



OFFICE OF THE UNDER SECRETARY OF DEFENSE

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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

March 28, 2013

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: AcqDemo Memorandum (AM) 13-04 – Retained Pay Entitlement Upon Promotion

- References:
- (a) Federal Register Notice (FRN), 64 FR 1426, January 8, 1999, as amended, Civilian Acquisition Workforce Personnel Demonstration Project (AcqDemo); Department of Defense (DoD)
 - (b) Title 5 United States Code (U.S.C.) Chapter 53, Sections 5301; 5302 (8) and (9); 5303 – 5305; 5331 – 5336; and 5363 as waived by Reference (a)
 - (c) Title 5 Code of Federal Regulations (CFR) Part 530 Subpart C: Special Salary Rates; Part 531, Subparts B, D, and E: “Determining rate of pay; within-grade increases and quality step increases; Part 531 Subpart F: Locality Payments; and Part 536: Grade and Pay Retention as waived by Reference (a)
 - (d) The Workforce Flexibility Act of 2004, Section 301(Public Law 108-411, October 30, 2004
 - (e) Federal Register Notice, Volume 70, No. 103, May 31, 2005, pages 31278 – 31315
 - (f) DoD Civilian Acquisition Workforce Personnel Demonstration Project Operating Procedures (OP), Section 5.3, May 15, 2003

Purpose. AM 13-04 provides guidance, consolidated from References (a), (b), (c), (d), and (e), to assist in re-determining an AcqDemo employee’s retained pay entitlement when promoted to a position in a higher AcqDemo broadband level than that of the employee’s current position.

Effective Date. This AM is effective immediately as an augmentation to Reference (f), and will expire upon incorporation into an upcoming revision of Reference (f). Please ensure the widest dissemination possible to all AcqDemo organizations.

Background.

a. When the AcqDemo Project Plan, Reference (a), was first constructed, waivers to various sections of title 5 U.S.C. Chapter 53, Reference (b), and to a number of associated parts and subparts of title 5 CFR, Reference (c), were included to afford the ability to develop new compensation methodology that better fit the AcqDemo Project. These waivers facilitated the flexibility to determine rates of base pay; the elimination of special salary rates, grade retention, within-grade increases, quality step increases, and promotions within a broadband level; and the continuation of coverage for AcqDemo employees of current title 5 U.S.C. and title 5 CFR valued provisions albeit they may have slight modifications to accommodate the AcqDemo or

they may be changed through legislation or by OPM. The latter is the situation with the pay retention regulations as they were not waived in their entirety in the initial AcqDemo Project Plan, Reference (a); and AcqDemo is subject to compliance with title 5 law changes not covered by a waiver.

b. The AcqDemo broadbands were designed to encompass the base pay (excluding locality pay) of two or more General Schedule (GS) grades. This eliminated the GS structure of 10 steps per grade, thus affecting the use of the GS two-step promotion rule to determine a new AcqDemo base pay (excluding locality pay) upon promotion. An AcqDemo alternative method was provided in Reference (a), Section III.E.1(a) Competitive, Non-competitive, and Temporary Promotions, whereby “When an employee receiving a retained rate is promoted to a higher broadband level, at a minimum, the employee’s salary [base pay] upon promotion will be set in the higher broadband level (1) at six percent higher than the maximum rate of the employee’s existing broadband level; or (2) at the employee’s existing retained rate, whichever is greater.” Locality pay was then added to the new base pay or the existing retained rate.

c. With the passage of Reference (d), locality pay ceased to be payable on top of a retained rate effective May 1, 2005. The new retained rate equals the employee’s former base pay including any locality payment and is treated as an employee’s payable rate of base pay for a number of situations as described in 5 CFR 536.307. An eligible employee would be entitled to a retained rate if his or her payable rate of base pay (including any locality payment, but after geographic conversion) exceeds the maximum rate of the highest applicable rate range for the new position or geographic area.

Guidance.

a. A recent query to the Program Office revealed that there may be confusion on how retained rate determinations are made upon promotion to a higher broadband level than currently held. To clarify how the above legislative and Federal Register Notice changes have impacted continued retained pay status when AcqDemo employees on retained pay are promoted, the following steps should be followed:

1. Calculate the AcqDemo promotion base pay increase in accordance with the FRN provisions. The appropriate locality pay is added to the calculated promotion base pay to determine the employee’s payable rate of base pay. If the payable rate of base pay is equal to or greater than the retained rate, the payable rate of base pay is converted to the employee’s new AcqDemo base pay rate and appropriate locality pay and retained pay terminates.

2. If the pre-existing retained rate is greater than the payable rate of base pay *and exceeds* the maximum rate of the highest applicable rate range for the new position, the employee continues to be entitled to the existing retained rate. Under AcqDemo, the maximum rate of the highest applicable rate range would be that rate in the appropriate locality pay table for the employee’s official duty station and the highest General Schedule grade included in the broadband of the new position.

3. If the pre-existing retained rate is greater than the payable rate of base pay *but is less* than the maximum rate of the highest applicable rate range for the new position, the pre-existing retained rate is converted to the employee's new AcqDemo base pay rate and appropriate locality pay and retained pay terminates.

b. Components are strongly encouraged to review those promotion actions involving retained pay that were effective prior to the date of this AcqDemo Memorandum to determine if the maximum rate of the highest applicable rate range was used in determining future retained pay entitlements and take corrective action as appropriate.

Point of Contact. Questions concerning this policy should be directed to Darryl Burgan, Deputy AcqDemo Program Director, at Darryl.burgan@dau.mil or by phone at 703-805-5050.

A handwritten signature in black ink, appearing to read 'J. Irwin', with a stylized flourish at the end.

James D. Irwin
AcqDemo Program Director

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