



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

Thursday, December 18, 2008

CPM 2008-24

MEMORANDUM FOR: Heads Of Executive Departments And Agencies

FROM: Michael W. Hager, Acting Director

Subject: 2008 Annual Review of Special Rates

The President has signed an Executive order to implement the January 2009 pay adjustments. (See Attachment 1.) The Executive order authorizes a 2.9 percent across-the-board increase for the statutory pay systems under the provisions of 5 U.S.C. 5303 and locality pay increases costing approximately 1.0 percent of payroll under 5 U.S.C. 5304, reflecting the overall average pay increase of 3.9 percent authorized by section 142 of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Public Law 110-329, September 30, 2008). This memorandum reviews relevant portions of the Executive order and provides general information on the 2009 pay adjustments for the General Schedule (GS) pay system and certain other pay systems and schedules.

2009 Salary Tables and Effective Date

We have posted the 2009 salary tables on the U.S. Office of Personnel Management's (OPM's) Website at www.opm.gov/oca/09tables/index.asp. The 2009 pay rates will become effective on the first day of the first applicable pay period beginning on or after January 1, 2009 (January 4, 2009).

The General Schedule and Other Statutory Pay Systems

The Executive order provides an across-the-board increase of 2.9 percent in the rates of basic pay for the statutory pay systems—the GS, the Foreign Service schedule, and certain schedules for the Veterans Health Administration of the Department of Veterans Affairs. Special base rates for law enforcement officers at GS grades 3 through 10 also are increased by 2.9 percent. (These law enforcement officers are assigned the “GL” pay plan code.)

Executive Schedule

Under 5 U.S.C. 5318, Executive Schedule (EX) rates of pay will be increased by 2.8 percent (rounded to the nearest \$100) and will become effective on the first day of the first applicable pay period beginning on or after January 1, 2009 (January 4, 2009). The EX salary table is available on OPM's Website at www.opm.gov/oca/09tables/indexSES.asp.

Senior Executive Service

Under 5 U.S.C. 5382, the minimum rate of basic pay for the Senior Executive Service (SES) rate range will be adjusted to be consistent with the increase in the minimum rate of basic pay for senior-level positions under 5 U.S.C. 5376 (\$117,787 in 2009). The applicable maximum rate of basic pay for the SES will be \$177,000 (EX-II) for SES members covered by a certified SES performance appraisal system and \$162,900 (EX-III) for SES members covered by an SES performance appraisal system that has not been certified. An SES member at the minimum rate of the SES rate range must receive a pay increase of 2.9 percent in January 2009, since an SES member may not receive less than the minimum rate of the SES rate range. An agency's determination to adjust the rate of basic pay for an SES member that is approved by the end of the first pay period in January 2009 (January 17, 2009) may be made effective as of the first day of that first pay period (January 4, 2009). Determinations to adjust SES pay that are approved after January 17, 2009, will become effective at the beginning of the next pay period following the approval. OPM's regulations for setting and adjusting SES pay are available at 5 CFR part 534, subpart D.

Senior-Level and Scientific or Professional Positions

The minimum rate of basic pay for the senior-level and scientific or professional (SL/ST) rate range will be increased by 2.9 percent (\$117,787 in 2009), which is the amount of the across-the-board GS pay increase. The maximum rate of basic pay for the SL/ST rate range is the rate for EX-IV (\$153,200 in 2009). Note that beginning April 12, 2009, employees in SL/ST positions will begin receiving pay under the provisions of a new pay system established under the Senior Professional Performance Act of 2008 (Public Law 110-372, October 8, 2008). (See CPM 2008-19.) OPM will issue additional information on the new SL/ST pay system before April 12, 2009.

