

**HHS Office of Human Resources Instruction 531-2, Setting Salary
Effective Date 08/13/2024**

Material Transmitted:

Department of Health and Human Services (HHS) Instruction 531-2, Setting Salary, August 13, 2024

Material Superseded:

HHS Instruction 531-2, Setting Salary, dated 5/20/1996

Background:

This Instruction states the Department's policy and provides guidance concerning the determination of basic pay of General Schedule (GS) employees and the entitlement of grade and pay retention for GS employees. Specifically, this updated Instruction added definitions, added responsibilities for managers and employees; added policy on primary pay setting rules (e.g. new appointments and promotions); expanded on when highest previous rate can and cannot be used; and expanded on grade and pay retention.

This Instruction also added language consistent with the new OPM January 2024 regulations banning the use of salary history when setting pay.

This policy is effective immediately and must be carried out by HHS Operating and Staff Division HR Centers in accordance with applicable laws, regulations, bargaining agreements, and Departmental policy.

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531-2-00 SECTIONS

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531-2-10 PURPOSE

This Instruction implements the Department of Health and Human Services' policy and provides guidance concerning the determination of basic pay of General Schedule (GS) employees and the entitlement to grade and pay retention for GS employees.

When provisions of this policy differ from changes in applicable law or regulation, the changes in law or regulation apply.

531-2-20 COVERAGE

- A. Coverage. The provisions of this Instruction apply to HHS employees who occupy positions classified and paid under the GS pay system.
- B. The Department will follow all requirements of 5 USC Chapter 71 involving bargaining conditions of employment for bargaining unit employees. To the extent that provisions of this policy are in specific conflict with a Collective Bargaining Agreement (CBA), the provisions of the CBA govern for bargaining unit positions only.

531-2-30 REFERENCES

- A. [5 U.S.C., Chapter 53](#), Pay Rates and Systems
- B. [5 CFR, Part 531](#), Pay under the General Schedule
- C. [5 CFR, Part 536](#), Grade and Pay Retention
- D. HHS Instruction 531-1, Setting Pay Based on Superior Quals and Special Needs
- E. HHS Instruction 351-1, Reduction in force (RIF)

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531-2-40 DEFINITIONS

- A. **Grade Retention.** Employee under a covered pay system who is placed in a lower graded position under the same or different covered pay system (e.g. as a result of a reduction in force or when their position is reduced in grade as a result of a reclassification) may be entitled to retain the grade held immediately before the reduction for a period of 2 years.
- B. **Geographic Conversion Rule.** When an employee's official worksite is changed to a new location upon promotion *where different pay schedules apply*, the agency must convert the employee to the applicable pay schedule(s) and rate(s) of basic pay for the new official worksite based on the employee's position of record before promotion before applying the *two-step promotion rule*. Set the employee's rate(s) of basic pay in the applicable pay schedule(s) in the new location based on his or her position of record (including grade) and step (or a GM employee's GS rate) immediately before the change in the employee's official worksite. The resulting rate must be used as the existing rate in applying the *two-step promotion rule*. (See [5 CFR 531.206](#) and [531.214](#) for information on processing other pay actions that may occur simultaneously with a promotion action.) In the context of applying the geographic conversion rule, the phrase "where different pay schedules apply" means 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 (i.e., locality rate schedule or special rate schedule) if the employee were to remain in the same position of record.
- C. **Covered Pay System.** General Schedule pay system under [5 U.S.C. chapter 53, subchapter III](#); a prevailing rate system under [5 U.S.C. chapter 53, subchapter IV](#) (including the Federal Wage System); or a special occupational pay system under [5 U.S.C. chapter 53, subchapter IX](#).
- D. **Highest Previous Rate.** The highest actual rate of basic pay previously received by an individual while employed in a civilian position in any part of the Federal Government without regard to whether the position was in the GS pay system or the highest rate of basic pay in effect when a GS employee held their highest GS grade and highest step within that grade.
- E. **Pay Retention.** Employee whose rate of basic pay otherwise would be reduced as a result of a management action is entitled to retain basic pay provided the conditions in [Section 70, paragraph I](#) of this Instruction, are met.
- F. **Management Action.** 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., Recent Graduates Program) is considered a management action even though the employee initiates or requests such placement or transfer.
- G. **Promotion.** A GS employee's movement from one GS grade to a higher GS grade while continuously employed.
- H. **Rate of Basic Pay.** The rate of pay fixed by law or administrative action for the position held by a GS employee before any deductions, including a GS base rate, a Law Enforcement Officer (LEO) special base rate, a special rate, a locality rate, and a retained rate, but exclusive of additional pay of any other kind.

