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108TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 108–586

PAY COMPRESSION RELIEF ACT OF 2004

JULY 7, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. TOM DAVIS of Virginia, from the Committee on Government Reform, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3737]

[Including cost estimate of the Congressional Budgt Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 3737) to increase the minimum and maximum rates of basic pay payable to administrative law judges, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:

29–006

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Pay Compression Relief Act of 2004".

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 5, United States Code.

SEC. 2. AMENDMENTS RELATING TO BASIC PAY.

(a) ADMINISTRATIVE LAW JUDGES.—Section 5372(b)(1)(C) is amended by striking "may not exceed the rate for level IV" and inserting "may not exceed the rate for level III".

(b) CONTRACT APPEALS BOARD MEMBERS.—Section 5372a is amended—

(1) By striking subsection (b) and inserting the following:

"(b)(1) Rates of basic pay under this section—

"(A) shall consist of—

"(i) the rate for the chairman of an appeals board;

"(ii) the rate for the vice chairman of an appeals board; and

"(iii) the rate for all other contract appeals board members;

"(B) shall be initially adjusted by the Office of Personnel Management and thereafter adjusted under paragraph (2); and

"(C) shall not be greater than the rate of basic pay for level III of the Executive Schedule nor less than 94 percent of the rate of basic pay for level IV of the Executive Schedule.

"(2) Subject to paragraph (1)(C), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 in the rates of basic pay under the General Schedule, each rate of basic pay for contract appeals board members shall be adjusted by an amount determined by the President to be appropriate."; and

(2) by adding after subsection (c) the following:

"(d) The Office of Personnel Management shall prescribe regulations necessary to administer this section.".

(c) CERTAIN SENIOR-LEVEL POSITIONS.—Section 5376(b)(1)(B) is amended by striking "level IV" and inserting "level III".

SEC. 3. AMENDMENTS RELATING TO LOCALITY-BASED COMPARABILITY PAYMENTS.

(a) MODIFIED MAXIMUMS.—Paragraph (2) of section 5304(g), as amended by section 1125(a)(1)(A) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1638), is amended to read as follows:

"(2) The applicable maximum under this subsection shall be—

"(A) level II of the Executive Schedule for positions under subparagraphs (A)–(D) of subsection (h)(1); and

"(B) level III of the Executive Schedule for any positions under subsection (h)(1)(E) which the President may determine.".

(b) ADMINISTRATIVE APPEALS JUDGES.—Section 5304(h)(1), as amended by section 1125(a)(1)(B) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1638), is amended—

(1) in subparagraph (C), by striking "and" at the end;

(2) by redesignating subparagraph (D) as subparagraph (E); and

(3) by inserting after subparagraph (C) the following:

"(D) a position to which section 5372b applies (relating to administrative appeals judges); and".

SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.

Section 5304(h)(2)(B), as amended by section 1125(a)(1)(C) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1638), is amended—

(1) in clause (i)—

(A) by striking "(A) through (C)" and inserting "(A) through (D)"; and

(B) by striking "(vii)" and inserting "(vi)"; and

(2) in clause (ii), by striking "(1)(D)" and inserting "(1)(E)".

SEC. 5. APPLICABILITY.

(a) IN GENERAL.—The amendments made by this Act shall—

(1) for purposes of computing any rate of compensation for service performed in any pay period beginning before the date specified under subsection (b), be treated as if they had never been enacted; and

(2) for purposes of computing any rate of compensation for service performed in any pay period beginning on or after the date specified under subsection (b),

take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1392).

(b) DATE SPECIFIED.—The date specified under this subsection shall be the earlier of—

(1) the first day of the first pay period beginning at least 90 days after the date of the enactment of this Act; or

(2) such other date (not earlier than the date of the enactment of this Act) as the Office of Personnel Management may determine.

SEC. 6. REPORTING REQUIREMENT.

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Office of Personnel Management shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate a written report containing the following:

(1) A list of all Executive Schedule positions, and the rate of basic pay in effect for and the total number of individuals occupying each such position.

(2) A comparison of the rates of basic pay for administrative law judges, administrative appeals judges, and contract appeals board members (before and after taking comparability pay into account) with—

(A) the rates of basic pay for Executive Schedule positions; and

(B) the rates of basic pay for United States magistrate judges, United States bankruptcy judges, judges of a United States district court, and judges of a United States court of appeals, respectively.