Administrative Law Judges

The Executive order reflects a decision by the President to increase the rates of basic pay for administrative law judges (ALJs) by 2.9 percent, rounded to the nearest \$100 (except for those at AL-1 who will receive a 2.8 percent increase). The rate of basic pay for AL-1 will be \$153,200 (equivalent to the rate for EX-IV). The rate of basic pay for AL-2 will be \$149,600. The rates of basic pay for AL-3/A through 3/F will range from \$102,400 to \$141,600. The ALJ salary table is available on OPM's Website at www.opm.gov/oca/09tables/indexSES.asp.

Administrative Appeals Judges

Under 5 U.S.C. 5372b, the rates of basic pay for administrative appeals judge (AAJ) positions must be set at a rate not less than the minimum rate of basic pay for level AL-3 and not more than the maximum rate of basic pay for level AL-3 of the ALJ pay system established under 5 U.S.C. 5372. At 5 CFR 534.603, OPM's regulations link the structure of the AAJ pay system directly to the structure for level AL-3 of the ALJ pay system. The AAJ pay system includes six rates of basic pay—AA-1, 2, 3, 4, 5, and 6. These rates correspond to the rates of basic pay for AL-3/A, B, C, D, E, and F of the ALJ pay system. The AAJ salary table is available on OPM's Website at www.opm.gov/oca/09tables/indexSES.asp.

Locality Payments

The President's Executive order establishes the amounts of the 2009 locality payments for GS employees. Attachment 2 provides a table showing the 2009 locality pay percentage and total percentage increase in each locality pay area (reflecting the combined effect of the 2.9 percent across-the-board increase and the applicable increase in the locality pay percentage). Also provided is a chart showing an example of how the 2009 locality rate and total increase are computed for an employee in the "Rest of U.S." locality pay area. (See Attachment 3.)

Locality Pay Extensions

On October 27, 2008, the Acting Director of OPM issued a memorandum on behalf of the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget (OMB) and OPM) that extends the GS locality payments to ALJs, employees in SL/ST positions, and certain other non-GS categories of employees again in 2009. By law, EX officials, SES members, and employees in certain other equivalent pay systems are not authorized to receive locality payments. As previously stated, beginning April 12, 2009, employees in SL/ST positions will be covered by a new pay system. Under that system, SL/ST employee will no longer be eligible to receive locality pay. OPM will issue guidance before April 12, 2009, on the conversion of SL/ST positions into the new pay system without a loss of pay.

Locality Pay Areas in 2009

We do not anticipate any changes in locality pay areas effective on the first day of the first applicable pay period beginning on or after January 1, 2009 (January 4, 2009). Locality pay area definitions are posted at www.opm.gov/oca/09tables/locdef.asp.

Note that locality pay area definitions are tied to Metropolitan Statistical Areas (MSAs) and Combined Statistical Areas (CSAs) identified by OMB and are subject to change if OMB adds locations to MSAs or CSAs. If OMB adds locations to MSAs or CSAs affecting locality pay areas, the changes go into effect with the first pay period beginning on or after January 1 of the next calendar year. OPM will post any revisions to locality pay areas as a result of OMB actions as soon as possible after we are notified of the changes by OMB.

2008 Annual Review of Special Rates

We are issuing a separate memorandum announcing the results of the 2008 annual review of special rates.

Aggregate Limitation on Pay

The aggregate limitation on pay for calendar year 2009 will be \$196,700 (equivalent to the rate for EX-I). SES members and employees in SL/ST positions who are covered by a certified performance appraisal system are subject to a higher aggregate limitation on pay of the Vice President's salary (\$227,300 in 2009). (See 5 U.S.C. 5307 and 5 CFR part 530, subpart B.) Information on obtaining certification of performance appraisal systems is available at www.opm.gov/ses/performance/certification.asp.

2009 Premium Pay Caps

Under 5 U.S.C. 5547(a) and 5 CFR 550.105, GS and other covered employees may receive certain types of premium pay in a biweekly pay period only to the extent that the sum of basic pay and such premium pay for the pay period does not exceed the greater of the biweekly rate payable for (1) GS-15, step 10 (including any applicable locality payment or special rate supplement), or (2) the rate payable for EX-V (\$143,500 in 2009). In certain emergency or mission-critical situations, an agency may apply an annual premium pay cap instead of a biweekly premium pay cap, subject to the conditions prescribed in law and regulation. (See 5 U.S.C. 5547(b) and 5 CFR 550.106–550.107.) We have posted the biweekly premium pay caps on OPM's Website at www.opm.gov/oca/pay/html/09GSCap.asp.

