

1978—Pub. L. 95-454, title IV, §407(b), title VIII, §801(a)(3)(B)(i), (ii), Oct. 13, 1978, 92 Stat. 1172, 1221, struck out items 5337 “Pay saving” and 5345 “Retained rate of pay on reduction in grade or reassignment”, added item for subchapter VI and items 5361 to 5366, redesignated former item for subchapter VI and items 5361 to 5365 as subchapter VII and items 5371 to 5375, respectively, and added item for subchapter VIII and items 5381 to 5385.

Pub. L. 95-251, §2(c)(4), Mar. 27, 1978, 92 Stat. 184, substituted “Administrative law judges” for “Hearing examiners” in item 5362.

1975—Pub. L. 94-82, title II, §202(b)(6), Aug. 9, 1975, 89 Stat. 420, added item 5318.

1972—Pub. L. 92-392, §1(b), Aug. 19, 1972, 86 Stat. 572, substituted items 5341, 5343, 5344, and 5345 relating to “Policy”, “Prevailing rate determinations; wage schedules; night differentials”, “Effective date of wage increase; retroactive pay” and “Retained rate of pay on reduction in grade or reassignment”, for such former items relating to “Trades and crafts”, “Effective date of pay increase”, “Retroactive pay” and “Position classification appeals”, added items 5342, 5346, 5347, and 5349, and renumbered former item 5342 as 5348.

1971—Pub. L. 91-656, §§2(b)(2), 3(b), Jan. 8, 1971, 84 Stat. 1946, 1951, struck out item 5302 “Annual reports on pay comparability” and added items 5305-5308.

1969—Pub. L. 91-34, §1(b), June 30, 1969, 83 Stat. 41, added item 5365.

1967—Pub. L. 90-206, title II, §223(b), Dec. 16, 1967, 81 Stat. 642, added item 5345.

SUBCHAPTER I—PAY COMPARABILITY SYSTEM

§ 5301. Policy

It is the policy of Congress that Federal pay fixing for employees under the General Schedule be based on the principles that—

- (1) there be equal pay for substantially equal work within each local pay area;
(2) within each local pay area, pay distinctions be maintained in keeping with work and performance distinctions;
(3) Federal pay rates be comparable with non-Federal pay rates for the same levels of work within the same local pay area; and
(4) any existing pay disparities between Federal and non-Federal employees should be completely eliminated.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 458; Pub. L. 91-656, §2(a), Jan. 8, 1971, 84 Stat. 1946; Pub. L. 96-465, title II, §2314(c)(1), Oct. 17, 1980, 94 Stat. 2167; Pub. L. 101-509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1429.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: ..... 5 U.S.C. 1171. Oct. 11, 1962, Pub. L. 87-793, § 502, 76 Stat. 841.

The words “It is the policy of Congress” are substituted for “The Congress hereby declares”. The words “whereas the functions of a Federal salary system are to fix salary rates for the services rendered by Federal employees so as to make possible the employment of persons well qualified to conduct the Government’s programs and to control expenditures of public funds for personal services with equity to the employee and to the taxpayer, and whereas fulfillment of these functions is essential to the development and maintenance of maximum proficiency in the civilian services of Government, then, accordingly” are omitted as unnecessary.

In the last sentence, the words “and henceforth” are omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1990—Pub. L. 101-509 amended section generally. Prior to amendment, section read as follows:

“(a) It is the policy of Congress that Federal pay fixing for employees under statutory pay systems be based on the principles that—

- “(1) there be equal pay for substantially equal work;
“(2) pay distinctions be maintained in keeping with work and performance distinctions;
“(3) Federal pay rates be comparable with private enterprise pay rates for the same levels of work; and
“(4) pay levels for the statutory pay systems be interrelated.

“(b) The pay rates of each statutory pay system shall be fixed and adjusted in accordance with the principles under subsection (a) of this section and the provisions of sections 5305, 5306, and 5308 of this title.

“(c) For the purpose of this subchapter, ‘statutory pay system’ means a pay system under—

- “(1) subchapter III of this chapter, relating to the General Schedule;
“(2) section 403 of the Foreign Service Act of 1980, relating to the Foreign Service of the United States; or
“(3) chapter 73 of title 38, relating to the Department of Medicine and Surgery, Veterans’ Administration.”

1980—Subsec. (c)(2). Pub. L. 96-465 substituted “section 403 of the Foreign Service Act of 1980” for “subchapter IV of chapter 14 of title 22”.

1971—Pub. L. 91-656 designated provisions of first sentence as subsec. (a), incorporating former cl. (1) in cls. (1) and (2), and former cl. (2) in cl. (3), and inserted “for employees under statutory pay systems” after “Federal pay fixing”; substituted subsec. (b) reading “The pay rates of each statutory pay system shall be fixed and adjusted in accordance with the principles under subsection (a) of this section and the provisions of sections 5305, 5306, and 5308 of this title” for former second sentence providing “Pay levels for the several Federal statutory pay systems shall be interrelated, and pay levels shall be set and adjusted in accordance with these principles”; and added subsec. (c).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 529 [title III, §305] of Pub. L. 101-509 provided that:

“(a) GENERALLY.—Except as otherwise provided in this Act, this Act and the amendments made by this Act [this Act means section 529 [titles I-III, §§1-306] of Pub. L. 101-509, but does not include section 529 [title IV, §§401-412] of Pub. L. 101-509, see Short Title of 1990 Amendment; Rules of Construction note below, and see Tables for classification] shall take effect on such date as the President shall determine [see Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521, set out below], but not earlier than 90 days, and not later than 180 days, after the date of enactment of this Act [Nov. 5, 1990].

“(b) SPECIAL RULE.—The first calendar year in which comparability payments under section 5304 of title 5, United States Code (as amended by this Act), are paid shall be the calendar year beginning on January 1, 1994.”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-554, §1(a)(4) [div. B, title IX, §901], Dec. 21, 2000, 114 Stat. 2763, 2763A-303, provided that: “This title

[enacting provisions set out as notes under sections 5304 and 5305 of this title and section 204 of Title 3, The President, and amending provisions set out as a note under section 5305 of this title] may be cited as the 'Law Enforcement Pay Equity Act of 2000'."

#### SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103-89, §1, Sept. 30, 1993, 107 Stat. 981, provided that: "This Act [amending sections 3372, 4501, 4502, 5302, 5332, 5334 to 5336, 5361 to 5363, 5410, 5948, and 8473 of this title, sections 1602, 1732, and 1733 of Title 10, Armed Forces, and section 731 of Title 31, Money and Finance, repealing sections 4302a and 5401 to 5410 of this title, enacting provisions set out as notes under sections 3372, 5335, 5401, and 5410 of this title, and amending provisions set out as a note under section 5304 of this title] may be cited as the 'Performance Management and Recognition System Termination Act'."

#### SHORT TITLE OF 1990 AMENDMENT; RULES OF CONSTRUCTION

Section 529 [§1] of Pub. L. 101-509 provided that:

"(a) **SHORT TITLE.**—This section, and the sections immediately following this section through section 412, inclusive [section 529 [§§1-412] of Pub. L. 101-509, see Tables for classification], may be cited as the 'Federal Employees Pay Comparability Act of 1990' (hereinafter in this section referred to as 'FEPCA')."

"(b) **RULES OF CONSTRUCTION.**—(1) Except as otherwise expressly provided, any reference (actual or implicit) in FEPCA (outside of this section) to 'this Act' (or to any title, section, or other designated provision of 'this Act') shall be construed to be a reference to FEPCA (or the corresponding provision within FEPCA)."

"(2) Except as otherwise expressly provided, any reference (actual or implicit) in any provision of this Act outside of FEPCA to 'this Act' (or to any title, section, or other designated provision of 'this Act'), and any reference made in any provision of law outside of this Act to the 'Treasury, Postal Service and General Government Appropriations Act, 1991' [Pub. L. 101-509] (or to any title, section, or other designated provision of such Act), shall be construed disregarding the provisions of FEPCA."

Section 529 [title III, §306] of Pub. L. 101-509 provided that: "Notwithstanding section 1(b) [section 529 [§1(b)] of Pub. L. 101-509, set out above], a reference in any of the preceding provisions of this title [section 529 [title III, §§301-305] of Pub. L. 101-509, enacting section 237 of Title 42, The Public Health and Welfare, amending section 212 of Title 42, and enacting provisions set out as notes under this section, section 5304 of this title, and section 212 of Title 42] to 'this Act' [section 529 of Pub. L. 101-509] (other than a reference in section 301) [section 529 [title III, §301] of Pub. L. 101-509, set out below] shall not be considered to include any provision of title IV [section 529 [title IV, §§401-412] of Pub. L. 101-509, enacting sections 4521 to 4523 of this title, amending sections 5541, 5542, 5547, 8335, and 8425 of this title, enacting provisions set out as notes under sections 4521, 5305, 5541, and 8335 of this title, and amending provisions set out as a note under section 5541 of this title]."

