



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

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PERSONNEL BULLETIN NO: 24-07

SUBJECT: Use of Maximum Payable Rate Rule in Pay Setting

1. Purpose. This personnel bulletin establishes the Department of the Interior's (Department) policy on the use of maximum payable rates rules in pay setting. It supersedes previous guidance issued under Personnel Management Letter No. 91-2 (531) Use of Special Rate of Pay as Employees Highest Previous Rate, dated June 11, 1991.

2. Authorities. 5 United States Code (U.S.C.) Chapter 53, 5 Code of Federal Regulations (CFR) Part 531, 5 CFR Part 532, 5 CFR 530 Subpart C, 5 CFR 535 and 536, and Appropriated Fund Operating Manual, Subchapter 8.

3. Policy. This policy establishes guidance and procedures for use of maximum payable rates in pay setting in accordance with the regulations issued by the U.S. Office of Personnel Management (OPM) for General Schedule (GS) and prevailing rate employees. Heads of bureaus and equivalent offices will be responsible for establishing and administering the policy to include:

- Designation of officials with the authority to approve and set pay under this section;
- Any situations in which the agency must use the authority;
- Any situations in which the agency may exercise its discretion in using the authority;
- Consideration of step to use based on how pay was set for other employees performing similar work in the same organization based on the position's occupational, series, grade level, types of duties, or other job-relevant factors, and any other factors the designated office may or must consider in determining the step at which to set pay between the employee's entitlement under any other applicable pay-setting rule and the employee's maximum payable rate;
- Any other factors the designated officials 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 MPR; and
- Rules for maintaining documentation and recordkeeping to reconstruct the action if necessary.

4. Approving Officials. The heads of bureaus, equivalent offices, or their designee are granted authority to approve maximum payable rates. This authority may be further delegated at the discretion of the head of the bureau or equivalent office to the level of the supervisor of the

affected employee. The authorized approving official, in coordination with the servicing human resources office for the requesting supervisor, will determine whether an employee meets all the statutory requirements and will ensure the documentation in support of the determination is maintained. Decisions to approve or disapprove the use of maximum payable rates for employees in the Immediate Office of the Secretary will be made by the Deputy Assistant Secretaries within Policy, Management, and Budget (PMB) with the concurrence of the Director of the Servicing Human Resources Office. For employees within the Office of Policy, Management and Budget, approval has been further delegated to the Deputy Assistant Secretaries. The Assistant Secretary – PMB (ASPMB) will retain the authority for ASPMB Hallway direct reports.

5. Definitions.

- a. **GM Employee.** A GS employee who was formerly covered by the Performance Management and Recognition System.
- b. **GS Rate.** Rate of basic pay within the General Schedule, excluding any Law Enforcement Officer (LEO) special base rate and additional pay of any kind such as locality payments or special rate supplements. A rate payable to a GM employee is considered a GS rate even though the rate may fall between GS step rates.
- c. **General Schedule (GS).** Classification and pay system established under 5 U.S.C., Chapter 51 and Subchapter III of Chapter 53, which also refers to the pay schedule of GS rates established under 5 U.S.C. 5332, as adjusted under 5 U.S.C. 5303 or other law (including GS rates payable to GM employees). LEOs who receive special base rates are covered by the GS but receive higher base rates of pay in lieu of GS rates at grades GS-3 through GS-10.
- d. **Highest Applicable Rate Range.** The rate range applicable to a GS employee based on a position of record and official worksite that provides the highest rates of basic pay, excluding any retained rates.
- e. **Highest Previous Rate.** The highest rate of basic pay in effect when a GS employee held their highest GS grade and highest step within that grade; or the highest rate of basic pay previously received while employed in a civilian position in any branch of the Federal Government including service with the government of the District of Columbia on or after October 1, 1987.
- f. **LEO Special Base Rate.** Special base rate established for GS law enforcement officers at grades GS-3 through GS-10 under section 403 of the Federal Employees Pay Comparability Act of 1990 (section 529 of Pub. L. 101-509, November 5, 1990, as amended) which is used in lieu of a GS rate.
- g. **Locality Rate.** A locality-based comparability payment payable to GS or LEO employees.

- h. **Maximum Payable Rate.** The highest rate of pay that can be provided, based upon either the payable rate associated with the position under normal pay setting rules, such as promotion or demotion, or the highest previous rate the employee received in another Federal job.
- i. **Payable Rate.** A rate of basic pay to which an employee is entitled based on the employee's position of record, official worksite, and step or relation position in range for a GM employee, or, if applicable, a retained rate.
- j. **Position of Record.** 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 and current position description.
- k. **Prevailing Rate.** An individual employed in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement.
- l. **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 rate, an LEO special base rate, a special rate, a locality rate, and a retained rate, but exclusive of additional pay of any other kind.
- m. **Rate of Basic Pay for Prevailing Rate employees.** Scheduled rate of pay plus any night shift or environmental differential.
- n. **Special Rates.** Higher rates of basic pay for a group or category of GS positions in one or more geographic areas to address existing or likely significant handicaps in recruiting or retaining well-qualified employees.

