

Ex. Ord. No. 11637, Dec. 22, 1971, 36 F.R. 24911, effective Jan. 1, 1972, superseded by Ex. Ord. No. 11811.

Ex. Ord. No. 11576, Jan. 8, 1971, 36 F.R. 347, effective Jan. 1, 1971, superseded by Ex. Ord. No. 11811.

Ex. Ord. No. 11524, Apr. 15, 1970, 35 F.R. 6247, effective first pay period on or after Dec. 27, 1969, superseded by Ex. Ord. No. 11811.

Ex. Ord. No. 11474, June 16, 1969, 34 F.R. 9605, effective July 1, 1969, superseded by Ex. Ord. No. 11811.

Ex. Ord. No. 11413, June 11, 1968, 33 F.R. 8641, effective July 1, 1968, superseded by Ex. Ord. No. 11811.

FREEZING FEDERAL EMPLOYEE PAY SCHEDULES AND RATES THAT ARE SET BY ADMINISTRATIVE DISCRETION

Memorandum of President of the United States, Dec. 22, 2010, 75 F.R. 81829, provided:

Memorandum for the Heads of Executive Departments and Agencies

On November 29, 2010, I proposed a two-year freeze in the pay of civilian Federal employees as the first of a number of difficult actions required to put our Nation on a sound fiscal footing. As I said then, Federal workers are not just a line in a budget. They are public servants who, like their private sector counterparts, may be struggling in these difficult economic times.

Despite the sacrifices that I knew a pay freeze would entail for our dedicated civil servants, I concluded that a two-year freeze in the upward statutory adjustment of pay schedules is a necessary first step in our effort to address the challenge of our fiscal reality. The Congress responded to my proposal by including such a freeze in the Continuing Appropriations and Surface Transportation Extensions Act, 2011 (H.R. 3082) [Pub. L. 111-322], which I signed into law today (the “Act”). The Act freezes statutory pay adjustments for all executive branch pay schedules for a two-year period. It also generally prohibits executive departments and agencies from providing any base salary increases at all to senior executives or senior level employees, including performance-based increases.

While this legislation will prevent adjustments in executive branch pay schedules that are made by statute, some laws allow such adjustments to be made by agency heads as an exercise of administrative discretion. In order to ensure consistent treatment of executive branch employees and to promote the fiscal purposes of my original proposal, agency heads who have such discretion should not provide any upward adjustments in Federal employees’ pay schedules or rates during the two-year period covered by the statutory pay freeze.

Accordingly, you should suspend any increases to any pay systems or pay schedules covering executive branch employees that could otherwise take effect as a result of an exercise of administrative discretion during the period beginning on January 1, 2011, and ending on December 31, 2012. You also should forgo any general increases (including general increases for a geographic area, such as locality pay) in covered employees’ rates of pay that could otherwise take effect as a result of the exercise of administrative discretion during the same period. To the extent that an agency pay system provides performance-based increases in lieu of general increases, funds allocated for those performance-based increases should be correspondingly reduced to reflect the freezing of the employees’ base pay schedule.

This memorandum shall be carried out to the extent permitted by law and consistent with executive departments’ and agencies’ legal authorities. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Personnel Management shall issue guidance on implementing this memorandum, and is also hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

FEDERAL EMPLOYEE PAY SCHEDULES AND RATES THAT ARE SET BY ADMINISTRATIVE DISCRETION

Memorandum of President of the United States, Dec. 21, 2012, 78 F.R. 647, provided:

Memorandum for the Heads of Executive Departments and Agencies

On December 22, 2010, I issued a memorandum stating that the heads of executive departments and agencies should suspend any increases to any pay systems or pay schedules covering executive branch employees, and should forgo any general increases in covered employees’ rates of pay, that could otherwise take effect as a result of the exercise of administrative discretion during the period beginning on January 1, 2011, and ending on December 31, 2012. In light of section 114 of the Continuing Appropriations Resolution, 2013 (Public Law 112-175), I am hereby instructing the heads of executive departments and agencies that they should continue to adhere to this policy through March 27, 2013, the date after which statutory pay adjustments may be made pursuant to section 114 of Public Law 112-175.

This memorandum shall be carried out to the extent permitted by law and consistent with executive departments’ and agencies’ legal authorities. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Personnel Management shall issue any necessary guidance on implementing this memorandum, and is also hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

Memorandum of President of the United States, Apr. 5, 2013, 78 F.R. 21213, provided:

Memorandum for the Heads of Executive Departments and Agencies

Section 1112 of the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113-6), reflects the Congress’s decision to continue to deny statutory adjustments to any pay systems or pay schedules covering executive branch employees. In light of the Congress’s action, I am instructing heads of executive departments and agencies to continue through December 31, 2013, to adhere to the policy set forth in my memoranda of December 22, 2010, and December 21, 2012, regarding general increases in pay schedules and employees’ rates of pay that might otherwise take effect as a result of the exercise of administrative discretion.

