

ARTICLE 12431

WITHHOLDING OF WITHIN-GRADE INCREASE

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SUBARTICLE 1. GENERAL PROVISIONS

1 1. Purpose. To provide procedures for withholding within-grade increases (WIGIs) in accordance with Title 5 Code of Federal Regulations (CFR) Part 531.

1 2. Definitions

a. "Acceptable Level of Competence" (ALOC) means:

1. Performance at the "Acceptable" or better level on all critical elements for employees serving in General Schedule (GS) positions.

2. The term "ALOC" does not apply to FWS employees.

b. "Activity" means a field installation, headquarters command, or office.

c. "Activity Head Designee" is the military officer or civilian official who approves performance appraisal ratings of record and performance awards. (Applies to Department of the Navy (DON)).

d. "Critical element" means a component of a position consisting of one or more duties and responsibilities which contributes towards accomplishing organizational goals and objectives and is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

e. "Days" mean calendar days.

f. "Negative determination" is a decision not to grant a within-grade increase.

g. "Rating of record" is the official annual or special summary performance rating for pay, performance award and retention purposes.

h. "Reconsideration official" is the individual designated to reconsider a negative determination.

i. "Waiting period" means the minimum time requirement of creditable service to be eligible for consideration for a within-grade increase.

j. "Withholding official" means that individual authorized to withhold a within-grade increase.

k. "Within-grade increase" means a periodic increase in an employee's rate of basic pay from one step of the grade of his or her position to the next higher step of that grade.

1 3. Coverage. This instruction applies to all GS employees who occupy permanent positions and all FWS employees who are paid at less than the maximum step of their grades. This Article does not apply to:

a. Members of the Senior Executive Service (SES).

b. Individuals appointed by the President.

c. Non-appropriated fund employees.

1 4. Delegation of Authority

a. Heads of agencies or their designees are delegated authority to withhold within-grade increases under this Article. That authority should be delegated in writing to the lowest practicable level, preferably the first-line supervisor.

b. Heads of agencies or their designees should delegate in writing the authority to serve as a reconsideration official to the lowest possible level (preferably the Activity Head Designee for DON employees, or the official who has authority to approve final performance ratings of record for non-DON employees). The reconsideration official must be at least one level higher than the person who made the decision to withhold. If an activity head withholds a within-grade increase, the activity head shall serve as the reconsideration official.

1 5. Responsibilities

a. Activity Head. The activity head is responsible for:

1. Ensuring that this instruction is implemented within the activity.
2. Ensuring that the provisions of this instruction are followed when a WIGI is granted or denied, and when reconsideration of a negative determination is requested.
3. Delegating authority to grant or deny a WIGI and to reconsider a negative determination as deemed appropriate.
4. Ensuring that all supervisors are made aware of the provisions of this instruction and of the procedures within the activity for granting or denying a WIGI and for requesting reconsideration of a negative determination.

b. Withholding Official. The withholding official is responsible for:

1. Notifying an employee of the performance elements and standards required to achieve an ALOC (GS) or “Acceptable” performance (FWS) to be granted a WIGI.
2. Ensuring that an employee otherwise eligible for a WIGI who has failed to perform at an ALOC (GS) or “Acceptable” performance level (FWS), has received or is issued a timely rating of record which supports denial of the WIGI, and for initiating action to deny the WIGI.
3. Completing a rating of record which supports granting the WIGI and initiating action to grant the WIGI should the employee improve and sustain his or her performance at an ALOC or Acceptable level.

c. Reconsideration Official. The reconsideration official is responsible for:

1. Establishing and reviewing a reconsideration file which contains all pertinent documents relating to the negative determination.
2. Reviewing the employee's reconsideration request, including granting or denying an extension of the time limit for its filing as provided for by paragraph 2 1d.

3. Allowing or disallowing the employee's choice of representative as provided for by paragraph 2 1c3.

4. Hearing the employee's (or his or her representative's) personal presentation, if one is made; preparing a written summary of such a presentation; and allowing the employee or his or her representative to submit written exceptions to the summary for the reconsideration file if desired.

5. Providing a written decision which considers the employee's written presentation and personal presentation if one is made; summarizes the results of any investigation conducted; and grants or denies the reconsideration request.

6. Transmitting the reconsideration file to the Human Resources Office (HRO) after making a final decision.

e. Employee. The employee is responsible for the timely filing of a written request for reconsideration (not to exceed 15 days from receipt of a negative determination) which clearly sets forth all of the reasons that the reconsideration official shall consider.

SUBARTICLE 2. PROCEDURES

2 1. Withholding a Within-Grade Increase

a. A supervisor or manager with delegated authority is responsible for ensuring that a GS employee's performance meets the ALOC, or performance is Acceptable for an FWS employee, before the employee is granted a WIGI for which (s)he is otherwise eligible.

1. A WIGI will be denied for any covered employee not at the maximum step of his or her grade whose rating of record does not reflect an ALOC for a GS employee or Acceptable performance for an FWS employee.

2. A GS employee whose most recent performance rating of record does not support the granting of a WIGI may only receive the increase when a new rating of record is completed showing that the employee has demonstrated a sustained ALOC.

3. An FWS employee's performance rating of record must be Acceptable in order to support granting a WIGI. If it is not, the WIGI may only be granted upon completion of a new rating of record showing that the employee has demonstrated sustained Acceptable performance.

