

PART 2051 - HOURS AND PAY

Subpart A - Determining Rate of Basic Pay

§ 2051.1 Definition of "Highest Previous Rate" (HPR).

Highest previous rate means:

- (a) The highest actual rate of basic pay previously received by an individual while employed in a position in a branch of the Federal Government (executive, legislative, or judicial); a Government corporation, as defined in 5 USC 103; the U.S. Postal Service or Postal Rate Commission; or the government of the District of Columbia before October 1, 1987; without regard to whether the position was subject to the General Schedule; or
- (b) The actual rate of basic pay for the highest grade and step previously held by an individual while employed in a position subject to the General Schedule.

§ 2051.2 Determination of HPR.

Upon a position change, Rural Development will pay the HPR based on the following:

- (a) The HPR will be based on a regular tour of duty at a rate of basic pay received by an individual while serving under an appointment not limited to 90 days or less, or for a continuous period of not less than 90 days under one or more appointments without a break in service.
- (b) The experience gained in the previous position is applicable to the new position.
- (c) The HPR will be granted to employees on temporary promotion for one year or longer.
- (d) The HPR will be considered when reassigning an employee from a special salary rate to a non-special salary rate position when it is determined that the employee's contribution will be greater in the new position and in the best interest of the Agency.

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(1) These determinations will be made on a case-by-case basis by the servicing Human Resources Office, who will record in writing the reasons for a positive or negative determination to use the special rate as the employee's HPR. This determination is to be filed on the right side of the official personnel file (OPF).

(2) The servicing Human Resources Office must approve reassignments of employees who are in positions (occupations) covered by a special salary rate to non-special salary rate positions (occupations) across agency lines (USDA). In these cases, the gaining office or agency will prepare the justification describing how the individual will make a greater contribution in the position to which he/she is being reassign-ed. The decision to approve/disapprove the HPR must be made prior to effecting the reassignment.

(e) In making HPR determinations, care must be taken to avoid wind-falls in pay for employees in circumstances when the HPR may not be appropriate. For example, the provisions of this Instruction may not be used as a vehicle to circumvent the period required for within-grade salary increases. (See 35 Comp. Gen. 370)

§ 2051.3 Exceptions.

(a) The HPR may not be based on the following:

(1) A rate received under an appointment as an expert or consultant as defined in 5 USC 3109.

(2) A rate received in a position to which the employee was temporarily promoted for less than one year, except when the employee is permanently placed in a position at the same or higher grade. This means that any rates earned on a temporary promotion of less than one year cannot be used as the HPR. If, however, an employee is subsequently placed permanently in a position at the same or higher grade as the temporary promotion, the rate can then be used as the HPR.

(3) A rate received in a position from which an employee was reassigned or reduced in grade for failure to satisfactorily complete a probationary period as a supervisor or manager.

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(4) A rate received in a position from which the employee was demoted for cause using 5 USC Chapter 75 procedures (i.e., for conduct-related reasons). Salary must be set at the first step of the grade level of the position to which demoted. This grade and step shall be used to determine any future HPR decision. An employee demoted for conduct-related reasons loses any previous entitlement to HPR based on the position from which he/she is demoted.

(5) A rate received in a position from which the employee was demoted for cause using 5 USC Chapter 43 procedures (i.e., for performance-related reasons). Salary must be set at the first step of the grade level of the position to which demoted. This grade and step shall be used to determine any future HPR decision. An employee demoted for performance-related reasons loses any previous entitlement to HPR based on the position from which he/she is demoted.

(6) A rate received under a void/illegal appointment or a rate otherwise contrary to applicable law or regulation.

(7) A rate received by an employee of the District of Columbia (DC) who was first employed by that Government on or after October 1, 1987.

(8) A special rate established in 5 USC 5305. In these situations, the employee's HPR is the rate the employee would have been entitled to had the special rate not been applied. Exceptions to this policy can be approved by the Assistant Administrator, Human Resources.

(9) When an employee accepts a change to a lower grade to a position with greater promotion potential than his/her current position with the expectation that he/she will be repromoted within 120 days.

(10) When an employee requests a change to lower grade for performance-related reasons. Rather than giving HPR in these instances, management may use discretion when determining salary for an employee who has requested a voluntary change to lower grade because of performance-related reasons. However, the employee must receive an actual reduction in salary.

(b) There are several reasons why an employee may request a voluntary change to lower grade due to performance-related reasons:

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- (1) The employee may feel he/she is having trouble performing his/her duties and wants to return to a lower graded job; or
- (2) The employee may have been given notice that his/her work performance is unacceptable; or
- (3) The employee may be on an Opportunity-to-Improve (OTI) period or have received a proposal to demote notice.

(c) As long as an actual adverse action under 5 USC Chapter 43 procedures has not yet occurred, if the employee requests a voluntary change to lower grade, management may set salary at any step of the grade level of the position in which the employee is placed that does not exceed the highest step he/she previously held at that grade.

(1) For example, if an employee's rate of basic pay is GS-11/2, he/she has requested a change to a GS-9 position, and his/her highest rate of basic pay was GS-9/6 in a position previously held, management may set salary at any step of the GS-9 position, from step 1 to step 6.

(2) Management should make these decisions on a case-by-case basis, after evaluating the merits of each request for change to lower grade for performance-related reasons. There should be a continuing concern with fairness, equity, and consistency when making these salary determinations.

(3) Management should document in writing the basis for each salary decision of this type and maintain this documentation. The approving official for the voluntary change to lower grade request has authority to approve these salary determinations.

(d) The grade and step upon change to lower grade shall be used to determine any future HPR decisions. An employee who takes a voluntary change to lower grade for performance-related reasons loses any entitlement to HPR based on the position from which he/she is changed.

§§ 2051.3 - 2051.50 [Reserved]

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