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531-2-50 RESPONSIBILITIES

- A. HHS Assistant Secretary for Administration, Office of Human Resources (ASA/OHR):
1. Develops department-wide human resources guidance and policies consistent with HHS and OPM policies, procedures and all applicable federal laws and regulations.
 2. Periodically reviews Operating Division and Staff Division (OpDiv/StaffDiv) procedures, actions, and reports to ensure conformance with HHS and OPM policies and guidance, and all applicable federal laws and regulations.
- B. OpDiv/StaffDiv Human Resources Centers (HR Centers):
1. Comply with this Instruction and applicable federal laws and regulations.
 2. Provide assistance and guidance to supervisors, managers, and employees concerning pay administration policies and procedures.
 3. In cases where pay setting is at the discretion of management, approve the pay in each individual case at the time the employee's personnel action is effectuated.
- C. Supervisors and Managers:
1. Keep themselves and their employees adequately informed of the current pay policies and regulations.
 2. Request assistance from HR Servicing Office concerning pay setting policy and regulations.
- D. Employees:
1. Review their leave and earning statements, as well as their SF-50s, "Notification of Personnel Action," and promptly notify their servicing HR office of any discrepancies.

531-2-60 PRIMARY PAY SETTING RULES

- A. HHS will make pay setting determinations without regard to race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information (including family medical history), marital status, political affiliation, labor organization affiliation or non-affiliation, status as a parent, or any other non-merit-based factor, unless specifically designated by statute as a factor that must be taken into consideration when awarding such benefits, or in retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available. All pay setting determinations must be based solely on job-related criteria.
- B. Primary Pay-setting rules.
1. Use the rules and directives of the gaining system, that is, the system to which the employee is moving.
 2. When an employee's worksite is changed to an area covered by a different locality schedule, the Geographic Conversion Rule must be applied in accordance with [5 CFR 531.205](#). Specifically, under this rule, the employee's rate of basic pay must be converted to the applicable pay

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schedule in the new location, based on the employee's grade and step immediately before the change in the official worksite.

3. Pay on any simultaneous pay actions is set in the order specified by regulation in accordance with [5 CFR 531.206](#). Therefore, when multiple pay actions that affect an employee's rate of basic pay have the same effective date, they must be processed in the following order:
 - a. General pay adjustment. General pay adjustments include an annual adjustment in the General Schedule under [5 U.S.C. 5303](#); an adjustment in LEO special base rates; an adjustment of a locality pay percentage under [5 U.S.C. 5304](#) and [5 CFR part 531](#), subpart F; the establishment or adjustment of a special rate schedule under [5 CFR part 530](#), subpart C, or similar legal authority (e.g., [38 U.S.C. 7455](#)); and an adjustment of a retained rate under [5 CFR 359.705](#) or [5 CFR 536.305](#) based on the establishment or adjustment of a pay schedule.
 - b. Geographic conversion. Convert the employee's rate(s) of pay to reflect any change in the location of the employee's official worksite, as prescribed in [5 CFR 531.205](#) (or similar geographic conversion provision).
 - c. Within-grade and quality step increases. Process any within-grade increase or quality step increase to which the employee is entitled under [5 CFR 531](#), subpart D or E.
 - d. Promotion, demotion, reassignment, or other pay actions. Process any promotion action using the rates of pay and rate ranges in the sequence prescribed in [5 CFR 531.214](#).
 - e. Except as otherwise provided in paragraphs (a) through (d) of this section or other regulation, process individual pay actions that take effect at the same time in the order that gives the employee the maximum benefit.

