

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 1/36th 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 for 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 2026 EX-V salary cap is \$184,900 and the 2026 EX-IV rate is \$197,200. 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](#)⁷. Be sure to read Chris Barfield's article on the biweekly pay cap, "[The Biweekly Pay Cap](#)."⁸

If we examine the 2026 Washington, DC, OPM salary tables, we can see that GS15-10 pay is \$197,200, 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 \$196,539.20. Why is that the case and not \$197,200?

OPM takes the \$197,200 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 \$94.49. There are 80 hours in a pay period, so $80 \times \$94.49 = \$7,559.20$. There are 26 pay periods in a year, so $26 \times \$7,559.20 = \$196,539.20$. Although I am explaining this in annualized terms, remember this is a biweekly cap. If your earnings exceed \$7,559.20 in one pay period in 2026, 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

⁷ <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/#url=Biweekly-Pay-Caps>

⁸ <https://www.barfieldfinancial.com/new-blog/the-biweekly-pay-cap>

The High Cost of FERS

period is not capped. Some agencies will keep track of this amount that is over the cap and apply it to a 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 2026, a GS15-10 in the **Rest of the United States** (RUS) pay scale exceeded the EX-V pay rate of \$184,900, so that posted salary table rate of \$191,692.80 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.

2.4 The High Cost of FERS

Look at your Earnings and Leave (E&L) statement. Most of you are paying for your FERS annuity benefit with a 1.3% deduction from your pay. Employees hired on or after January 1, 2013, are paying 3.6% of base pay (**Revised Annuity Employees** (RAEs)) and those hired on or after January 1, 2014, are paying 4.9% of base pay (**Further Revised Annuity Employees** (FRAEs)). If you find these costs as fascinating as I do, then check out [OPM Benefits Administration Letter 23-306](#)⁹.

If you are paid through the **National Finance Center** (NFC) look at the bottom portion of the web-based E&L statement and you can see the contribution that your agency makes on your behalf. For example, suppose an agent earns \$5,000 per pay period and has \$65 (1.3% of pay) deducted from each pay period for FERS retirement and the agency contributed a whopping \$1,880 *in each pay period* to fund that FERS retirement. The FY 2023 (still the current percentages) normal cost (OPM’s actuarially-determined cost) for a SCE FERS Law Enforcement Officer/Firefighter retirement is 39.5% of base pay. The employee is paying 1.3% (3.6% for RAE and 4.9% for FRAE) and the agency is paying 38.2%. That’s a very pricey retirement. The FY 2023 normal cost for a *regular* FERS employee is 19.2%, with the employee paying .8% (3.1% for RAE and 4.4% for FRAE) and the agency paying 18.4%. That means a SCE costs the agency 20.3% more of base pay than a non-SCE. That’s a huge difference – double the cost! and it’s an even larger amount when you consider the pay differential created by AUO and LEAP generally not paid to non-SCE FERS employees.

⁹ <https://www.opm.gov/retirement-center/publications-forms/benefits-administration-letters/2023/23-306.pdf>

Buying Out the FERS Benefit

On November 28, 2023, the appellant that I referenced, from Denver, received his “Opinion and Order” from the MSPB in Washington, DC. The MSPB found FOR the appellant, and AGAINST OPM.

Specifically, the Opinion and Order states:

We ORDER OPM to rescind its December 12, 2017, final decision, stop apportioning the annuity supplement, and refund all previously apportioned annuity supplement amounts to the appellant. OPM must complete this action no later than 20 days after the date of this decision.

OPM appealed the November 28, 2023, MSPB ruling to the United States Court of Appeals for the Federal Circuit, right at the 60-day mark, on 1/26/2024.

I check PACER daily on this matter and I have created a free page on my website where you can obtain the latest information on this appeal: <https://fersguide.com/opm-mspb-decision-on-the-ras/>.

The Petition itself is a pretty short read, at 17 pages. The balance of the filing consists of the MSPB decision. The best part can be found on the lower part of page 14 through page 15. OPM’s argument is that if they are forced to follow the MSPS ruling, it may cost \$50 million to resolve and involve 7,000 or more cases. They also cite the increased workload if state courts issue amended COAPs. How lame! Your argument is that you have done some much that was wrong, it creates a burden too large for repair?

On October 10, 2025, the United States Court of Appeals for the Federal Circuit issued their ruling and found against OPM. OPM has now lost twice – once with the MSPB and a second time in the United States Court of Appeals for the Federal Circuit. OPM has 90 days from the opinion date, October 10, 2025, to either appeal to the full 12-judge Appeals Court or file a writ of certiorari with the Supreme Court. I can’t imagine the Supreme Court granting a writ in this case, but we will have to wait out the 90-day period which ends December 23, 2025. On December 31, 2025, the United States Court of Appeals for the Federal Circuit issued its “mandate” order, sending the case and their October 10, 2025, opinion back to the MSPB, so OPM did NOT appeal the matter, and it is finally resolved. As to how long it will take OPM to cease automatic apportionment and issue refunds is anyone’s guess.

The beauty of this decision is that it was obtained by ONE person. Not a class-action lawsuit. Just one determined man. Always fight injustice!

4.1.7 Buying Out the FERS Benefit

I encourage my clients to seek a buyout of the former spouse’s share of the FERS annuity benefit when the marriage length is short enough to make the buyout amount feasible. Many clients choose to use additional TSP funds to buy the former spouse out of their interest in the