



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

The Director

Wednesday, December 17, 2003  
Pay Agent Memo

**MEMORANDUM FOR: Heads Of Executive Departments And Agencies**

FROM: George W. Bush, U.S. President

Subject: Extension of Locality Payments to Non-General Schedule Employees

**The President's Pay Agent  
Washington, D.C. 20415-1000**

The President's Pay Agent has decided to extend the 2004 locality-based comparability payments to certain categories of non-General Schedule employees. Except for the categories of employees listed below, the locality-based comparability payments are extended to the same Governmentwide and single-agency categories that were authorized to receive the 2003 locality payments. As required by law, the 2003 locality payments will remain in effect through the last day of the last pay period commencing during calendar year 2003.

Section 1125 of the "National Defense Authorization Act for Fiscal Year 2004" (Public Law 108-136, November 24, 2003) (the "Act"), establishes a new pay-for-performance system for the Senior Executive Service (SES). The newly revised 5 U.S.C. 5382 replaces the current six-level SES pay system with a single open-range pay system, with only the minimum and maximum rates of pay set by law. The new SES rate range becomes effective on the first day of the first pay period beginning on or after January 1, 2004 (January 11, 2004, for most employees).

(See CPM 2003-19 for information on the new SES pay system.)

Additional amendments made by the Act affect the extension of locality-based comparability payments to certain categories of positions, as follows:

- The newly amended 5 U.S.C. 5304(h)(1)(D)(v) prohibits extending locality-based comparability payments to (1) SES positions under 5 U.S.C. 3132 and (2) Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) SES positions under 5 U.S.C. 3151. As a result, beginning on the first day of the first applicable pay period beginning on or after January 1, 2004, members of the SES and FBI/DEA SES may not receive any locality-based comparability payments under 5 U.S.C. 5304.
- The newly amended 5 U.S.C. 5304(h)(1)(D) prohibits the extension of locality pay to any position that has a rate of basic pay higher than the rate for level IV of the Executive Schedule. As a result of the amendments made by the Act to 5 U.S.C. 5382, the maximum rate of basic pay for members of the Senior Foreign Service (SFS) will increase to a rate above level IV beginning on the first day of the first applicable pay

period beginning on or after January 1, 2004. Therefore, SFS members may no longer receive an extension of locality-based comparability payments under 5 U.S.C. 5304.

1. **It is imperative that agencies notify the Office of Personnel Management (OPM) immediately if the maximum rate of basic pay (excluding any locality payments) for any single-agency category of positions to which the President's Pay Agent extended locality pay in 2003 (Attachment 2) will exceed the rate for level IV of the Executive Schedule in January 2004 as a result of the amendments made by the Act in 5 U.S.C. 5382.** Such categories of employees may no longer receive locality-based comparability payments under the authority of 5 U.S.C. 5304.
- The newly amended 5 U.S.C. 5304(h)(1)(D)(vi) prohibits the extension of locality-based comparability payments to a position in a system that is equivalent to positions in the SES system under 5 U.S.C. 3132, as determined by the President's Pay Agent.
  1. **It is imperative that agencies notify OPM immediately if they have any positions to which the President's Pay Agent extended locality payments in 2003 (Attachment 2) that are equivalent to SES positions under 5 U.S.C. 3132.** We advise agencies to use the definition of "Senior Executive Service position" in 5 U.S.C. 3132(a)(2) to identify such positions. The President's Pay Agent will make the final decision on whether identified categories of positions will be eligible for locality payments in 2004.

Locality payments will be extended to the Governmentwide categories in Attachment 1 with no further action required by any agency. Under 5 U.S.C. 5304(h)(2)(A), locality payments may be extended to single-agency categories of employees only at the request of the head of an Executive agency. Therefore, locality payments will be extended to the single-agency categories in Attachment 2 without any further action required by any agency unless (1) the head of an Executive agency requests that an extension not be re-approved or (2) the President's Pay Agent determines that the category is no longer eligible because of the amendments made by the Act.

Please contact Brenda Roberts in OPM's Strategic Human Resources Policy Division, at (202) 606-2858 or by email to [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov), by **December 29, 2003**, if you believe a single-agency category of positions is no longer eligible for a locality pay extension or if you do not want locality payments extended in 2004 to a single-agency employee category in your agency for which such payments were previously authorized by the Pay Agent. Please note that a policy decision not to extend locality payments in 2004 to a category of employees means that those employees would no longer be entitled to any locality payment. All employees in a given locality pay area who receive locality payments in 2004 must receive the same percentage as received by GS employees in that area.

