

## What If I Exceed the Biweekly GS Pay Cap?

The High-3 is a weighted-average calculation. If you were at your highest salary for only one month when you retired, that only counts for 1/36<sup>th</sup> of the High-3. I can't stress this enough. Many folks tell me they are staying on to work one day into the following year or moving to a higher locality area for one month to increase their High-3 by the scheduled pay adjustment. This was especially true with the 7.7% COLA for FERS annuitants payable in January 2023. Many folks believed if they stayed on one month into 2023, they'd somehow benefit from the COLA.

Such action will have no effect on your High-3. It will have a small effect on your unused annual leave paid out to you, but that is small compared to the effect of not having your FERS annuity begin until February 1, in this example. The High-3 does not have to be the last 36 months of service. It is a period of 36 consecutive months of service where your pay was the highest. Your High-3 is computed on the pay that you received where a FERS retirement deduction was taken.

### 2.3 What If I Exceed the Biweekly GS Pay Cap?

If you are on the GS pay scale and are hitting the biweekly pay cap, only the pay received up to the pay cap counts toward your High-3 calculation. Understanding how the pay cap is administered is tricky, and it's a two-step process. First, you must understand the annual pay of all GS employees can't exceed that of Level IV of the **Executive Schedule (EX-IV)**. That is an overall cap, but not the true "salary cap" test. GS employees may earn basic pay and premium pay that does not exceed the *greater* of the GS15-10 salary *for their locality*, or the EX-V salary. The 2024 EX-V salary cap is \$180,000 and the 2024 EX-IV rate is \$191,900. Notice I am referring to *both* the EX-IV and EX-V pay levels in the examples below. OPM's explanation of the biweekly pay cap can be found [here](#)<sup>9</sup>. Be sure to read Chris Barfield's article on the biweekly pay cap, "[The Biweekly Pay Cap](#)."<sup>10</sup>

If we examine the 2024 Washington, DC, OPM salary tables, we can see that GS15-10 pay is \$191,900, far above the EX-V rate, but limited to the EX-IV rate. When you look at the actual cap for Washington, DC, it is \$191,256. Why is that the case and not \$191,900?

OPM takes the \$191,900 and divides that amount by 2,087, which represents the number of hours in OPM's work year. That results in an hourly rate of \$91.95. There are 80 hours in a pay period, so  $80 \times \$91.95 = \$7,356$ . There are 26 pay periods in a year, so  $26 \times \$7,356 = \$191,256$ . Although I am explaining this in annualized terms, remember this is a biweekly cap. If your earnings exceed \$7,356 in one pay period in 2024, you are "capped" for that pay period. If you find yourself as a salary-capped employee, when you retire, your unused annual leave will also be paid out to you as if you took it in 80-hour increments subject to the biweekly cap. This practice is discussed in detail in the annual-leave-payout section. Keep in mind that if your biweekly pay is \$6,000 in a subsequent pay period after being capped, then *that* pay period is not capped. Some agencies will keep track of this amount that is over the cap and apply it to a

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<sup>9</sup> <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/#url=Biweekly-Pay-Caps>

<sup>10</sup> <https://www.barfieldfinancial.com/new-blog/the-biweekly-pay-cap>

## What If I Exceed the Biweekly GS Pay Cap?

subsequent pay period where the cap was not exceeded and add a portion back to bring that pay period up to the cap.

As of 2024, a GS15-10 in the **Rest of the United States (RUS)** pay scale exceeded the EX-V pay rate of \$180,000, so that posted salary table rate of \$186,854, which is above the EX-V, but below the EX-IV rate, is the pay cap. That means that the “real” pay cap is the lesser of the GS15-10 and the EX-IV rate, up to the amount of the EX-IV rate. If you are unsure what wages are counted toward your High-3, simply look at your year-end total FERS contribution deduction and divide that by .013 (.036 for FERS-RAE and .049 for FERS-FRAE).

That result is the salary amount that your FERS deduction was taken from, which is your “base pay” for purposes of computing your annuity payment. You can also examine your **Statement of Earnings and Leave** (E&L statement) and conduct the same test; just multiply the result by 26 for an annualized result. If you are a member of the Senior Executive Service, the pay cap is higher.

A few years ago, some folks figured out a way to take a day off every pay period as **Leave Without Pay (LWOP)** and their take-home pay remained virtually unchanged. Their biweekly pay exceeded the pay cap by what comes out to be over 8 hours of pay. Their agency allowed these folks to take a single day of LWOP each pay period. When you hit 80 hours of LWOP within a year, you will accrue no annual leave (AL) or sick leave (SL) for one pay period. If you are taking one day of LWOP each pay period, this will happen twice in a year, so you are losing out on 16 hours of AL and 8 hours of SL, but you get 26 days off—a fair trade. Read [OPM’s Fact Sheet](#)<sup>11</sup> on the effect of LWOP on benefits. Remember, you do not need to use the entire day as LWOP – depending on where your numbers are at, you may determine that 4 hours of LWOP is adequate to equal your over-earn amount.

Each agency has its own policy on how LWOP is administered. The agency in this example has a LWOP policy which states: “LWOP is a temporary, non-pay status and an authorized absence from duty granted at the request of the employee and at management’s discretion. An employee does not have to exhaust AL or SL before requesting LWOP.” Be very careful and be sure you know your agency’s policy before proceeding, as certain agencies have begun to disallow this practice. The issue seems to be the “appearance of impropriety.” Not sure what’s so “appropriate” about coming to work for 10 days and only being paid for 9 days.

