



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

Thursday, March 4, 2004

MEMORANDUM FOR: Chief Human Capital Officers

FROM: KAY COLES JAMES, Director

Subject: CPM 2004-05: Retroactive 2004 Pay Adjustment

The President has signed an Executive order to implement a retroactive pay increase averaging 4.1 percent above the 2003 rates. (See Attachment 1.) This pay adjustment is effective as of the first day of the first applicable pay period beginning on or after January 1, 2004 (January 11 for most employees), and supersedes the 2.0 percent overall average increase approved by the President on December 30, 2003. Of the 4.1 percent average increase, 2.7 percent is allocated as an across-the-board increase to the rates of basic pay for the statutory pay systems, including the General Schedule (GS). As explained below and in Attachment 2, an additional 1.4 percent of payroll is allocated to increases in locality rates of pay. The overall 2004 pay increase ranges from about 3.89 percent (in the Kansas City locality pay area) to about 5.35 percent (in the San Francisco locality pay area) over the 2003 rates. ([CPM 2003-22](#) transmitted Executive Order 13322 of December 30, 2003, which provided previously authorized across-the-board and locality pay increases for January 2004. The pay rates in Executive Order 13322 are superseded.)

New 2004 Salary Tables

We have posted the new 2004 salary tables discussed in this memorandum on the Office of Personnel Management's (OPM's) Web site at opm.gov/oca/payrates/index.asp. The new rates of pay reflect a 4.1 percent overall average pay adjustment, as required by the Consolidated Appropriations Act, 2004 (Public Law 108-199, January 23, 2004).

The General Schedule and Other Statutory Pay Systems

The Executive order provides for a 2.7 percent across-the-board increase in 2004 (in lieu of the 1.5 percent originally implemented) in the rates of basic pay for the statutory pay systems—the General Schedule, the Foreign Service Schedule, and certain schedules for the Veterans Health Administration of the Department of Veterans Affairs.

Locality Payments

The President's Executive order distributes approximately 1.4 percent of payroll for locality pay increases by providing larger pay increases for locality pay areas with larger overall pay disparities, as recommended by the Federal Salary Council. Attachment 2 provides a list of the new locality pay rates for the 32 locality pay areas established by the President's Pay Agent. Attachment 2 also shows the increase attributable to the new locality pay rates and the total increase in pay over the 2003 rates for each locality pay area. Attachment 3 provides a chart

showing an example of how the 2004 locality pay rate and total pay increase are computed for an employee in the "Rest of U.S." locality pay area.

GS Locality Pay Limitation

Under 5 U.S.C. 5304(g)(1), locality-adjusted rates of pay for GS employees may not exceed the rate payable for level IV of the Executive Schedule (\$136,900 in 2004). In the San Francisco locality pay area, the locality-adjusted rate for GS-15, step 9, and GS-15, step 10, otherwise would exceed the rate for level IV. In the Houston locality pay area, the locality-adjusted rate for GS-15, step 10, otherwise would exceed the rate for level IV. The locality-adjusted rate for these employees is limited to \$136,900 in 2004.

Law Enforcement Officers

We have prepared new salary tables for law enforcement officers (LEOs) in each locality pay area. These tables incorporate the statutory worldwide law enforcement special rates for grades GS-3 through GS-10 (Special Rate Table No. 491), which are used as the basis for computing any locality or other geographic payment. As a result of the retroactive increase, the locality pay percentage in the Boston metropolitan area in 2004 (16.99 percent) is higher than the Boston special LEO geographic pay adjustment of 16 percent. Therefore, LEOs in the Boston locality pay area will receive the higher locality pay percentage (16.99 percent). The LEO special geographic adjustment in Boston is terminated as of the first day of the first applicable pay period beginning on or after January 1, 2004. In all locality pay areas, LEOs are now entitled to the same locality pay percentages that apply to other GS employees.

Executive Schedule

By law (5 U.S.C. 5318), the rates for levels I through V of the Executive Schedule (EX-I through EX-V) will increase by 2.2 percent over 2003 rates (rounded to the nearest \$100) in lieu of the 1.5 percent originally provided. The new rates are effective on the first day of the first applicable pay period beginning on or after January 1, 2004.