(3) A determination of whether rates of basic pay for administrative law judges, administrative appeals judges, and contract appeals board members are incongruous with the rates of basic pay for the positions referred to in paragraphs (2)(A) and (2)(B), respectively.

(4) A recommendation on the extent to which the rates of basic pay for Executive Schedule positions should be adjusted (if at all), based on any determination under paragraph (3).

(5) Any other information or recommendation which the Office of Personnel Management considers pertinent to the issue of appropriate rates of basic pay for Executive Schedule positions.

(b) DATA AND METHODOLOGY.—The report of the Office of Personnel Management under this section shall include a statement identifying the data and methodology used in preparing such report.

(c) DEFINITIONS.—For purposes of this section—

(1) the term "Executive Schedule positions" means positions under the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code, and all other positions in the executive branch the annual rates of basic pay for which are individually fixed, or expressly authorized to be fixed, by statute, at the rate provided for a level of the Executive Schedule or at a rate determined by reference to a level of the Executive Schedule, but does not include administrative law judges, contract appeals board members, or administrative appeals judges;

(2) the terms "administrative law judge", "contract appeals board member", and "administrative appeals judge" have the meanings given them by sections 5372, 5372a, and 5372b of title 5, United States Code, respectively; and

(3) the term "comparability pay" means comparability pay under section 5304 of title 5, United States Code, or similar provision of law.

Amend the title so as to read:

A bill to adjust the rates of pay payable to administrative law judges, and for other purposes.

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 3737, the Pay Compression Relief Act of 2004, is intended to raise the current cap on pay that results in pay compression of pay rates of higher level administrative law judges, members of contract appeals boards, and certain senior level employees outside the Senior Executive Service. The rates of basic pay for these employees would be set administratively, subject to a new, higher limit set in law, together with a new higher cap on locality pay.

This allows the Executive branch to establish salaries that reflect differences in position responsibility.

BACKGROUND AND NEED FOR LEGISLATION

The Committee is concerned by the problem of pay compression among administrative law judges (ALJs) and certain other categories of employees outside the Senior Executive Service (SES). Pay compression causes employees at lower levels of responsibility to be paid at the same rate of pay as higher-responsibility employees. Until enactment of the National Defense Authorization Act for Fiscal Year 2004, the employees covered by H.R. 3737 were subject to the same pay cap as members of the SES. Due to the recognized problem of pay compression in the SES, section 1125 of the Act amended title 5 of the United States Code to relieve pay compression in the SES by lifting the cap on pay from executive level III (currently $145,600) to executive level II ($158,100) for high-performing executives in agencies with qualifying performance appraisal systems. The Act also authorizes employing agencies to set individual SES pay at any rate within a range of $104,927 (120% of grade 15 of the General Schedule) to a maximum of EL–III or, for agencies with certified performance appraisal systems, EL–II.

The approximately 1,300 ALJs in nearly 30 Federal agencies across the government are responsible for hearing disputes over agency decisions. Most of them work at the Social Security Administration, where they make judgments on benefits appeals. ALJs in other agencies adjudicate cases involving a range of significant and diverse regulatory matters that may affect millions of people and involve billions of dollars. Due to the need for independent decision-making by ALJs, their pay is not subject to performance appraisal ratings.

The current EL–III cap on combined basic and locality pay of ALJs has resulted in a serious pay compression problem:

- Both levels of supervisory ALJs in all 32 localities receive the same pay.
- ALJs at the highest non-supervisory level (AL–3F) in 11 localities—including Boston, Chicago, Los Angeles, New York and San Francisco—receive the same pay as supervisors.
- In two localities (San Francisco and Houston), ALJs at the next level down (AL–3E) also receive the same pay as supervisors.
- In another seven localities, the AL–3F rate is within about $1000 per year of the supervisory rate.

The magnitude of this problem threatens the ability to hire and retain an appropriate number of well-qualified ALJs. This legislation addresses ALJ pay compression by authorizing OPM to adjust upward the maximum rates of basic pay for ALJs (up to a cap of EL–III), while continuing their eligibility for locality pay increases subject to a new cap of (EL–II).

In the case of members of boards of contract appeals, when basic pay is increased by locality pay, the Chairman and Vice Chairman in every locality are capped at EL–III ($145,600). In 18 of the 32 locality pay areas, the other members of these boards also receive the capped rate, so that the majority of these employees all receive the same pay despite differing levels of responsibility. The amendment would allow OPM to alleviate this severe pay compression, increasing the combined basic plus locality pay cap to EL–II.