New requests for extending locality-based comparability payments to single-agency categories of non-GS employees should be submitted by the agency head or his or her designee to the following address by **December 29, 2003**, to ensure that the extension takes effect beginning on the first day of the first applicable pay period beginning on or after January 1, 2004:

The Honorable Kay Coles James  
 Director  
 Office of Personnel Management

1900 E Street NW.  
Washington, DC 20415-1000

In your request, please include the following information:

- (1) The legal authority under which the employees are paid.
- (2) The types of employees to be paid.
- (3) The number of employees to be covered by the extension.

New requests for extending locality-based comparability payments to single-agency categories should be directed to the OPM Human Capital Officer for your agency. Employees should contact their agency human resources offices to obtain information on locality pay entitlements.

For the President's Pay Agent:  
Kay Coles James, Director  
Office of Personnel Management

Attachments:

[Governmentwide categories of non-General schedule employees](#)

[Single-agency categories of non-General schedule employees](#)

cc: Chief Human Capital Officers  
Human Resources Directors

*Attachment 1*

**LOCALITY PAY EXTENSIONS  
GOVERNMENTWIDE CATEGORIES OF  
NON-GENERAL SCHEDULE EMPLOYEES**

1. Administrative law judges (ALJs) paid under 5 U.S.C. 5372
2. Administrative appeals judges (AAJs) paid under 5 U.S.C. 5372b
3. Members of Boards of Contract Appeals (BCA) paid under 5 U.S.C. 5372a
4. Senior-level (SL) and scientific or professional (ST) positions paid under 5 U.S.C. 5376
5. Members of the Foreign Service (FS) paid under 22 U.S.C. 3963

*Attachment 2*

**EXTENSIONS  
SINGLE-AGENCY CATEGORIES OF NON-GENERAL SCHEDULE EMPLOYEES**

(updated January 11, 2004)

<b>Agency</b>	<b>Pay Authority [pay plan code]</b>	<b>Types of Employees [number of employees <sup>[1]</sup>]</b>	<b>Original Approval Date</b>
<b>Agency for International Development</b>	<b>22 U.S.C. 2385 [AD]</b>	Miscellaneous types of positions [66]	Jan. 7, 1994
	<b>22 U.S.C. 2386 [EE, EG]</b>	Experts and consultants under the Foreign Assistance Act [15]	Jan. 7, 1994
	<b>5 U.S.C. 3109 [ED, EF]</b>	Experts and consultants [15]	Jan. 7, 1994
<b>Agriculture</b>	<b>5 CFR 213.3102(I) [EG]</b>	Temporary, intermittent, and seasonal employees [1]	Feb. 9, 1994
	<b>5 U.S.C. 3109 [ED, EF]</b>	Experts and consultants [3]	Feb. 9, 1994
<b>American Battle Monuments Commission</b>	<b>36 U.S.C. 2101 [AD]</b>	Secretary of the American Battle Monuments Commission [1]	Nov. 25, 1996
<b>Commerce</b>	<b>35 U.S.C. 3(c) [AD]</b>	Examiners-in-chief on the Board of Patent Appeals and Interferences [8]	Jan. 4, 1994
	<b>35 U.S.C. 3(e) [AD]</b>	Attorney examiners (trademark) on the Trademark Trial & Appeal Board [48]	Jan. 4, 1994
<b>Corporation for National and Community Service</b>	<b>42 U.S.C. 12651f(b)(1) [NX]</b>	Senior level equivalent employees in pay band NX-2 of CNS' alternative personnel system [9]	June 15, 1995

Agency	Pay Authority [pay plan code]	Types of Employees [number of employees <sup>[1]</sup> ]	Original Approval Date
Defense	10 U.S.C. 1595 [AD]	National Defense University Directors, Deans, and Professors [72]	Jan. 3, 1997
	10 U.S.C. 4021 [AD]	United States Army Command and General Staff College Civilian Staff and Faculty [5]	Jan. 3, 1997
	10 U.S.C. 4331 and 4338 [AD]	United States Army Military Academy Civilian Staff and Faculty [97]	Jan. 3, 1997
	10 U.S.C. 6952 [AD]	United States Naval Academy Civilian Faculty [322]	Jan. 3, 1997
	10 U.S.C. 7043 [AD]	Naval Postgraduate School Academic Dean [1]	Jan. 3, 1997
	10 U.S.C. 7044 [AD]	Naval Postgraduate School Civilian Faculty [322]	Jan. 3, 1997
	10 U.S.C. 7478 [AD]	Naval War College Faculty [52]	Jan. 3, 1997
	10 U.S.C. 7478 [AD]	United States Marine Corps Command and Staff College Civilian Faculty [14]	Jan. 3, 1997
	10 U.S.C. 9021 [AD]	Air University Civilian Faculty [30]	Jan. 3, 1997
	10 U.S.C. 9314 [AD]	Air Force Institute of Technology Civilian Faculty [114]	Jan. 3, 1997
	10 U.S.C. 9338 [AD]	United States Air Force Academy Civilian Faculty [77]	Jan. 3, 1997
	10 U.S.C. 1746 [AD]	Defense Acquisition University Faculty [305]	April 12, 2000
	Sec. 1101 of PL 105- 261[AD]	Defense Advanced Research Projects Agency (DARPA) Experimental Personnel Management Program [20]	July 28, 2000

