U.S. OFFICE OF PERSONNEL MANAGEMENT

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Pay Retention For Former Employees Of The Department Of Defense National Security Personnel System (NSPS)

This fact sheet provides guidance on pay retention for former NSPS employees upon transfer, promotion, or movement to another Federal agency.

Background

On October 28, 2009, the authority for the Department of Defense's (DOD's) National Security Personnel System was repealed by section 1113 of the National Defense Authorization Act of FY 2010 (Public Law 111-84). Section 1113(c)(1) requires DOD to convert NSPS employees to the pay system that last applied or would have applied to the employees' positions if not for NSPS. Section 1113(c)(1) provides that under no circumstances should an NSPS employee's rate of pay be reduced due to the termination of NSPS. The majority of NSPS employees are converting into the General Schedule (GS) pay system.

Most GS pay-setting rules apply to NSPS employees when they convert into the GS system, including the pay retention rules in 5 U.S.C. chapter 53, subchapter VI, and 5 CFR part 536. (Grade retention does not apply.) Therefore, when DOD converts NSPS employees to GS positions, employees are entitled to a retained rate equal to the employee's former NSPS rate, if the former NSPS rate exceeds the maximum rate of pay (step 10) of the GS grade of the employee's position. The employee's entitlement to pay retention under the GS system will continue until a terminating event under 5 CFR 536.308 occurs. See the Pay Retention Fact Sheet for a complete list of terminating events.

However, the protection of section 1113(c)(1) allows NSPS employees to retain a rate that is higher than the GS pay retention limitations found under 5 CFR 536.304(b)(3)— i.e., higher than 150 percent of the applicable step 10 rate of pay for the employee's grade or the rate for level IV of the Executive Schedule (EX).

Under the NSPS pay system, DOD was authorized to establish certain pay band maximums at the rate for EX-IV + 5%. This means that some NSPS employees' rates of pay could have been established at a rate as high as $163,275 in 2011 ($155,500 + 5%).

Former NSPS employee moving to a new agency

A retained rate received due to the termination of the NSPS pay system will continue as long as a terminating event under 5 CFR 536.308 does not occur. Therefore, if a former NSPS employee transfers from DOD to a new Federal agency, the gaining agency must honor the retained rate the former NSPS employee is receiving, even if that rate exceeds the normal pay retention limitations. The former NSPS

employee will continue to receive the NSPS retained rate until a terminating event occurs (i.e., demotion, break in service of one workday or more, etc.).

However, under no circumstances should a former NSPS employee's retained rate exceed the rate for EX-IV + 5%. The only exception to this rule applies to former NSPS physicians and dentists. To determine the higher retained rate limitation, agencies must use the current calendar year's Executive Schedule level IV rate and increase the rate by 5 percent.

Example:

A former NSPS employee was converted into the General Schedule at a GS-15. At transition, the employee's adjusted salary (NSPS base rate plus local market supplement) was $160,860, which exceeded the maximum rate of pay for the GS-15 Washington, DC, locality rate range (GS-15, step 10 = $155,500 in 2011). Since the employee's rate cannot be placed within the GS-15 rate range, the employee was entitled to a retained rate equal to $160,860 (GS-15, step 00). The employee was assigned a pay rate determinant (PRD) code of "Y" — see below for further information below regarding the PRD-Y code.

After conversion, the employee leaves DOD to accept a position at another Federal agency in the DC locality pay area. The employee is being hired into a GS-15 position. How does the new agency set pay for the former NSPS employee who is receiving a retained rate above the normal EX-IV pay limitation ($155,500 in 2011)?

The employee is entitled to keep the retained rate received due to the termination of NSPS upon movement to the new agency as long as a terminating event under 5 CFR 536.308 does not occur. Since the employee's retained rate is greater than the normal EX-IV limit, the retained rate will remain subject to the higher limitation of EX-IV + 5% until a terminating event occurs that would end the employee's pay retention entitlement. Therefore, the gaining agency must set the retained rate at GS-15, step 00, $160,860. The gaining agency must monitor the employee's retained rate to ensure that it does not exceed the EX-IV + 5% pay limitation (i.e., $163,275 in 2011) and monitor when pay retention terminates under the conditions prescribed under 5 CFR 536.308.

PRD-Y Code

OPM has established a PRD-Y code to recognize that former NSPS employees may retain a rate of pay that exceeds the normal retained rate limitations (the rate for EX-IV or 150 percent of applicable GS step 10 rate). The PRD-Y code is also used to identify former NSPS employees' entitlement to any future Government-wide general pay increases (50 percent of the amount of the increase in the maximum rate of the employee's grade -- see 5 CFR 536.305) subject to the higher EX-IV + 5% pay limitation. The PRD-Y code is active and contained within the Guide to Data Standards (GDS)- http://www.opm.gov/feddata/gp59/cpdf/payratedet.pdf. The definition of the new code is provided below.

Y: NSPS retained pay - Retained rate based on former pay rate under the National Security Personnel System (NSPS) and established when an employee is converted out of NSPS, consistent with section 1113(c)(1) of Public Law 111-84. Normally applicable pay retention codes do not apply because

(1) the employee has a time-limited appointment at time of conversion out of NSPS; (2) the employee's retained rate exceeds 150 percent of the applicable step 10 rate of pay; or (3) the employee's retained rate exceeds the rate of pay for level IV of the Executive Schedule. This NSPS retained pay code applies while the employee is in DOD **or another agency**, until one of the conditions for terminating pay retention in 5 CFR 536.308 apply.