Senior level (SL) and scientific and professional (ST) positions are also capped under current law at EL–IV for basic pay and EL–III for combined basic and locality pay. By law, their basic pay is set by their employing agency head, subject to OPM regulations. The amendment would raise the locality pay cap to EL–II, but does not otherwise change the ability of agency heads to determine the appropriate pay rate in each case.

The Subcommittee expects OPM to take action to alleviate pay compression for ALJs and members of boards of contract appeals as soon as possible following enactment of this legislation and to encourage agency heads to make appropriate use of their new flexibility in setting salaries of SL/ST employees.

LEGISLATIVE HISTORY

On January 28, 2004, Subcommittee Chairwoman Jo Ann Davis introduced H.R. 3737. That same day, the bill was referred to the Government Reform Committee, which referred the bill to the Subcommittee on Civil Service and Agency Organization on January 30. On February 10, a Subcommittee hearing was held, titled "Esprit de Corps: Recruiting and Retaining America's Best for the Federal Civil Service." The witnesses included Ronald Sanders, Associate Director of the Office of Personnel Management, and the Honorable Kevin Dugan, representing the Association of Administrative Law Judges. At a March 17, 2004, business meeting, the Subcommittee marked up H.R. 3737. Chairwoman Jo Ann Davis offered an amendment in the nature of a substitute and Ranking Minority Member Danny Davis offered an amendment to the substitute. Mr. Davis's amendment was approved by voice vote and the substitute, as amended, was then approved by voice vote, and the amended bill was reported out of the Subcommittee. On April 1, 2004, the Government Reform Committee approved the bill as reported out of the Subcommittee and ordered the bill favorably reported to the House of Representatives.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; references

The short title of H.R. 3737, as amended, is the Pay Compression Relief Act of 2004.

Provisions of the bill that amend a section of law or other provision are references to sections or provisions of title 5, United States Code, unless otherwise specified.

Section 2. Amendments relating to basic pay

Administrative law judges, contract appeals board members, and certain senior level positions. Subsections (a)–(c) would increase the upper limit on basic pay for administrative law judges (ALJs), board of contract appeals (BCA) members, and certain senior level (SL) and scientific and professional (ST) positions by amending sections 5372, 5372a, and 5376 of title 5. The new upper limit would rise by $8,700 per year from executive level IV ($136,900) to executive level III ($145,600). The lower limit on basic pay for these employees would remain unchanged at 65% of EL–IV for ALJs, 94% of EL–IV for BCA members, and 120% of the minimum rate of

grade 15 of the General Schedule ($104,927) for SL/ST positions. The new basic pay ranges are summarized below:

	Minimum basic pay		Current maximum basic pay		Maximum basic pay under H.R. 3737 as amended	
ALJ	65% of EL–IV	$88,985	EL–IV	$136,900	EL–III	$145,600
CAB	94% of EL–IV	128,686	EL–IV	136,900	EL–III	145,600
SL/ST	120% of GS–15/1	104,927	EL–IV	136,900	EL–III	145,600

Under subsection (a), the actual rates of basic pay for ALJs will continue, as under current law, to be set within the statutory limits in accordance with OPM regulations and the President will determine the amount of General Schedule increases that will be applied to ALJs' basic pay. Under the current basic pay schedule the actual minimum rate of basic pay for ALJs is $91,200 (about 66.6% of EL–IV) and the actual maximum rate is $136,900. Within this range, there are three levels: AL–1 is for Chief ALJs in larger offices, AL–2 is for Deputy Chief ALJs and Chief ALJs in smaller offices, and AL–3 is for non-supervisory ALJs. AL–1 and AL–2 each have a single rate of basic pay, currently set at 100% and 97.4% of EL–IV, respectively. By law, AL–3 is divided into six rates of basic pay, and employees can move from one rate to the next after periods of service set out in statute at 5 U.S.C. 5372. An ALJ who enters his position at AL–3A will progress to AL–3B after 52 weeks, AL–3C after another 52 weeks, and AL–3D after another 52 weeks, AL–3E after another 104 weeks and finally to AL–3F after another 104 weeks. The current rates of basic pay are as follows:

AL–3A	$91,200
AL–3B	98,100
AL–3C	105,200
AL–3D	112,200
AL–3E	119,200
AL–3F	126,100
AL–2	133,300
AL–1	136,900

Subsection (b) addresses the basic pay of members of boards of contract appeals. Section 5372a of title 5 currently sets the rates of basic pay as follows:

Chairman	EL–IV ($136,900).
Vice chairman	97% of EL–IV ($132,793).
Other members	94% of EL–IV ($128,686).