<b>Agency</b>	<b>Pay Authority [pay plan code]</b>	<b>Types of Employees [number of employees <sup>[1]</sup>]</b>	<b>Original Approval Date</b>
<b>Defense Nuclear Facilities Safety Board</b>	<b>Section 161d of the Atomic Energy Act of 1954 (Public Law 101- 510) [DN]</b>	Professional scientific and technical personnel [59]	Dec. 30, 1996
<b>Energy</b>	<b>42 U.S.C. 7231(d) [EJ]</b>	Scientific, engineering, professional, and administrative employees [200]	Dec. 30, 1994
	<b>P.L. 103-337 [EK]</b>	Scientific, engineering, and technical employees [200]	Dec. 30, 1994
	<b>P.L. 92-463 [EI]</b>	Miscellaneous types of positions [14]	Dec. 30, 1994
	<b>5 U.S.C. 3109 &amp; 42 U.S.C. 7233 [ED, EF]</b>	Experts and consultants [105]	Dec. 30, 1994
	<b>Section 3241 of P.L. 106- 65 [EN]</b>	Scientific, engineering, and technical positions in the National Nuclear Security Administration [300]	Jan. 13, 2003
<b>Education</b>	<b>20 U.S.C. 9011 [AD]</b>	Executive Director of the National Assessment Governing Board [1]	June 26, 2002
<b>Environmental Protection Agency</b>	<b>P.L. 95-190 [AD]</b>	Miscellaneous types of positions [19]	Jan. 4, 1994
<b>Export-Import Bank</b>	<b>P.L. 102-583 [AD]</b>	Miscellaneous types of positions [35]	Jan. 24, 1994
<b>General Services Administration</b>	<b>5 U.S.C. 3109 [ED, EF ]</b>	Experts and consultants [10]	June 7, 1999

Agency	Pay Authority [pay plan code]	Types of Employees [number of employees <sup>[1]</sup> ]	Original Approval Date
Homeland Security	P.L 105-261 [AD]	Scientists and engineers at the Homeland Security Advanced Research Projects Agency (HSARPA) [1 (1 as of approval date, but HSARPA was new and in the process of adding positions and recruiting--limited to 20 under Section 1101 of P.L. 105-261)]	Oct. 3, 2003
	Title 14, Section 186 [AD]	Civilian faculty members at the U.S. Coast Guard Academy [68]	Oct. 31, 2003
Interior	Title 4 of D.C. Code [SP]	United States Park Police [620] (Note: Under section 4-416(c)(3) of the D.C. Code, United States Park Police are entitled to locality pay under 5 U.S.C. 5304 by law, not by administrative action. See P.L. 108-7, February 20, 2003, and section 902(b) of Public Law 106-554, December 21, 2000.)	Aug. 10, 1998
Justice	Section 371(a) of Public Law 104-208 and 8 U.S.C. 1101(b)(4) [IJ]	Immigration judges [200] (Note: Immigration judges are entitled to locality pay under 5 U.S.C. 5304 by law, not by administrative action. See section 371(c)(2)(B) of Public Law 104-208, September 30, 1996.)	Dec. 29, 1996
National Archives	44 U.S.C. 2102 Note [AD]	Director of the Center for Legislative Archives [1]	July 15, 1994
	44 U.S.C. 2503(a) [AD]	Executive Director, National Historical Publications and Records Commission [1]	July 15, 1994



