

**Forest Service Handbook
National Headquarters - Washington Office
Washington, DC**

**Forest Service Handbook 6109.11 – Pay Administration, Attendance and Leave Handbook
Chapter 50 - Maximum Payable Rate**

Amendment: 6109.11-2016-1

Effective date: February 18, 2016

Duration: This amendment is effective until superseded or removed.

Approved by: J. Lenise Lago, Deputy Chief for Business Operations

Date approved: February 17, 2016

Responsible Staff:

Last Change: Amendment 6109.11-2015-1 to 6109.11_30

Superseded Document(s): None

Digest: Following is an explanation of the changes throughout the directive by section.

50: Establishes chapter, code, and caption; sets forth new direction.

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50 - Maximum Payable Rate

This section provides direction on the use of highest previous rate under the maximum payable rate rule to General Schedule (GS) and Federal Wage System (FWS) employees.

50.01 - Authority

1. The implementation of regulations for Title 5, United States Code (U.S.C.), chapter 53, are in Title 5, Code of Federal Regulations (CFR), part 531.
2. The maximum payable rate provisions are contained in 5 CFR 531.221-531.223 for GS employees; 5 CFR 531.247 for General Manager (GM) employees; and 5 CFR 531.216 for an employee moving to a GS position from a Department of Defense and Coast Guard non-appropriated fund instrumentality position.

50.02 - Objective

To determine the maximum payable rate based on an employee's highest previous rate, and provide pay-setting options for Line Officers and Unit Managers to carry out their missions and objectives effectively.

50.03 - Line Officers and Unit Managers

Line Officers and Unit Managers have the authority to justify and approve the use of the highest previous rate. The Human Resources Officer has the responsibility to ensure compliance with Agency pay-setting policy in the use of highest previous rate.

50.04 - Definitions

Demotion. A change of an employee's status, while continuously employed from one GS grade to a lower GS grade with or without reduction in pay; or a higher rate paid under a non-GS pay to a lower rate within a GS grade. For a FWS employee, a reduction in pay in any amount.

Employee. An employee as defined in 5 U.S.C. 5361 and 5342.

Formal Development Program. A formal employee development program generally utilized Government-wide, such as upward mobility, apprenticeship, and the Pathways Program.

Highest Previous Rate. The highest rate of basic pay received by an individual while employed in a civilian position in any part of the Federal Government without regard to whether that position was under the GS pay system. If under the GS pay system, the highest rate of basic pay in effect when a GS employee held the highest GS grade

and highest step within that grade. If under the FWS pay system, either the current rate for the grade and step of the former job on applicable wage schedule or the actual earned rate.

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.

Maximum Payable Rate. The maximum rate of basic pay that may be paid to GS employees upon reemployment, transfer, reassignment, promotion, demotion, movement from non-GS pay system, change in type of appointment, or termination of grade or pay retention (5 CFR 531.203(c)).

New Appointment. The first appointment, regardless of tenure, as an employee of the Federal Government.

Non-Temporary Employee. For purposes of applying this policy, non-temporary employee includes an employee whose appointment is not designated as temporary and does not have a definite time limitation of 1 year or less. The term does not include a position filled by an employee whose appointment is limited to 1 year or less and subsequently extended so that the total time of the appointment exceeds 1 year.

Official Worksite. The official location of the employee's position of record as determined under the rules in 5 CFR 531.605 for GS employees and synonymous with the term "official duty station" as used in 5 U.S.C. 5363(c).

Pay Schedule. A set of rate ranges established under a single authority (such as the GS basic rate or locality schedule, Law Enforcement Officer's special base rate or locality schedule, prevailing rate schedule, or special rate schedule based on the official worksite or occupation, and so forth) and applies to an employee who meets the established coverage even when a rate under that schedule is not currently payable to the employee because of a higher pay entitlement under another pay schedule.

Position of Record. An employee's official position as documented on the employee's most recent Form SF-50, Notification of Personnel Action, and the current position description, excluding any position to which an employee is temporarily detailed or assigned.

Promotion. A change of an employee's status from a lower GS grade to a higher GS grade, or from a lower non-GS rate to a higher GS rate, while continuously employed. For a FWS employee, an increase in pay in any amount.