This code also applies when an employee is temporarily retaining a rate above step 10 of the assigned grade based on a former rate of basic pay held by the employee during an NSPS temporary promotion or temporary reassignment (in effect immediately before conversion out of NSPS).

This code also applies when an employee's recruitment, relocation, or retention incentive under 5 U.S.C. 5753-5754 is temporarily protected from reduction under the normal rules governing such incentives.

Note 1: The above recruitment, relocation, and retention incentive (3Rs) protection does not apply if the employee moves to a non-DOD agency, since the protection applies only as long as the employee remains with DOD, the 3Rs authorizing agency. Also, the temporary protection of a rate based on an NSPS temporary promotion or temporary reassignment does not apply after leaving DOD, since leaving DOD would have ended the temporary promotion or reassignment. That is why those two paragraphs don't have the language about "another agency".

Note 2: When the PRD-Y code is first used by an agency, the agency should also place a notation on the employee's SF-50 that the employee's retained rate is provided based on section 1113(c)(1) of NDAA FY 2010 (Public Law 111-84, Oct. 28, 2009) and will continue until a terminating event under 5 CFR 536.308 applies.

Note 3: Under OPM's retained rate regulations, the limitation equal to 150 percent of the applicable adjusted rate of basic pay for step 10 of the employee's grade is applied only at the time a retained rate is initially established; it is not applied on an ongoing basis. (See 5 CFR 536.304(b)(3)(i).) However, an agency may choose (for example, due to constraints of its personnel or payroll systems) to use PRD-Y code to recognize that an employee's retained rate initially exceeded the 150-percent cap and that it remains above 150 percent of the applicable adjusted rate of basic pay for step 10 of the employee's grade.

Loss of Y Code Status

While a PRD-Y code may be initially appropriate when an employee's retained rate exceeds EX-IV, an employee will lose the Y code status when the employee's retained rate falls at or below the EX-IV rate (due to a 50-percent adjustment, as described in the preceding section, or geographic conversion, as described in the next section). At that point, there is no longer a need to maintain the higher EX-IV + 5% cap. That higher cap was justified only as necessary to give effect to section 1113(c)(1) of Public Law 111-84 and prevent a pay reduction. Once the employee's retained rate falls below the normal EX-IV cap, the normal pay retention rules are fully applicable from that point forward. At that point, the employee's PRD code should generally be changed to PRD code J or K, as appropriate. However, as discussed in Note 3 above, an agency may choose to continue to use the PRD-Y code if the employee's current retained rate exceeds the 150-percent cap.

If use of the PRD-Y code is based solely on the employee having a time-limited appointment at the time of conversion out of NSPS, DOD may cease to use the Y code any time after initial establishment of the retained rate—since the existence of a time-limited appointment only prevents the initial establishment of a retained rate. DOD may choose to continue using the Y code as long as that employee has a time-limited appointment. However, if such an employee moves from DOD to another agency, the new agency should no longer use the Y code; it should use the normal pay retention codes, as applicable.

Geographic Conversion

Under OPM regulations (5 CFR 536.303(b)), a retained rate is subject to geographic conversion when an employee's official worksite is changed to a new location where different pay schedules apply.

- If an employee with a PRD-Y code has a retained rate above EX-IV, and if the geographic conversion results in a recomputed retained rate that remains above EX-IV, the employee will remain subject to an EX-IV + 5% cap on his or her retained rate and will retain the PRD-Y code.
- If an employee with a PRD-Y code has a retained rate above EX-IV, and if geographic conversion results in a recomputed retained rate that falls below EX-IV, the employee will cease to be subject to the EX-IV + 5% cap, and the PRD-Y code will no longer be applicable (unless the PRD-Y code is applicable for other reasons). Going forward, the employee's retained rate will be subject to the normal EX-IV cap.
- If a former NSPS employee has a retained rate at or below EX-IV before geographic conversion, the rate resulting from geographic conversion is subject to the normal EX-IV cap.

DOD Pay Setting Guidance

DOD is responsible for establishing policies and guidance for transitioning NSPS employees out of the former system. Therefore, specific questions regarding an employee's transition must be addressed by the employee's DOD servicing personnel office. An NSPS transition web site has been established at http://www.cpms.osd.mil/nsps/transition/. Information on pay retention for former NSPS employees can be found in Chapter 3 of the NSPS to GS Transition Guide for Human Resources Practitioners located on the NSPS Transition web site.

Resources

- 5 U.S.C. chapter 53, subchapter VI
- 5 CFR part 536
- Grade Retention Fact Sheet
- Pay Retention Fact Sheet
- Grade and Pay Retention Examples
- NSPS Transition Office

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This page can be found on the web at the following url:
http://www.opm.gov/oca/pay/html/payRetention_DOD_NSPS.asp

U.S. Office of Personnel Management
1900 E Street, NW, Washington, DC 20415 | (202) 606-1800 | TTY (202) 606-2532