



## UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

Wednesday, December 23, 2009

CPM 2009-23

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

**FROM:** John Berry Director

**Subject:** January 2010 Pay Adjustments

The President has signed an Executive order to implement the January 2010 pay adjustments. (See Attachment 1.) The Executive order authorizes a 1.5 percent across-the-board increase for the statutory pay systems under the provisions of 5 U.S.C. 5303 and locality pay increases costing approximately 0.5 percent of payroll under 5 U.S.C. 5304-5304(a), reflecting the overall average pay increase of 2.0 percent authorized by section 744 of Division C of the Consolidated Appropriations Act, 2010 (Public Law 111-117, December 16, 2009). This memorandum reviews relevant portions of the Executive order and provides general information on the 2010 pay adjustments for the General Schedule (GS) pay system and certain other pay systems and schedules.

#### **2010 Salary Tables and Effective Date**

We have posted the 2010 salary tables on the U.S. Office of Personnel Management's (OPM's) Website at [opm.gov/oca/10tables/index.asp](http://opm.gov/oca/10tables/index.asp). The 2010 pay rates will become effective on the first day of the first applicable pay period beginning on or after January 1, 2010 (January 3, 2010).

#### **The General Schedule and Other Statutory Pay Systems**

The Executive order provides an across-the-board increase of 1.5 percent in the rates of basic pay for the statutory pay systems—the GS, the Foreign Service schedule, and certain schedules for the Veterans Health Administration of the Department of Veterans Affairs. Special base rates for law enforcement officers at GS grades 3 through 10 also are increased by 1.5 percent. (These law enforcement officers are assigned the “GL” pay plan code.)

#### **Executive Schedule**

Under 5 U.S.C. 5318, Executive Schedule (EX) rates of pay will be increased by 1.5 percent (rounded to the nearest \$100) and will become effective on the first day of the first applicable pay period beginning on or after January 1, 2010 (January 3, 2010). The EX salary table is available on OPM's Website at [opm.gov/oca/10tables/indexSES.asp](http://opm.gov/oca/10tables/indexSES.asp).

## Senior Executive Service

Under 5 U.S.C. 5382, the minimum rate of basic pay for the Senior Executive Service (SES) rate range will be adjusted to be consistent with the increase in the minimum rate of basic pay for senior-level positions under 5 U.S.C. 5376 (\$119,554 in 2010). The applicable maximum rate of basic pay for the SES will be \$179,700 (EX-II) for SES members covered by a certified SES performance appraisal system and \$165,300 (EX-III) for SES members covered by an SES performance appraisal system that has not been certified. An SES member at the minimum rate of the SES rate range must receive a pay increase of 1.5 percent in January 2010, since an SES member may not receive less than the minimum rate of the SES rate range. An agency's determination to adjust the rate of basic pay for an SES member that is approved by the end of the first pay period in January 2010 (January 16, 2010) may be made effective as of the first day of that first pay period (January 3, 2010). Determinations to adjust SES pay that are approved after January 16, 2010, will become effective at the beginning of the next pay period following the approval. OPM's regulations for setting and adjusting SES pay are available at 5 CFR part 534, subpart D.

## Senior-Level and Scientific or Professional Positions

The minimum rate of basic pay for the senior-level (SL) and scientific and professional (ST) rate range will be increased by 1.5 percent (\$119,554 in 2010), which is the amount of the across-the-board GS increase. The applicable maximum rate of basic pay will be \$179,700 (EX-II) for SL or ST employees covered by a certified SL/ST performance appraisal system and \$165,300 (EX-III) for SL or ST employees covered by an SL/ST performance appraisal system that has not been certified. An SL or ST employee at the minimum rate of the SL/ST rate range must receive a pay increase of 1.5 percent in January 2010, since an SL or ST employee may not receive less than the minimum rate of the SL/ST rate range. An increase in an SL or ST employee's rate of basic pay upon conversion to the new SL/ST pay system on April 12, 2009, was considered a pay adjustment for the purpose of 5 CFR 534.503(c), which prohibits more than one pay adjustment for an SL or ST employee in any 12-month period (with certain exceptions). Therefore, for an SL or ST employee who received a basic pay increase upon conversion to the new SL/ST pay system, an agency may provide an annual adjustment in pay under 5 CFR 534.504 effective the first day of the first pay period beginning on or after January 1, 2010 (January 3, 2010) that is no higher than the greater of the statutory adjustments provided to GS or EX employees (1.5 percent in 2010). Such an adjustment is excluded from the 12-month rule. (See [CPM 2009-06](#).) Note that an agency does not have discretion to substitute a performance-based increase for this annual adjustment in pay for an SL or ST employee who is subject to the 12-month waiting period.

