



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

The Director

Thursday, April 2, 2009  
CPM 2009-06

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

FROM: Kathie Ann Whipple, Acting Director

Subject: New SL/ST Pay System

The Senior Professional Performance Act of 2008 (Public Law 110-372, October 8, 2008), hereafter referred to as the "Act", establishes a new pay system for senior-level (SL) and scientific and professional (ST) employees that provides pay ranges comparable to those available under the Senior Executive Service (SES) pay system. (See CPM 2008-19, November 7, 2008.)

This memorandum provides information on the new SL/ST pay structure and guidance on converting an SL or ST employee to the new SL/ST pay system. The regulations on pay for SL and ST positions in 5 CFR part 534, subpart E, continue to apply, except when they have been superseded by law, as described below. The U.S. Office of Personnel Management (OPM) will issue proposed regulations to provide new rules for setting and adjusting SL and ST rates of basic pay in the near future.

**Effective Date**

The new SL/ST pay system will go into effect on April 12, 2009.

**New SL/ST Pay Structure**

The minimum rate of basic pay under the new SL/ST pay system will continue to be 120 percent of the minimum rate of basic pay payable for GS-15 (\$117,787 in 2009). The maximum rate of basic pay will be the rate payable for level II of the Executive Schedule (EX-II) (\$177,000 in 2009) for SL and ST employees covered by a performance appraisal system certified under 5 U.S.C. 5307(d) by OPM with the concurrence of the Office of Management and Budget. The maximum rate of basic pay under the new SL/ST pay system will be the rate payable for EX-III (\$162,900 in 2009) for SL and ST employees covered by a performance appraisal system that has not been certified under 5 U.S.C. 5307(d). Effective April 12, 2009, 5 CFR 534.502(b) regarding the maximum rate of the SL/ST pay range will be superseded. Agencies should revise their written procedures established under 5 CFR 534.503 to reflect the new SL/ST pay structure.

A certified SL/ST appraisal system makes meaningful distinctions based on relative performance. In addition, agencies that obtain such certification must apply to their SL and ST employees a higher aggregate limitation on pay under 5 U.S.C. 5307(d) that is equivalent to the total annual compensation payable to the Vice President (\$227,300 in 2009). The regulations prescribing the substantive and procedural requirements that an agency must meet to receive such certification for these purposes are in 5 CFR part 430, subpart D.

### **Applicability of the New SL/ST Pay System**

The Act applies to employees appointed to positions compensated under 5 U.S.C. 5376. An agency with employees appointed to positions that are similar but compensated under different statutory authority must determine what actions, if any, the applicable statutes authorize the agency to take with respect to changes made by the Act to 5 U.S.C. 5376. In addition, section 2(d) of the Act provides specific rules for interpreting existing references in statute to maximum rates payable under 5 U.S.C. 5376. If the law that refers to the maximum rate under 5 U.S.C. 5376 was enacted before April 12, 2009, the maximum rate under section 5376 is considered to be the rate payable for EX-IV. (For such an employee, locality pay may be payable if extended under 5 U.S.C. 5304(h), subject to an EX-III cap on the locality-adjusted rate.) If the law that refers to the maximum rate under 5 U.S.C. 5376 was enacted on or after April 12, 2009, the maximum rate under section 5376 is considered to be the rate payable for EX-III, unless the head of the agency responsible for administering the applicable pay system certifies that the employees in question are covered by a performance appraisal system meeting the criteria in 5 CFR part 430, subpart D—in which case, the maximum rate under section 5376 is considered to be the rate payable for EX-II. (For such an employee subject to an EX-III or EX-II cap on the rate of basic pay, locality pay under 5 U.S.C. 5304 is not payable.)

### **Conversion to the New SL/ST Pay System**

Guidance on converting SL and ST employees to the new SL/ST pay system, processing the conversion action, and notifying employees on post-employment restrictions is provided in the attachments to this memo.

