

MANUAL: Personnel
 Chapter Series CC--Commissioned Corps Personnel Manual
 Part 2--Commissioned Corps Personnel Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES
 Public Health Service

Chapter CC23 -- Staffing
 Subchapter CC23.8 -- Retirement
 Personnel INSTRUCTION 10 -- Application of Dual Compensation Provisions of
 5 U.S.C. 5532 to Retired Officers

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Section A. Purpose and Scope

This INSTRUCTION provides information about the limits on compensation received by retired Public Health Service (PHS) commissioned officers who are subsequently employed in a civilian capacity by the Federal Government.

Section B. Authority

8. The authority for the offset of the retired pay of PHS commissioned officers in the regular corps who are employed by the Federal Government in a civilian position is the Dual Compensation Act of 1964 (5 U.S.C. 5532(b)).
9. The authority for the ceiling on the retired pay of PHS commissioned officers in the regular or reserve corps who are employed by the Federal Government in a civilian position is the Civil Service Reform Act of 1978 (5 U.S.C. 5532(c)).

Section C. Definitions

For purposes of this INSTRUCTION, the following definitions apply:

1. Officer. A member of the PHS Commissioned Corps who is in retired status.
2. Dual Compensation Offset. That offset authorized by 5 U.S.C. 5532(b) which is applied to the retired pay of regular corps officers who are reemployed in civil service positions by the Federal Government.
3. Ceiling. The currently authorized rate of pay for Executive Schedule Level V, which is the maximum level of combined retired pay and civil service salary any regular or reserve corps officer may receive under the provisions of 5 U.S.C. 5532(c).
4. Position. Any civilian office or position (including temporary, part-time V48001 or intermittent positions), elective or appointive, in the legislative, executive, or judicial branch of the Government of the United States (including a Government corporation and a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces).
5. Compensation. Basic civil service salary and PHS retired pay. The following compensation from the Federal Government will not be considered under either 5 U.S.C. 5532(b) or (c):
 - a. Any bonus an officer may receive because of participation in the Senior Executive Service.
 - b. Any disability compensation from the Department of Veterans Affairs.
 - c. Any other compensation from the Federal Government that is not part of either the basic salary or retired pay.

Section D. Reductions in Retired Pay of PHS Officers
Employed in Federal Civilian Positions Following Retirement

1. Pursuant to 5 U.S.C. 5532(b), retired regular corps officers employed in Federal civil service positions are entitled to receive the first \$2,000 of their retired pay, plus one-half of the remainder. The \$2,000 amount is increased from time to time in direct proportion to each increase in retired pay under 10 U.S.C. 1401a(b). As of the date of this INSTRUCTION, the amount had been increased to \$8,495.60. (See Exhibit I for an example of the dual computation offset calculations.) An officer's retired pay may be further reduced by the provisions of 5 U.S.C. 5532(c) as discussed in Section D.2, below. Exemptions to the dual compensation offset provisions may be granted as explained in Section F., "Exemptions."
2. Pursuant to 5 U.S.C. 5532(c), there is a ceiling on the amount of total compensation any retired officer (regular or reserve corps) may receive from the Federal Government for retired pay combined with a civil service basic salary (see Exhibits II and III). This ceiling is set at the Executive Schedule Level V, currently \$101,300. (This amount will increase from time to time as the compensation for Level V is increased.)
3. The ceiling will be applied to both regular and reserve corps officers who retired on or after January 11, 1979. Officers who retired prior to this date are exempt from 5 U.S.C. 5532(c).
4. Any reductions will come entirely from the retired pay. The officer will receive the full civil service salary under these provisions. However, the reduction in retired pay will not result in the officer's being unable to have deductions made from the retired pay for participation in the Survivor Benefit Plan or for participation in veterans' insurance programs. In the event a retired officer should have the entire amount of retired pay offset, contributions still will be made by PHS in the amount designated by the officer to the Survivor Benefit Plan fund or to veterans' insurance funds. These contributions will not be paid to the officer but will be made directly from the Compensation Branch, Division of Commissioned Personnel (DCP), Office of the Surgeon General, to the appropriate fund.
5. Regular corps officers retired on or after January 11, 1979, who are employed in positions covered by the Dual Compensation Act will have the dual compensation offset in their retired pay computed first. If the remaining retired pay combined with the civil service basic salary still exceeds Executive Schedule Level V, the retired pay will be reduced further to bring the combined total to the Level V salary or until all of the retired pay has been offset, whichever occurs first.
6. The reductions will be applied to the retired pay of officers in full-time permanent positions starting with the first day of reemployment (see exceptions discussed in paragraph 8 of this section), on a pro rata basis, and will be applied for each day thereafter for which the officer receives a salary.