6. Criteria for Determination.

a. Maximum Payable Rate Rule

- i. A bureau or equivalent office may apply the maximum payable rate 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, Subchapter S8 of the Appropriated Fund Operating Manual and 5 CFR part 532 delineates rules for using highest previous rates for prevailing rate employees. Special rules for former Performance Management and Recognition System or GM employees are provided in § 531.247. A

payable rate set under this section must take effect on the effective date of the action involved. This policy 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.

- ii. A bureau or equivalent office may set an employee's rate of basic pay at the maximum rate identified under 5 CFR §531.221 or at a lower rate at its discretion. The rate may not be lower than the rate of entitlement under any other applicable pay-setting rule.
- iii. The applicable annual rates of pay or the hourly rate for non-GS (such as prevailing rate) converted to an annual rate must be utilized.
- iv. A critical position pay rate under 5 CFR part 535 must be treated as if it were a rate under a non-GS pay system, as described in the highest previous rate under a non-GS system. A critical position is one that has been designated to require an extremely high level of expertise in a scientific, technical, professional, or administrative field that is critical to the successful accomplishment of an important agency mission and requested by the agency head in coordination with the Office of Personnel Management and the Office of Management and Budget.
- v. An adjusted GS rate that includes market pay under 38 U.S.C. 7431(c) must be treated as if it were a rate under a non-GS pay system.
- vi. To ensure compliance with 89 Federal Register 5755 Advancing Pay Equity in Governmentwide Pay Systems, bureaus and equivalent offices need to ensure 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) and 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.

b. Rates of Basic Pay That May Be Used as the Highest Previous Rate

- i. The rates that may be used as the highest previous rate include:
 - 1. The highest rate of basic pay previously received in a civilian position in any part of the Federal Government without regard to whether the position was in the GS pay system; or
 - 2. The highest rate of basic pay in effect when a GS employee held their highest GS grade and highest step within that grade.
- ii. The highest previous rate must be a rate of basic pay received by an employee while serving on a regular tour of duty:

1. Under an appointment not limited to 90 days or less; or
2. For a continuous period of not less than 90 days under one or more appointments without a break in service.
- iii. The highest previous rate cannot be a special rate unless criteria in paragraph (iv) of this section are met. If the highest previous rate is a locality rate, the underlying GS rate or an LEO special base rate associated with that locality rate must be used as the highest previous rate.
- iv. A special rate may be used if established under 5 U.S.C. 5305 and 5 CFR part 530, subpart C, or 38 U.S.C. 7455 as the highest previous rate when all the following conditions apply:
 1. The employee is reassigned to another position in the same agency at the same grade level;
 2. The special rate is the employee's rate of basic pay immediately before the reassignment; and
 3. An authorized official may determine that the need for the services and contributions of the employee, will be greater in the position to which reassigned. This will be determined on a case-by-case basis and documented in writing.

c. Rates of basic pay that may not be used as the highest previous rate.

The highest previous rate may not be based on the following:

- i. A rate received under an appointment as an expert or consultant under 5 U.S.C. 3109;
- ii. 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;
- iii. 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;
- iv. 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;
- v. A rate received by an individual while employed by a Department of Defense or Coast Guard nonappropriated fund instrumentality;
- vi. A rate received solely during a period of interim relief under 5 U.S.C. 7701(b)(2)(A);

- vii. 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 5 CFR §531.222(c));
- viii. A rate received under a void appointment or a rate otherwise contrary to applicable law or regulation;
- ix. A rate received as a member of the uniformed services; or
- x. A retained rate under 5 U.S.C. 5363 or a similar rate under another legal authority

d. Use of Highest Previous Rates for GS rate and LEO Special base rate

When an employee's highest previous rate is based on a GS rate or an LEO special base rate paid under the GS pay system, an agency must determine the maximum payable rate of basic pay that may be paid to the employee.