### **Additional Information**

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

cc: Chief Human Capital Officers

Human Resources Directors

Attachments

## **Attachment 1**

### **Guidance on Conversion to the New SL/ST Pay System**

#### **Setting Pay for SL and ST Employees upon Conversion**

Under section 2(d) of Public Law 110-372, October 8, 2008, agencies must convert SL and ST employees to the new SL/ST pay system on April 12, 2009. An SL or ST employee's converted rate of basic pay is his or her rate of basic pay, plus any applicable locality pay paid to the employee on the day prior to conversion. Under the new pay system, locality pay will no longer be paid on top of SL or ST basic rates. In processing the conversion, an agency must take into account the EX-III limitation on locality rates for SL and ST positions that applies on April 11, 2009. An increase in an SL or ST employee's rate of basic pay upon conversion to the new SL/ST pay system as a result of the addition of locality pay is 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). In other words, an agency may not further increase an SL or ST employee's rate of basic pay after the conversion until April 12, 2010, unless the subsequent pay adjustment is excluded from the 12 month restriction under 5 CFR 534.503(c)(2) or (c)(3). However, an agency must convert an SL or ST employee to the new SL/ST pay system even if he or she has received a pay adjustment in the 12 months prior to April 12, 2009, because the conversion is required by law.

For example, on April 11, 2009, an SL employee who is at the maximum of the SL/ST rate range and has an official worksite in a locality pay area receives a rate of basic pay of \$153,200 (i.e., EX-IV) and a locality payment of \$9,700 for a total rate of \$162,900. (The difference between the rate for EX-III and EX-IV is \$9,700.) The SL employee's converted rate of basic pay will be \$162,900. Except as provided in current regulations at 5 CFR 534.503(c)(2) and (c)(3), the SL employee may not receive another pay adjustment until April 12, 2010.

SL and ST employees who have an official worksite on April 11, 2009, outside the 48 contiguous States or the District of Columbia in a position overseas or in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands or other U.S. territory and possession where locality pay is not authorized will convert to the new SL/ST pay system at their rate of basic pay (which does not include any locality pay) on April 12, 2009. Since such employees will not receive an increase in basic pay upon conversion, the conversion is not considered a pay adjustment for the purpose of applying the 12-month rule under 5 CFR 534.503(c).

Agencies must apply the pay conversion before processing any other pay action that takes effect on April 12, 2009. For example, an SL or ST employee with an official worksite in a locality pay area on April 11, 2009, who moves effective April 12, 2009, to an SL or ST position in a different locality pay area will be converted to a rate of basic pay that includes the locality pay the employee received on April 11, 2009. The SL or ST pay conversion must be processed before processing the move to the new official worksite.

The newly converted SL or ST rate will become the SL or ST employee's rate of basic pay for all pay computation purposes. Consistent with section 2(d) of the Act, an agency may not reduce an SL or ST employee's rate of basic pay, including any applicable locality payment in effect on April 11, 2009, as a result of conversion to the new SL/ST pay system. (This does not limit an agency's authority to reduce an SL or ST employee's rate of basic pay under 5 CFR 534.503(d) after conversion.)

### **Processing Personnel Actions to Convert to the New Pay System**

For the purpose of processing a personnel action (SF-50) to effect conversion to the new pay system, a "pay adjustment" is any increase or reduction in an employee's rate of basic pay where there is no change in the duties or responsibilities of the employee's position, or where there is a change in the pay system under which the employee is paid. To document the conversion, agencies should use Nature of Action (NOA) code "890/Misc Pay Adjustment" and Legal Authority code "ZLM/P.L. 110-372." When processing the conversion for SL and ST employees who are subject to the 1-year post-employment conflict of interest restrictions set forth in 18 U.S.C. 207(c), agencies should include a remark code ("M97") on the SF-50 which reads as follows: "Employee subject to post-employment restrictions under 18 U.S.C. 207(c)."

### **Notification of Post-Employment Restrictions**

Agencies are required to notify SL and ST employees and other individuals who are paid at a rate of basic pay (excluding locality pay) equal to or greater than 86.5 percent of the rate for EX-II (\$153,105 in 2009) 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 use the sample notice in Attachment 2 to notify an SL or ST employee or other individual that he or she is subject to the post-employment restrictions in 18 U.S.C. 207(c) and document the coverage using remark code "M97" on the SF-50, as noted under "Processing Personnel Actions to Convert to the New Pay System."

### **Pay Adjustments for SL and ST Employees after Conversion**

OPM's regulations at 5 CFR 534.503 will continue to apply when setting pay for an SL or ST employee after conversion, as supplemented by agency pay-setting procedures. OPM will propose regulations to provide new rules for setting and adjusting pay for SL and ST employees in the near future. We are considering elimination of the regulation that restricts an agency's flexibility to adjust pay more than once during a 12-month period.

