



## UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

December 13, 2010

### **MEMORANDUM FOR: Heads of Executive Departments and Agencies**

**FROM:** John Berry, Director

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

Section 5304(h) of title 5, United States Code, requires that extensions of locality pay to non-General Schedule (GS) categories of employees be renewed each year. The President's Pay Agent has decided to extend the 2011 locality payments to the same Governmentwide and single-agency categories of employees authorized to receive the 2010 locality payments. If a pay freeze is enacted for 2011, these categories of employees will be entitled to continue to receive locality payments at the 2010 level.

Locality payments will be extended to the Governmentwide categories shown in Attachment 1 with no further action required by any agency. Under the statute, locality payments may be extended to single-agency categories of employees only at the request of the head of an Executive agency. Attachment 2 shows single-agency categories currently receiving locality pay, which will be extended locality pay in 2011 without any further action required by any agency unless the head of an Executive agency requests that an extension not be re-approved.

Under the statute, locality payments may not be extended to employees paid under the senior level (SL) and scientific and professional (ST) pay systems, members of the Senior Executive Service (SES) and similar pay systems (except certain SL/ST and SES employees in nonforeign areas, as described below), employees paid under the critical pay authority, senior executives in temporary organizations, prevailing rate employees, categories of positions paid Executive Schedule (EX) rates of pay, or any position that has a rate of basic pay higher than the rate for level IV of the Executive Schedule (EX-IV).

The Nonforeign Area Retirement Equity Assurance Act (NAREAA; sections 1911-1919 of Public Law 111-84, October 28, 2009) extends locality pay to employees in SES, SL, and ST positions whose official worksite was located in a nonforeign area (as defined in 5 U.S.C. 5941) on the day before the first day of the first pay period beginning on or after January 1, 2010. Therefore, these SES, SL, and ST employees will receive the locality pay rate for their area, subject to the applicable locality rate cap established by 5 U.S.C. 5304(g)—i.e., EX-II if the employee is covered by an appraisal system certified under 5 U.S.C. 5307(d), or EX-III if not so covered. For additional information, see CPM 2009-27, December 30, 2009, which is available at <https://www.chcoc.gov/content/nonforeign-area-retirement-equity-assurance-act>. In particular, see the section entitled "SES and SL/ST Employees" and the example provided in Attachment 3.

Please contact Allan Hearne, of the U.S. Office of Personnel Management's (OPM's) Pay Systems staff, at (202) 606-2838 or by email at [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov), by December 15, 2010, if you do not want locality payments extended in 2011 to a single-agency employee category in your agency for which such payments were previously authorized by the Pay Agent. Please note that a decision not to extend locality payments in 2011 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 2011 must receive the same percentage as received by GS employees in that area, subject to applicable pay caps.

New requests for extending locality 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 no later than December 15, 2010, to ensure the extension takes effect beginning on the first day of the first pay period beginning on or after January 1, 2011:

The Honorable John Berry  
Director  
U.S. Office of Personnel Management  
1900 E Street, NW.  
Washington, DC 20415-0001

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; and
- (4) A contact person name, telephone number, and e-mail address at your agency.

A copy of new requests for extending locality payments to single-agency categories also should be sent to the OPM Human Capital Officer for your agency.

Under 5 U.S.C. 5304(g) and 5 CFR 531.606, locality rates may not exceed the rate for level III of the Executive Schedule for administrative law judges and members of Boards of Contract Appeals. Locality rates for all other categories of non-GS employees (except certain SES, SL, and ST employees in nonforeign areas as previously described) may not exceed (1) the rate for level IV of the Executive Schedule when the maximum scheduled annual rate of pay for such positions is less than or equal to the maximum payable scheduled annual rate of pay for GS-15 or (2) the rate for level III of the Executive Schedule when the maximum scheduled annual rate of pay for such positions exceeds the maximum payable scheduled annual rate of pay for GS-15.

For the President's Pay Agent:

John Berry, Director  
U.S. Office of Personnel Management

cc: The Honorable Hilda L. Solis  
Secretary of Labor

The Honorable Jacob J. Lew  
Director, Office of Management and Budget  
Chief Human Capital Officers  
Human Resources Directors

Attachments:

Attachment 1: Locality Pay Extensions Governmentwide Categories of Non-General Schedule Employees

Attachment 2: Locality Pay Extensions Single-Agency Categories Of Non-General Schedule Employees (updated November 1, 2010)

## **Attachment 1**

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

Administrative law judges (ALJs) paid under 5 U.S.C. 5372

Administrative appeals judges (AAJs) paid under 5 U.S.C. 5372b

Members of Boards of Contract Appeals (BCA) paid under 5 U.S.C. 5372a

Members of the Foreign Service paid under 22 U.S.C. 3963

Members of the Senior Executive Service (SES) or employees covered by Senior Level (SL) or Scientific and Professional (ST) pay systems with official worksites in a nonforeign area (as defined in 5 U.S.C. 5941) on the day before the first day of the first pay period beginning on or after January 1, 2010.