#### SHORT TITLE

Section 1 of Pub. L. 91-656 provided that: "This Act [enacting sections 5305 to 5308 and 5947 of this title, amending this section, sections 5108 and 5942 of this title, and section 410 of Title 39, Postal Service, repealing section 5302 of this title, and enacting provisions set out as notes under sections 5303 and 5942 of this title, section 60a of Title 2, The Congress, and section 410 of Title 39] may be cited as the 'Federal Pay Comparability Act of 1970'."

#### PAY-FOR-PERFORMANCE LABOR-MANAGEMENT COMMITTEE

Section 529 [title I, §111] of Pub. L. 101-509 provided that:

"(a) **POLICY.**—It is the policy of Congress that—

"(1) the Federal Government should institute systems for determining pay for its General Schedule employees under which the linkage between their performance and their pay will be strengthened;

"(2) the design of such systems should be developed by the Office of Personnel Management, in conjunction with the Pay-for-Performance Labor-Management Committee;

"(3) the systems should provide flexibility to adapt to the different needs of different agencies and organizational components in the Federal Government; and

"(4) any legislation needed to implement the systems should be enacted in a timely fashion so as to permit implementation of the system by October 1, 1993.

"(b) **ESTABLISHMENT.**—The Office of Personnel Management shall establish a Pay-for-Performance Labor-Management Committee to advise the Office on the design and establishment of systems for strengthening the linkage between the performance of General Schedule employees and their pay.

"(c) **MEMBERSHIP.**—The members of the Committee shall be—

"(1) a Chairman, who shall be appointed by the Director of the Office of Personnel Management on the basis of the appointee's education, training, and experience as an expert in compensation practices, and after consultation with the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committee on Post Office and Civil Service of the House of Representatives, respectively;

"(2) an employee of the Office of Personnel Management, designated by the Director of such Office;

"(3) an employee of the Department of Defense, designated by the Secretary of Defense;

"(4) 3 individuals, each of whom shall be an employee designated by the head of each of 3 other departments or agencies selected by the Director of the Office of Personnel Management from among departments and agencies having substantial numbers of General Schedule employees; and

"(5) 6 individuals appointed by the Director of the Office of Personnel Management to serve as representatives of employee organizations which represent substantial numbers of General Schedule employees, and who shall be selected with due consideration to such factors as the relative numbers of General Schedule employees represented by the various organizations, except that not more than 3 members of the Committee at any one time shall be from a single employee organization, council, federation, alliance, association, or affiliation of employee organizations.

"(d) **PAY FOR MEMBERS.**—The Chairman shall be paid at a rate of basic pay for the Senior Executive Service, to be determined by the Director of the Office of Personnel Management. The members of the Committee who are otherwise employees of the Federal Government shall not receive any additional pay by reason of their service on the Committee. The members of the Committee who are not otherwise employees of the Federal Government shall not be paid for their service on the Committee and shall not be considered employees of the Federal Government for any purpose by reason of their service on the Committee.

"(e) **ADMINISTRATIVE SUPPORT.**—The Office of Personnel Management may provide staff and administrative support for the Committee.

"(f) **FUNCTIONS.**—The Committee shall review available reports and studies on performance evaluation and performance-based pay systems (including a report to be prepared by the National Academy of Sciences) and any other pertinent information.

"(g) **REPORT TO THE OFFICE OF PERSONNEL MANAGEMENT.**—No later than 1 year after the date of enactment of this Act [Nov. 5, 1990], the Committee shall submit a report to the Director of the Office of Personnel Management, which shall include recommendations as to—

- “(1) the types of pay raises to be covered;
- “(2) guidelines for pay-for-performance systems, including the criteria to be used in determining eligibility for and the amount of increases in basic pay above the midpoint of the pay range;
- “(3) the role organization performance should play in pay-for-performance systems;
- “(4) any differences in pay-for-performance systems for different categories of employees;
- “(5) the role for employee organizations in the implementation and operation of pay-for-performance systems; and
- “(6) whether demonstration projects on pay-for-performance are desirable.”

#### BUDGET ACT COMPLIANCE

Section 529 [title III, §301] of Pub. L. 101-509 provided that: “For purposes of the Congressional Budget Act of 1974 [titles I through IX, of Pub. L. 93-344, July 12, 1974, 88 Stat. 297, see Tables for classification], any authority to make payments under this Act or any amendment made by this Act [see Short Title of 1990 Amendment note above] shall be effective only to the extent provided for in advance in appropriation Acts.”

#### PAY RATES FOR CURRENT EMPLOYEES

Section 529 [title III, §303] of Pub. L. 101-509 provided that: “Nothing in this Act or in any amendment made by this Act [see Short Title of 1990 Amendment note above] shall have the effect of diminishing the rate of basic pay payable to any individual employed by the United States on the date of the enactment of this Act [Nov. 5, 1990] to a rate below the rate payable to such individual on such date, so long as that individual continues in such position without a break in service.”

#### EX. ORD. NO. 12748. PROVIDING FOR FEDERAL PAY ADMINISTRATION

Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521, as amended by Ex. Ord. No. 12883, Nov. 29, 1993, 58 F.R. 63281; Ex. Ord. No. 13106, §8, Dec. 7, 1998, 63 F.R. 68152; Ex. Ord. No. 13415, §2(a), Dec. 1, 2006, 71 F.R. 70641, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Employees Pay Comparability Act of 1990 (hereinafter “FEPCA”), as incorporated in section 529 of Public Law 101-509 [see Short Title of 1990 Amendment note above], and sections 3301 and 3302 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. *Annual Adjustments to Pay Schedules.* The following agencies are designated under section 5303(g) of title 5, United States Code, as amended by FEPCA, to prescribe conversion rules for the initial adjustment of rates of pay to be applied during each annual adjustment of pay schedules under section 5303 of title 5, United States Code:

- (a) the Office of Personnel Management, for the General Schedule;
- (b) the Department of State, for the Foreign Service Schedule; and
- (c) the Department of Veterans Affairs, for the Veterans Health Services and Research Administration Schedules.

SEC. 2. *Locality-based Comparability Payments.* (a) The Secretary of Labor, the Director of the Office of Management and Budget, and the Director of the Office of Personnel Management are hereby designated under section 5304(d)(1) of title 5, United States Code, as amended by FEPCA, to serve jointly as the President’s agent under section 5304 of title 5, United States Code, and shall be known in this capacity as the President’s Pay Agent.

(b) The head of each executive agency employing personnel under a statutory pay system, as defined in section 5302(1) of title 5, United States Code, as amended by FEPCA, shall provide such information and assistance as may be requested by the President’s Pay Agent in carrying out the provisions of section 5304 of title 5, United States Code.

(c) The President’s Pay Agent, as designated in subsection (a), is hereby authorized and designated to exercise the authorities of the President under section 5304(g)–(h) [5 U.S.C. 5304(g), (h)] concerning the extension of locality-based comparability payments to certain categories of positions not otherwise covered.

SEC. 3. *Previous Order Revoked.* Executive Order No. 11721, as amended, is revoked.

SEC. 4. *Advance Payments for New Appointees.* Section 2(b) of Executive Order No. 10982, as amended [5 U.S.C. 5527 note], is further amended to read as follows:

“(b) The Office of Personnel Management is hereby designated and empowered to perform the functions conferred upon the President by the provisions of section 5527 of title 5, United States Code, with respect to allotments and assignments authorized by section 5525 of title 5, United States Code, and advance payments to new appointees authorized by section 5524a of title 5, United States Code, as added by section 107(a) of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101-509.”

SEC. 5. *Staffing Differentials.* The Office of Personnel Management is hereby designated and empowered to exercise the authority of the President under section 209 of FEPCA [5 U.S.C. 5305 note] to establish staffing differentials.

SEC. 6. *Executive Assignment System.* (a) Civil Service Rule 9 (5 CFR Part 9), as established by Executive Order No. 11315, as amended, is revoked.

(b) The Office of Personnel Management shall take such actions as the Office may determine to be necessary to provide for the orderly termination of the Executive Assignment System.

SEC. 7. *Effective Dates.* (a) Except as otherwise provided by Public Law 101-509, the provisions of subchapter I of chapter 53 of title 5, United States Code, as amended by section 101 of FEPCA [this subchapter], and the provisions of sections 1 through 4 of this order shall take effect on February 3, 1991.

(b) Except as otherwise provided by Public Law 101-509, the remaining provisions of FEPCA and of this order shall take effect on May 4, 1991, except that the Office of Personnel Management may establish an earlier effective date, but not earlier than February 3, 1991, for any such provisions with respect to which the Office determines an earlier effective date is appropriate. [For effective dates of certain provisions of FEPCA as established by the Office of Personnel Management, see notices and rules issued by the Office of Personnel Management and published in the Federal Register at 56 F.R. 6212, 11059, 12833, 20339, and 20343.]