The amendment would establish a new range of basic pay for these employees: the minimum basic pay would remain at the current 94% of EL–IV and the maximum would increase to EL–III ($145,600). The subsection requires OPM to initially adjust the pay of current members of these boards and the President would then determine the amount of each General Schedule increase by which each rate of basic pay for these employees will be adjusted on an annual basis.

Subsection (c) addresses the pay of certain senior level (SL) and scientific and professional (ST) employees, whose pay is set under section 5376 of title 5. These are positions above GS–15 but outside the Senior Executive Service. The head of each employing agency

sets the basic pay of these positions, subject to OPM regulations, within a range of not less than 120% of grade 15, step 1, of the General Schedule and not more than EL–IV. The employing agency also determines the amount of basic pay adjustments for these positions when General Schedule basic pay rates are adjusted. Subsection (c) would raise the current cap on basic pay in these positions to EL–III, but does not change the lower end of the range under current law (120% of grade 15, step 1).

Section 3. Amendments relating to locality-based comparability payments

Subsection (a) raises the cap on combined basic pay and locality pay under section 5304 of title 5 from EL–III (currently $145,600) to EL–II ($158,100) for administrative law judges, members of boards of contract appeals, and certain senior level (SL) and scientific and professional (ST) employees whose basic pay is set under section 5376 of title 5. Raising this cap to EL–II will allow relief from the severe pay compression now affecting employees who are not now receiving the full locality pay amount due to the EL–III cap.

Subsection (b) ensures that administrative appeals judges (AAJs) will continue to be eligible for locality pay under section 5304 of title 5. AAJs' basic pay is set under section 5372b of title 5, and is subject to a statutory minimum of 65% of EL–IV (same as the lower limit on ALJ basic pay) and a statutory maximum equal to the rate of basic pay for the AL–3F level, the highest rate in the ALJ pay schedule below the Deputy Chief ALJ level. Within these limits, the basic pay of AAJs (employees whose primary duties involve reviewing ALJ decisions and who are not classified above GS–15) is set by the employing agency head, subject to OPM regulations.

Subsection (b) does not change the statutory relationship of AAJ pay to ALJ pay. However, a technical change is included to ensure that AAJs continue to be eligible for locality pay. Current section 5304(h)(1)(D), the provision allowing AAJs to receive locality pay, restricts locality pay eligibility to employees whose basic pay is no higher than EL–IV. Under the authority to set ALJ pay in section 2 of the bill, the basic pay rate for AL–3F may exceed EL–IV. Because AAJs' basic pay may exceed EL–IV under the new authority, subsection (b) amends section 5304(h)(1) to specify that AAJs will be eligible for locality pay.

Section 4. Technical and conforming amendments

Section 1125(a)(1)(C) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1638) created a reference in section 5304(h)(2)(B) of title 5 to a non-existent clause (vii) of section 5304(h)(1). That reference is being changed to clause (vi). The correction of the other error in the Act (a reference in section 5304(g)(2)(A) to "subparagraphs (A)–(D)" that should have been a reference to "subparagraphs (A)–(C)") is obviated by the addition of a subparagraph (D) to section 5304(h)(1), the subparagraph that ensures that AAJs will continue to be eligible for locality pay upon implementation of the bill (see section 3). The other conforming amendment in this section is the re-designation of current subparagraph (D) of section 5304(h)(1) as subpara-

graph (E), which is necessary due to insertion of the new subparagraph (D) in paragraph (h)(1).

Section 5. Applicability

For the purpose of computing increases in pay as authorized by H.R. 3737, the effective date is the first day of the first pay period beginning at least 90 days after enactment, or another date established by OPM, whichever is earlier. Pay increases authorized by the bill will be computed as if included in the National Defense Authorization Act for Fiscal Year 2004, enacted November 24, 2003, but no increase will apply to service performed before the date established under this section.

