

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405

HRM 9552.1
May 17, 2023

GSA ORDER

SUBJECT: Maximum Payable Rate Rule in Basic Pay Setting

1. Purpose. This Order cancels and serves to replace Chapter 4 of the handbook, Pay Administration and Position Classification (CPO P 9550.1). The purpose of this Order is to update policy and processing rules governing the use of the maximum payable rate rule, and the highest previous rate, during basic pay setting, in compliance with current civil service laws and regulations, following passage of the Workplace Flexibilities Act of 2004 (Pub. L. 108-411).

2. Background. This Order incorporates current civil service regulatory principles governing basic pay setting pursuant to Workforce Flexibility Act of 2004 (Pub. L. 108-411).

3. Scope and Applicability.

a. The provisions of this policy apply to organizations and employees of GSA in both the competitive and excepted services in positions classified and paid under the General Schedule (i.e., Subchapter III of 5 U.S.C. Chapter 53).

b. The Office of Inspector General (OIG) has independent personnel authority. See Section 6 of the Inspector General Act of 1978, (5 U.S.C. App.3), as amended (Inspector General is authorized “to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General”) and GSA Order ADM 5450.39D CHGE 1 GSA Delegations of Authority Manual (Delegations Manual), Chapter 2, Part 1 (“the Inspector General has independent authority to formulate policies and make determinations concerning human capital issues within the [OIG]” and GSA determinations/delegations do not limit that authority). Similarly, GSA specifically recognizes that the Inspector General has independent authority to formulate policies and make determinations concerning training, employee development, and career management.

4. Cancellation. Pay Administration and Position Classification Handbook (CPO P 9550.1).

5. Nature of Revision. The provisions of this policy update: (a) the approval criteria for when highest previous rate pay setting may be used and (b) the approval processes.

6. Implementation. Implementation under this issuance must be carried out in accordance with applicable laws, regulations, and bargaining agreements.

7. Labor Organizations. Implementation of this Order as it affects employees represented by a labor organization is contingent upon meeting and completion of related labor relations obligations.

8. Signature.

/S/

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1. Introduction. An agency may apply the maximum payable rate rule as described in this Order to determine an employee's payable rate of basic pay under the GS pay system at a rate higher than would otherwise be applicable 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. A payable rate set under this Order 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.

2. References.

- a. Title 5, United States Code, Chapter 53.
- b. Title 31, United States Code, Section 3702.
- c. Title 5, Code of Federal Regulations, Part 531, Subpart B.
- d. Title 5, Code of Federal Regulations, Part 178.
- e. GSA Order 9531.1, *Superior Qualifications and Special Needs Pay Setting Authority*.

Authority.

f. GSA Memorandum for Heads of Services and Staff Offices, *Amendment to the Delegation of Authority - Approval Authority for use of Superior Qualifications and Special Needs Pay-setting Authority and Recruitment, Relocation and Retention Incentives*, April 15, 2012.

3. Definitions.

a. GS rate. A 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.

b. Highest Previous Rate. A rate of basic pay previously received by an individual while employed in a civilian position in any part of the Federal Government (including service with the government of the District of Columbia for employees first employed by that government before October 1, 1987), without regard to whether the position was in the GS pay system; or a rate of basic pay in effect when a GS employee held his or her highest GS grade and highest step within that grade.

c. LEO Special Base Rate. A 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 base rate.

d. 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 (e.g., promotion, demotion) or the highest previous rate the employee received in another Federal job.

e. 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 relative position in range for a GM employee) or, if applicable, a retained rate.

f. Rate of basic pay. The rate of pay fixed by law or administrative action for the position held by an employee before any deductions, including a GS rate, an LEO special base rate, a special rate, a locality rate, or a retained rate, but excluding additional pay of any other kind. For the purpose of applying the maximum payable rate rule using a rate under a non-GS pay system as an employee's highest previous rate, the rate of basic pay means a rate of pay under another legal authority that is equivalent to a rate of basic pay for GS employees.

4. Rates of basic pay that may be used as the highest previous rate.

a. Generally. 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.

b. Locality Rates. If a locality rate is used as the highest previous rate, the underlying GS rate (without locality) or a LEO special base rate associated with that locality rate must be used as the highest previous rate for pay setting purposes.

c. Special Rates. Normally special rates may not be used as the highest previous rate. However, a special rate may be used as the highest previous rate when:

(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 agency official finds that the need for the services of the employee, and the employee's contribution to the program of the agency, will be greater in the position to which he or she is reassigned. This determination must be made on a case-by-case basis. In each case, the agency must document the determination to use the special rate as an employee's highest previous rate in writing.

d. LEO Special Base Rates. These rates are used in pay setting in lieu of GS rates (i.e., GS base rates), for law enforcement officers in GS-3 through 10.

- e. Non-GS Rates. A non-GS rate may be used in pay setting under the maximum payable rate rule (see 5 CFR 531.221(d)). Non-GS rates are associated with statutory classification and pay authorities outside of Title 5 (General Schedule).