4. If an employee's latest rating of record supports the granting of a WIGI, but the employee is no longer performing at an ALOC (GS) or Acceptable (FWS), a new rating of record must be completed prior to completion of the waiting period and the WIGI denied.

b. When a negative determination is made, a GS employee shall be given a written notice as soon as possible following the completion of the waiting period or other period upon which the negative determination was based. An FWS employee will be given similar written notice. A notice of negative determination should be given to an employee within 30 days after completion of the period upon which the negative determination is based. The negative determination notice shall contain the following:

1. The reasons for the negative determination and the specific critical elements, work plan requirements, or objectives, if applicable, that the employee is not performing acceptably and the performance standards necessary to support granting the WIGI.

2. The employee's right to request reconsideration in writing not more than 15 days after receiving the notice and the identity of the reconsideration official.

c. An employee, upon receipt of a negative determination, shall have the right to:

1. Submit a written request for reconsideration stating the reasons for contesting the determination.

2. A reasonable amount of official time, if in a duty status, to review the material relied upon to make the determination and to prepare a response.

3. Be represented in requesting reconsideration of the negative determination. The reconsideration official may disallow the choice of an individual as a representative which would result in a conflict of interest or position, would result in a conflict with the priority needs of the activity, or would give rise to unreasonable cost to the Government. The terms of any applicable bargaining agreement govern representation for employees in an exclusive bargaining unit.

d. The 15-day time limit to request reconsideration may be extended if the employee was not notified of the time limit and was not otherwise aware of it or if the employee was prevented by circumstances beyond his or her control from requesting reconsideration within the time limit.

e. The activity will establish a reconsideration file which contains all pertinent documents relating to the negative determination and reconsideration process. This file shall not contain any document that has not been made available to the employee or the employee's representative. This file shall contain, at a minimum, the following:

1. Employee's rating of record supporting the denial of the WIGI.

2. Written negative determination and supporting documentation.

3. Employee's written request for reconsideration.

4. Report of investigation, if made.

5. Written summary or transcript of any personal presentation made and, if submitted, a written exception to the summary by the employee or employee's representative.

6. Activity's decision on the request for reconsideration.

The HRO shall maintain the reconsideration file until the employee has reached an ALOC (GS) or Acceptable performance or better performance rating (FWS) and has been granted a within-grade increase or until an appeal or complaint arising from an action under this Article is finally adjudicated, whichever is longer.

f. The employee shall be informed, in writing, of the decision to either reverse or sustain the negative determination and the right to further review, if applicable, as outlined in paragraph 2 3. If the reconsideration official grants the WIGI, it shall be retroactive to its original due date.

2 2. Timing of Actions

a. Delay in Determination

1. An employee's WIGI determination shall be postponed at least 90 days when the employee does not have a rating of record for reasons such as:

(a) An employee has not been informed of the specific requirements for performance at an ALOC (GS) Acceptable performance (FWS) in his/her current position at least 90 days prior to the end of the waiting period, and has not been given a rating of record in any position within 90 days before the end of the waiting period.

(b) An employee is reduced in grade because of unacceptable performance to a position in which (s)he is eligible for a WIGI or will become eligible within 90 days.

2. When a WIGI determination has been so postponed:

(a) The employee will be informed in writing of the reason for the postponement, the length of time the rating period will be extended, and the performance requirements necessary to be granted a WIGI.

(b) The WIGI will be granted retroactively to the beginning of the pay period following the completion of the applicable waiting period, if, following the delay, the employee's performance rating of record supports granting a WIGI.

b. Actions After Withholding

1. When a sustained ALOC has been demonstrated by a GS employee, or sustained Acceptable performance has been demonstrated by a FWS employee, a new rating of record will be completed promptly and the employee will be granted the WIGI at the beginning of the first day of the next pay period after completion of the new rating.

2. After the initial withholding of the WIGI, the activity, at a minimum, shall determine whether an employee's performance warrants the WIGI no more than 52 calendar weeks following the original eligibility date. If the activity continues to deny the WIGI, determinations will be made not later than each 52 calendar weeks thereafter.

3. Completion of a rating of record showing an ALOC for a GS employee or Acceptable performance for a FWS employee requires an activity to grant a WIGI it is currently withholding.

c. When, due to administrative error, oversight, or delay, a positive determination is made after the waiting period is complete, the effective date of the WIGI shall be retroactive to the original due date.

d. When, for reasons such as listed in paragraph 2 2c, a WIGI has been granted where the employee's rating of record prior to the effective date did not reflect an ALOC (GS) Acceptable performance (FWS), the activity must so notify the employee and reduce the employee's rate of pay. Such a reduction is not an appealable adverse action.

The employee will be issued a notice of negative determination as described in paragraph 2 1b.

2 3. Grievance or Appeal Rights

a. GS Employees

1. If the Reconsideration Official sustains the negative determination, an employee has the right to appeal the decision to the Merit Systems Protection Board (MSPB) (See Article 12772), unless covered by a collective bargaining agreement which does not exclude a negative determination from the negotiated grievance procedure. Employees covered by such collective bargaining agreements may grieve under that negotiated grievance procedure.

2. An employee eligible to appeal to MSPB shall be furnished the time limits for filing an appeal, the address of the appropriate Board Office, a copy of the MSPB's regulations, and a copy of the Board's Appeal Form in the decision letter.

b. FWS Employees. An employee in a bargaining unit covered by a collective bargaining agreement must use the negotiated grievance procedure unless a negative determination is excluded from the negotiated grievance procedure. Non-bargaining unit employees may use the administrative grievance procedure. (See Article 12771)

2 4. Relationship to Negotiated Agreement. The provisions and regulations of this Article apply to Bargaining Unit Employees except in case of conflict with the negotiated agreement, in which case the negotiated agreement will take precedence.

2 5. Role of Human Resources Office

a. HRO shall provide advice and guidance to individuals involved in the denial of within-grade increases and reconsideration thereof.

b. HRO shall maintain a reconsideration file for each employee whose within-grade increase has been denied.