7. The reductions will be applied to the retired pay of officers who retired under medical disability provisions except as described below. The reductions will not be applied to the retired pay of officers whose retirements were based on disability resulting from injury or disease received in the line of duty as a direct result of armed conflict; or caused by an instrumentality of war and incurred in the line of duty during a period of war.
8. The reductions do not apply if the officer is employed on a temporary (full or part-time) basis, for the first 30-day period for which the officer receives pay. This 30-day period will be computed using only those days the officer actually works and receives a salary.
 - a. Officers employed on a part-time or intermittent basis must certify in writing to the Compensation Branch, DCP, (see address in Section E.3, below), the specific days and hours actually worked at the end of every calendar month of such employment, or at the termination of such employment, whichever is the lesser period of time.
 - b. Officers employed on a full-time temporary basis need not provide certification of days actually worked because this information will be provided to the Compensation Branch, DCP, by the employing personnel office (see Section E., below).
9. Not all work performed on behalf of the Federal Government by retired officers is subject to the reductions. Work on a per them or fee basis and certain types of contracts may be found exempt from the provisions of 5 U.S.C. 5532(b) and/or (c) if the work does not create what could be considered an "employee-employer" relationship. All retired officers entering into an agreement with the Federal Government as contractors, consultants, advisors, or through any other possible method of employment, must notify the Compensation Branch, DCP, in writing so that a determination may be made as to whether the reductions are applicable.
10. Exemptions from the provisions of 5 U.S.C. 5532(b) and (c) may be authorized as discussed in Section F., below.

Section E. Responsibilities

1. It is the responsibility of the servicing personnel office employing a retired PHS commissioned officer to notify the Compensation Branch, DCP, of each personnel action affecting the retired officer by submitting a copy of the SF-50, "Notification of Personnel Action," to that office. Federal Personnel Manual (FPM) Supplement 296-33, Subchapter 8, provides guidance to employing civilian personnel offices about the procedures to be followed when hiring a retired officer.

2. It is the responsibility of the Chief, Compensation Branch, DCP, to determine if a dual compensation offset and/or ceiling limitation are applicable to an officer's retired pay based on the information provided by the officer and the SF-50. The Compensation Branch, DCP, is also responsible for computing and making any reductions in retired pay necessary under the provisions of 5 U.S.C. 5532(b) or (c).
3. It is the responsibility of each retired officer to notify the Compensation Branch, DCP, in writing, within 60 days, if he/she accepts any employment with the Federal Government as described in this issuance. This notification must contain the following information:
 - a. Employing agency;
 - b. Type of position;
 - c. Salary;
 - d. Conditions of employment (full-time, part-time, or intermittent); and
 - e. Whether negotiations for the civil service position took place prior to retirement from PHS.

These notices should be sent to the following address:

Compensation Branch
Division of Commissioned Personnel, OSG
Room 4-35, Parklawn Building
5600 Fishers Lane
Rockville, MD 20857

If an officer fails to submit the required notification as described in this INSTRUCTION, or if an officer submits false information, he/she will be liable to pay back all monies that would have been offset at the maximum rate allowed by law, and also will be subject to other legal and disciplinary action.

Section F. Exemptions

1. Officers who retired prior to January 11, 1979, are not subject to the ceiling limitations imposed by 5 U.S.C. 5532(c). However, regular corps officers who retired prior to January 11, 1979, are subject to the dual compensation offset provisions of 5 U.S.C. 5532(b).
2. The Federal Employees Pay Comparability Act (Public Law 101-509, enacted November 5, 1990) provides authority for United States Office of Personnel Management (USOPM) to approve exemptions to the dual compensation offset and ceiling limitations (1) for temporary employment that is necessary due to an emergency involving a direct threat to life or property or other

- unusual circumstances; and (2) on a case-by-case basis for employees in positions for which there is exceptional difficulty in recruiting or retaining qualified employees.
3. Requests for exemptions under Section F.2, above, must be submitted to USOPM in accordance with the procedures established by the Agency/Department that seeks to employ the retired officer.
 4. In addition to the authority of USOPM to grant exemptions to the dual compensation provisions, certain agencies such as the Department of Veterans Affairs and the Uniformed Services University of the Health Sciences have specific statutory authority to grant exemptions for certain positions or occupational categories.
 5. When a retired officer submits notification to the Compensation Branch, DCP, about pending civilian employment with the Federal Government, he/she should include a statement of any exemptions applied for or granted, citing the appropriate provision under which the exemption was requested or granted and providing a copy of the exemption authorization.