This memorandum shall be carried out to the extent permitted by law and consistent with executive departments’ and agencies’ legal authorities. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Personnel Management shall issue any necessary guidance on implementing this memorandum, and is also hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

**§ 5333. Minimum rate for new appointments**

New appointments shall be made at the minimum rate of the appropriate grade. However, under regulations prescribed by the Office of Personnel Management which provide for such considerations as the existing pay or unusually high or unique qualifications of the candidate, or a special need of the Government for his services, the head of an agency may appoint, with the approval of the Office in each specific case, an individual to a position at such a rate above

the minimum rate of the appropriate grade as the Office may authorize for this purpose. The approval of the Office in each specific case is not required with respect to an appointment made by the Librarian of Congress.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 467; Pub. L. 90-83, §1(19), Sept. 11, 1967, 81 Stat. 199; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-54, §2(a)(26)(A), Aug. 14, 1979, 93 Stat. 382; Pub. L. 101-509, title V, §529 [title I, §106, title II, §211(b)(1)], Nov. 5, 1990, 104 Stat. 1427, 1449, 1461.)

HISTORICAL AND REVISION NOTES  
1966 ACT

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(a) .....	5 U.S.C. 1131.	Oct. 28, 1949, ch. 782, §801, 63 Stat. 969. Aug. 14, 1964, Pub. L. 88-426, §103(a), 78 Stat. 401.
(b) .....	5 U.S.C. 1133.	Oct. 28, 1949, ch. 782, §803, 63 Stat. 970. Sept. 1, 1954, ch. 1208, §104, 68 Stat. 1106. Oct. 11, 1962, Pub. L. 87-793, §604(c), 76 Stat. 848.

In subsection (b), the word “scheduled” is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87-793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	Source (U.S. Code)	Source (Statutes at Large)
5333(a) .....	5 App.: 1131.	July 18, 1966, Pub. L. 89-504, §103, 80 Stat. 289.

AMENDMENTS

1990—Pub. L. 101-509 struck out “; higher rates for supervisors of prevailing rate employees” after “appointments” in section catchline, struck out “(a)” before “New appointments shall”, struck out “in GS-11 or above” after “individual to a position”, and struck out subsec. (b) which read as follows: “Under regulations prescribed by the Office of Personnel Management, an employee in a position to which this subchapter applies, who regularly has responsibility for supervision (including supervision over the technical aspects of the work concerned) over employees whose pay is fixed and adjusted from time to time by wage boards or similar administrative authority as nearly as is consistent with the public interest in accordance with prevailing rates, may be paid at one of the rates for his grade which is above the highest rate of basic pay being paid to any such prevailing-rate employee regularly supervised, or at the maximum rate for his grade, as provided by the regulations.”

1979—Pub. L. 96-54 substituted “prevailing rate” for “wage-board” in section catchline.

1978—Subsecs. (a), (b). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

**§ 5334. Rate on change of position or type of appointment; regulations**

(a) The rate of basic pay to which an employee is entitled is governed by regulations prescribed by the Office of Personnel Management in conformity with this subchapter and chapter 51 of this title when—

- (1) he is transferred from a position in the legislative, judicial, or executive branch to which this subchapter does not apply;
- (2) he is transferred from a position in the legislative, judicial, or executive branch to which this subchapter applies to another such position;
- (3) he is demoted to a position in a lower grade;
- (4) he is reinstated, reappointed, or reemployed in a position to which this subchapter applies following service in any position in the legislative, judicial, or executive branch;
- (5) his type of appointment is changed;
- (6) his employment status is otherwise changed; or
- (7) his position is changed from one grade to another grade.

For the purpose of this subsection, an individual employed by the Appalachian Regional Commission under section 14306(a)(2) of title 40, who was a Federal employee immediately prior to such employment by a commission and within 6 months after separation from such employment is employed in a position to which this subchapter applies, shall be treated as if transferred from a position in the executive branch to which this subchapter does not apply.

(b) An employee who is promoted or transferred to a position in a higher grade is entitled to basic pay at the lowest rate of the higher grade which exceeds his existing rate of basic pay by not less than two step-increases of the grade from which he is promoted or transferred. If, in the case of an employee so promoted or transferred who is receiving basic pay at a rate in excess of the maximum rate of his grade, there is no rate in the higher grade which is at least two step-increases above his existing rate of basic pay, he is entitled to—

- (1) the maximum rate of the higher grade; or
- (2) his existing rate of basic pay, if that rate is the higher.

If an employee so promoted or transferred is receiving basic pay at a rate saved to him under subchapter VI of this chapter on reduction in grade, he is entitled to—

- (A) basic pay at a rate two steps above the rate which he would be receiving if subchapter VI of this chapter were not applicable to him; or
- (B) his existing rate of basic pay, if that rate is the higher.