<b>Agency</b>	<b>Pay Authority [pay plan code]</b>	<b>Types of Employees [number of employees <sup>[1]</sup>]</b>	<b>Original Approval Date</b>
<b>National Science Foundation</b>	<b>42 U.S.C. 1873(a)(1) [AD, EE, EG]</b>	Professional and technical employees, experts and consultants [264]	Jan. 4, 1994
	<b>5 U.S.C. 3109 [ED, EF]</b>	Experts and consultants [1]	Mar. 22, 1994
<b>Nuclear Regulatory Commission</b>	<b>Atomic Energy Act of 1954 &amp; Energy Reorganization Act of 1974 [SN, AJ]</b>	Senior Level employees [41] and Administrative Judges [12]	Jan. 4, 1994
<b>Office of Personnel Management</b>	<b>5 U.S.C. 3109 [EF, ED, EH]</b>	Experts and consultants [2]	Jan. 7, 1994
<b>Overseas Private Investment Corporation</b>	<b>Section 233(d) of the Foreign Assistance Act of 1961 [AD]</b>	Miscellaneous types of positions [20]	Jan. 31, 1996
<b>Peace Corps</b>	<b>22 U.S.C. 2506(a)(2) [AD]</b>	Miscellaneous types of positions [83]	Jan. 7, 1994
	<b>5 U.S.C. 3109 [EE]</b>	Experts and consultants [34]	Jan. 7, 1994
<b>Securities and Exchange Commission</b>	<b>Section 203 of the Securities Litigation Uniform Standards Act of 1998 [EZ]</b>	Economists [15]	Dec. 23, 1998
<b>Small Business Administration</b>	<b>P.L. 94-305 [AD]</b>	Miscellaneous types of positions [34]	Jan. 4, 1994
	<b>5 U.S.C. 3109 [ED, EF]</b>	Experts and consultants [1]	Dec. 30, 1994
<b>Smithsonian</b>	<b>5 U.S.C. 5375</b>	Members of the police force of the National Zoological Park [13]	Jan. 7, 1994

<b>Agency</b>	<b>Pay Authority [pay plan code]</b>	<b>Types of Employees [number of employees <sup>[1]</sup>]</b>	<b>Original Approval Date</b>
<b>State</b>	<b>22 U.S.C. 1474(l) [GG]</b>	Non-U.S. citizen employees [307]	Jan. 4, 1994
	<b>22 U.S.C. 4024 [GG]</b>	Employees at the National Foreign Affairs Training Center [350]	Jan. 7, 1994
	<b>22 U.S.C. 287 [GG]</b>	Employees at the U.S. Mission to the United Nations [58]	Jan. 7, 1994
	<b>22 U.S.C. 287 [AD]</b>	Miscellaneous types of positions whose pay is linked to Foreign Service Officer pay under 22 U.S.C. 3963	Jan. 7, 1994
	<b>5 U.S.C. 3109 [ED, EF]</b>	Experts and consultants [50]	Jan. 7, 1994
<b>Treasury</b>	<b>5 U.S.C. 5378 [TR]</b>	Members of the police forces in the Bureau of Engraving and Printing and Bureau of the Mint [377]	Jan. 31, 1994
	<b>Title 4 of the D.C. Code [LE]</b>	Uniformed Division of the U.S. Secret Service [1,095] (Note: Under section 4-416(c)(3) of the D.C. Code, United States Secret Service Uniformed Division officers are entitled to locality pay under 5 U.S.C. 5304 by law, not by administrative action. See P.L. 108-7, February 20, 2003, and section 902(b) of Public Law 106-554, December 21, 2000.)	Jan. 31, 1994
<b>U.S. Trade and Development Agency</b>	<b>Section 661(c)(2)(C) of the Foreign Assistance Act of 1961 [AD]</b>	Miscellaneous types of positions [2]	Dec. 9, 1998

<b>Agency</b>	<b>Pay Authority [pay plan code]</b>	<b>Types of Employees [number of employees <sup>[1]</sup>]</b>	<b>Original Approval Date</b>
<b>Veterans Affairs</b>	<b>38 U.S.C. 7404(b)(1) [VN]</b>	Physician assistants, optometrists, podiatrists, and expanded-function dental auxiliaries [1,139]	Jan. 4, 1994
	<b>38 U.S.C. 7405(b)(2) [AD]</b>	Medical support personnel, trainees, and students [631]	Jan. 4, 1994
	<b>38 U.S.C. 7404(a) [SR]</b>	Non-physician, non-dentist, and non-nurse employees [4]	April 5, 1994
	<b>38 U.S.C. 7101A [AL]</b>	Members of the Board of Veteran's Appeals [53]	Dec. 30, 1994

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<sup>[1]</sup> Number of employees as of the original approval date.