#### § 5302. Definitions

For the purpose of this subchapter—

(1) the term “statutory pay system” means a pay system under—

(A) subchapter III, relating to the General Schedule;

(B) section 403 of the Foreign Service Act of 1980, relating to the Foreign Service of the United States; or

(C) chapter 74 of title 38, relating to the Veterans Health Administration (other than a position subject to section 7451 of title 38);

(2) the term “ECI” means the Employment Cost Index (wages and salaries, private industry workers) published quarterly by the Bureau of Labor Statistics;

(3) the “base quarter” for any year is the 3-month period ending on September 30 of such year;

(4) the term “pay agent” means the agent designated by the President under section 5304(d)(1);

(5) the term “locality” or “pay locality” means any locality, as established or modified under section 5304;

(6) the term “pay disparity”, as used with respect to a locality, means the extent to which rates of pay payable under the General Schedule are generally lower than the rates paid for the same levels of work by non-Federal workers in the same locality; except as otherwise required in this subchapter, a pay disparity shall be expressed as a single percentage which, if uniformly applied to employees within the locality who are receiving rates of pay under the General Schedule, would cause the rates payable to such employees to become substantially equal (when considered in the aggregate) to the rates paid to non-Federal workers for the same levels of work in the same locality;

(7) the term “comparability payment” means a payment payable under section 5304;

(8) the term “rates of pay under the General Schedule”, “rates of pay for the General Schedule”, or “scheduled rates of basic pay” means the rates of basic pay under the General Schedule as established by section 5332, excluding pay under section 5304 and any other additional pay of any kind; and

(9) the term “General Schedule position” means any position to which subchapter III applies.

(Added Pub. L. 101-509, title V, § 529 [title I, § 101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1429; amended Pub. L. 102-378, § 2(25), Oct. 2, 1992, 106 Stat. 1348; Pub. L. 103-89, § 3(b)(1)(E), Sept. 30, 1993, 107 Stat. 981; Pub. L. 108-411, title III, § 301(a)(1), Oct. 30, 2004, 118 Stat. 2313.)

#### REFERENCES IN TEXT

Section 403 of the Foreign Service Act of 1980, referred to in par. (1)(B), is classified to section 3963 of Title 22, Foreign Relations and Intercourse.

#### PRIOR PROVISIONS

A prior section 5302, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 458, provided for annual reports on pay comparability, prior to repeal by Pub. L. 91-656, § 2(b)(1), Jan. 8, 1971, 84 Stat. 1946.

#### AMENDMENTS

2004—Par. (8). Pub. L. 108-411 added par. (8) and struck out former par. (8) which read as follows: “the term ‘rates of pay under the General Schedule’, ‘rates of pay for the General Schedule’, or ‘scheduled rates of basic pay’ means—

“(A) the rates of basic pay set forth in the General Schedule; and

“(B) in the case of an employee receiving a retained rate of basic pay under section 5363, the rate of basic pay payable under such section; and”.

1993—Par. (8). Pub. L. 103-89, § 3(b)(1)(E)(i), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “in the case of an employee covered by the performance management and recognition system, the rates of basic pay under chapter 54; and”.

Par. (9). Pub. L. 103-89, § 3(b)(1)(E)(ii), substituted “applies” for “applies (including any position under the performance management and recognition system)”.

1992—Par. (1)(C). Pub. L. 102-378, § 2(25)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “chapter 73 of title 38, relating to the Veterans Health Services and Research Administration;”.

Par. (8)(C). Pub. L. 102-378, § 2(25)(B), added subpar. (C).

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-411 effective on the first day of the first applicable pay period beginning on or after the 180th day after Oct. 30, 2004, with provisions relating to conversion rules, see section 301(d) of Pub. L. 108-411, set out as a note under section 5363 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103-89, set out as a note under section 3372 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective Feb. 3, 1991, see section 9(b)(5) of Pub. L. 102-378, set out as a note under section 6303 of this title.

#### EFFECTIVE DATE

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101-509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

### § 5303. Annual adjustments to pay schedules

(a) Effective as of the first day of the first applicable pay period beginning on or after January 1 of each calendar year, the rates of basic pay for each statutory pay system shall be increased by the percentage (rounded to the nearest one-tenth of 1 percent) equal to one-half of 1 percentage point less than the percentage by which the ECI for the base quarter of the year before the preceding calendar year exceeds the ECI for the base quarter of the second year before the preceding calendar year (if at all).

(b)(1) If, because of national emergency or serious economic conditions affecting the general welfare, the President should consider the pay adjustment which would otherwise be required by subsection (a) in any year to be inappropriate, the President shall—

(A) prepare and transmit to Congress before September 1 of the preceding calendar year a plan for such alternative pay adjustments as he considers appropriate, together with the reasons therefor; and

(B) adjust the rates of pay of each statutory pay system, in accordance with such plan, effective on the same day as the increase under subsection (a) would otherwise take effect.

(2) In evaluating an economic condition affecting the general welfare under this subsection, the President shall consider pertinent economic measures including, but not limited to, the Indexes of Leading Economic Indicators, the Gross National Product, the unemployment rate, the budget deficit, the Consumer Price Index, the Producer Price Index, the Employment Cost Index, and the Implicit Price Deflator for Personal Consumption Expenditures.

(3) The President shall include in the report to Congress under paragraph (1)(A) his assessment of the impact that the alternative pay adjustments under this subsection will have on the Government’s ability to recruit and retain well-qualified employees.

(c) The rates of basic pay that take effect under this section—

(1) shall modify, supersede, or render inapplicable, as the case may be, to the extent in-

consistent therewith, any prior rates of basic pay under the statutory pay system involved (as last adjusted under this section or prior provisions of law); and

(2) shall be printed in the Federal Register and the Code of Federal Regulations.

(d) An increase in rates of basic pay that takes effect under this section is not an equivalent increase in pay within the meaning of section 5335.

(e) This section does not impair any authority pursuant to which rates of basic pay may be fixed by administrative action.

(f) Pay may not be paid, by reason of any provision of this section (disregarding any comparability payment payable), at a rate in excess of the rate of basic pay payable for level V of the Executive Schedule.

(g) Any rate of pay under this section shall be initially adjusted, effective on the effective date of the rate of pay, under conversion rules prescribed by the President or by such agency or agencies as the President may designate.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 458; Pub. L. 90-206, title II, §207, Dec. 16, 1967, 81 Stat. 631; Pub. L. 91-375, §6(c)(10), Aug. 12, 1970, 84 Stat. 776; Pub. L. 94-183, §2(16), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-465, title II, §2314(c)(2), Oct. 17, 1980, 94 Stat. 2167; Pub. L. 101-509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1430.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1173.	Oct. 11, 1962, Pub. L. 87-793, §504, 76 Stat. 842. Aug. 14, 1964, Pub. L. 88-426, §123, 78 Stat. 412.

In subsection (a), the words “the provisions of this title governing appointment in the competitive service” are substituted for “the civil service laws and regulations”.

In subsections (a), (b), and (d), the word “agency” is substituted for “agency or agencies” because the singular imports the plural, see 1 U.S.C. 1.

In subsection (d), the word “officer” is omitted as included in “employee”, “agency” is substituted for “department”, and “rules” is omitted as included in “regulations”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Level V of the Executive Schedule, referred to in subsec. (f), is set out in section 5316 of this title.

AMENDMENTS

1990—Pub. L. 101-509 amended section generally, substituting provisions relating to annual adjustments to pay schedules for provisions relating to President’s authority to set higher minimum rates of basic pay.

1980—Subsec. (a)(4). Pub. L. 96-465 substituted “section 403 of the Foreign Service Act of 1980” for “sections 867 and 870 of title 22”.

1978—Subsec. (a). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission”.

1975—Subsec. (c). Pub. L. 94-183 struck out “and section 3552 of title 39” after “of section 5335(a) of this title”.

1970—Subsec. (a)(2). Pub. L. 91-375 repealed cl. (2) making positions paid under provisions of part III of

title 39 relating to employees in the postal field service subject to higher minimum rates established by the President.

1967—Subsec. (a). Pub. L. 90-206, §207(a), substituted “maximum pay rate” for “seventh pay rate”.

Subsec. (d). Pub. L. 90-206, §207(b), inserted provisions that permitted an initial adjustment to be made to statutory increases which become effective prior to, on, or after the date of enactment of the statute.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-206 effective Dec. 16, 1967, see section 220(a)(1) of Pub. L. 90-206, set out as an Effective Date note under section 3110 of this title.

DELEGATION OF FUNCTIONS

For designation of agencies to perform functions of President under subsec. (g) of this section, see Ex. Ord. No. 12748, §1, Feb. 1, 1991, 56 F.R. 4521, eff. Feb. 3, 1991, set out as a note under section 5301 of this title.

PAY RAISES FOR PROGRAMS FUNDED BY ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACTS TO BE ABSORBED WITHIN SUCH ACTS

Pub. L. 102-377, title V, §506, Oct. 2, 1992, 106 Stat. 1343, provided that: “Such sums as may be necessary for Federal employee pay raises for programs funded by this Act or subsequent Energy and Water Development Appropriations Acts hereafter shall be absorbed within the levels appropriated in such Acts.”

SENSE OF CONGRESS

Section 529 [title I, §101(e)] of Pub. L. 101-509 provided that: “It is the sense of the Congress that the total funds dedicated to adjustments under sections 5303 and 5304 [of this title] for any year be no less than the total funds that would have been dedicated to adjustments under such section 5303 for such year had the full change in the ECI been applied to pay rates for such year.”

