

HHS Transmittal 96.11
Personnel Manual
Issue Date: 5/20/96

Material Transmitted:

HHS Instruction 531-2, Setting Salary

Material Superseded:

HHS Instruction 531-2 (all)
HHS Instruction 532-5 (all)
HHS Instruction 536-1 (all)

Background:

This Instruction has been revised consistent with recent changes in the organization of HHS, and in support of HHS administrative initiatives calling for more streamlined rules and greater delegations of authority.

Under this issuance, three Instructions have been consolidated because of similar subject matter and the need for greater streamlining of the rules.

Any reference to "OPDIV" in this Instruction now includes the PHS agencies, the Office of the Secretary, the Program Support Center, HCFA, ACF, and AOA.

This issuance is effective immediately. Implementation of this issuance must be carried out in accordance with applicable laws, regulations, bargaining agreements, and Departmental policy.

Filing Instructions:

Remove superseded material and file new material. Post receipt of this transmittal to the HHS Check List of Transmittals and file this transmittal in sequential order after the check list.

Eugene Kinlow
Deputy Assistant Secretary for Human Resources,
OASMB

INSTRUCTION 531-2

Distribution: MS (PERS): HRFC-001

HHS PERSONNEL INSTRUCTION 531-2
POSITION CLASSIFICATION PROGRAM

- 531-2-00 Purpose and Authority
 - 10 References
 - 20 Pay Setting
 - 30 Grade and Pay Retention

531-2-00 PURPOSE AND AUTHORITY

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 GS and Federal Wage System (FWS) employees to grade and pay retention.

531-2-10 REFERENCES

- A. U.S. Code, Chapter 53 (law - pay rates and systems)
- B. CFR, Part 531 (regulations - pay under the General Schedule)
- C. CFR, Part 536 (regulations - grade and pay retention)
- D. HHS Instruction 338-2 (appointments above the minimum because of superior qualifications)
- E. HHS Instruction 351-1 (reduction in force (RIF))

531-2-20 PAY SETTING

A. Highest Previous Rate

1. When the use of the highest previous rate (HPR) is optional under Government-wide regulations, the Department's policy is that the manager who approves a Request for Personnel Action is authorized (unless otherwise provided) to approve the employee's rate of pay after consultation with the personnel officer or his/her designee. That rate of pay may be any rate between the basic rate for the position and the HPR, subject to the restriction in 531-2-20B below. In this situation, the employee has no entitlement to a particular rate of pay.
2. When applying the HPR, care must be taken to avoid windfalls in pay for employees being reinstated or transferring from other Federal entities which have pay schedules that are substantially higher than GS pay rates.
3. The HPR remains available for use in subsequent promotions or movement of the employee to another position, unless the restriction in 531-2-20B is applicable.

B. Restriction

The HPR cannot be used unless an employee's most recent annual performance rating is fully successful or better. If a performance rating is not available, because the individual involved is being reinstated or transferred from another agency from which the rating is unavailable, a presumed fully successful rating shall be applicable.

C. Effect of Temporary Promotion

The HPR may be used when setting salaries after temporary promotions of one year or more. If the HPR is not used, the employee is placed at the step he/she would have attained had there been no temporary promotion.

D. Change to Lower Grade for Cause

Employees who are changed to lower grades for personal cause cannot have their pay set pursuant to the HPR. When employees are changed to lower grades for cause (e.g., inefficiency, less than fully successful performance, misconduct, etc.), their pay will be set in the lower grades so that there is a reduction in pay equivalent to at least 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 rate must be used. Management may set the employee's pay as low as the first step of the grade to which the employee is demoted.

NOTE : In accordance with OPM Regulation 536.105, an employee who is downgraded for cause is not eligible for retained pay. Therefore, if the employee's pay falls above Step 10 of the lower grade, his/her pay will be set at Step 10.

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

1. The HPR cannot be used when an employee is changed to a lower grade at his/her own request, except as indicated in 2 below. (If an employee is eligible for grade and pay retention, his/her salary should be set in accordance with 5 CFR 536.)
2. When the employee-requested action also serves the convenience of the Government, the employees pay may be set at the step represented by the

HPR, or a lower step. The fact that an action series 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.

3. When an employee requests a change to a lower grade, to a position which is less than the top of a career ladder, the highest previous rate that may be used in setting the employee's salary is the rate in the lower grade which, upon repromotion, will place the employee at the rate of pay he/she would have attained if the employee had remained in the former grade (unless the exception in 2 above applies). This includes any step increases the employee would have received if he/she had remained at the higher grade during the period of qualifying for repromotion. For example, if an employee would have received Step 3 of the former grade during that period, the rate of pay at Step 3 is used in determining the employees pay at the lower grade.

If the employee would not have been eligible for a step increase at the former grade between the time of the change to lower grade and the time the employee will qualify for repromotion, the step increase cannot be credited in setting the employee's pay at the lower grade. For example, if the employee qualifies for promotion within 4 months after a change to a lower grade and the step increase at the higher grade is due in 9 months, that step increase cannot be credited.

F. Special Pay Rates

Special pay rates for recruitment and retention as provided in 5 U.S. Code 5305 can be used as the HPR under the conditions outlined below:

1. Reassignment must be from and to positions within the Department.
2. The special rate must be the employee's current rate of pay.
3. The servicing personnel officer/designee with appointing authority for the position being filled (based on recommendations from both gaining and

losing management officials) must determine that the need for services of the employee will be greater in the new position.

G. Promotion from Federal Wage System

When a FWS employee is promoted to the GS, pay will be set in accordance with the HPR. This is because FWS employees promoted to GS positions are not entitled to a two-step increase. (See U.S. v. Clark - Supreme Court, 80-1121.)

H. Documentation of Intended Use of the HPR

When a personnel office intends to use the HPR but does not have sufficient proof of an applicants or employees previous rate of pay, it cannot grant the HPR until it receives the necessary documentation. Pending receipt of the documentation, the servicing personnel office must annotate the employees Notification of Personnel Action (SF 50) with regard to its intent to use the HPR. The employees pay will be set at the lowest step or other appropriate step of the grade until documentation is, received. Upon receipt of confirmation of the HPR, the employee's salary will be adjusted retroactively to the date of appointment. Acceptable documentation is an SF 50 or like document, or the employee's official earnings and leave statement.

531-2-30 GRADE AND PAY RETENTION

A. Transfer and Reassignment of Employees

1. Employees who are on grade retention are entitled to their retained grade in any position they hold. However, the appointing authority, at the request of the selecting official, may ask an employee to waive his/her retained grade at the time he/she is offered a transfer into the Department or a reassignment within the Department to a position at a lower grade than his/her retained grade. An employee who waives grade retention is not entitled to pay retention.
2. An employee cannot waive entitlement to pay retention. Pay retention entitlement ceases only when one of the conditions stated in the Office of Personnel Management (OPM) regulations occurs.

B. Disability

The appointing authority is authorized to grant pay retention to employees who are

found to be disabled for their current position yet are willing to accept assignment to a lower graded position, the duties of which they are capable of performing. The finding of disability must be supported by acceptable medical evidence. This policy is applicable regardless of whether an application for disability retirement has been filed or the disability retirement application has been denied. Such employees are not entitled to grade retention.

C. Optional Use of Grade and Pay Retention

Personnel officers or their designees may approve the use of grade or pay retention where such use is optional.