Under section 1101 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417, October 14, 2008), the head of an agency may waive the premium pay cap provisions under 5 U.S.C. 5547 in calendar year 2009 for an employee who performs work while in an overseas location that (1) is in the area of responsibility of the United States Central Command (CENTCOM) or (2) was formerly in the CENTCOM area of responsibility but has been moved to the area of responsibility of the Commander of the United States Africa Command (AFRICOM). The qualifying overseas work must meet one of two additional qualifying conditions: (1) performance of work in direct support of or directly related to a military operation (including a contingency operation as defined in 10 U.S.C. 101(a)(13)) or (2) performance of work in direct support of or directly related to an operation in response to an emergency declared by the President. The annual limitation on basic pay and premium pay allowed under the waiver authority is \$227,300 in calendar year 2009. Section 1101 also provides that the aggregate limitation on pay under 5 U.S.C. 5307 will not apply to an employee in calendar year 2009 if the employee is granted a waiver of the normally applicable premium pay limitations. (See CPM 2008-19.)

Post Employment Restrictions

Agencies are required to notify SES members and other individuals who are paid at a rate of basic pay equal to or greater than 86.5 percent of the rate for EX-II (\$153,105 in 2009) that they are subject to certain post-employment restrictions in 18 U.S.C. 207(c). (See 18 U.S.C. 207(c)(2)(A)(ii).) OPM's regulations requiring notification of post-employment restrictions are available at 5 CFR part 730. Agencies may continue to use the sample notice OPM provided in its memorandum of January 6, 2004 (CPM 2004-01), to notify an SES member or other individual that he or she is subject to the post-employment restrictions in 18 U.S.C. 207(c). (Agencies will need to update the salary threshold and effective date, as appropriate.) The sample notice is available at www.opm.gov/oca/compmemo/2004/2004-01_attach1.asp.

Order for Processing Pay Actions

The general pay adjustments that take effect in January 2009 must be processed **before** any individual pay action (e.g., a within-grade increase or promotion) that takes effect on the same date. General pay adjustments include across-the-board increases under 5 U.S.C. 5303 and increases in locality payments or other geographic adjustments, special rate supplements, and retained rates. If multiple individual pay actions become effective on the date of the January

2009 pay adjustment, those actions must be processed in the order applicable to the employee's pay system (e.g., the simultaneous action rule for GS employees in 5 CFR 531.206).

Pay Administration

We are providing the following examples of pay computations to assist agencies in administering the 2009 pay adjustments for GS employees:

Examples of January 2009 Pay Computations -- See www.opm.gov/oca/compmemo/2008/09PAYCOMP.ASP.

How to Compute Rates of Pay -- See www.opm.gov/oca/pay/HTML/computerates.asp.

How to Compute FLSA Overtime Pay -- See www.opm.gov/oca/pay/HTML/computeflsa.asp.

Internal Revenue Service Guidance

Internal Revenue Service (IRS) Publication 15, Circular E, Employer's Tax Guide (revised January 2009), will show the 2009 wage bracket income tax withholding tables for both single and married persons who are paid on a biweekly basis. IRS will mail Publication 15 to employers, and this publication also should be available at IRS offices in January 2009. (Call 1-800-829-3676 to order copies.) IRS publications may be downloaded at www.irs.gov/formspubs/index.html.

Questions

For additional information, agency Chief Human Capital Officers and/or Human Resources Directors should contact their assigned OPM Human Capital Officers. Employees should contact their agency human resources offices for assistance.

Attachment 1

Attachment 2

Attachment 3

cc: Chief Human Capital Officers
Human Resources Directors