FEDERAL EMPLOYEE PAY ADJUSTMENTS

2010—Pub. L. 111-242, §147, as added by Pub. L. 111-322, title I, §1(a)(2), Dec. 22, 2010, 124 Stat. 3518, provided that:

“(a) For the purposes of this section—

“(1) the term ‘employee’—

“(A) means an employee as defined in section 2105 of title 5, United States Code; and

“(B) includes an individual to whom subsection (b), (c), or (f) of such section 2105 pertains (whether or not such individual satisfies subparagraph (A));

“(2) the term ‘senior executive’ means—

“(A) a member of the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code;

“(B) a member of the FBI-DEA Senior Executive Service under subchapter III of chapter 31 of title 5, United States Code;

“(C) a member of the Senior Foreign Service under chapter 4 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3961 and following); and

“(D) a member of any similar senior executive service in an Executive agency;

“(3) the term ‘senior-level employee’ means an employee who holds a position in an Executive agency and who is covered by section 5376 of title 5, United States Code, or any similar authority; and

“(4) the term ‘Executive agency’ has the meaning given such term by section 105 of title 5, United States Code.

“(b)(1) Notwithstanding any other provision of law, except as provided in subsection (e), no statutory pay adjustment which (but for this subsection) would otherwise take effect during the period beginning on January 1, 2011, and ending on December 31, 2012, shall be made.

“(2) For purposes of this subsection, the term ‘statutory pay adjustment’ means—

“(A) an adjustment required under section 5303, 5304, 5304a, 5318, or 5343(a) of title 5, United States Code; and

“(B) any similar adjustment, required by statute, with respect to employees in an Executive agency.

“(c) Notwithstanding any other provision of law, except as provided in subsection (e), during the period beginning on January 1, 2011, and ending on December 31, 2012, no senior executive or senior-level employee may receive an increase in his or her rate of basic pay absent a change of position that results in a substantial increase in responsibility, or a promotion.

“(d) The President may issue guidance that Executive agencies shall apply in the implementation of this section.

“(e) The Non-Foreign Area Retirement Equity Assurance Act of 2009 [Pub. L. 111-84, div. A, title XIX, subtitle B] (5 U.S.C. 5304 note) shall be applied using the appropriate locality-based comparability payments established by the President as the applicable comparability payments in section 1914(2) and (3) of such Act.”

2009—Pub. L. 111-117, div. C, title VII, §744, Dec. 16, 2009, 123 Stat. 3219, provided that:

“(a) The adjustment in rates of basic pay for employees under the statutory pay systems that takes effect in fiscal year 2010 under section 5303 of title 5, United States Code, shall be an increase of 1.5 percent, and the overall average percentage of the adjustments taking effect in such fiscal year under sections 5304-5304a of such title 5 shall be an increase of 0.5 percent (with comparability payments to be determined and allocated among pay localities by the President). Adjustments under the preceding sentence shall also apply to civilian employees in the Department of Homeland Security and in the Department of Defense. All adjustments under this subsection shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2010.

“(b) Notwithstanding section 710 [Pub. L. 111-117, 5 U.S.C. 5343 note], the adjustment in rates of basic pay for the statutory pay systems that take place in fiscal year 2010 under sections 5344 and 5348 of title 5, United States Code, shall be no less than the percentages in subsection (a) as employees in the same location whose rates of basic pay are adjusted pursuant to the statutory pay systems under section 5303 and 5304-5304a of title 5, United States Code. Prevailing rate employees at locations where there are no employees whose pay is increased pursuant to sections 5303 and 5304-5304a of such title 5 and prevailing rate employees described in section 5343(a)(5) of such title 5 shall be considered to be located in the pay locality designated as ‘Rest of

U.S.’ pursuant to section 5304 of such title 5 for purposes of this subsection.

“(c) Funds used to carry out this section shall be paid from appropriations, which are made to each applicable department or agency for salaries and expenses for fiscal year 2010.”

2008—Pub. L. 110-329, div. A, §142, Sept. 30, 2008, 122 Stat. 3580, as amended by Pub. L. 111-8, div. D, title VII, §738(a), Mar. 11, 2009, 123 Stat. 691, provided that:

“(a) The adjustment in rates of basic pay for employees under the statutory pay systems that takes effect in fiscal year 2009 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 3.9 percent, and this adjustment shall apply to civilian employees in the Department of Homeland Security and shall apply to civilian employees in the Department of Defense who are represented by a labor organization as defined in section 7103(a)(4) of title 5, United States Code. Such adjustment shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2009.

“(b) The adjustment in rates of basic pay for the statutory pay systems that take place in fiscal year 2009 under sections 5344 and 5348 of title 5, United States Code, shall be no less than the percentage in subsection (a) as employees in the same location whose rates of basic pay are adjusted pursuant to the statutory pay systems under section 5303 and 5304 of such title 5. Prevailing rate employees at locations where there are no employees whose pay is increased pursuant to sections 5303 and 5304 of such title 5 and prevailing rate employees described in section 5343(a)(5) of such title 5 shall be considered to be located in the pay locality designated as ‘Rest of US’ pursuant to section 5304 of such title 5 for purposes of this subsection.

“(c) Funds used to carry out this section shall be paid from appropriations which are made to each applicable department or agency for salaries and expenses for fiscal year 2009.

“(d) The provisions of this section shall apply notwithstanding any other provision of this joint resolution [div. A of Pub. L. 110-329, amending section 17013 of Title 42, The Public Health and Welfare, and provisions set out in a note under section 1701 of Title 50, War and National Defense].”

[Pub. L. 111-8, div. D, title VII, §738(b), Mar. 11, 2009, 123 Stat. 691, provided that: “The amendment made by subsection (a) [amending section 142 of Pub. L. 110-329, set out above] shall take effect as if included in the enactment of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 [Pub. L. 110-329].”]

2007—Pub. L. 110-161, div. D, title VII, §740, Dec. 26, 2007, 121 Stat. 2031, provided that:

“(a) The adjustment in rates of basic pay for employees under the statutory pay systems that takes effect in fiscal year 2008 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 3.5 percent, and this adjustment shall apply to civilian employees in the Department of Homeland Security and shall apply to civilian employees in the Department of Defense who are represented by a labor organization as defined in 5 U.S.C. 7103(a)(4), and such adjustments shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2008. Civilian employees in the Department of Defense who are eligible to be represented by a labor organization as defined in 5 U.S.C. 7103(a)(4), but are not so represented, will receive the adjustment provided for in this section unless the positions are entitled to a pay adjustment under 5 U.S.C. 9902.

“(b) Notwithstanding section 712 of this Act [div. D of Pub. L. 110-161, 5 U.S.C. 5343 note], the adjustment in rates of basic pay for the statutory pay systems that take place in fiscal year 2008 under sections 5344 and 5348 of title 5, United States Code, shall be no less than the percentage in paragraph (a) as employees in the same location whose rates of basic pay are adjusted pursuant to the statutory pay systems under section 5303 and 5304 of title 5, United States Code. Prevailing

rate employees at locations where there are no employees whose pay is increased pursuant to sections 5303 and 5304 of title 5 and prevailing rate employees described in section 5343(a)(5) of title 5 shall be considered to be located in the pay locality designated as 'Rest of US' pursuant to section 5304 of title 5 for purposes of this paragraph.

“(c) Funds used to carry out this section shall be paid from appropriations, which are made to each applicable department or agency for salaries and expenses for fiscal year 2008.”

2005—Pub. L. 109-115, div. A, title VIII, §843, Nov. 30, 2005, 119 Stat. 2506, provided that:

“(a) The adjustment in rates of basic pay for employees under the statutory pay systems that takes effect in fiscal year 2006 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 3.1 percent, and this adjustment shall apply to civilian employees in the Department of Defense and the Department of Homeland Security and such adjustments shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2006.

“(b) Notwithstanding section 813 of this Act [div. A of Pub. L. 109-115, 5 U.S.C. 5343 note], the adjustment in rates of basic pay for the statutory pay systems that take place in fiscal year 2006 under sections 5344 and 5348 of title 5, United States Code, shall be no less than the percentage in paragraph (a) as employees in the same location whose rates of basic pay are adjusted pursuant to the statutory pay systems under section 5303 and 5304 of title 5, United States Code. Prevailing rate employees at locations where there are no employees whose pay is increased pursuant to sections 5303 and 5304 of title 5 and prevailing rate employees described in section 5343(a)(5) of title 5 shall be considered to be located in the pay locality designated as 'Rest of US' pursuant to section 5304 of title 5 for purposes of this paragraph.

“(c) Funds used to carry out this section shall be paid from appropriations, which are made to each applicable department or agency for salaries and expenses for fiscal year 2006.”

2004—Pub. L. 108-447, div. H, title VI, §640, Dec. 8, 2004, 118 Stat. 3282, provided that:

“(a) The adjustment in rates of basic pay for employees under the statutory pay systems that takes effect in fiscal year 2005 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 3.5 percent, and this adjustment shall apply to civilian employees in the Department of Defense and the Department of Homeland Security and such adjustments shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2005.