Section G. Privacy Act Provisions

Personnel and payroll records are subject to the Privacy Act of 1974. The applicable systems of records are 09-37-0002, "PHS Commissioned Corps Personnel Records, HHS/OASH/OSG," and 09-90-0017, "Pay, Leave, and Attendance Records, HHS/OS/ASPER."

EXHIBIT I

Dual Compensation Computation
5 U.S.C. 5532(b)

Retired regular corps officer accepts full-time civil service position and is not exempted from dual compensation offset provisions of 5 U.S.C. 5532(b).

	Retired Pay:	\$47,000
	Civil Service Salary:	<u>+50,000</u>
	Total combined income before offset:	\$97,000
1.	Officer receives the first \$8,495.60 of retired pay:	\$8,495.60
2.	Plus one-half of remainder of retired pay:	\$47,000.00 <u>- 8,495.60</u> \$38,504.40
	\$38,504.40 divided by 2:	\$19,252.20
	Officer's retired pay after offset:	<u>+ 8,495.60</u> \$27,747.80
3.	Officer's combined income:	
	Retired pay	\$27,747.80
	Civil service salary	<u>\$50,000.00</u>
	Total income	\$77,747.80
4.	Total amount of reduction in retired pay:	\$19,252.20

EXHIBIT II

Dual Compensation and Ceiling Limitation Computation
5 U.S.C. 5532(b) and (c)

Retired regular corps officer accepts full-time civil service position and is not exempted from dual compensation offset and ceiling limitation provisions of 5 U.S.C. 5532(b) and (c).

Retired Pay:	\$47,000
Civil service salary:	<u>+80,000</u>
Total combined income before offset and ceiling limitation:	\$127,000

1. Dual compensation offset computed first:

A. Officers receives first \$8,495.60 retired pay:	\$ 8,495.60
B. Plus one-half of remainder \$47,000 - \$8,495.60 =	\$38,504.40
divided by 2 = \$19,252.20	+\$19,252.20

Officer's retired pay after offset is	\$27,747.80
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2. Combined income:

Retired pay	\$27,747.80
Civil service salary	<u>+80,000.00</u>
Total	\$107,747.80

3. Since combined income is greater than the Executive Schedule Level V rate of \$101,300 per year, retired pay is further reduced.

Combined income:	\$107,747.80
Level V ceiling:	<u>-101,300.00</u>
Amount of further reduction:	\$ 6,447.80
Retired pay after offset:	\$ 27,747.80
Further reduction:	<u>-6,447.80</u>
Retired pay after offset and ceiling limitation:	\$ 21,300.00

EXHIBIT II (Continued)

4. Total combined income:

Retired pay after offset and ceiling limitation:	\$21,300.00
Civil service salary:	<u>+80,000.00</u>
Total combined income	\$101,300.00

5. Total reduction in retired pay: \$ 25,700.00

EXHIBIT III

Ceiling Limitation Computation
5 U.S.C. 5532(c)

Retired reserve corps officer accepts full-time civil service position and is not exempted from the ceiling limitation provisions of 5 U.S.C. 5532(c).

Retired Pay:	\$47,000
Civil Service Salary:	<u>+80,000</u>
Total combined income:	\$97,000

1. Since officer retired in the reserve corps, there is no dual compensation offset under 5 U.S.C. 5532(b).
2. Since combined income is greater than \$101,300 applicable to Executive Schedule Level V, retired pay must be reduced.

Combined income:	\$127,000
Income Ceiling:	<u>-101,300</u>
Amount retired pay must be reduced:	\$ 25,700

3.

Retired Pay:	\$ 47,000
Reduction:	<u>-25,700</u>
Reduced retired pay:	\$ 21,300

4. Total combined income after reduction.

Retired pay:	\$ 21,300
Civil service salary:	<u>+80,000</u>
Total combined income:	\$101,300