5. Rates of basic pay that may not be used as the 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 C.F.R. Part 530, Subpart C, or 38 U.S.C. § 7455 (except as provided in 5 C.F.R. § 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; or
- j. A retained rate under 5 U.S.C. 5363 or a similar rate under another legal authority.

Note: When an applicant has prior uniformed service, as discussed in (i) above, while the maximum payable rate rule is not available, due to civil service regulation, at 5 C.F.R. § 531.223(i), such employees may have this rate considered for initial civilian appointment pay setting purposes under “superior qualifications” pay setting authority. See 5 C.F.R. § 531.212 and GSA Order 9531.1, *Superior Qualifications and Special Needs Pay Setting Authority*. When uniformed service compensation is considered in

this context, the comparability analysis typically includes the consideration of uniformed services allowances (e.g., basic allowance for subsistence and basic allowance for housing) as well as special and incentive pay.

6. Calculating the Maximum Payable Rate. The maximum payable rate rule is an optional pay setting authority, available as a human capital tool in lieu of normal pay setting rules that would otherwise apply (for promotions, demotions, etc.). There are three general calculation methods: for GS rates, special rates, or non-GS rates. (See also 5 C.F.R. § 531.221 and the OPM Fact Sheet).

- a. When the highest previous rate is based on a GS rate or LEO special base rate. (5 CFR 531.221(b)).

Step A: Compare the employee's highest previous rate (i.e., excluding locality) with the GS rates (i.e. base rates) for the grade in which pay is currently being set using the schedule of GS rates (excluding any locality or additional pay of any kind) in effect at the time the highest previous rate was earned. (For example, if the highest previous rate was earned within GS-12, at Step 6, look at that pay rate compared to the grade and pay range being considered: GS-9 for a voluntary downgrade or demotion being considered by the job candidate in the example below).

Step B: Identify the lowest step in the grade for the new position being considered at which the GS rate was, at that time, 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 for the grade, identify the step 10 rate. (For example, when considering GS-12, Step 6 as applicable to a GS-9 pay range, use the rates for GS-12 and GS-9 during the pay year, for example, 2021, when the highest previous rate was earned. For the example below, the rate at GS-12, Step 6 is actually higher than the top step, Step 10, in the GS-9 range being considered).

Step C: Identify the rate on the current (meaning, current pay year) applicable GS rate range (excluding locality) for the employee's new position of record and grade that corresponds to the step identified in step B. This rate is the maximum payable GS rate the agency may pay the employee in the new position's rate range.

Step D: After setting the employee's GS rate (excluding locality) within the rate range for the grade (not to exceed the maximum payable rate identified in step C), determine the employee's payable rate of basic pay (i.e., including locality or a special rate). In other words, apply that grade and step to the appropriate locality table to yield the final salary.

EXAMPLE: An employee, Mary, is a GS-12, Step 6, Management Analyst (series 0343) with experience and a graduate degree in information technology. She wishes to enter a special training program in information technology,

associated with a 2210 job series. This formal training program is a career ladder, beginning at GS-9, with non-competitive promotion opportunities to GS-11 and then 12 (following 52-weeks time-in-grade under 5 CFR Part 300, Subpart F). In 2021, she is selected through merit promotion and is offered a voluntary downgrade to GS-9. She is not eligible for either grade retention or pay retention, under 5 U.S.C. § 5362(d)(2) or 5363(e)(3). Under the 2021 GS rate table (excluding locality), her GS-12, Step 6 base salary is \$77,969 (Step A). To encourage her to accept the offer, also during 2021, she is extended the benefit of the maximum payable rate rule and is offered the base rate of GS-9, Step 10 at \$59,907 (Steps B and C). In the Kansas City area, the GS-9, Step 10 (i.e., same grade and step) is associated with a locality-adjusted rate of \$70,169 (Step D). Use both the locality-adjusted rate and the underlying GS base rate to complete the necessary salary blocks within the SF-50 in the appropriate human resources system (e.g., HR Links).

- b. When the highest previous rate is based on a GS employee's special rate. (5 C.F.R. § 531.221(c)). As discussed above, normally a special rate is not used in basic pay setting under the maximum payable rate rule. Sometimes, however, an employee is laterally reassigned under conditions that satisfy 5 C.F.R. § 531.222(c).

STEP A: 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.

STEP B: Next, refer to the locality-adjusted pay schedule associated with the reassignment. Identify the Step in the locality pay schedule that is equal to, or higher (if between steps) that corresponds to the existing special rate.

STEP C: Process the reassignment and note that a new waiting period begins because the employee received an "equivalent increase" under 5 C.F.R. § 531.407(a)(3).

EXAMPLE: Joe is a series 0318 secretary in Juneau, Alaska, in GS-5, Step 2, on special rate table 0159, earning \$42,781 during the 2021 pay year. Due to a retirement in the Portland, Oregon office, in 2021, Joe agrees to accept a management-directed reassignment to a GS-5 position, series 0318, at the Portland office. Rather than pay him Step 2 under the Portland pay scale, the agency allows him to slot his existing special rate from Juneau into the Portland pay scale, offering Joe Step 6, at \$43,908 in the Portland 2021 locality-adjusted pay table.