2004 Special Salary Rates

The 2004 special rate schedules that were increased as of the first pay period in January, and which previously received a 1.5 percent increase, have been updated to reflect the 2.7 percent increase in General Schedule rates of basic pay. We have posted the new 2004 special salary rate tables on the OPM Web site at <http://apps.opm.gov/ssr/tables/index.cfm>. The new tables are effective as of the first day of the first applicable pay period beginning on or after January 1, 2004. Since a special rate employee receives the greater of the applicable special rate or the locality rate for his or her grade and step, agencies must compare an employee's special rate with the new locality pay rate to ensure he or she is paid from the proper schedule.

Employees in Senior-Level (SL) and Scientific or Professional (ST) Positions

As a result of increases in the GS and Executive Schedule rates of basic pay, the minimum rate of basic pay for employees in SL/ST positions is increased by 2.7 percent over the 2003 rate to

\$104,927, and the maximum rate of basic pay is increased by 2.2 percent over the 2003 rate to \$136,900 (equivalent to the rate for level IV of the Executive Schedule).

Senior Executive Service

OPM recently issued interim regulations to implement the new performance-based pay system for members of the Senior Executive Service (SES). (See [CPM 2004-03](#).) The minimum rate of basic pay for the new SES pay range is increased by 2.7 percent over the 2003 rate to \$104,927 (equivalent to the minimum rate of basic pay for senior-level positions), and the maximum rate of basic pay is increased by 2.2 percent over the 2003 rate to \$145,600 (equivalent to the rate for level III of the Executive Schedule). By law, an SES member must be paid at one of the rates within the SES rate range based on individual performance, contribution to the agency's performance, or both, as determined under a rigorous performance management system. Therefore, agencies may provide a pay adjustment only upon a determination that a senior executive's performance and/or contributions so warrant and that the senior executive is otherwise eligible for such a pay adjustment (i.e., he or she did not receive a pay adjustment during the previous 12-month period). On January 20, 2004, the Director of OPM delegated responsibility to the heads of executive departments and agencies to approve limited exceptions to the 12-month rule. (See [CPM 2004-04](#).) OPM's regulations prescribing the rules for adjusting rates of basic pay after an agency receives certification of its SES performance appraisal system will address the issue of an SES member's eligibility for more than one pay adjustment during a 12-month period.

Under 5 CFR 534.406(c)(1), an agency may increase an SES member's rate of basic pay on the first day of the first applicable pay period beginning on or after January 1, 2004, or on any date thereafter, but only up to the new rate for level III of the Executive Schedule. In addition, since the President's Executive order provides an additional increase in the rate for level III of the Executive Schedule in 2004, which became effective as of the first day of the first applicable pay period beginning on or after January 1, 2004, an agency may review a previous determination to increase the pay of an SES member to determine whether, and to what extent, an additional pay increase may be warranted based on the same criteria used for the previous determination to increase pay. (See 5 CFR 534.406(c)(2).) If an agency determines that an additional pay increase is warranted, that increase must be made effective as of the effective date of the previous increase. If an agency did not grant a pay increase to an SES member between January 11, 2004, and the date of the President's Executive order, the agency must make any subsequent pay increase effective prospectively, and the pay increase is considered a pay adjustment for the purpose of applying the 12-month rule.

Because the Boston LEO special geographic pay adjustment has been terminated as of January 11, 2004, agencies must correct the rate of basic pay for SES law enforcement officers in Boston and base any pay adjustments approved on or after January 11, 2004, on the senior executive's newly reconstructed rate of basic pay.

Agencies are reminded that under section 1125(c)(2) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136, November 24, 2003), an agency may not reduce an SES member's rate of basic pay below the rate in effect on November 24, 2003 (including any applicable locality payment), during the first year after the effective date of the new SES pay

system (i.e., from January 11, 2004, through January 10, 2005). Agencies may reduce the pay of an SES member for performance, disciplinary, or other reasons beginning on or after January 11, 2005, provided the individual did not receive a pay adjustment during the 12-month period before the pay reduction.

