning, monitoring, developing, evaluating, and rewarding employee performance. For a senior professional employee, this term refers to appraisal programs or appraisal systems as defined in § 430.203 of this chapter.

*Performance management system* means the framework of policies and practices that an agency uses to implement performance management, as described in § 430.102 of this chapter. As used in this subpart, the term includes, but is not limited to, those disciplines and activities by which an agency addresses the criteria identified in § 430.404(a)(1) through (9) of this chapter.

*Performance rating* means the written, or otherwise recorded, appraisal of performance compared to the SL or ST employee’s performance standard(s) for each critical and non-critical element on which there has been an opportunity to perform for a minimum of 90 days. A performance rating may include the assignment of a summary level within a pattern as specified in § 430.208(d) of this chapter.

*Rate of basic pay* means the rate of pay fixed by law or administrative action for an SL or ST employee under the provisions of 5 U.S.C. 5376 and this subpart before any deductions and exclusive of additional pay of any other kind.

*Rating of record* means the performance rating prepared at the end of an appraisal period for performance of agency-assigned duties over the entire period and the assignment of a summary level within a pattern as specified in § 430.208(d) of this chapter that has been reviewed and approved in accordance with § 534.505(a).

*Scientific or professional (ST) employee* means an individual appointed to a position described in § 319.103 and authorized by OPM under § 319.202 of this chapter or otherwise established under 5 U.S.C. 3104.

*Senior-level (SL) employee* means an individual appointed to a position described in § 319.102 and authorized by OPM under § 319.202 of this chapter.

*Senior professional* means an SL or ST employee.

*Transfer* means any movement, as defined in this section, that is a change of a senior professional from an SL or ST position in one agency to an SL or ST position in another agency without a break in service of at least 1 full workday.

#### § 534.504 Pay range.

(a) A rate of basic pay under this subpart must be—

(1) Not less than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule, and

(2) Not greater than—

(i) The rate of basic pay payable for level III of the Executive Schedule (EX–III), or

(ii) In the case of an SL or ST employee who is covered by a certified performance appraisal system or whose established rate of basic pay is preserved under § 534.509, the rate of basic pay payable for level II of the Executive Schedule (EX–II).

(b) An agency may not set or adjust the rate of basic pay for an SL or ST employee higher than the maximum in—

(1) Paragraph (a)(2)(i) of this section (i.e., EX–III) when the SL or ST employee is covered by a performance appraisal system that is not certified or when the SL or ST employee is not subject to a performance appraisal system, except as provided in § 534.509; or