## 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 1.5 percent, rounded to the nearest \$100. The rate of basic pay for AL-1 will be \$155,500 (equivalent to the rate for EX-IV). The rate of basic pay for AL-2 will be \$151,800. The rates of basic pay for AL-3/A through 3/F will range from \$103,900 to \$143,700. The ALJ salary table is available on OPM's Website at [opm.gov/oca/10tables/indexSES.asp](http://opm.gov/oca/10tables/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. At 5 CFR 534.603, OPM's regulations 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 correspond to the rates of basic pay for AL-3/A, B, C, D, E, and F of the ALJ pay system. The AAJ salary table is available on OPM's Website at [opm.gov/oca/10tables/indexSES.asp](http://opm.gov/oca/10tables/indexSES.asp).

## **Locality Payments**

The President's Executive order establishes the amounts of the 2010 locality payments for GS employees. Attachment 2 provides a table showing the 2010 locality pay percentage and total percentage increase in each locality pay area (reflecting the combined effect of the 1.5 percent across-the-board increase and the applicable increase in the locality pay percentage). Also provided is a chart showing an example of how the 2010 locality rate and total increase are computed for an employee in the "Rest of U.S." locality pay area. (See Attachment 3.)

Certain employees in the nonforeign areas listed in 5 CFR 591.205 will begin receiving locality pay the first day of the first pay period beginning on or after January 1, 2010 (January 3, 2010) as a result of the Nonforeign Area Retirement Equity Assurance (AREA) Act contained in the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Public Law 111-84, October 28, 2009). OPM is issuing a separate memorandum to describe the Nonforeign AREA Act in more detail.

## **Locality Pay Extensions**

On October 23, 2009, the Director of OPM issued a memorandum on behalf of the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget (OMB) and OPM) that extends GS locality payments to ALJs and certain other non-GS employee categories again in 2010. By law, EX officials, SES members, employees in SL/ST positions, and employees in certain other equivalent pay systems are not authorized to receive locality payments. (Note: An exception applies to SES, SL, or ST employees stationed in a nonforeign area on January 2, 2010. OPM is issuing a separate memorandum to describe SES, SL, and ST employee eligibility for locality pay in nonforeign areas under the Nonforeign AREA Act.)

## **Locality Pay Areas in 2010**

We do not anticipate any changes in existing locality pay areas effective on the first day of the first applicable pay period beginning on or after January 1, 2010 (January 3, 2010). Alaska, Hawaii, and "Other Nonforeign Areas" listed in 5 CFR 591.205 are new locality pay areas in 2010. Locality pay area definitions are posted at [opm.gov/oca/10tables/locdef.asp](http://opm.gov/oca/10tables/locdef.asp).

Note that locality pay area definitions are tied to Metropolitan Statistical Areas (MSAs) and Combined Statistical Areas (CSAs) identified by OMB and are subject to change if OMB adds

locations to MSAs or CSAs. If OMB adds locations to MSAs or CSAs affecting locality pay areas, the changes go into effect with the first pay period beginning on or after January 1 of the next calendar year. OPM will post any revisions to locality pay areas as a result of OMB actions as soon as possible after we are notified of the changes by OMB.

### **2009 Annual Review of Special Rates**

We are issuing a separate memorandum announcing the results of the 2009 annual review of special rates.

### **Aggregate Limitation on Pay**

The aggregate limitation on pay for calendar year 2010 will be \$199,700 (equivalent to the rate for EX-I). SES members and employees in SL/ST positions who are covered by a certified performance appraisal system are subject to a higher aggregate limitation on pay of the Vice President's salary (\$230,700 in 2010). (See 5 U.S.C. 5307 and 5 CFR part 530, subpart B.) Information on obtaining certification of performance appraisal systems is available at [opm.gov/ses/performance/certification.asp](http://opm.gov/ses/performance/certification.asp).