SES Post-Employment Restrictions

On January 6, 2004, OPM issued a memorandum providing guidance on the new salary-based threshold (i.e., 86.5 percent of the rate for level II of the Executive Schedule) for determining the applicability of certain post-employment conflict-of-interest restrictions to SES members, as set forth in 18 U.S.C. 207(c). (See [CPM 2004-01](#).) The rate for level II of the Executive Schedule has been increased to \$158,100. Therefore, any individual whose rate of basic pay is equal to or greater than \$136,757 is subject to the post-employment conflict of interest restrictions. The new salary threshold is retroactive to the first day of the first applicable pay period beginning on or after January 1, 2004 (January 11 for most affected SES members).

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 2.2 percent over the 2003 rates (rounded to the nearest \$100), an amount equivalent to the increase in the rates for the Executive Schedule. The new rate of basic pay for AL-1 is \$136,900. The new rate of basic pay for AL-2 is \$133,300. The new rates of basic pay for AL-3/A through 3/F range from \$91,200 to \$126,100, as shown in the table following "Administrative Appeals Judges," below. The new 2004 rates of basic pay for ALJs also are available on the OPM Web site at opm.gov/oca/04tables/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. OPM's regulations at 5 CFR 534.603 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 are adjusted to correspond to the new rates of basic pay for AL-3/A, B, C, D, E, and F of the ALJ pay system, as shown in the following table:

AAJ Pay Level	ALJ Pay Level	Rate of Basic Pay in 2004
AA-1	AL-3/A	\$91,200
AA-2	AL-3/B	\$98,100
AA-3	AL-3/C	\$105,200
AA-4	AL-3/D	\$112,200
AA-5	AL-3/E	\$119,200
AA-6	AL-3/F	\$126,100

Locality Pay for Non-GS Employees

On December 17, 2003, the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget, and the Director of OPM) extended the 2004 locality payments to certain categories of non-GS employees. (See the President's Pay Agent's memorandum to agency heads.) Based on this action, the new 2004 locality payments that apply to GS employees also will apply retroactively to these same categories of employees. Covered employees include employees in SL/ST positions, ALJs, AAJs, members of Boards of Contract Appeals, and members of the Foreign Service. By law, Executive Schedule officials, SES members, and prevailing rate employees are not authorized to receive locality payments.

Pay Administration

We have revised the following fact sheets to reflect the retroactive pay increase. The revised fact sheets are available on OPM's Web site, as follows:

Biweekly Caps on Premium Pay - See opm.gov/oca/pay/HTML/04GSCap.asp.

Examples of January 2004 Pay Computations - See opm.gov/oca/compmemo/2003/04PAYCOMP.asp.

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

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

Processing and Documenting Retroactive Pay Adjustments

The President's Executive order makes the pay increases effective retroactive to the first day of the first applicable pay period beginning on or after January 1, 2004 (January 11 for most employees). **It is imperative that agency human resources offices process these retroactive payments expeditiously so that Federal payroll providers can issue payments to employees as soon as possible.**

To document the retroactive pay adjustment for employees other than SES members, agencies should correct the original personnel action that effected the earlier pay adjustment in January 2004 using nature of action (NOA) code "**002/Correction.**" To document the retroactive pay adjustment for SES members in Boston, MA, who were also receiving special geographic pay adjustments for law enforcement officers under section 404 of Public Law 101-509, agencies should correct the original personnel action that effected the conversion to the new SES pay system on January 11, 2004, using NOA code "**002/Correction,**" based upon the guidance provided under "Senior Executive Service" in this memorandum. To document the retroactive pay adjustment for SES members for whom agencies have determined that an additional increase is warranted based upon 5 CFR 534.406(c)(2), agencies should correct the original personnel action that effected the earlier pay adjustment using NOA code "**002/Correction.**" To document the prospective pay adjustment for SES members who did not previously receive an increase under 5 CFR 534.406(c)(1) prior to the date of the Executive order, agencies should process a personnel action using NOA code "**894/Pay Adjustment.**" In addition to the above guidance, for all employees, agencies must correct any intervening personnel actions that took effect between the first day of the first pay period in January 2004 and the date the retroactive pay adjustment is processed. For more information on processing the above actions, agencies should refer to The Guide to Processing Personnel Actions, [CPM 2004-03](#), and [CPM 2004-04](#).