Rate of Basic Pay. The rate of pay fixed by law or administrative action for the position held by an employee (such as the GS basic rate or locality schedule, Law Enforcement Officer's special base rate or locality schedule, prevailing rate schedule, special rate schedule based on official worksite or occupation, or a retained rate), excluding additional pay of any other kind (such as premium payment, differentials, and allowances) and before any deductions.

Rate Range. The range of rates of basic pay for a grade within an established pay schedule, excluding any retained rate.

Rate Schedule. A specific set of rates within a pay schedule.

Reassignment. A change of an employee's status, while serving continuously in the same Federal agency, from one appropriate position to another without promotion or demotion.

Reemployment. Any employment, including reinstatement or another type of appointment, after a break in service of at least 1 full workday.

Reduced in Grade or Pay at the Employee's Request. A reduction in grade or rate of basic pay that is initiated by the employee for their benefit, convenience, or personal advantage. For example, the voluntary reduction in grade of an employee in response to a management action directly related to personal cause is considered to be at the employee's request.

Reduction in Grade or Pay for Personal Cause. A reduction in grade or rate of basic pay based on the misconduct, inefficiency, character, or unacceptable performance of an employee.

Superior Qualifications. An individual with unusually high or unique qualifications particularly suited to the position in comparison with other qualified individuals. In addition, the individual would be losing salary if employed at the first step of the grade. See Departmental Regulation 4050-531-002 for policy on the use of the Superior Qualifications Authority.

Temporary Employee. For the purpose of applying this policy, temporary employee includes an employee whose appointment is designated as temporary and has a definite time limitation of 1 year or less. The term includes a position filled by an employee whose appointment is limited to 1 year or less and subsequently extended so that the total time of the appointment exceeds 1 year. The highest previous rate may not be granted to temporary employees and the highest previous rate may not be based upon a rate received on a temporary appointment. The term does not include Term appointments.

Temporary Promotion. A time-limited promotion with a not-to-exceed date at the end of which the employee is expected to return to their position of record or one of like grade/pay.

Term Appointment. An appointment made for more than 1 year but not more than 4 years to a position where the need for an employee's services is not permanent. For purposes of applying this policy, highest previous rate may be granted to term appointments.

Transfer. A change of a Federal Government employee, without a break in service, from one branch in the Federal Government to another or from one Federal agency to another.

50.1 - Maximum Payable Rate Rule

When an employee receives their first appointment in Federal service, pay is set at step 1 of the grade unless a superior qualifications appointment has been approved. On subsequent position

changes, pay may be set at any step of the grade that does not exceed the employee's maximum payable rate.

Line Officers and Unit Managers shall pay the minimum rate of the grade unless a higher rate is justifiable, for example, when there is a reasonable relationship between the position on which the highest previous rate is based and the position for which selected, such as the same occupational series or similar duties in the same occupational group. An employee may be paid under maximum payable rate rules provided the employee does not have a higher entitlement under statute, for example, as a result of pay retention or the two-step promotion rule.

Highest previous rate is not an entitlement, and the decision to set pay based upon highest previous rate is made at Management's discretion. The decision to pay above the minimum rate is made by the Line Officer or Unit Manager, is documented in writing, cannot be retroactive, and the official may select any rate for the position between Step 1 and the highest previous rate.

1. Basis for Highest Previous Rate. The highest previous rate, when applicable, must be:

- a. Granted only to non-temporary employees;
- b. Based on an established tour of duty; and
- c. Based on a rate of pay held for a period of 90 days.

2. Criteria for Highest Previous Rate.

- a. Highest previous rate may be based on a rate earned on a temporary promotion only when the employee served in the same continuous position for more than 1 year or was permanently promoted to the same position in the higher grade.
- b. When the highest previous rate is authorized and that rate of pay falls between two rates of the new grade, the employee may be paid the higher rate.
- c. The maximum rate cannot exceed the top step of the grade.
- d. The highest previous rate cannot be used unless an employee's most recent annual performance rating is fully successful or better.
- e. Highest previous rate may be authorized for a temporary appointment (not to exceed 1 year) only when the applicant has experience and unusually high qualifications that meet a special need of the Agency. For example, the applicant is considered a subject matter expert for the particular position.
- f. A special rate may be used as the highest previous rate when all of the following conditions are met:

(1) The employee is reassigned to another position within the Forest Service at the same grade level;

(2) The special rate is the employee's rate of basic pay immediately before the reassignment; and

(3) The Director of Human Resources, or designee, officially determines that the employee's contributions to the program of the Agency will be greater in the position to which the employee is being reassigned.