Section 6. Reporting requirement

H.R. 3737 would require the Office of Personnel Management to submit to the House Government Reform Committee and the Senate Governmental Affairs Committees a report containing:

- A list of all Executive Schedule positions and the rate of basic pay for each one, with the total number of incumbents in each such position;
- A comparison of the pay rates for ALJs, AAJs, and BCA members with the pay rates (before and after taking locality pay into account) for Executive Schedule positions and U.S. magistrate judges, bankruptcy judges, and district and appeals court judges;
- A determination of whether ALJ, AAJ, and CAB member rates of pay are incongruous with rates for Executive Schedule positions and those of the above-mentioned judges;
- A recommendation on adjusting pay under the Executive Schedule; and
- Any other information or recommendation OPM considers pertinent to this matter.

OPM is required to include a statement identifying the data and methodology used in preparing the report, which is due to the Committees no later than 6 months after enactment of H.R. 3737.

EXPLANATION OF AMENDMENTS

The provisions of the substitute are explained in this report.

COMMITTEE CONSIDERATION

On April 1, 2004, the Committee met in open session and ordered reported favorably the bill, H.R. 3737, as amended, by voice vote, a quorum being present.

ROLLCALL VOTES

No rollcall votes were held.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill would raise the current cap on pay that results in pay compression of pay rates of higher

level administrative law judges, members of contract appeals boards, and certain senior level employees outside the Senior Executive Service.

Legislative branch employees that are subject to the General and Executive Pay Schedules may be eligible for the benefits provided by this legislation.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 3737. Article I, Section 8, Clause 18, the Necessary and Proper Clause, of the Constitution of the United States grants the Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement whether the provisions of the report include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 3737. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 3737 from the Director of Congressional Budget Office:

H.R. 3737—Pay Compression Relief Act of 2004

H.R. 3737 would raise the caps on combined basic and locality pay from Executive Schedule Level III (currently $145,600) to Executive Schedule Level II (currently $158,100) for administrative law judges, contract appeals board members, and senior level and scientific and professional employees. It also would direct the Office of Personnel Management to conduct a study comparing rates of pay for those employees with pay for other high-level federal employees.

Based on information from the Office of Personnel Management, CBO estimates that the cost of raising the caps for the affected employees would be about $1 million in fiscal year 2005. Over the 2005–2009 period, implementing the legislation would cost about $6 million, subject to the availability of appropriated funds. H.R. 3737 would not affect direct spending or revenues.

The cost of this legislation arises because the salaries of roughly 430 of these employees are already at the caps currently specified by statute. Raising the caps will allow those employees to get higher annual across-the-board pay raises and locality-based comparability adjustments. CBO assumes that each January—under both current law and under the proposed legislation—base pay will increase by its projection of the employment cost index minus one-half percent, the average locality adjustment will raise base pay by an additional one-half percent, and Executive level salaries (and thus the caps) will rise by the full amount proscribed in the Ethics Reform Act, which governs pay raises for Members of Congress and Executive level employees. (Alternatively, if the adjustment of caps under current law were only one-half of the amount specified by the Ethics Reform Act to account for the fact that the Congress votes to block those raises in some years, pay compression under current law would worsen. In that case, the cost of the legislation relative to current law would be $16 million over the five-year period.)

H.R. 3737 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Ellen Hays. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHAPTER 53 OF TITLE 5 UNITED STATES CODE

* * * * * * *

CHAPTER 53—PAY RATES AND SYSTEMS

* * * * * * *

SUBCHAPTER I—PAY COMPARABILITY SYSTEM

* * * * * * *

5304. Locality-based comparability payments

(a) Pay disparities shall be identified and reduced as follows:

(1) * * *

* * * * * * *

(g)(1) * * *

[(2) The applicable maximum under this subsection shall be level III of the Executive Schedule for

[(A) positions under subparagraphs (A)–(D) of subsection (h)(1); and

[(B) any positions under subsection (h)(1)(D) which the President may determine.**]**

(2) The applicable maximum under this subsection shall be—

(A) level II of the Executive Schedule for positions under subparagraphs (A)–(D) of subsection (h)(1); and

(B) level III of the Executive Schedule for any positions under subsection (h)(1)(E) which the President may determine.