531-2-70 POLICY

A. Setting Pay for Newly Appointed Employee

1. First Appointments. Pay for new appointments will be set at the minimum rate (step 1) of the grade for the position the employee is being appointed to in accordance with [5 CFR 531.211](#), except as outlined in paragraph C below and HHS Instruction 531-1, "Setting Pay Based on Superior Qualifications and Special Needs."
2. Reemployment. For an employee who has previous civilian service in the Federal Government, an agency must set the payable rate of basic pay upon reemployment at the minimum rate of the highest applicable rate range for the position the employee is being appointed to unless:
 - f. The employee meets the conditions in [5 CFR 531.212](#) (also see HHS Instruction 531-1, Setting Pay Based on Superior Qualifications and Special Needs) and OpDiv/StaffDiv determines it is appropriate to set pay under that section; or
 - g. The employee is eligible for a higher payable rate under the maximum payable rate rule in [5 CFR 531.221](#) and the OpDiv/StaffDiv chooses to apply that rule.

B. Promotions. When an employee moves from a lower GS grade to a higher GS grade, pay is set using the two-step promotion rule. The employee is entitled to basic pay at the lowest rate of the higher grade that exceeds the existing basic pay rate by not less than two-step increases of the

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grade from which they were promoted.

C. **Maximum Payable Rate.** An OpDiv/StaffDiv may apply the maximum payable rate rule as described in [5 CFR 531.222](#) and this section to determine an employee's payable rate of basic pay under the GS pay system at a rate higher than the otherwise applicable rate upon reemployment, transfer, reassignment, promotion, demotion, change in type of appointment, termination of a critical position pay authority under [5 CFR part 535](#), movement from a non-GS pay system, or termination of grade or pay retention under [5 CFR part 536](#). (Note: Special rules for GM employees are provided in [5 CFR 531.247](#)). Refer to [OPM Q&A](#) "What Is Considered an Equivalent Increase for non-GS employees Who Move to the GS Pay System," in its entirety. A payable rate set under this section must take effect on the effective date of the action involved. [5 CFR 531.222](#) may not be used to set an employee's rate of basic pay retroactively unless a retroactive action is required to comply with a nondiscretionary agency policy.

1. At its discretion, an OpDiv/StaffDiv may set an employee's rate(s) of basic pay at the maximum rate identified under this section or at a lower rate. However, the employee's rate may not be lower than the rate to which he or she is entitled under any other applicable pay-setting rule.
2. In applying this section, an OpDiv/StaffDiv must use applicable annual rates of pay or, if a rate under a non-GS system is an hourly rate, convert the hourly rate to an annual rate.
3. In applying this section, an OpDiv/StaffDiv must treat a critical position pay rate under [5 CFR part 535](#) as if it were a rate under a non-GS pay system, as described in [5 CFR 531.221\(d\)](#).
4. In applying this section, an agency must treat an adjusted GS rate that includes market pay under 38 U.S.C. 7431(c) as if it were a rate under a non-GS pay system, as described in [5 CFR 531.221\(d\)](#).
5. Before setting pay under this section, an OpDiv/StaffDiv must establish a policy on its use of the maximum payable rate that includes:
 - a. Designation of officials with the authority to approve and set pay under this section;
 - b. Any situations in which the OpDiv/Staff Div must use the authority;
 - c. Any situations in which the OpDiv/StaffDiv may exercise its discretion in using the authority;
 - d. Consideration of the step at which pay has been set for other employees performing similar work in the organization (based on the position's occupational series, grade level, types of duties, or other job-relevant factors);
 - e. Any other factors the designated official(s) may or must consider in determining the step at which to set the employee's pay between the employee's entitlement under any other applicable pay-setting rule and the employee's maximum payable rate; and
 - f. Documentation and recordkeeping requirements sufficient to allow reconstruction of the action.