- i. Compare the employee's highest previous rate excluding locality with the GS base rates using the schedule of GS rates while excluding any locality or additional pay of any kind in effect at the time the highest previous rate was earned. For an employee receiving an LEO special base rate when the highest previous rate was earned, compare the highest previous rate to the applicable LEO special base rates in lieu of GS rates, if the grade in which pay is currently being set is one of the grades from GS-3 through GS-10.
- ii. Identify the lowest step in the grade for the new position being considered at which the GS rate or LEO special base rate was equal to or greater than the employee's highest previous rate. If the employee's highest previous rate was greater than the maximum GS rate or LEO special base rate for the grade, identify the step 10 rate.
- iii. Identify the rate on the current applicable rate range excluding locality for the employee's new position of record and grade that corresponds to the step identified above. This is the maximum payable GS rate or LEO special base rate the agency may pay the employee under this section.
- iv. After setting the employee's GS or LEO special base rate excluding locality within the rate range for the grade not to exceed the maximum payable rate identified in the above step, determine the employee's payable rate of basic pay based on the employee's GS or LEO special base rate. Apply that grade and step to the appropriate locality table to yield the final salary.

e. Highest Previous Rate Based on a Special Salary Rate

As stated above in 6.b.(iv)., a special rate may only be used if certain criteria are met. When a GS employee is reassigned, the employee's former special rate in effect

immediately before the reassignment may be used as the employee's highest previous rate. To apply the HPR based on a special salary rate:

- i. Identify the basic rate of pay associated with the current grade and step on the special rate schedule applicable to the employee's current position.
- ii. Refer to the locality adjusted pay schedule associated with the reassignment and determine the step in the locality pay schedule equal to or higher if between steps that corresponds to the existing special rate to identify the maximum payable rate of basic pay.

f. Highest Previous Rate based on a non-GS Pay System.

If an employee's highest previous rate is based on a rate of basic pay in a non-GS pay system, the agency must determine the maximum payable rate of basic pay that may be paid to the employee in the current GS position of record as follows:

- i. Compare the highest previous rate to the highest applicable rate range in effect at the time and place where the highest previous rate was earned. The highest applicable rate range is determined as if the employee held the current GS position of record, to include the grade in which pay is being set, at that time and place. Identify the lowest step rate in that range that was equal to or higher than the highest previous rate or the maximum step rate if the highest previous rate exceeded the range maximum.
- ii. Convert the step rate identified above to a corresponding rate, the same step, in the current highest applicable rate range for the employee's current GS position of record and official worksite. That step rate is the employee's maximum payable rate of basic pay.
- iii. After setting the employee's rate of basic pay in the current highest applicable rate range but not to exceed the maximum payable rate, determine any underlying rate of basic pay to which the employee is entitled at the determined step rate.

g. Highest Previous Rate for Prevailing Rate Employees.

A bureau or equivalent office may apply the maximum payable rate to determine an employee's payable rate of basic pay under the prevailing rate pay system at a rate higher subject to conditions in 5 CFR §532.407, S8-3d, to grade and pay retention provisions in subchapter S9, and 5 CFR Part 536, when a wage grade employee is reemployed, transferred, reassigned, promoted, or changed to a lower grade, a bureau or agency may pay the employee at any rate of the grade which does not exceed the employee's highest previous rate.

- i. If the employee's highest previous rate falls between two step-rates the employee may be paid at the higher rate.

- ii. A bureau or equivalent office may continue to pay the employee the existing scheduled rate or at any higher rate of the grade which does not exceed the highest previous rate when an employee's type of appointment is changed in the same job;
- iii. If the employee's highest previous rate falls between two step rates of the grade, the employee may be paid at the higher rate.
- iv. Computation of highest previous rate.
 - 1. The highest previous rate is based on a regular tour of duty at that rate under an appointment not limited to 90 days or less, or for a continuous period of no less than 90 days under one or more appointments without a break in service.
 - 2. The highest previous rate may be based upon a rate of pay received during a period of temporary promotion if it is not used to circumvent the period required for within-grade pay increases, or the temporary promotion is for a period of not less than 1 year. This 1-year limitation does not apply upon permanent placement in a position at the same or higher grade.
 - 3. The highest previous rate may not be based on:
 - (a) A rate received for an appointment as an expert or consultant under 5 U.S.C. 3109;
 - (b) A rate of basic pay established under 5 U.S.C. 5305; or
 - (c) A rate established under S8-3b.
 - 4. When an employee's rate of pay is one which was established under 5 U.S.C. 5305, or S8-3b, the employee's highest previous rate is the rate to which the employee would have been entitled had the rate established under section 5305 or S8-3b (1) and (2) not applied.
 - 5. If the highest previous rate was earned in a wage job it is the current rate of the grade and step rate of the former job on the same type of wage schedule in the wage area in which the employee is being employed, or the actual earned rate, whichever is higher. If the highest rate previously received falls between two rates of the new grade, the agency may consider the higher of the two rates as the highest previous rate.
 - 6. If the employee's former scheduled rate was earned on a General Schedule or other statutory pay schedule job, the highest previous rate is the current statutory rate for the same grade and step rate of that schedule.