Let’s look at an actual example from a reader whose salary is above the biweekly pay cap. This person “earns” \$187,300, but because of the pay cap, is paid \$177,382 in their locality. This person earns a gross pay of \$6,822 over a 10-day work period (two 5-day weeks), so that is \$682 per day. This person is \$381 per pay period over the pay cap. This means that if this person took a day of LWOP, he or she would be paid for 9 days instead of 10. His or her gross pay would drop to \$6,138. In this example, the employee can work 9 days a pay period and earn just \$301 less. That may only feel like \$225 a pay period, on an after-tax basis. That’s a

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<sup>11</sup> <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/leave-without-pay/>

## 2.16 What Happens If I Am Reemployed by the Federal Government?

This section describes the procedures for coming back to work for the federal government *after* you have retired and are receiving your annuity. Chapter 100<sup>55</sup> of the CSRS and FERS Handbook covers Reemployed Annuitants. Also be sure to read Chris Barfield’s article, “Reemployed Annuitants – What’s this all about?”<sup>56</sup>

Generally, coming back to work for the federal government after retirement is called being a “reemployed annuitant.” The federal government has a general prohibition against “double dipping,” or receiving both a salary and an annuity. If you are an annuitant and come back to work for the federal government, you will still receive your full annuity from OPM—nothing on that part changes. Your employing agency is required to reduce your salary by the amount of your annuity. For example, if you are drawing a \$50,000 annual annuity and come back to work for the federal government in a \$75,000/year position, your employing agency will only pay you \$25,000/year. If you work for the federal government an additional five or more years (full-time) and retire again, you can ask OPM to recalculate your annuity, adding on the additional time and using the higher of the two High-3 computations. If you are reemployed at least one year (full-time), but fewer than five years, you will collect a supplemental annuity based solely on the reemployed position’s High-3 and service credit.

There are a limited number of positions for reemployed annuitants that are referred to as “waivered” positions because OPM has allowed the agency to waive the double-dipping rule to fill a hard-to-staff position or a position that requires special skills. These waived positions are of limited duration (two years) and no additional retirement credit is earned, so it will not count toward the five years to have your annuity recomputed. **If you accept a waived position, insist on receiving a copy of the OPM communication that granted the agency a waiver for your position.** I’ve had a couple of readers inform me they were told that they had waived positions, only to get a request from OPM ordering repayment of tens of thousands of dollars that should have been offset as a regular reemployed annuitant. If you are a waived reemployed annuitant, you will not participate in the TSP like a regular employee would.

In some instances, you may also return to federal employment in a limited part-time capacity without a reduction in your salary as a reemployed annuitant. These positions are limited to 1,040 hours per year (about 20 hours per week), 520 hours in six months, and a grand total of 3,120 hours of service before they expire.

An interesting item has just surfaced in 2024 for rehired annuitants. In addition to rehired annuitants having their salary reduced by the amount of their annuity, the amount paid to them by the reemploying agency is also subject to the earnings test for the RAS. At least that’s what Title 5 says.....but you know OPM, they make up policy and rules as the want to, in violation of the Administrative Procedure Act of 1946. That being said, a few of Chris Barfield’s

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<sup>55</sup> <https://www.opm.gov/retirement-services/publications-forms/csrsfers-handbook/c100.pdf>

<sup>56</sup> <https://www.barfieldfinancial.com/new-blog/rehired-annuitants-whats-this-all-about>

## What Happens If I Am Reemployed by the Federal Government?

clients alerted him that OPM has had a policy in place since 2016 whereby OPM does NOT include the income from the reemployed position in the RAS annual earnings test. Both Chris and I found this hard to believe. No part of Title 5 excludes income from the reemploying agency from the RAS earnings test. The only group of reemployed annuitants that have their income excluded *by law* are retired ATCs that are engaged in training. One of the individuals reporting to Chris Barfield engaged OPM several times on this matter, at our urging, as this couldn't possibly be true. Surely, the OPM representative was mistaken!

OPM replied, in writing, to the annuitant, *"We do not count any government earnings whether you just retired or if you are a reemployed annuitant."*

Chris has published article on this new matter, "Reemployed Annuitants Not Subject to FERS Supplement Earnings Test?"<sup>57</sup>

In Chris' article, you will read how a supervisor from OPM's Retirement Services and Retirement Inspections Branch stated that there are approximately 9,500 rehired annuitants who are still receiving their full supplements even though they are past MRA and earning well over the earnings limit. The annuitant in this example from Chris received full back pay for the previously-eliminated RAS.

I agree completely with Chris Barfield's summary (taken from his article) below:

- I can find NO LAW stating that rehired annuitant salaries are exempt from the supplement earnings test, with the exception of the aforementioned Air Traffic Controllers
- The supervisor at OPM stated herself that it is not in the law (Title 5), but it is OPM policy
- We have PLENTY of proof that OPM is certainly not applying this policy to many, many rehired annuitants, regardless of this supervisor's claim
- OPM's own form, RI 92-22 specifically excludes ONLY rehired Air Traffic Controllers from the supplement earnings test. Because they are so specific with that one job, that would indicate to me that is the ONLY job that is exempt as a rehired annuitant.
- RI 92-22 states, *"Regardless of what income is called or who receives it, if it is actually wages for services you performed or net earnings from self-employment you secured, it must be included in applying the earnings test."*

What does this mean? It means that if you are a reemployed annuitant and your RAS is currently reduced or eliminated due to earnings that you reported on your annual form RI 92-22, then you need to reach out to OPM to inform them that you are a reemployed annuitant and that the income that you reported was paid to you by the federal government.

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<sup>57</sup> <https://www.barfieldfinancial.com/new-blog/reemployed-annuitants-not-subject-to-fers-supplement-earnings-test>