D. **Highest Previous Rate.** The use of the highest previous rate is optional under [5 CFR 531.221-5 CFR 531.223](#)

1. The Highest Previous Rate must be based on a rate of basic pay received by an employee on a regular tour of duty (i.e., full time, or part-time, not intermittent):
 - a. Under an appointment not limited to 90 days or less, or

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- b. For a continuous period not less than 90 days under one or more appointments, without a break in service.
2. The following rates of basic pay may not be used as Highest Previous Rate:
 - a. A rate received under an appointment as an expert or consultant under [5 U.S.C. 3109](#);
 - b. A rate received in a position to which the employee was temporarily promoted for less than 1 year, except upon permanent placement in a position at the same or higher grade;
 - c. A rate received in a position from which the employee was reassigned or reduced in grade for failure to satisfactorily complete a probationary period as a supervisor or manager;
 - d. A rate received by an individual while employed by the government of the District of Columbia who was first employed by that government on or after October 1, 1987;
 - e. A rate received by an individual while employed by a Department of Defense or Coast Guard non-appropriated fund instrumentality;
 - f. A rate received solely during a period of interim relief under [5 U.S.C. 7701\(b\)\(2\)\(A\)](#);
 - g. A special rate established under [5 U.S.C. 5305](#) and [5 CFR part 530](#), subpart C, or [38 U.S.C. 7455](#) (except as provided in § 531.222(c));
 - h. A rate received under a void appointment or a rate otherwise contrary to applicable law or regulation;
 - i. A rate received as a member of the uniformed services (including the military services, the Commissioned Corps of the Public Health Service, or the Commissioned Corps of the National Oceanic Atmospheric Administration); or
 - j. A retained rate under [5 U.S.C. 5363](#) or a similar rate under another legal authority.
 3. When the highest previous rate is based on a rate under a non-GS pay system, [5 CFR 531.221\(d\)](#) applies.
 4. Per [5 CFR 531.215\(c\)](#), when an employee is returned to the lower grade from which promoted on expiration or termination of a temporary promotion, the OpDiv/StaffDiv must set the employee's payable rate of basic pay in the lower grade as if he or she had not been temporarily promoted, unless the OpDiv/StaffDiv sets pay at a higher rate under the maximum payable rate rule in 5 CFR 531.221. If a temporary promotion is made permanent immediately after the temporary promotion ends, the OpDiv/StaffDiv may not return the employee to the lower grade. (See [5 CFR 531.214\(e\)](#)).
 5. The highest previous rate may not be based on a special rate unless:
 - a. Reassignment is from and to positions within the Department at the same grade level,
 - b. The special rate is the employee's rate of basic pay immediately before the reassignment, and
 - c. The servicing personnel officer/designee with appointing authority for the position being filled

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determines that the need for services of the employee will be greater in the new position. This determination must be in writing.

6. Before setting pay utilizing highest previous rate, OpDivs/StaffDivs must establish a policy regarding use of employees' highest previous rates. The policy must include the following elements:
 - a. Designation of officials with the authority to approve and set pay under this section;
 - b. Any situations in which the OpDivs/StaffDiv must use an employee's highest previous rate;
 - c. Any situations in which the OpDiv/StaffDiv may exercise its discretion in using an employee's highest previous rate;
 - d. Consideration of the step at which pay has been set for other employees performing similar work in the organization (based on the position's occupational series, grade level, types of duties, or other job-relevant factors);
 - e. Any other factors the designated official(s) may or must consider in determining the step at which to set the employee's pay between the employee's entitlement under any other applicable pay-setting rule and the employee's highest previous rate; and
 - f. Documentation and recordkeeping requirements sufficient to allow reconstruction of the action.