“(b) Notwithstanding section 613 of this Act [div. H of Pub. L. 108-447, 5 U.S.C. 5343 note], the adjustment in rates of basic pay for the statutory pay systems that take place in fiscal year 2005 under sections 5344 and 5348 of title 5, United States Code, shall be no less than the percentage in paragraph (a) as employees in the same location whose rates of basic pay are adjusted pursuant to the statutory pay systems under section 5303 and 5304 of title 5, United States Code. Prevailing rate employees at locations where there are no employees whose pay is increased pursuant to sections 5303 and 5304 of title 5 and prevailing rate employees described in section 5343(a)(5) of title 5 shall be considered to be located in the pay locality designated as 'Rest of US' pursuant to section 5304 of title 5 for purposes of this paragraph.

“(c) Funds used to carry out this section shall be paid from appropriations, which are made to each applicable department or agency for salaries and expenses for fiscal year 2005.”

Pub. L. 108-199, div. F, title VI, §640, Jan. 23, 2004, 118 Stat. 359, provided that:

“(a) The adjustment in rates of basic pay for employees under the statutory pay systems that takes effect in fiscal year 2004 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 4.1 percent, and this adjustment shall apply to civilian em-

ployees in the Department of Defense and the Department of Homeland Security and such adjustments shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2004.

“(b) Notwithstanding section 613 of this Act [div. F of Pub. L. 108-199, 5 U.S.C. 5343 note], the adjustment in rates of basic pay for the statutory pay systems that take place in fiscal year 2004 under sections 5344 and 5348 of title 5, United States Code, shall be no less than the percentage in paragraph (a) as employees in the same location whose rates of basic pay are adjusted pursuant to the statutory pay systems under section 5303 and 5304 of title 5, United States Code. Prevailing rate employees at locations where there are no employees whose pay is increased pursuant to sections 5303 and 5304 of title 5 and prevailing rate employees described in section 5343(a)(5) of title 5 shall be considered to be located in the pay locality designated as 'Rest of US' pursuant to section 5304 of title 5 for purposes of this paragraph.

“(c) Funds used to carry out this section shall be paid from appropriations, which are made to each applicable department or agency for salaries and expenses for fiscal year 2004.”

2003—Pub. L. 108-7, div. J, title VI, §637, Feb. 20, 2003, 117 Stat. 472, provided that:

“(a) The adjustment in rates of basic pay for the statutory pay systems that takes effect in fiscal year 2003 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 4.1 percent and shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2003.

“(b) Funds used to carry out this section shall be paid from appropriations which are made to each applicable department or agency for salaries and expenses for fiscal year 2003.”

2001—Pub. L. 107-67, title VI, §646, Nov. 12, 2001, 115 Stat. 556, provided that:

“(a) The adjustment in rates of basic pay for the statutory pay systems that takes effect in fiscal year 2002 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 4.6 percent.

“(b) Funds used to carry out this section shall be paid from appropriations which are made to each applicable department or agency for salaries and expenses for fiscal year 2002.”

2000—Pub. L. 106-554, §1(a)(4) [div. B, title I, §140], Dec. 21, 2000, 114 Stat. 2763, 2763A-235, provided that:

“(a) The adjustment in rates of basic pay for the statutory pay systems that takes effect in fiscal year 2001 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 3.7 percent.

“(b) Funds used to carry out this section shall be paid from appropriations which are made to each applicable department or agency for salaries and expenses for fiscal year 2001.”

1999—Pub. L. 106-58, title VI, §646, Sept. 29, 1999, 113 Stat. 478, provided that:

“(a) The adjustment in rates of basic pay for the statutory pay systems that takes effect in fiscal year 2000 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 4.8 percent.

“(b) Funds used to carry out this section shall be paid from appropriations which are made to each applicable department or agency for salaries and expenses for fiscal year 2000.”

1998—Pub. L. 105-277, div. A, §101(h) [title VI, §621], Oct. 21, 1998, 112 Stat. 2681-480, 2681-518, provided that:

“For purposes of each provision of law amended by section 704(a)(2) of the Ethics Reform Act of 1989 [Pub. L. 101-194] (5 U.S.C. 5318 note), no adjustment under section 5303 of title 5, United States Code, shall be considered to have taken effect in fiscal year 1999 in the rates of basic pay for the statutory pay systems.”

Pub. L. 105-277, div. A, §101(h) [title VI, §647], Oct. 21, 1998, 112 Stat. 2681-480, 2681-527, provided that:

“(a) The adjustment in rates of basic pay for the statutory pay systems that takes effect in fiscal year 1999 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 3.6 percent.

“(b) Funds used to carry out this section shall be paid from appropriations which are made to each applicable department or agency for salaries and expenses for fiscal year 1999.”

1996—Pub. L. 104-208, div. A, title I, §101(f) [title VI, §637], Sept. 30, 1996, 110 Stat. 3009-314, 3009-364, provided that: “For purposes of each provision of law amended by section 704(a)(2) of the Ethics Reform Act of 1989 [Pub. L. 101-194] (5 U.S.C. 5318 note), no adjustment under section 5303 of title 5, United States Code, shall be considered to have taken effect in fiscal year 1997 in the rates of basic pay for the statutory pay systems.”

1995—Pub. L. 104-52, title VI, §633, Nov. 19, 1995, 109 Stat. 507, provided that: “For purposes of each provision of law amended by section 704(a)(2) of the Ethics Reform Act of 1989 [Pub. L. 101-194] (5 U.S.C. 5318 note), no adjustment under section 5303 of title 5, United States Code, shall be considered to have taken effect in fiscal year 1996 in the rates of basic pay for the statutory pay systems.”

1994—Pub. L. 103-329, title VI, §630(a), Sept. 30, 1994, 108 Stat. 2424, provided that:

“(1) The adjustment in rates of basic pay for the statutory pay systems that takes effect in fiscal year 1995 under section 5303 of title 5, United States Code, shall be an increase of 2 percent.

“(2) For purposes of each provision of law amended by section 704(a)(2) of the Ethics Reform Act of 1989 [Pub. L. 101-194] (5 U.S.C. 5318 note), no adjustment under section 5303 of title 5, United States Code, shall be considered to have taken effect in fiscal year 1995 in the rates of basic pay for the statutory pay systems.

“(3) For purposes of this subsection, the term ‘statutory pay system’ shall have the meaning given such term by section 5302(1) of title 5, United States Code.”

1993—Pub. L. 103-123, title V, §517B, Oct. 28, 1993, 107 Stat. 1253, provided that:

“(a) Any adjustment required by section 5303 of title 5, United States Code, to become effective in fiscal year 1994 in the rates of basic pay for the statutory pay systems shall not be made.

“(b) For the purpose of this section, the term ‘statutory pay system’ has the meaning given such term by section 5302(1) of title 5, United States Code.”

1990—Pub. L. 101-509, title VI, §618, Nov. 5, 1990, 104 Stat. 1475, provided that:

“(a) Notwithstanding any other provision of law, in the case of fiscal year 1991, the overall average percentage of the adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule, and in the rates of pay under the other statutory pay systems (as defined by section 5301(c) of such title), shall be an increase of 4.1 percent.

“(b) Any increase in a pay rate or schedule which takes effect under such section 5305 in fiscal year 1991 (in accordance with subsection (a)) shall, to the maximum extent practicable, be of the same percentage, and shall take effect as of the first day of the first applicable pay period commencing on or after January 1, 1991.”

Pub. L. 101-509, title VI, §633, Nov. 5, 1990, 104 Stat. 633, provided that:

“(a) IN GENERAL.—Notwithstanding any other provision of law (including any provision of the Federal Employees Pay Comparability Act of 1990 [see Short Title of 1990 Amendment note set out under section 5301 of this title] and any provision of law amended by such Act), for purposes of any adjustment scheduled to take effect under section 5303 of title 5, United States Code (as amended by section 101 [section 529 [title I, §101] of Pub. L. 101-509]) during the period beginning on October 1, 1991, and ending on September 30, 1994, the provisions of section 5303 of such title (as so amended) shall be applied in accordance with the following:

“(1) For purposes of the adjustment taking effect in each of fiscal years 1992 and 1993, respectively, deem subsection (a) to be amended by striking ‘one-half of 1 percentage point less than’.

“(2) Deem subsection (b) to be amended as follows:

“(A) In paragraph (1), strike ‘if’ and all that follows thereafter through ‘welfare,’ and insert ‘Subject to paragraph (2), if’.

“(B) Redesignate paragraphs (2) and (3) as paragraphs (3) and (4), respectively.

“(C) Insert after paragraph (1) the following:

“(2) Authority to provide alternative pay adjustments under this subsection in any year may not be exercised except in accordance with the following:

“(A) If the adjustment which (but for this subsection) would otherwise take effect under this section in a fiscal year would be 5 percent or less, no reduction may be made unless necessary because a state of war or severe economic conditions exist.