(h)(1) For the purpose of this subsection, the term "position" means—

(A) * * *

* * * * * * *

(C) a position to which section 5372a applies (relating to contract appeals board members); **[**and**]**

(D) a position to which section 5372b applies (relating to administrative appeals judges); and

[(D)**]** (*E*) a position within an Executive agency not covered under the General Schedule or any of the preceding subparagraphs, the rate of basic pay for which is (or, but for this section, would be) no more than the rate payable for level IV of the Executive Schedule;

but does not include—

(i) * * *

* * * * * * *

(2)(A) * * *

(B) A request by an agency head or exercise of authority by the President under subparagraph (A) shall cover—

(i) with respect to the positions under subparagraphs **[**(A) through (C)**]** *(A) through (D)* of paragraph (1), all positions described in the subparagraph or subparagraphs involved (excluding any under clause (i), (ii), (iii), (iv), (v), or **[**(vii)**]** *(vi)* of such paragraph); and

(ii) with respect to the positions under paragraph [(1)(D)] *(1)(E)*, such positions as may be considered appropriate (excluding any under clause (i), (ii), (iii), (iv), (v), or (vi) of paragraph (1)).

* * * * * * *

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

* * * * * * *

§ 5372. Administrative law judges

(a) * * *

(b)(1)(A) * * *

* * * * * * *

(C) The rate of basic pay for AL–3, rate A, may not be less than 65 percent of the rate of basic pay for level IV of the Executive Schedule, and the rate of basic pay for AL–1 [may not exceed the rate for level IV] *may not exceed the rate for level III* of the Executive Schedule.

* * * * * * *

§ 5372a. Contract appeals board members

(a) * * *

[(b) Rates of basic pay for contract appeals board members shall be as follows:

[(1) Chairman of an appeals board—the rate of basic pay payable for level IV of the Executive Schedule.

[(2) Vice chairman of an appeals board—97 percent of the rate under paragraph (1).

[(3) Other members of an appeals board—94 percent of the rate under paragraph (1).]

(b)(1) Rates of basic pay under this section—

(A) shall consist of—

(i) the rate for the chairman of an appeals board;

(ii) the rate for the vice chairman of an appeals board; and

(iii) the rate for all other contract appeals board members;

(B) shall be initially adjusted by the Office of Personnel Management and thereafter adjusted under paragraph (2); and

(C) shall not be greater than the rate of basic pay for level III of the Executive Schedule nor less than 94 percent of the rate of basic pay for level IV of the Executive Schedule.

(2) Subject to paragraph (1)(C), effective at the beginning of the first applicable pay period commencing on or after the first date of the month in which no adjustment takes effect under section 5303 in the rates of basic pay under the General Schedule, each rate of basic payment for contract appeals board members shall be adjusted by an amount determined by the President to be appropriate.

* * * * * * *

(d) The Office of Personnel Management shall prescribe regulations necessary to administer this section.

* * * * * * *

§ 5376. Pay for certain senior-level positions

(a) * * *

(b)(1) Subject to such regulations as the Office of Personnel Management prescribes, the head of the agency concerned shall fix the rate of basic pay for any position within such agency to which this section applies. A rate fixed under this section shall be—

(A) * * *

(B) not greater than the rate of basic pay payable for **[**level IV**]** *level III* of the Executive Schedule.

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ADDITIONAL VIEWS

We support H.R. 3737 to raise the pay caps for administrative law judges (ALJs), administrative appeals judges, and other senior positions in the government.

These pay increases are necessary to recruit and retain highly qualified individuals. The positions covered by this bill are ones of significant responsibility and merit competitive salaries. For instance, the 1,300 ALJs in the federal government adjudicate cases involving complex regulatory matters that affect large numbers of people or involve millions—and sometimes billions—of dollars.

Although we support this legislation, we are concerned about the pay disparities created by both this bill and legislation enacted last year to raise salaries for other federal employees. After enactment of this bill, a large number of federal employees would be paid at Executive Schedule Level II, which is currently $158,100. This is the same amount earned by deputy secretaries of cabinet departments, agency administrators, and federal district judges. In fact, under this bill, ALJs would earn more than federal bankruptcy judges and magistrates.

We believe it is important to maintain some pay differential between the deputy secretary of a department and the employees who work in the department. It is also important to maintain some pay differential between federal district judges and ALJs.

To address this problem, Representative Danny Davis offered an amendment at the Subcommittee markup to require the Office of Personnel Management (OPM) to study federal salaries and determine whether further salary adjustments need to be made. This amendment is codified in Section 6 of the bill. It is our hope that Congress will carefully consider the findings of the OPM study and address any pay disparities.

HENRY A. WAXMAN.
DANNY K. DAVIS.

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