E. Change to Lower Grade at Own Request (Including those involving transfers)

1. Highest Previous Rate should not be used if the employee takes a voluntarily change to lower grade and the use of the highest previous rate would result in more pay than the employee would have gotten if they had stayed in the higher grade. Specifically, the employee's pay will be set at the step of the lower grade which upon re-promotion will not place the employee in a rate exceeding the previously held rate in the higher grade (i.e., pay should be set at the rate in the lower grade where, on later promotion, it will not be more than it would have been without the change to lower grade). [5 CFR 531.215](#)
2. An exception to number E1 above, is if the action serves at the convenience of the government. In those cases, the highest previous rate can be used. The fact that an action serves the convenience of the Government must be supported by documentation that reflects management's need for the employee's skills and knowledge in the specific situation and that filling the position with the employee avoids costs that would otherwise accrue through recruitment, reduction-in-force, etc.

F. Change to Lower Grade for Cause

1. When an employee is changed to a lower grade for cause (e.g. unsatisfactory performance or conduct) their pay will be set so that there is a reduction to two within-grade increases in the higher grade from which being reduced. If a two-step equivalent computation falls between two-steps of the lower grade, the lower step must be used. Management may set the employee's pay as low as the first step of the grade to which the employee is being demoted ([5 CFR 531.215](#)).

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2. Fails to complete supervisory or managerial probationary period. When an employee promoted to a supervisory or managerial position does not satisfactorily complete a probationary period established under [5 USC 3321\(a\)\(2\)](#) and is returned to a position at the lower grade held before the promotion, the agency must set the employee's payable rate of basic pay upon return to the lower grade as if the employee had not been promoted to the supervisory or managerial position, unless the agency sets pay at a higher rate under the maximum payable rate rule in [5 CFR 531.221](#).

G. Promotion from Federal Wage System

1. When a FWS employee is promoted to the GS, pay will be set in accordance with the highest previous rate. This is because FWS employees promoted to GS positions are not entitled to a two-step increase. (See the Supreme Court's decision in [U.S. v. Clark, 454 U.S. 555 \(1982\)](#).)

H. Grade Retention

1. Mandatory Grade retention ([5 CFR 536.201](#)). When an employee meets the eligibility requirements below, the employee must retain their prior grade for two years, even if performing duties at a lower grade level. This means that an employee's retained grade is treated as their grade for all pay and pay administration purposes. Consequently, an employee on grade retention receives full annual adjustments and any within-grade increases that become due. If an employee is placed at step 10 because their rate of basic pay (determined under grade retention rules) is at or above the maximum of the rate range of the retained grade, then the employee is not entitled to any further step increases.

- a. Basic eligibility. The following three requirements must be met for an employee to be eligible for grade retention:

- i. The employee must be serving under a permanent appointment.
- ii. The employee must have been placed in a position under the GS or a prevailing wage system.
- iii. The employee must have been placed in a lower-graded position for one of the following reasons:

- Reduction in force. A GS employee is eligible for grade retention as a result of a reduction in force only if the employee has served for at least 52 consecutive weeks in one or more positions under a covered pay system at one or more grades higher than the grade of the position in which the employee is placed.
- Reclassification to a lower grade. An employee is eligible for grade retention based on a reclassification of their position only if immediately before the reduction in grade, that position was classified at the existing grade or a higher grade for a continuous period of at least 1 year. Refer to [5 CFR 536, Subpart B](#), for the detailed regulation on grade retention.