In the case of an employee who **separated** from Federal employment after the effective date of the January 2004 pay adjustment, the former employing agency is responsible for processing the retroactive adjustment in pay to ensure that the employee receives the additional pay to which he or she was entitled for the period between the first day of the first pay period in January 2004 and the date of separation. The former employing agency also is responsible for ensuring appropriate processing/distribution/filing of the personnel action(s).

In the case of an employee who **transferred** to a different Federal agency after the effective date of the January 2004 pay adjustment, the employee's **current** employing agency and payroll provider are responsible for (1) processing the adjustment in pay retroactive to the first day of the first pay period beginning on or after January 1, 2004; (2) paying that portion of the retroactive payment covering the period of time following the transfer; and (3) ensuring appropriate processing/distribution/filing of the personnel action(s). The **prior** employing agency and payroll provider are responsible for paying that portion of the retroactive payment covering the period between the first day of the first pay period in January 2004 and the date of transfer.

Employees are **not** entitled to interest on any payments received as a result of processing the retroactive adjustments in pay. Back pay is payable under 5 CFR part 550, subpart H, whenever an employee has been affected by an "unjustified or unwarranted personnel action" that results in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee. The retroactive adjustment in pay does not meet the definition of "unjustified or unwarranted personnel action" and does not correct a "withdrawal, reduction, or denial of pay." Therefore, employees are not entitled to any interest on the retroactive payment even if agencies cannot process the adjustment within 30 days.

Other Affected Pay and Benefits

Premium Payments

The retroactive pay increase may affect premium pay entitlements such as overtime, night, Sunday, and holiday pay. Agencies must review each employee's work schedule and make any necessary pay adjustments to reflect the new 2004 pay rates for any premium pay hours the employee worked during the intervening period. Agencies also must retroactively adjust affected employees' pay to reflect the new biweekly or annual premium pay limitations. (See the revised fact sheet on Biweekly Caps on Premium Pay at opm.gov/oca/pay/html/04GSCap.asp.)

Post-Separation Payments

An employee who separated or retired in late 2003 or early 2004 may be entitled to an adjustment in his or her lump-sum payment for annual leave to reflect the new 2004 pay rates. The lump-sum payment for annual leave must be calculated on the basis of the amount of pay the employee would have received if he or she had remained in Federal service and used the annual leave. The retroactive adjustment also may affect severance payments computed using the pay rates in effect before the retroactive adjustment.

Retirement

The retroactive pay adjustment is considered basic pay for retirement purposes. Federal payroll providers must submit the appropriate employee deductions and agency contributions due for any additional basic pay to OPM in accordance with standard reporting procedures. For employees who separated after the beginning of the first full pay period of the calendar year, agency payroll offices also must submit a supplemental Individual Retirement Record documenting the revised salary rate and additional employee deductions.

Federal Employees' Group Life Insurance (FEGLI)

If an employee's retroactive pay adjustment moves the employee into a different \$1,000 bracket, the amount of his or her Basic insurance increases. This increases the employee's withholding and the Government contribution. This increase in coverage and withholding also applies to Option B coverage if the employee has that coverage.

In computing any lump-sum catch-up salary payment, agencies must calculate the amount of FEGLI withholdings (and Government contributions) that should have been made based on the new salary and compare that amount with the amount actually withheld for pay periods

beginning after January 1. Agencies must make any additional withholdings (and contributions) from the lump-sum catch-up adjustment and submit them to OPM in the usual manner.

Federal Wage System

The Transportation, Treasury, and Independent Agencies Appropriations Act, 2004, as contained in the Consolidated Appropriations Act, 2004 (Public Law 108-199, January 23, 2004), contains two provisions that affect the determination of pay adjustments for certain prevailing rate (wage) employees in fiscal year 2004. Section 613 of the Act provides that pay increases for certain prevailing rate employees in FY 2004 may not exceed 4.39 percent-the sum of the General Schedule (GS) across-the-board percentage adjustment and the difference between the overall average percentage locality payments for GS employees in FY 2003 and FY 2004. Section 640(b) of the Act provides that, notwithstanding section 613, pay adjustments for certain prevailing rate employees may not be less than the pay adjustments received by GS employees in January 2004 where they work. OPM will provide additional guidance on this matter in the near future.

Additional Information

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

Attachment 1

Attachment 2

Attachment 3