- c. When the highest previous rate is based on a non-GS pay rate. (5 C.F.R. § 531.221(d)). Under 5 C.F.R. § 531.222(c), a civilian employee may use a non-GS rate as the highest previous rate, when accepting a position covered by the General Schedule. Typically such scenarios occur when an employee is being

appointed by transfer from a losing agency that is under a demonstration project, alternative pay system, or non-Title 5 classification and pay authority.

Step A: Compare the non-GS highest previous rate to the highest applicable GS range (including a locality rate or special rate) that was in effect at the time and place where the non-GS highest previous rate was earned. The highest applicable range is determined as if the employee held the new (i.e. selected) GS position of record (including the grade in which pay is being set) at that particular time and place.

Step B: Identify the lowest step rate in that GS range that was equal to, or higher, than the non-GS highest previous rate (or assign Step 10 rate if the highest previous rate exceeds the range's maximum).

Step C: Convert the rate identified in Step B to the corresponding rate (i.e. use the same step) on the pay range (e.g., locality pay table) appropriate for the employee's new (i.e., selected) GS position of record and official worksite. This new pay rate will be the employee's maximum payable rate of basic pay and will correspond to the selected position's new worksite and appropriate GS pay table.

Step D: After setting the employee's rate of basic pay, determine any underlying GS (i.e., base) rate of pay to which the employee is entitled to, at the position's GS grade and step.

EXAMPLE: In 2021, Marsha, a USPS employee in the Postal Career Service, applies, and is selected for, appointment by transfer to the Title 5 competitive service (permissible under 39 U.S.C. 1006). At USPS, she holds an EAS-25 position (under Title 39) as a Program Manager, 0340, earning a salary of \$125,500, during the 2021 pay year, at the Postal Headquarters in Washington, DC. She qualifies for a GS-13, based on a combination of education and work experience in the Postal Career Service. Applying the Steps above, the HR Specialist reviews the Postal salary against the 2021 General Schedule, Washington, DC locality-based table and finds that the closest step is Step 8 (\$127,885). The underlying GS (national base) rate for Step 8 is \$98,011.

7. Processing Steps. Offering a certain salary – when there is flexibility under statute and regulation – is inherent in the staffing process of recruitment and selection. The business case for seeking use of the maximum payable rate rule must begin with the position's selecting official. Generally, the selecting official will seek use of this discretionary authority to help cement a job candidate's acceptance of a tentative offer.

The selecting official should prepare a memorandum, no longer than 1 page (450 words), seeking use of this authority and providing justification, based upon information contained within the staffing file, submitted by the applicant, as well as information collected during interviews, assessment testing, or subsequent assessment hurdles. Per the April 15, 2012 Memorandum to Heads of Services and Staff Offices, the request

memorandum should be addressed to the **Chief Human Capital Officer** and the **Chief Financial Officer**, as a **joint approval**, routed through the Director of Human Resources Services, Office of Human Resources Management. To ensure that sufficient funds are available, the request letter from the selecting official should mention that the appropriate local budget officer has certified that funds are available and there will be a minimal impact on the overall available salary and expense funding for the applicable line or staff office.

8. When to Use the Maximum Payable Rate Rule. The maximum payable rate rule is a special rule that allows an agency to set pay for a General Schedule (GS) employee at a rate above the rate that would be established using normal rules, based on a higher rate of pay the employee previously received in another Federal job. It is used at the discretion of the selecting official. A selecting official's request is considered appropriate (and therefore approvable) when:

- a. Competitive selection (typically promotions or agency transfers): The following represent the most common situations encountered when use of the maximum payable rate rules would be considered appropriate. Each of the following is considered an independent, valid justification: (a) the selectee is part of the Best Qualified category (under category rating), (b) there is a shortage of qualified candidates on the selection certificate, (c) the job candidate has special or unique knowledge and skills that would help further the agency's mission and goals, and/or (d) there is a perceived high risk that the selectee will reject a tentative offer if traditional pay setting policies are used instead;
- b. Non-competitive selection (other personnel actions): When (a) an employee experiences a termination of grade retention or pay retention under 5 CFR Part 536, (b) there is termination of critical pay authority under 5 CFR Part 535, (c) an employee is reemployed (typically reinstated to the Federal Service) on a temporary or permanent basis, (d) an employee agrees to a management-initiated lateral reassignment, particularly to a new duty station that would require permanent change of station, or (e) an employee is chosen to participate in a career development program, or a technical field or area of study, that requires entry at a certain specific level (e.g., GS-9), may involve a voluntary demotion, and is often associated with a career ladder for future non-competitive promotion.

9. Documentation and Recordkeeping. Memorandum and justification narratives should be kept on file for a minimum of 6 years, due to 31 U.S.C. § 3702 and 5 C.F.R. Part 178.