



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

The Director

Thursday, December 18, 2008  
CPM 2008-23

**MEMORANDUM FOR: Chief Human Capital Officers**

FROM: Michael W. Hager, Acting Director

Subject: Fiscal Year 2009 Prevailing Rate Pay Adjustments

The Consolidated Appropriations Act, 2008 (Public Law 110-161, December 26, 2007) (the fiscal year 2008 Act), contains two provisions that affect the determination of pay adjustments for certain prevailing rate (wage) employees. The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Public Law 110-329, September 30, 2008) (the FY 2009 Act), contains the floor pay adjustment provision under section 142 and extends into FY 2009 the pay limitation provision of section 712 of the FY 2008 Act.

As extended, section 712 provides that pay increases for certain prevailing rate employees in FY 2009 may not exceed 4.15 percent—the sum of the January 2009 General Schedule (GS) across-the-board percentage adjustment and the difference between the overall average percentage locality payments for GS employees in FY 2008 and FY 2009. Section 142 provides that, notwithstanding section 712, pay adjustments for certain prevailing rate employees in FY 2009 may not be less than the January 2009 pay adjustments received by GS employees where they work. Section 712 applies to wage employees covered by 5 U.S.C. 5342(a)(2) or 5348. Section 142 applies to wage employees covered by 5 U.S.C. 5344 or 5348. Sections 712 and 142 do not apply to wage employees who negotiate their pay under section 9(b) of Public Law 92-392.

Lead agencies must establish wage rates for affected prevailing rate employees for FY 2009 by determining the maximum rates applicable under the pay limitation provisions of section 712, determining the minimum pay increase applicable under section 142, and then applying the **higher** of the rates to affected prevailing rate wage schedules. In some wage areas, wage schedule adjustments under the minimum increase provisions of section 142 will be higher than under the maximum increase provisions of section 712. In addition, as a result of section 142, certain prevailing rate wage areas will have more than one wage schedule in effect during FY 2009.

In addition to regular appropriated and nonappropriated fund wage schedules, prevailing rate pay systems have numerous special pay practices that are affected by sections 712 and 142. Pay adjustments for employees who are paid special rates or are paid from special wage schedules are explained in detail in an attachment to this memorandum.

## **Determining Rates Under Section 712**

Section 712 provides that pay increases for wage employees in FY 2009 may not exceed 4.15 percent—the sum of the GS across-the-board percentage adjustment and the difference between the overall average percentage locality payments for GS employees in FY 2008 and FY 2009.

If any rate exceeds the rate payable on September 30, 2008, by more than 4.15 percent, or if any rate exceeds the rate payable on September 30, 2008, by more than 4.15 percent due to rounding, that rate must be reduced to the highest rate that does not exceed 4.15 percent. If the annual wage survey of private sector rates in a given wage area indicates an adjustment of less than 4.15 percent is warranted under section 712, the lower prevailing rate will be payable under that section.

Wage schedules issued pursuant to a wage survey under the authority of 5 U.S.C. 5343 are subject to the limitation in section 712. The limitation also applies to wage schedules produced by reference to schedules adjusted pursuant to wage surveys and to wage schedules that have been temporarily set aside from certain provisions of the Federal Wage System (FWS) pending study by the Federal Prevailing Rate Advisory Committee. The adjustment of a wage rate required pursuant to a change in an applicable Federal, State, or local minimum wage rate is not subject to the limitation in section 712. Rates established as the result of an adjustment in an applicable minimum wage rate will be the basis for determining the limitation on subsequent adjustments indicated by an annual prevailing rate wage survey.

## **Determining Rates Under Section 142**

Section 142 provides that adjustments in basic pay that take place in FY 2009 under 5 U.S.C. 5344 and 5348 may not be less than the percentage adjustments under 5 U.S.C. 5303 and 5304 received by GS employees in the same location in January 2009.

The geographic boundaries of appropriated and nonappropriated fund prevailing rate wage areas and of GS locality pay areas are not the same. Consequently, section 142 requires that certain prevailing rate wage areas have more than one wage schedule in effect during FY 2009. Although a majority of prevailing rate wage areas coincide only with part of the Rest of U.S. (RUS) GS locality pay area, many prevailing rate wage areas coincide with parts of more than one GS locality pay area.

