

## LIMITATIONS ON PAY

### INTRODUCTION

The following table identifies the statutory and regulatory limitations on compensation, including premium pay and cash awards, a Federal employee may receive under titles 3 and 5 of the United States Code (U.S.C.) and Title 5, Code of Federal Regulations (CFR), and then explains the limitations in further detail below.

<b>Maximum General Schedule and Administratively Determined Pay Limitations</b>		
General Schedule (GS)	Level V of the Executive Schedule (EX)	5 U.S.C. 5303(f)
GS rate plus locality pay	EX-IV	5 U.S.C. 5304(g)(1) 5 CFR 531.606(a)
Pay fixed by administrative action	EX-IV	5 U.S.C. 5373
Special salary rates (GS rate plus special rate supplement)	Minimum rate may not exceed 30% of maximum rate for grade, and maximum rate may not exceed EX-IV	5 U.S.C. 5305(a) 5 CFR 530.304(a)
<b>Limitations on Premium Pay</b>		
Biweekly limitation on premium pay	Greater of biweekly rate payable for a GS-15, step 10, OR EX-V	5 U.S.C. 5547(a) 5 CFR 550.105
Annual limitation on premium pay for emergency or mission-critical work	Greater of annual rate payable for a GS-15, step 10, OR EX-V	5 U.S.C. 5547(b) 5 CFR 550.106 and 550.107
<b>Aggregate Limitation on Pay</b>		
Aggregate limitation on pay	EX-I	5 U.S.C. 5307(a) 5 CFR 530.203(a)

### BIWEEKLY LIMITATION ON PREMIUM PAY

An employee may be paid certain types of premium pay in a pay period only to the extent that the sum of the employee's basic pay plus premium pay for the pay period does not exceed the greater of the biweekly rate for GS-15 step 10, or EX-V.

Premium pay means the dollar value of earned hours of compensatory time off and additional pay authorized for overtime, night, Sunday, or holiday work; or for standby duty, administratively uncontrollable overtime work, or availability duty. It excludes overtime pay paid to employees under the Fair Labor Standards Act of 1938 (FLSA) and compensatory time off earned in lieu of such overtime pay.

## ANNUAL LIMITATION ON PREMIUM PAY FOR EMERGENCY/CRITICAL-MISSION WORK

For any pay period when the Department of Defense (DoD) or the Office of Personnel Management (OPM) determines that an emergency exists, employees performing work in connection with an emergency or its aftermath will be paid premium pay only to the extent that the sum of the employee's basic pay and premium pay for the calendar year does not exceed the greater of the annual rate for GS-15 step 10, or EX-V. Emergency is defined as a temporary condition posing a direct threat to human life or property, including a forest wildfire emergency (5 CFR 550.103). Entitlement to premium pay under the annual limitation becomes effective on the first day of the pay period in which such work began.

The head of an agency (or designee) may also apply an annual limitation whenever he or she determines that an employee is needed to perform work that is critical to the mission of the agency. Entitlement to this limitation becomes effective on the first day of the pay period designated by the head of the agency (or designee).

The following types of premium pay remain subject to a biweekly cap even when other premium payments are subject to an annual limitation:

- (1) Standby duty pay,
- (2) Administratively uncontrollable overtime pay,
- (3) Availability pay for criminal investigators, and
- (4) Overtime pay for hours in the regular tour of duty of a firefighter.

The annual maximum earnings limitations for work in connection with an emergency do not apply to DoD employees who are paid premium pay under 5 U.S.C. 5546(a).

### **EXCEPTION FOR CERTAIN FEDERAL CIVILIAN EMPLOYEES WORKING OVERSEAS:**

Employees who are granted a waiver in calendar year 2018 under section 1105 of Public Law 115-91, December 12, 2017, will be covered by a higher annual premium pay cap in lieu of the normal biweekly and annual premium pay caps under 5 U.S.C. 5547. The employee will be entitled to premium payments identified in 5 U.S.C. 5547(a), or similar limitation, to the extent it does not cause the employee's combined payable amount of basic pay and premium pay for calendar year 2018 to exceed the annual rate of pay established for the Vice President under 3 U.S.C. 104 (currently set at \$240,100 for 2018).

## AGGREGATE LIMITATION ON PAY

An employee may not receive any portion of an allowance, differential, bonus, award, or similar payments under title 5 in any calendar year, which when combined with the employee's basic pay, would cause the employee's total compensation (including premium pay) to exceed the rate for Level I

of the Executive Schedule at the end of the calendar year. See current year Executive Level I rate on the Office of Personnel Management Salary and Wages webpage at:

<https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>

The aggregate limitation applies to the total amount of compensation actually received by an employee during the calendar year without regard to when the compensation was earned. (5 CFR 530.203(c)).