h. Special Rules for GM Employees

On September 30, 1993, Public Law 103-89, The Performance Management and Recognition System (PMRS) Termination Act of 1993, was enacted. This law terminated the Performance Management and Recognition System (PMRS) effective November 1, 1993. From that date forward, promotion, change to a lower grade, a break in service of more than 3 days, transfer to another agency, or reassignment to a non-supervisory or non-management position will end an employee's coverage under the provisions of the PMRS Termination Act of 1993. At that time, the agency will adjust the employee's rate of basic pay to the designated GS step rate that meets or exceeds the current rate of pay, not to exceed step 10. When processing the personnel action that results in the employee's placement at a designated GS step rate and shift back to the GS pay plan code, the agency should include a remark on the SF 50 that this action terminates the employee's coverage under the provisions of P.L. 103-89 and the use of the GM pay plan code.

i. Maximum Payable Rate Rule for Former GM Employees

- i. A rate received by a GM employee may qualify as a highest previous rate.
- ii. If an employee loses status as a GM employee because of a transfer, promotion, demotion, or reassignment to a position in which the employee will no longer be a supervisor or management official, and if the employing agency after the action chooses to apply the maximum payable rate rule, the agency must follow the rules in § 531.221.
- iii. If an employee retains GM status after an action that allows application of the maximum payable rate to set the employee's pay, apply the following special provisions:
 1. Compare the employee's highest previous rate to an applicable rate range for the grade in which pay is being set, do not identify the lowest step rate that equals or exceeds the highest previous rate. Identify the rate in the rate range that equals the highest previous rate unless that highest previous rate is below the range minimum or above the range maximum. If the highest previous rate is below the range minimum, identify the minimum rate (step 1) of the grade. If the highest previous rate is above the range maximum, identify the maximum rate (step 10) of the grade.
 2. In applying § 531.221(b) for an employee whose highest previous rate is a GS rate, the highest previous rate must be compared to the GS rate range for the grade in which pay is currently being set, but which was in effect at the time the highest previous rate was earned. If the highest previous rate was earned while the current GS rate range was in effect, the rate identified under paragraph 6.i.3.(a) is the maximum payable GS rate. Otherwise, based on the rate

identified in paragraph 6.i.3.(a), the bureau or equivalent office must determine the corresponding rate in the current GS rate range for the grade in which pay is currently being set. That corresponding rate is the maximum payable GS rate. If the highest previous rate was above the range minimum and below the range maximum, the corresponding rate in the current GS rate range must be derived as follows:

- (a) Find the difference between the employee's highest previous rate and the minimum rate for the GS rate range for the employee's current grade in effect at the time the highest previous rate was earned.
 - (b) Find the difference between the maximum rate and the minimum GS rate for the rate range identified in step A. If the GS maximum rate was not payable because of the EX level V pay limitation, use the uncapped maximum rate.
 - (c) Divide the result from step 1 by the result from step 2. Carry this result to the seventh decimal place and truncate, rather than round, the result. This decimal factor represents the employee's relative position in the rate range.
 - (d) Using the current GS rate range for the employee's current grade, find the difference between the maximum rate and the minimum rate. If the maximum GS rate was not payable because of the EX level V pay limitation, use the uncapped maximum GS rate.
 - (e) Multiply the result from step D by the factor derived under step C.
 - (f) Add the result from step 5 to the minimum rate for the employee's current GS rate range and round to the next higher whole dollar. This rate is the maximum payable GS rate the agency may pay the employee subject to the EX level V pay limitation.
4. In applying 5 CFR §531.221(c) for an employee whose highest previous rate is a special rate, the highest previous rate after any geographic conversion must be compared directly to the current highest applicable rate range for the employee's position of record and official worksite after reassignment. The rate identified under paragraph 6.i.3.(a) is the maximum payable rate of basic pay.

7. Documentation. All documentation to include memorandum and justification should be kept on file for a minimum of 6 years. References 31 USC §3702 and 5 CFR Part 178.

8. Labor-Management Obligations. Bureaus and equivalent offices are reminded to fulfill their labor-management obligations, as appropriate, in implementing the requirements set forth in this PB.

9. Inquiries. Any employee or employee representative seeking further information concerning this policy may contact their respective SHRO. SHROs should confer with their bureau or office human capital policy offices for clarity on this policy. The Office of Human Capital serves as principal liaison to the U.S. Office of Personnel Management. Bureau and equivalent office human capital offices may contact the Office of Human Capital at DOI_Office_of_Human_Resources@ios.doi.gov.

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