

## Critical Position Pay Fact Sheet

### Description

Under 5 U.S.C. 5377 and 5 CFR part 535, the U.S. Office of Personnel Management (OPM), in consultation with the Office of Management and Budget (OMB), may, upon the request of an agency head, grant authority to fix the rate of basic pay for one or more positions at a rate higher than the rate that would otherwise be payable for the position(s) (See "Setting and Adjusting Critical Pay Rates" for limitations.) In order to apply the critical position pay authority, the position(s) must require an extremely high level of expertise in a scientific, technical, professional, or administrative field that is critical to the successful accomplishment of an important agency mission. The authority may be used only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position.

### Eligibility

Categories of positions that are eligible for critical position pay include:

- General Schedule (GS),
- Senior-level (SL),
- Senior Executive Service (SES) and the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration SES,
- Executive Schedule (EX),
- Scientific and professional (ST),
- FBI intelligence positions as determined by the Director of the FBI; and
- Other positions designated by the Director of OPM at the request of an agency head.

Not more than 800 positions may be covered Governmentwide at any one time, and not more than 30 active authorizations may be for positions otherwise paid rates of pay under the Executive Schedule.

### Approval Criteria

OPM's regulations in 5 CFR part 535 generally require agencies to:

- Submit written requests describing the position and the qualifications of any incumbent or prospective candidates;
- Document the level of expertise required and explaining how any incumbent or candidate is exceptionally well qualified for the position;
- Demonstrate that the use of other human resources flexibilities has not enabled the agency to fill the position; and
- Explain why the position is critical to an important agency missions and the potential impact if the agency is unable to fill the position with an exceptional candidate.

For a complete list of the OPM requirements for agency requests, please see 5 CFR 535.104.

### **Setting and Adjusting Critical Position Pay Rates**

Subject to the limit approved by the Director of OPM, in consultation with the Director of OMB, the head of an agency may initially set a critical pay rate not less than the rate of basic pay that would otherwise be payable for the position, but not greater than--

- the rate for level II of the Executive Schedule, or
- the rate for level I of the Executive Schedule, if the agency demonstrates exceptional circumstances.

In rare circumstances, the President may provide written approval for a rate in excess of the rate for level I of the Executive Schedule.

The head of an agency may make subsequent adjustments in the rate of basic pay for a critical position each January at the same time general pay adjustments are authorized for Executive Schedule employees under 5 U.S.C. 5318, subject to the criteria in 5 CFR 535.105(c).

Employees receiving critical pay are not eligible for locality pay or other similar supplements.

### **Rate of Basic Pay**

A critical position pay rate is considered a rate of basic pay for all purposes, including any applicable premium pay, except—

- Application of any pay retention provisions under 5 U.S.C. 5363; and
- Application of any adverse action provisions under 5 U.S.C. 7512.

### **Discontinuing and Terminating Critical Position Pay**

Once critical position pay is granted, an agency may continue to use the authority for authorized positions as long as needed. An agency may discontinue critical position pay for a given position on its own initiative.

OPM will monitor the use of critical position pay authorities annually, through the agency's required reports under 5 CFR 535.107, and will terminate the authority associated with a given position after notifying the agency if, in OPM's judgment in consultation with OMB, the authority is no longer needed. (See 5 CFR 535.103(d).)

If an employee's critical position pay is discontinued or terminated, the employee's rate of basic pay will be set at the rate to which the employee would be entitled had he or she not received critical pay, as determined by the head of the agency, unless the employee is eligible for a higher payable rate under the General Schedule maximum payable rate rule and the agency chooses to apply that rule.

## **Report**

OPM must submit an annual report to Congress on the use of the critical position pay authority. Agencies must submit the following information to OPM by January 31 of each year on their use of critical position pay authority for the previous calendar year –

- The name, title, pay plan, and grade/level of each employee receiving a higher rate of basic pay under this subpart;
- The annual rate or rates of basic pay paid in the preceding calendar year to each employee in a critical position;
- The beginning and ending dates of such rate(s) of basic pay, as applicable;
- The rate or rates of basic pay that would have been paid but for the grant of critical position pay; and
- Whether the authority is still needed for the critical position(s).

## **References**

5 U.S.C. 5377

5 CFR part 535

Executive Order 13415, December 5, 2006