In addition, we are considering proposing a mandatory supplemental conversion pay adjustment for any SL or ST employee who has an official worksite on April 11, 2009, that is outside the 48 contiguous States or the District of Columbia in a position overseas or in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, or other U.S. territory and possession where locality pay is not authorized, upon the employee's first movement (after April 11, 2009) to an SL or ST position in a locality pay area. The pay adjustment would apply prospectively, not retroactively. We have developed the following formula for this adjustment, which will produce the approximate rate of basic pay the employee

would have had if the employee had been located in the given locality pay area immediately before the April 12, 2009, conversion (based on the locality rates and the EX-III locality rate cap in effect at that time).

**Step A:** Determine the dollar amount of the locality payment that would have been payable to the employee on April 11, 2009, if the employee had been officially stationed in the locality pay area to which the employee is now moving (taking into account the Executive Schedule level III cap on locality rates in effect at that time).

**Step B:** Divide the amount from step A by the employee's rate of basic pay in effect on April 11, 2009, to determine the percentage value of the locality pay dollar amount.

**Step C:** Multiply the employee's rate of basic pay in effect immediately before movement to a locality pay area by a factor equal to 1 plus the percentage value derived in step B, and round the result to the nearest whole dollar.

**Step D:** The employee's new rate of basic pay is the amount derived under step C, except that it may not exceed the current rate of basic pay for level II of the Executive Schedule for SL and ST employees covered by a performance appraisal system certified under 5 U.S.C. 5307(d), or the current rate of basic pay for level III of the Executive Schedule for SL and ST employees covered by a performance appraisal system that has not been certified under 5 U.S.C. 5307(d).

An agency that wants to provide an adjustment to an employee in this situation upon a first movement to a position in a locality pay area that occurs before OPM publishes new regulations may do so under current regulations, provided: (1) the agency revises its written procedures under 5 CFR 534.503(a) to provide for such an adjustment, and (2) the individual has not received a pay adjustment within the preceding 12 months. The pay adjustment would be subject to the existing 12-month restriction in 5 CFR 534.503(c) and would initiate a new 12-month waiting period for the employee.

### **Setting Pay for New SL and ST Employees**

An agency with a performance appraisal system covering SL and ST employees that has been certified under 5 U.S.C. 5307(d) may set the rate of basic pay of an individual at any rate within the SL/ST rate range upon initial appointment to the SL or ST position on or after April 12, 2009, subject to the EX-II limitation on the maximum rate of basic pay and the agency's written procedures under 5 CFR 534.503. An agency with a performance appraisal system covering SL and ST employees that has not been certified under 5 U.S.C. 5307(d) may set the rate of basic pay of an individual at any rate within the SL/ST rate range upon initial appointment to the SL or ST position on or after April 12, 2009, subject to the EX-III limitation on the maximum rate of basic pay and the agency's written procedures under 5 CFR 534.503.

## Attachment 2

### Sample Notice of Post-Employment Restrictions

**Notice for senior-level (SL) and scientific and professional (ST) employees who will become subject to the post-employment restrictions because the employee's rate of basic pay (excluding locality pay) is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (\$153,105 in 2009):**

Effective on April 12, 2009, you are subject to the post-employment conflict of interest restrictions as set forth in 18 U.S.C. 207(c) because you serve in what the Office of Government Ethics refers to as a "senior" position. A senior position for these purposes is one for which the rate of basic pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (\$153,105 in 2009). Your rate of basic pay upon conversion to the new SL/ST pay system in accordance with Public Law 110-372 (Senior Professional Performance Act of 2008, October 8, 2008) will exceed \$153,105.

The post-employment restrictions require that for 1 year after service in a senior position ends, no former senior employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he or she served in any capacity during the 1-year period prior to ending service in that senior position, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he or she seeks official action by that employee. These post-employment restrictions will apply to you for 1 year after your service in a senior position as defined above ends. You will be notified of any future changes in coverage under the post-employment restrictions.

In addition, you may wish to contact the agency's Ethics Officer for further guidance. Mr./Ms. \_\_\_\_\_ may be reached at \_\_\_\_\_.