2. Optional Grade Retention ([5 CFR 536.202](#)).

- a. Subject to the requirements in [5 CFR 536.102](#) and [5 CFR 536.203](#), an OpDiv/StaffDiv may provide grade retention to an employee moving from a position under a covered pay system to a lower-graded position under a covered pay system when—

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- i. OpDiv/StaffDiv announces a reorganization or reclassification decision in writing (including a general notice or a specific notice) that may or would affect the employee; and
 - ii. The employee moves to a lower-graded position (either at the employee's initiative or in response to a management-initiated offer) on or before the date the announced reorganization or reclassification is effected.
 - b. An OpDiv/StaffDiv must apply [5 CFR 536.105](#) in determining whether a position under a different covered pay system is a lower-graded position.
 - c. When an employee is offered a position with grade retention under this section in anticipation of a reduction in grade, the OpDiv/StaffDiv must inform the employee in writing that acceptance of the position is not required and that declination of the offer will not affect the employee's entitlement to grade retention under [5 CFR 536.201](#) if the agency actually moves the employee to the lower-graded position.
- I. Pay Retention ([5 CFR 5 CFR 536, subpart C](#))
 1. Basic eligibility. A GS employee is entitled to pay retention when the following occurs:
 - a. The expiration of the 2-year period of grade retention;
 - b. A reduction in force or reclassification action that places an employee in a lower-graded position when the employee does not meet the eligibility requirements for grade retention;
 - c. 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;
 - d. A management action that places an employee under a different pay schedule;
 - e. A management action that places an employee in a formal employee development program generally utilized Governmentwide (e.g., Recent Graduates Program); or
 - f. 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](#).
 2. Determining Pay Retention Entitlement. When an employee becomes entitled to pay retention, an agency must determine the employee's pay retention entitlement under the following rules after applying any required geographic conversion (see [5 CFR 536.304](#)):
 - a. If the employee's existing payable rate of basic pay is less than or equal to the maximum rate of the highest applicable rate range for the grade of the employee's position of record immediately after the event causing the pay retention entitlement, the employee is entitled to the lowest rate of basic pay in such rate range that equals or exceeds the employee's existing payable rate of basic pay. If an employee's payable rate of basic pay is set at or below the

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maximum rate of the highest applicable rate range, pay retention ceases to apply to the employee.

- b. If the employee's existing payable rate of basic pay is greater than the maximum rate of the highest applicable rate range for the grade of the employee's position immediately after the event causing the pay retention entitlement, the employee is entitled to a retained rate equal to the employee's existing payable rate of basic pay.
 - c. The retained rate may not exceed 150 percent of the maximum payable rate for the lower-graded position or the rate for level IV of the Executive Schedule.
3. Adjusting Employee's Rate While Entitled to Pay Retention
- a. When a GS employee is on pay retention, the employee is entitled to receive 50 percent of the annual pay increase at the maximum rate of the grade of the position. This also applies if a special rate schedule is revised and the maximum payable rate of the new grade of the position of record is increased. The employee on the retained rate would receive 50 percent of the difference between the new step 10 and the prior step 10. Any annual adjustment in pay rates must be processed before any geographic conversion or other simultaneous pay action. When an annual adjustment causes the employee's retained rate to become equal to or lower than the maximum rate of the highest applicable rate range for the grade of the employee's position, the employee is entitled to the maximum rate and pay retention ends. Refer to [5 CFR 536](#), subpart C for specific requirements regarding pay retention.

531-2-80 DOCUMENTATION AND ACCOUNTABILITY

- A. Records, including all documentation sufficient for third party reconstruction purposes, must be retained for third party reconstruction purposes, must be retained according to the record disposition schedule. Generally, records created in a given year must be retained for a total of three (3) full years.
- B. Records involved in litigation and grievance processes may be destroyed only after official notification is received from OPM, Department of Justice, courts, or the Office of the General Counsel, etc. that the matter has been fully litigated, or resolved and closed.
- C. ASA/OHR may conduct periodic accountability reviews to analyze compliance with this Instruction, HHS and OPM policy and guidance, and applicable federal laws and regulations.