“(B) If the adjustment which (but for this subsection) would otherwise take effect under this section in a fiscal year would be greater than 5 percent, no reduction may be made—

“(i) to a level of 5 percent or greater, unless necessary because of national emergency or serious economic conditions affecting the general welfare; or

“(ii) to a level of less than 5 percent, unless necessary because of either of the reasons set forth in subparagraph (A).”

“(D) Add after paragraph (4) (as so redesignated by subparagraph (B)) the following:

“(5) For the purpose of this subsection, ‘severe economic conditions’ shall be considered to exist relative to an adjustment scheduled to take effect on a given date if, during the 12-month period ending 2 calendar quarters before such date, there occurred 2 consecutive quarters of negative growth in the GNP.”

“(b) REFERENCES.—Notwithstanding any other provision of law (including any provision of the Federal Employees Pay Comparability Act of 1990 [see Short Title of 1990 Amendment note set out under section 5301 of this title] and any provision of law amended made by such Act), effective for purposes of any pay adjustment scheduled to take effect during the period described in subsection (a), any reference in a provision of law to section 5303 of title 5, United States Code, as amended by section 101 [section 529 [title I, §101] of Pub. L. 101-509] (or to the effective date of a pay adjustment, the size of an adjustment, a rate payable after an adjustment, or other related matter under such section 5303) shall be considered a reference to such section as applied in accordance with this section (or to the corresponding matter, as determined under such section 5303, as applied in accordance with this section).”

1989—Pub. L. 101-194, title VII, §702, Nov. 30, 1989, 103 Stat. 1767, provided that:

“(a) RESTORATION.—

“(1) IN GENERAL.—Effective for pay periods beginning on or after the date of enactment of this Act [Nov. 30, 1989], the rate of basic pay for any office or position in the executive, legislative, or judicial branch of the Government or in the government of the District of Columbia shall be determined as if the provisions of law cited in paragraph (2) had never been enacted.

“(2) CITATIONS.—The provisions of law referred to in paragraph (1) are as follows:

“(A) Section 620(b) of the Treasury, Postal Service and General Government Appropriations Act, 1989 (2 U.S.C. 5305 note) [Pub. L. 100-440, set out below].

“(B) Section 619(b) of the Treasury, Postal Service and General Government Appropriations Act, 1990 (Public Law 101-136) [set out below].

“(b) EXCEPTIONS.—Notwithstanding any other provision of this section, the rate of basic pay for a Senator, the President pro tempore of the Senate, and the majority leader and the minority leader of the Senate shall be determined as if subsection (a) had not been enacted.

“(c) SPECIFIC AUTHORITY.—For purposes of section 140 of Public Law 97-92 (28 U.S.C. 461 note), appropriate salary increases are hereby authorized for Federal judges and Justices of the Supreme Court pursuant to subsection (a).

“(d) SPECIAL RULE.—Notwithstanding any other provision of this section, no adjustment in any rate of pay

shall become effective, as a result of the enactment of this section, before the first applicable pay period beginning on or after the date as of which the order issued by the President on October 16, 1989, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 902] is rescinded.”

Pub. L. 101-194, title XI, §1101(a), Nov. 30, 1989, 103 Stat. 1781, provided that:

“(1) ADJUSTMENTS IN RATES OF PAY.—Notwithstanding any other provision of law (including any provision of this Act or amendment made by this Act), effective as provided in paragraph (2), the rate of pay of each office and position of United States Senator, the President pro tempore of the Senate, and the majority and minority leaders of the Senate shall be increased by—

“(A) the percentage increase that would have taken effect in fiscal year 1988 if the provisions of section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)) were applied to the rate of pay of each such office and position in effect on January 1, 1988 without regard to section 108 of the resolution entitled ‘Joint resolution making further continuing appropriations for the fiscal year 1988, and for other purposes’, approved December 22, 1987 [Pub. L. 100-202]; (101 Stat. 1329-434; 5 U.S.C. 5305 note [set out below]);

“(B) the percentage increase that would have taken effect in fiscal year 1989 if the provisions of section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)) were applied to the rate of pay of each such office and position in effect on January 1, 1989 (as adjusted under subparagraph (A) of this paragraph) without regard to subsection (b) of section 620 of the Treasury, Postal Service and General Government Appropriations Act, 1989 (Public Law 100-440; 102 Stat. 1756; 5 U.S.C. 5305 note [set out below]); and

“(C) the percentage increase that would take effect in fiscal year 1990 by the application of section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)) (as adjusted under subparagraphs (A) and (B) of this paragraph) without regard to subsection (b) of section 619 of the Treasury, Postal Service and General Government Appropriations Act, 1990 (Public Law 101-136) [set out below].

“(2) The increase in the rates of pay for each office and position described under paragraph (1) shall be effective on the first day of the first pay period beginning on or after January 1, 1990.”

Pub. L. 101-136, title VI, §619, Nov. 3, 1989, 103 Stat. 820, provided that:

“(a)(1) Notwithstanding any other provision of law, in the case of fiscal year 1990, the overall average percentage of the adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule, and in the rates of pay under the other statutory pay systems (as defined by section 5301(c) of such title), shall be an increase of 3.6 percent.

“(2) Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage, and shall take effect as of the first day of the first applicable pay period commencing on or after January 1, 1990.

“(b)(1) Notwithstanding any other provision of this Act or any other law, no adjustment in rates of pay under section 5305 of title 5, United States Code, which becomes effective on or after October 1, 1989, and before October 1, 1990, shall have the effect of increasing the rate of salary or basic pay for any office or position in the legislative, executive, or judicial branch or in the government of the District of Columbia—

“(A) if the rate of salary or basic pay payable for that office or position as of September 30, 1989, was equal to or greater than the rate of basic pay described in paragraph (3); or

“(B) to a rate exceeding the rate of basic pay described in paragraph (3) if, as of September 30, 1989, the rate of salary or basic pay payable for that office or position was less than the rate described in such paragraph.

“(2) For purposes of paragraph (1), the rate of salary or basic pay payable as of September 30, 1989, for any office or position which was not in existence on such date shall be deemed to be the rate of salary or basic pay payable to individuals in comparable offices or positions on such date, as determined under regulations prescribed—

“(A) by the President, in the case of any office or position within the executive branch or in the government of the District of Columbia;

“(B) jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate, in the case of any office or position within the legislative branch; or

“(C) by the Chief Justice of the United States, in the case of any office or position within the judicial branch.

“(3) The rate of basic pay described in this paragraph is the rate equal to the rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code, as of September 30, 1989, increased by 3.6 percent.”

1988—Pub. L. 100-440, title VI, §620, Sept. 22, 1988, 102 Stat. 1756, provided that:

“(a)(1) Notwithstanding any other provision of law, in the case of fiscal year 1989, the overall percentage of the adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule, and in the rates of pay under the other statutory pay systems (as defined by section 5301(c) of such title), shall be an increase of 4.1 percent.

“(2) Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage, and shall take effect as of the first day of the first applicable pay period commencing on or after January 1, 1989.

“(b)(1) Notwithstanding any other provision of this Act or any other law, no adjustment in rates of pay under section 5305 of title 5, United States Code, which becomes effective on or after October 1, 1988, and before October 1, 1989, shall have the effect of increasing the rate of salary or basic pay for any office or position in the legislative, executive, or judicial branch or in the government of the District of Columbia—

“(A) if the rate of salary or basic pay payable for that office or position as of September 30, 1988, was equal to or greater than the rate of basic pay then payable for level III of the Executive Schedule under section 5314 of title 5, United States Code; or

“(B) to a rate exceeding the rate of basic pay payable for level III of the Executive Schedule under such section 5314 as of September 30, 1988, if, as of that date, the rate of salary or basic pay payable for that office or position was less than the rate of basic pay then payable for such level III.

“(2) For purposes of paragraph (1), the rate of salary or basic pay payable as of September 30, 1988, for any office or position which was not in existence on such date shall be deemed to be the rate of salary or basic pay payable to individuals in comparable offices or positions on such date, as determined under regulations prescribed—

“(A) by the President, in the case of any office or position within the executive branch or in the government of the District of Columbia;

“(B) jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate, in the case of any office or position within the legislative branch; or

“(C) by the Chief Justice of the United States, in the case of any office or position within the judicial branch.”

1987—Pub. L. 100-202, §108, Dec. 22, 1987, 101 Stat. 1329-434, provided that:

“(a) Notwithstanding any other provision of this resolution or any other law, no adjustment in rates of pay under section 5305 of title 5, United States Code, which becomes effective on or after October 1, 1987, and before October 1, 1988, shall have the effect of increasing the

rate of salary or basic pay for any office or position in the legislative, executive, or judicial branch or in the government of the District of Columbia—

“(1) if the rate of salary or basic pay payable for that office or position as of September 30, 1987, was equal to or greater than the rate of basic pay then payable for level V of the Executive Schedule under section 5316 of title 5, United States Code; or

“(2) to a rate exceeding the rate of basic pay payable for level V of the Executive Schedule under such section 5316 as of September 30, 1987, if, as of that date, the rate of salary or basic pay payable for that office or position was less than the rate of basic pay then payable for such level V.