If any of the conditions above are not met, the highest previous rate is the rate the employee would have received on the GS base pay table.

3. Exclusions. Highest previous rate shall not be based on (5 CFR 531.223):
 - a. A rate received as an expert or consultant under 5 U.S.C. 3109.
 - b. 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.
 - c. An erroneous rate.
 - d. A rate received as result of a locality-based comparability payment.
 - e. A rate received as a member of the uniformed services.
 - f. An intermittent, on-call, or as-needed work schedule.
 - g. A retained rate under 5 U.S.C. 5363 or a similar rate under another legal authority.
4. Factors to Consider. Consider the following when determining the rate of pay:
 - a. Staffing needs.
 - b. Conditions affecting recruitment and retention of qualified employees.
 - c. Qualifications and service history of employee.
 - d. Salary rates of other employees in similar positions in the area.
 - e. Labor market conditions.
 - f. Availability of funds.

50.11 - Pay Setting Using the Maximum Payable Rate Rule

1. New Appointments. Pay must be set at the minimum rate of the grade to which the employee has been appointed except as provided for superior qualification appointments or if the conditions for highest previous rate are met. Applicants shall be informed of the rate at which their pay will be set prior to accepting the position.

2. Change to Lower Grade to a Position with Known Promotion Potential. When an employee is demoted or changed to lower grade at their own request for their own personal benefit or convenience (for example, to acquire competitive status, or a desired duty station, or career ladder promotion) with the prospect of re-promotion as soon as possible under merit promotion rules, any windfall that could occur when the employee is promoted must be taken into consideration when setting the employee's pay at a rate in the lower grade. Basic pay will be set at a step in the lower grade which, upon re-promotion, will place the employee at the rate in the higher grade that would have been attained through a direct promotion had the employee remained in the previous position. Employees shall be informed of the rate at which their pay will be set prior to accepting the reassignment to a lower-graded position.
3. Change to Lower Grade to Enter a Formal Development Program. When an employee takes a demotion to enter a formal development program, this is not considered at the employee's request and therefore, the employee is entitled to the highest previous rate if the requirements for highest previous rate are met. Employees shall be informed of the rate at which their pay will be set prior to accepting the reassignment to a lower-graded position.
4. Change to Lower Grade for Cause. Employees changed to lower grades for personal cause shall not have their pay set in accordance with the highest previous rate. The employee shall not receive an increase in pay.
 - a. When an employee is changed to lower grade for personal cause, such as unacceptable performance or misconduct, or when an employee voluntarily changes to lower grade in lieu of adverse action, management may set the employee's pay as low as the first step of the grade to which the employee is demoted. Pay must not exceed the maximum step of the lower grade.
 - b. In instances where an employee covered by pay retention is changed to a lower grade for personal cause, pay retention must be terminated.
 - c. All factors that involve the change to lower grade must be considered in setting the pay. Management's decision on setting pay shall be maintained in the adverse action case file.
5. Change to a Lower Grade to Provide Reasonable Accommodation. When an employee is placed in a lower-graded position for inability to perform the duties of their position because of a medical or physical condition beyond the employee's control, the reduction in grade or pay is not considered to be for personal cause. Therefore, basic pay may be set in the lower grade that preserves the employee's salary to the maximum extent possible, to include granting pay retention if the criteria for pay retention are met. The employee is required to submit appropriate medical documentation to substantiate illness or disability. Employees shall be informed of the rate at which their pay will be set prior to accepting the reassignment to a lower-graded position.

6. Promotion from FWS to GS. FWS employees are not entitled to a two-step promotion increase when promoted to a GS position. Therefore, pay may be set in accordance with the highest previous rate when the conditions for highest previous rate have been met.