### **2010 Premium Pay Caps**

Under 5 U.S.C. 5547(a) and 5 CFR 550.105, GS and other covered employees may receive certain types of premium pay in a biweekly pay period only to the extent that the sum of basic pay and such premium pay for the pay period does not exceed the greater of the biweekly rate payable for (1) GS-15, step 10 (including any applicable locality payment or special rate supplement), or (2) the rate payable for EX-V (\$145,700 in 2010). In certain emergency or mission-critical situations, an agency may apply an annual premium pay cap instead of a biweekly premium pay cap, subject to the conditions prescribed in law and regulation. (See 5 U.S.C. 5547(b) and 5 CFR 550.106–550.107.) We have posted the biweekly premium pay caps on OPM's Website at [opm.gov/oca/pay/html/10GSCap.asp](http://opm.gov/oca/pay/html/10GSCap.asp).

Under section 1106 of the NDAA for Fiscal Year 2010 (Public Law 111-84, October 28, 2009), the head of an agency may waive the premium pay cap provisions under 5 U.S.C. 5547 in calendar year 2010. This waiver authority applies to certain civilian employees who perform work while in an overseas location that (1) is in the area of responsibility of the United States Central Command (CENTCOM) or (2) was formerly in the CENTCOM area of responsibility but has been moved to the area of responsibility of the Commander of the United States Africa Command (AFRICOM). The qualifying overseas work must meet one of two additional qualifying conditions: (1) performance of work in direct support of or directly related to a military operation (including a contingency operation as defined in 10 U.S.C. 101(a)(13)) or (2) performance of work in direct support of or directly related to an operation in response to an emergency declared by the President. The annual limitation on basic pay and premium pay allowed under the waiver authority is \$230,700 in calendar year 2010. Section 1106 also provides that the aggregate limitation on pay under 5 U.S.C. 5307 will not apply to an employee in calendar year 2010 if the employee is granted a waiver of the normally applicable premium pay limitations.

## **Post Employment Restrictions**

Agencies are required to notify SES members, SL and ST employees, and other individuals who are paid at a rate of basic pay equal to or greater than 86.5 percent of the rate for EX-II (\$155,441 in 2010) that they are subject to certain post-employment restrictions in 18 U.S.C. 207(c). (See 18 U.S.C. 207(c)(2)(A)(ii).) OPM's regulations requiring notification of post-employment restrictions are available at 5 CFR part 730. Agencies may continue to use the sample notice OPM provided in its memorandum of January 6, 2004 (CPM 2004-01), to notify an SES member, SL and ST employees, or other individual that he or she is subject to the post-employment restrictions in 18 U.S.C. 207(c). (Agencies will need to update the pay system, salary threshold, and effective date, as appropriate.) The sample notice is available at [opm.gov/oca/compmemo/2004/2004-01\\_attach1.asp](http://opm.gov/oca/compmemo/2004/2004-01_attach1.asp).

## **Order for Processing Pay Actions**

The general pay adjustments that take effect in January 2010 must be processed **before** any individual pay action (e.g., a within-grade increase or promotion) that takes effect on the same date. General pay adjustments include across-the-board increases under 5 U.S.C. 5303 and increases in locality payments or other geographic adjustments, special rate supplements, and retained rates. If multiple individual pay actions become effective on the date of the January 2010 pay adjustment, those actions must be processed in the order applicable to the employee's pay system (e.g., the simultaneous action rule for GS employees in 5 CFR 531.206).

## **Pay Administration**

We are providing the following examples of pay computations to assist agencies in administering the 2010 pay adjustments for GS employees:

Examples of January 2010 Pay Computations -- See [opm.gov/oca/compmemo/2009/10PAYCOMP.ASP](http://opm.gov/oca/compmemo/2009/10PAYCOMP.ASP).

How to Compute Rates of Pay -- See [www.opm.gov/oca/pay/HTML/computerates.asp](http://www.opm.gov/oca/pay/HTML/computerates.asp).

How to Compute FLSA Overtime Pay -- See [www.opm.gov/oca/pay/HTML/computeflsa.asp](http://www.opm.gov/oca/pay/HTML/computeflsa.asp).

## **Internal Revenue Service Guidance**

Internal Revenue Service (IRS) Publication 15, Circular E, Employer's Tax Guide (revised January 2010), will show the 2010 wage bracket income tax withholding tables for both single and married persons who are paid on a biweekly basis. IRS will mail Publication 15 to employers, and this publication also should be available at IRS offices in January 2010. (Call 1-800-829-3676 to order copies.) IRS publications may be downloaded at [www.irs.gov/formspubs/index.html](http://www.irs.gov/formspubs/index.html).

**Questions**

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

cc: Chief Human Capital Officers  
Human Resources Directors

**Attachments**

- Attachment 1
- Attachment 2
- Attachment 3