“(b) For purposes of subsection (a), the rate of salary or basic pay payable as of September 30, 1987, for any office or position which was not in existence on such date shall be deemed to be the rate of salary or basic pay payable to individuals in comparable offices or positions on such date, as determined under regulations prescribed—

“(1) by the President, in the case of any office or position within the executive branch or in the government of the District of Columbia;

“(2) jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate, in the case of any office or position within the legislative branch; or

“(3) by the Chief Justice of the United States, in the case of any office or position within the judicial branch.”

Pub. L. 100-202, §110(a), Dec. 22, 1987, 101 Stat. 1329-436, provided that:

“(1) TWO-PERCENT INCREASE.—Notwithstanding any other provision of law, in the case of fiscal year 1988, the overall percentage of the adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule, and in the rates of pay under the other statutory pay systems (as defined by section 5301(c) of such title), shall be an increase of 2 percent.

“(2) UNIFORM ADJUSTMENTS; DELAYED EFFECTIVE DATE.—Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage and shall take effect as of the beginning of the first applicable pay period beginning on or after January 1, 1988.”

1986—Pub. L. 99-500, §144(a), Oct. 18, 1986, 100 Stat. 1783-350, and Pub. L. 99-591, §144(a), Oct. 30, 1986, 100 Stat. 3341-353, provided that:

“(1) Notwithstanding any other provision of law, in the case of fiscal year 1987, the overall percentage of the adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule, and in the rates of pay under the other statutory pay systems, shall be an increase of 3 percent.

“(2) Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage, and shall take effect as of the first day of the first applicable pay period commencing on or after January 1, 1987.

“(3)(A) Notwithstanding any other provision of law, determinations relating to amounts to be appropriated in order to provide for the adjustment described in paragraph (1) shall be made based on the assumption that the various departments and agencies of the Government will, in the aggregate, absorb 50 percent of the increase in total pay for fiscal year 1987.

“(B) Subparagraph (A) does not apply with respect to the Department of Defense or pay for employees of the Department of Defense.

“(4) For purposes of this subsection—

“(A) the term ‘total pay’ means, with respect to a fiscal year, the total amount of basic pay which will be payable to employees covered by statutory pay systems for service performed during such fiscal year;

“(B) the term ‘increase in total pay’ means, with respect to a fiscal year, that part of total pay for

such year which is attributable to the adjustment taking effect under this section during such year; and

“(C) the term ‘statutory pay system’ has the meaning given such term by section 5301(c) of title 5, United States Code.”

Pub. L. 99-272, title XV, §15201(a), Apr. 7, 1986, 100 Stat. 332, provided that:

“(1) The rates of pay under the General Schedule and the rates of pay under the other statutory pay systems referred to in section 5301(c) of title 5, United States Code, shall not be adjusted under section 5305 of such title during fiscal year 1986.

“(2)(A)(i) For fiscal years 1987 and 1988, the President shall provide for the adjustment of rates of pay under section 5305 of title 5, United States Code, as appropriate to reduce outlays, relating to pay of officers and employees of the Federal Government, by at least \$746,000,000 in fiscal year 1987 and \$1,264,000,000 in fiscal year 1988 (without regard to reductions in outlays which result by reason of subparagraph (B)(ii) of this paragraph, paragraph (1) of this subsection, subsection (b) of this section, and the application of section 1009 of title 37, United States Code), computed using the baseline used for the First Concurrent Resolution on the Budget for Fiscal Year 1986 (S. Con. Res. 32, 99th Congress), agreed to on August 1, 1985.

“(ii) Clause (i) of this subparagraph shall not be construed to suspend the requirements of section 5305 of title 5, United States Code, with respect to fiscal years 1987 and 1988.

“(B) Each adjustment in a pay rate or schedule which takes effect pursuant to subparagraph (A) of this paragraph—

“(i) shall, to the maximum extent practicable, be of the same percentage; and

“(ii) shall be effective with respect to pay periods beginning on or after January 1 of the fiscal year involved.”

1984—Pub. L. 98-270, title II, §202(a), Apr. 18, 1984, 98 Stat. 158, provided that:

“(1) Notwithstanding any other provision of law, in the case of fiscal year 1984, the overall percentage of the adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule, and in the rates of pay under the other statutory pay systems, shall be an increase of 4 percent.

“(2) Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage, and shall take effect as of the first day of the first applicable pay period commencing on or after January 1 of such fiscal year.”

1982—Pub. L. 97-253, title III, §310(a), Sept. 8, 1982, 96 Stat. 799, provided that:

“(1) Notwithstanding any other provision of law, if—

“(A) before September 1, 1982, the President transmits to the Congress pursuant to section 5305(c)(1) of title 5, United States Code, an alternative plan which provides for an overall percentage pay adjustment which is less than 4 percent, and

“(B) the alternative plan referred to in subparagraph (A) is disapproved pursuant to such section 5305,

the rates of pay under the General Schedule and the rates of pay under the other statutory pay systems shall be increased under the provisions of such section 5305 by 4 percent in the case of fiscal year 1983.

“(2) Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage, and shall take effect on the first day of the first applicable pay period commencing on or after October 1 of such fiscal year.”

1981—Pub. L. 97-35, title XVII, §1701(a), Aug. 13, 1981, 95 Stat. 753, provided that: “Notwithstanding any other provision of law, the overall percentage of the adjustment of the rates of pay under the General Schedule or any other statutory pay system under section 5305 of title 5, United States Code, which is to become effective with the first applicable pay period commencing

on or after October 1, 1981, shall not exceed 4.8 percent."

1978—Pub. L. 95-429, title VI, §614, Oct. 10, 1978, 92 Stat. 1018, provided that:

"(a) No part of any of the funds appropriated for the fiscal year ending September 30, 1979, by this Act or any other Act, may be used to pay the salary or pay of any individual in any office or position in an amount which exceeds the rate of salary or basic pay payable for such office or position on September 30, 1978, by more than 5.5 percent, as a result of any adjustments which take effect during such fiscal year under—

"(1) section 5305 of title 5, United States Code;

"(2) any other provision of law if such adjustment is determined by reference to such section 5305; or

"(3) section 5343 of title 5, United States Code, if such adjustment is granted pursuant to a wage survey (but only with respect to prevailing rate employees described in section 5342(a)(2)(A) of that title).

"(b) For the purpose of administering any provision of law, rule, or regulation which provides premium pay, retirement, life insurance, or other employee benefit, which requires any deduction or contribution, or which imposes any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay."

1971—Pub. L. 92-210, §3, Dec. 22, 1971, 85 Stat. 753, provided that: "Notwithstanding any provision of section 3(c) of the Federal Pay Comparability Act of 1970 (Public Law 91-656), or of section 5305 of title 5, United States Code, as added by section 3(a) of Public Law 91-656, and the provisions of the alternative plan submitted by the President to the Congress pursuant thereto on August 31, 1971, such comparability adjustments in the rates of pay of each Federal statutory pay system as may be required under such sections 5305 and 3(c), based on the 1971 Bureau of Labor Statistics survey—

"(1) shall not be greater than the guidelines established for the wage and salary adjustments for the private sector that may be authorized under authority of any statute of the United States, including the Economic Stabilization Act of 1970 (Public Law 91-379; 84 Stat. 799), as amended [formerly set out as a note under section 1904 of Title 12, Banks and Banking], and that may be in effect on December 31, 1971; and

"(2) shall be placed into effect on the first day of the first pay period that begins on or after January 1, 1972.

Nothing in this section shall be construed to provide any adjustments in rates of pay of any Federal statutory pay system which are greater than the adjustments based on the 1971 Bureau of Labor Statistics survey."

Section 3(c) of Pub. L. 91-656 provided that: "The President may make the initial adjustment required by subchapter I of chapter 53 of title 5, United States Code, as amended by this Act, without regard to the provisions of such subchapter relating to the Advisory Committee on Federal Pay and the Federal Employees Pay Council. Notwithstanding any provision of such subchapter I prescribing an effective date of October 1 for any pay adjustment made by the President, the initial adjustment based on the 1970 Bureau of Labor Statistics survey and the adjustment based on the 1971 Bureau of Labor Statistics survey shall become effective on the first day of the first applicable pay period that begins on or after January 1, 1971, and January 1, 1972, respectively. Notwithstanding the provisions of such subchapter I, the President's agent for purposes of the 1971 and 1972 adjustments shall be the Director, Office of Management and Budget and the Chairman, United States Civil Service Commission. Adjustments under the provisions of such subchapter I shall not apply to employees of the Post Office Department whose basic pay is fixed under the General Schedule."