**a.** Aggregate compensation means the total of:

- Basic pay received by an employee of the executive branch or as an employee outside the executive branch to whom the GS applies;
- Premium pay for prevailing rate (Wage Grade (WG), Wage Leader (WL), and Wage Supervisor (WS)) and GS employees (includes title 5 overtime pay; night shift differential; pay for holiday and Sunday work; environmental differentials for prevailing rate employees; regularly scheduled standby duty pay; administratively uncontrollable overtime; availability pay; and hazardous duty differential for GS employees);
- Incentive awards and performance-based cash awards (includes awards for superior accomplishments, special act or service, Presidential honorary recognition, cost savings disclosures, and awards to law enforcement officers for foreign language proficiency);
- Recruitment, relocation and retention incentives, extended assignment incentives, and supervisory differentials (5 U.S.C. 5753-5755 and 5757);
- Post differentials and danger pay allowances (5 U.S.C. 5925 and 5928);
- Post differentials based on environmental conditions for employees stationed outside the continental United States or in Alaska (5 U.S.C. 5941(a)(2));
- Market Pay covered under the Physicians and Dentists Pay Plan is excluded from the Executive Level I limitation, however, the sum of payments subject to the Executive Level I annual limitation, plus market pay, cannot exceed the annual salary of the President of the United States, excluding expenses. (38 U.S.C. 7431);
- Continuation of pay (5 U.S.C. 8118); and
- Lump-sum payments in excess of the aggregate limitation on pay (5 CFR 530.204).
- Payments not covered by the aggregate limitation include: back pay for an unjustified personnel action (5 U.S.C. 5596); overtime pay under the FLSA (5 CFR part 551); severance pay (5 U.S.C. 5595); lump-sum payments for accumulated and accrued annual leave upon separation (5 U.S.C. 5551 or 5552); student loan repayments (5 U.S.C. 5379); and non-foreign area cost-of-living allowances (5 U.S.C. 5941(a)(1)).

- b.** Basic pay means the total amount of pay received at a rate fixed by law or administrative action for the position held by an employee, including any special rate under 5 CFR part 530, subpart C, or any locality-based comparability payment under 5 CFR part 531, subpart F, or other similar payment or supplement under legal authority, before any deductions. For prevailing rate employees, basic pay includes night and environmental differentials (5 U.S.C. 5343(f) and 5 CFR 532.511).
- c.** Discretionary payment means a payment paid at an agency's discretion (e.g., performance awards and bonuses). Payments that are preauthorized and paid at a regular fixed rate each pay period are not discretionary payments (e.g., basic pay and premium pay). When an agency authorizes a discretionary payment, the agency must defer any portion of such payment that, when added to the estimated aggregate compensation the employee is projected to receive, would cause the employee's aggregate compensation during the calendar year to exceed the applicable aggregate limitation.
- d.** Excess amounts means amounts in excess of the aggregate limitation that are paid to an employee in a lump sum at the beginning of the following calendar year (5 CFR 530.204(a)).

  - If the lump-sum payment causes an employee's estimated aggregate compensation to exceed the rate payable for Level I of the Executive Schedule in the current calendar year, the agency (components) must consider only the employee's basic pay in determining the extent to which the lump-sum payment may be paid and will defer all other payments in order to pay as much of the excess amount as possible. (5 CFR 530.204(b)).
  - Any payments deferred, including any portion of the excess amount that was not payable, will become payable at the beginning of the next calendar year. (5 CFR 530.204(b)).
  - If the employee transfers to another agency, the gaining agency is responsible for making the lump-sum payment. The previous employing agency must provide a fund transfer equal to the total lump-sum payment to the gaining agency through the Department of Treasury's, Bureau of the Fiscal Service, Intra-Governmental Payment and Collection System at:  
[https://www.fiscal.treasury.gov/fsservices/gov/acctg/ipac/ipac\\_home.htm](https://www.fiscal.treasury.gov/fsservices/gov/acctg/ipac/ipac_home.htm) (5 CFR 530.204(c)).
- e.** Conditions permitting the payment of excess aggregate compensation without regard to the calendar year limitation; upon the death of an employee, the excess amount is payable as part of the settlement of accounts under 5 U.S.C. 5582. (5 CFR 530.204(d)(1)).

  - Upon separation of an employee from Federal service, the excess amount is payable; following a 30-day break in service. If the employee is reemployed in the Federal service within the same calendar year as the separation, any previous payment of an excess amount will be considered part of that year's aggregate compensation for the purpose of applying the aggregate limitation for the remainder of the calendar year. (5 CFR 530.204(d)(2)).

## REFERENCES

- 5 U.S.C. Chapters 53, 55, 57, 59 and 81
- 38 U.S.C. Chapter 74
- Public Law 114-328, Section 1137, December 23, 2016
- 5 CFR Parts 530, 531, 532, 550, and 551
- OPM Fact Sheet: Aggregate Limitation on Pay
- OPM Fact Sheet: Biweekly Caps on Premium Pay
- OPM Fact Sheet: Maximum GS Pay Limitations
- Department of Treasury, Bureau of the Fiscal Service, Intra-Governmental Payment and Collections System
- DoD Instruction Number 1400.25, Volume 543, DoD Civilian Personnel Management System: Pay Plan for DoD Physicians and Dentists Covered by the General Schedule
- DoD 7000.14-R, Financial Management Regulation, Volume 8, Chapter 3, Subparagraph 030203.

## CONTACT

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