**Attachment 2**

**LOCALITY PAY EXTENSIONS SINGLE-AGENCY CATEGORIES OF NON-GENERAL SCHEDULE EMPLOYEES (updated November 1, 2010)**

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

<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</b>	10 U.S.C. 1595 [AD]	National Defense University Directors, Deans, and Professors [72]	Jan. 3, 1997
	10 U.S.C. 184 [AD]	Defense Centers for Security, Defense, and Strategic Studies, Director, Deputy Director, professors, instructors, and lecturers.	July 27, 2010
	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>	Section 161d of the Atomic Energy Act of 1954 (Public Law 101-510) [DN]	Professional scientific and technical personnel [59]	Dec. 30, 1996
<b>Energy</b>	42 U.S.C. 7231(d) [EJ]	Scientific, engineering, professional, and administrative employees [200]	Dec. 30, 1994
	P.L. 103-337 [EK]	Scientific, engineering, and technical employees [200]	Dec. 30, 1994
	5 U.S.C. 3109 & 42 U.S.C. 7233 [ED, EF]	Experts and consultants [105]	Dec. 30, 1994
	Section 3241 of P.L. 106-65 [EN]	Scientific, engineering, and technical positions in the National Nuclear Security Administration [300]	Jan. 13, 2003
<b>Education</b>	20 U.S.C. 9011 [AD]	Executive Director of the National Assessment Governing Board [1]	June 26, 2002
	20 U.S.C. 9621 [AD]	Deputy Executive Director of the National Assessment Governing Board [1]	July 13, 2009
<b>Environmental Protection</b>	P.L. 95-190 [AD]	Miscellaneous types of positions [19]	Jan. 4, 1994
<b>Export-Import Bank</b>	P.L. 102-583 [AD]	Miscellaneous types of positions [35]	Jan. 24, 1994
<b>General Services Administration</b>	5 U.S.C. 3109 [ED, EF]	Experts and consultants [10]	June 7, 1999

<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>Homeland Security</b>	P.L 105-261 and P.L. 107-296 [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
	5 U.S.C. chapter 102 [LE]	Uniformed Division of the U.S. Secret Service [1095] (Note: 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 5 U.S.C. 10203(b)(3) and Public Law 111-282, October 15, 2010.)	Jan. 31, 1994
<b>Interior</b>	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
<b>Justice</b>	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
<b>Labor</b>	U.S. Court of Federal Claims, 97-37, April 10, 1997	Administrative law judges with pay set pursuant to a settlement agreement in a lawsuit, Levin and Miller v. U.S., entered into by the United States Court of Federal Claims in 1997. [2]	August 8, 2005



<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 Archives</b>	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>National Science Foundation</b>	42 U.S.C. 1873(a)(1) [AD, EE, EG]	Professional and technical employees, experts and consultants [264]	Jan. 4, 1994
	5 U.S.C. 3109 [ED, EF]	Experts and consultants [1]	Mar. 22, 1994
<b>Nuclear Regulatory Commission</b>	Atomic Energy Act of 1954 & Energy Reorganization Act of 1974 [SN, AJ]	Senior Level employees [41] and Administrative Judges [12]	Jan. 4, 1994
<b>Office of Personnel Management</b>	5 U.S.C. 3109 [EF, ED, EH]	Experts and consultants [2]	Jan. 7, 1994
<b>Overseas Private Investment Corporation</b>	Section 233(d) of the Foreign Assistance Act of 1961 [AD]	Miscellaneous types of positions [20]	Jan. 31, 1996
<b>Peace Corps</b>	22 U.S.C. 2506(a)(2) [AD]	Miscellaneous types of positions [83]	Jan. 7, 1994
	5 U.S.C. 3109 [EE]	Experts and consultants [34]	Jan. 7, 1994
<b>Securities and Exchange Commission</b>	Section 203 of the Securities Litigation Uniform Standards Act of 1998 [EZ]	Economists [15]	Dec. 23, 1998
<b>Small Business Administration</b>	P.L. 94-305 [AD]	Miscellaneous types of positions [34]	Jan. 4, 1994
	5 U.S.C. 3109 [ED, EF]	Experts and consultants [1]	Dec. 30, 1994
<b>Smithsonian</b>	5 U.S.C. 5375	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>	22 U.S.C. 1474(l) [GG]	Non-U.S. citizen employees [307]	Jan. 4, 1994
	22 U.S.C. 4024 [GG]	Employees at the National Foreign Affairs Training Center [350]	Jan. 7, 1994
	22 U.S.C. 287 [GG]	Employees at the U.S. Mission to the United Nations [58]	Jan. 7, 1994
	22 U.S.C. 287 [AD]	Miscellaneous types of positions whose pay is linked to Foreign Service Officer pay under 22 U.S.C. 3963	Jan. 7, 1994
	5 U.S.C. 3109 [ED, EF]	Experts and consultants [50]	Jan. 7, 1994
<b>Transportation</b>	46 U.S.C. Append. 1295g [AD]	Professors, lecturers, and instructors at the U.S. Merchant Marine Academy [86]	Jul. 23, 2008
<b>Treasury</b>	5 U.S.C. 5378 [TR]	Members of the police forces in the Bureau of Engraving and Printing and Bureau of the Mint [377]	Jan. 31, 1994
<b>U.S. Trade and Development Agency</b>	Section 661(c)(2)(C) of the Foreign Assistance Act of 1961 [AD]	Miscellaneous types of positions [2]	Dec. 9, 1998
<b>Veterans Affairs</b>	38 U.S.C. 7404(b)(1) [VN]	Physician assistants, optometrists, podiatrists, and expanded-function dental auxiliaries [1,139]	Jan. 4, 1994
	38 U.S.C. 7405(b)(2) [AD]	Medical support personnel, trainees, and students [631]	Jan. 4, 1994
	38 U.S.C. 7404(a) [SR]	Non-physician, non-dentist, and non-nurse employees [4]	April 5, 1994
	38 U.S.C. 7101A [AL]	Members of the Board of Veteran's Appeals [53]	Dec. 30, 1994

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