In each situation where a prevailing rate wage area's boundary coincides with a single GS locality pay area boundary, the lead agency for that wage area must establish one wage schedule applicable in the wage area. For example, the Cascade, MT, nonappropriated fund FWS wage area coincides with part of the RUS GS locality pay area. In this example, the minimum prevailing rate adjustment for the Cascade wage area is the same as the RUS GS locality pay area adjustment, 3.52 percent.

In each situation where a prevailing rate wage area coincides with part of more than one GS locality pay area, the lead agency for that wage area must establish more than one prevailing rate wage schedule for that wage area. For example, the boundaries of the Philadelphia, PA, appropriated fund FWS wage area coincide with parts of three different GS locality pay areas—New York-Newark-Bridgeport, NY-NJ-CT-PA; Philadelphia-Camden-Vineland, PA-NJ-DE-

MD; and Rest of U.S. In this example, the lead agency for the Philadelphia wage area must establish three separate wage schedules for use during FY 2009 in the Philadelphia FWS wage area. In the part of the Philadelphia wage area that coincides with the New York-Newark-Bridgeport, NY-NJ-CT-PA GS locality pay area, the minimum prevailing rate adjustment is 4.20 percent; in the part coinciding with the Philadelphia-Camden-Vineland, PA-NJ-DE-MD GS locality pay area, the minimum prevailing rate adjustment is 3.85 percent; and in the part coinciding with the RUS GS locality pay area, the minimum prevailing rate adjustment is 3.52 percent.

Prevailing rate employees at locations where GS employees do not receive locality payments under 5 U.S.C. 5304, such as Alaska, Hawaii, and Puerto Rico, must receive minimum increases equal to the increases received by GS employees in the RUS locality pay area. Prevailing rate employees in overseas locations described in 5 U.S.C. 5343(a)(5) also must receive increases at least equal to the increases received by GS employees in the RUS GS locality pay area.

Prevailing rate adjustments under section 142 must be rounded upwards when necessary so that such adjustments are not less than the relevant GS percentage adjustments that occur in January 2009.

### **Effective Date of Retroactive Pay Adjustments**

The wage rates on certain FY 2009 wage schedules are effective retroactively to the normal effective date prescribed on the wage schedule by the lead agency. This uniform date is fixed for all agencies using a wage schedule. For example, the wage schedule for the Washington, DC, FWS wage area has a normal effective date in FY 2009 of October 12, 2008. Employees paid from this wage schedule are entitled to pay adjustments retroactive to October 12, 2008. Likewise, the two wage schedules for the Boston, MA, FWS wage area have normal effective dates in FY 2009 of October 26, 2008. Employees paid from these wage schedules are entitled to pay adjustments retroactive to October 26, 2008.

### **Effect on Appropriations**

Section 142 provides that funds used to carry out the provisions of section 142 must be paid from appropriations made to each applicable department or agency for salaries and expenses for FY 2009. Section 142 affects certain prevailing rate employees of nonappropriated fund instrumentalities. In cases where the pay entitlement for prevailing rate employees paid from nonappropriated funds is higher under section 142 than under section 712, agencies must fund the difference from appropriations for agency salaries and expenses for FY 2009.

### **Obtaining Wage Schedules**

Prevailing rate wage schedules will continue to be distributed by lead agencies through normal agency distribution channels. In addition, FWS wage schedules are accessible via the Internet through the Wage and Salary Division of the Department of Defense Civilian Personnel Management Service (Internet address [www.cpms.osd.mil/wage](http://www.cpms.osd.mil/wage)).

For further information, please contact the Office of Personnel Management's Pay Systems Group, Center for Performance and Pay Systems, at (202) 606-2838 or by email at [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov).

cc: Technical Assistants to the Chief Human Capital Officers  
Human Resources Directors

Attachment

Pay Adjustments for Special Rate and Special Schedule Prevailing Rate Employees