1967—Pub. L. 90-206, title II, §212, Dec. 16, 1967, 81 Stat. 634, provided that: "In order to complete the im-

plementation of the policy of the Congress set forth in paragraph (2) of section 5301 of title 5, United States Code, the President, after seeking the views of such employee organizations as he considers appropriate and in such manner as he may provide, shall—

"(1) effective on the first day of the first pay period beginning on or after July 1, 1968, adjust the rates of basic pay, basic compensation, and salary, as in effect by reason of the enactment of the provisions of this title [see Short Title note under section 5332 of this title] other than this section and sections 205, 210, 213, 214, 215, and 219—

"(A) by amounts equal, as nearly as may be practicable, to one-half of the amounts by which such rates are exceeded by rates of pay paid for the same levels of work in private enterprise as determined on the basis of the 1967 annual survey conducted by the Bureau of Labor Statistics in accordance with the provisions of section 5302 of title 5, United States Code, or

"(B) by 3 per centum, whichever is greater; and

"(2) effective on the first day of the first pay period beginning on or after July 1, 1969, adjust the rates he has established under subparagraph (1) of this section, and the rates established by Postal Field Service Schedule II, and Rural Carrier Schedule II (contained in the amendments made by subsections (a) and (b) of section 205 [amending sections 3542 and 3543 of Title 39, Postal Service], by amounts equal, as nearly as may be practicable, to the amounts by which such rates are exceeded by rates of pay paid for the same levels of work in private enterprise as determined on the basis of the 1968 annual survey conducted by the Bureau of Labor Statistics in accordance with the provisions of section 5302 of title 5, United States Code.

Adjustments made by the President under this section shall have the force and effect of statute. The rates of pay of personnel subject to sections 210, 213 (except subsections (d) and (e)), and 214 of this title [see Short Title note under section 5332 of this title], and any minimum or maximum rate, limitation, or allowance applicable to any such personnel, shall be adjusted, by amounts which are equal, insofar as practicable and with such exceptions as may be necessary to provide for appropriate relationships between positions, to the amounts of the adjustments made by the President under subparagraphs (1) and (2) of this section, by the following authorities—

"(i) the President pro tempore of the Senate, with respect to the United States Senate;

"(ii) the Speaker of the House of Representatives with respect to the United States House of Representatives;

"(iii) the Architect of the Capitol, with respect to the Office of the Architect of the Capitol;

"(iv) the Director of the Administrative Office of the United States Courts, with respect to the judicial branch of the Government; and

"(v) the Secretary of Agriculture, with respect to persons employed by the county committees established pursuant to section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)). Such adjustments shall be made in such manner as the appropriate authority concerned deems advisable and shall have the force and effect of statute. Nothing in this section shall impair any authority pursuant to which rates of pay may be fixed by administrative action." [Section 212 of Pub. L. 90-206 effective Dec. 16, 1967, see section 220(a)(1) of Pub. L. 90-206, set out as a note under section 3110 of this title.]

#### § 5304. Locality-based comparability payments

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

(1) Comparability payments shall be payable within each locality determined to have a pay disparity greater than 5 percent.

(2)(A) The localities having pay disparities, and the size of those disparities, shall, for purposes of any comparability payment scheduled to take effect in any calendar year, be determined in accordance with the appropriate report, as prepared and submitted to the President under subsection (d)(1) for purposes of such calendar year.

(B) Any computation necessary to determine the size of the comparability payment to become payable for any locality in a year (as well as any determination as to the size of any pay disparity remaining after that comparability payment is made) shall likewise be made using data contained in the appropriate report (described in subparagraph (A)) so prepared and submitted for purposes of such calendar year.

(3) Subject to paragraph (4), the amount of the comparability payments payable under this subsection in a calendar year within any locality in which a comparability payment is payable shall be computed using such percentage as the President determines for such locality under subsection (d)(2), except that—

(A) the percentage for the first calendar year in which any amounts are payable under this section may not be less than  $\frac{1}{5}$  of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(B) the percentage for the second calendar year in which any amounts are payable under this section may not be less than  $\frac{3}{10}$  of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(C) the percentage for the third calendar year in which any amounts are payable under this section may not be less than  $\frac{2}{5}$  of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(D) the percentage for the fourth calendar year in which any amounts are payable under this section may not be less than  $\frac{1}{2}$  of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(E) the percentage for the fifth calendar year in which any amounts are payable under this section may not be less than  $\frac{3}{5}$  of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(F) the percentage for the sixth calendar year in which any amounts are payable under this section may not be less than  $\frac{7}{10}$  of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(G) the percentage for the seventh calendar year in which any amounts are payable under this section may not be less than  $\frac{4}{5}$  of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(H) the percentage for the eighth calendar year in which any amounts are payable under this section may not be less than  $\frac{9}{10}$  of the amount needed to reduce the pay disparity of the locality involved to 5 percent; and

(I) the percentage for the ninth calendar year in which any amounts are payable under this section, and any year thereafter, may not be less than the full amount necessary to reduce the pay disparity of the locality involved to 5 percent.

(4) Nothing in this section shall be considered to preclude the President, in his discretion, from adjusting comparability payments to a level higher than the minimum level otherwise required in a calendar year, including to the level necessary to eliminate a locality's pay disparity completely.

(b) After the ninth calendar year (referred to in subsection (a)(3)(I)), the level of comparability payments payable within such locality may be reduced for any subsequent calendar year, but only if, or to the extent that, the reduction would not immediately create another pay disparity in excess of 5 percent within the locality (taking into consideration any comparability payments remaining payable).

(c)(1) The amount of the comparability payment payable within any particular locality during a calendar year—

(A) shall be stated as a single percentage, which shall be uniformly applicable to General Schedule positions within the locality; and

(B) shall, for any employee entitled to receive a comparability payment, be computed by applying that percentage to such employee's scheduled rate of basic pay (or, if lower due to a limitation on the rate payable, the rate actually payable), subject to subsection (g).

(2) A comparability payment—

(A) shall be considered to be part of basic pay for purposes of retirement under chapter 83 or 84, as applicable, life insurance under chapter 87, and premium pay under subchapter V of chapter 55, and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe; and

(B) shall be paid in the same manner and at the same time as the basic pay payable to such employee pursuant to any provision of law outside of this section.

(3) Nothing in this subchapter shall be considered to permit or require that any portion of a comparability payment be taken into account for purposes of any adjustment under section 5303.

(4)(A) Only employees receiving scheduled rates of basic pay (subject to any pay limitation which may apply) shall be eligible for comparability payments under this section.

(B) Comparability payments shall not be payable for service performed in any position which may not, under subsection (f)(1)(A), be included within a pay locality.

(d) In order to carry out this section, the President shall—

(1) direct such agent as he considers appropriate to prepare and submit to him annually, after considering such views and recommendations as may be submitted under subsection (e) (but not later than 13 months before the start of the calendar year for purposes of which it is prepared), a report that—

(A) compares the rates of pay under the General Schedule (disregarding any described in section 5302(8)(C))<sup>1</sup> with the rates of pay generally paid to non-Federal workers

<sup>1</sup> See References in Text note below.

for the same levels of work within each pay locality, as determined on the basis of appropriate surveys that shall be conducted by the Bureau of Labor Statistics;

(B) based on data from such surveys, identifies each locality in which a pay disparity exists and specifies the size of each such pay disparity (before and after taking into consideration any comparability payments payable);

(C) makes recommendations for appropriate comparability payments, in conformance with applicable requirements of this section; and

(D) includes the views and recommendations submitted under subsection (e);

(2) after considering the report of his agent (including the views and recommendations referred to in subsection (e)(2)(C)), provide for or adjust comparability payments in conformance with applicable requirements of this section, effective as of the beginning of the first applicable pay period commencing on or after January 1 of the applicable year; and

(3) transmit to Congress a report of the actions taken under paragraph (2) (together with a copy of the report submitted to him by his agent, including the views and recommendations referred to in subsection (e)(2)(C)) which shall—

(A) identify each pay locality;

(B) specify which localities have pay disparities in excess of 5 percent, and the size of the disparity existing in each of those localities, according to the pay agent's most recent report under paragraph (1) (before and after taking into consideration any comparability payments payable); and

(C) indicate the size of the respective comparability payments (expressed as percentages) which will be in effect under paragraph (2) for the various pay localities specified under subparagraph (B) for the applicable calendar year.

(e)(1) The President shall establish a Federal Salary Council of 9 members, of whom—

(A) 3 shall be chosen from among persons generally recognized for their impartiality, knowledge, and experience in the field of labor relations and pay policy; and

(B) 6 shall be representatives of employee organizations which represent substantial numbers of employees holding General Schedule positions, and who shall be selected giving due consideration to such factors as the relative numbers of employees represented by the various organizations, except that not more than 3 members of the Council at any one time shall be from a single employee organization, council, federation, alliance, association, or affiliation of employee organizations.

Members of the Council shall not receive pay by reason of their service on the Council, nor shall members who are not otherwise employees of the United States be considered employees by reason of any such service. However, members under subparagraph (A) may be paid expenses in accordance with section 5703. The President shall designate one of the members to serve as Chairman of the Federal Salary Council. One of

the 3 members under subparagraph (A) may be the Chairman of the Federal Prevailing Rate Advisory Committee, notwithstanding the restriction under section 5347(a)(1), and such individual may also be designated to serve as Chairman of the Federal Salary Council.

(2) The pay agent shall—

(A) provide for meetings with the Council and give thorough consideration to the views and recommendations of the Council and the individual views and recommendations, if any, of the members of the Council regarding—

(i) the establishment or modification of pay localities;

(ii) the coverage of the surveys of pay localities conducted by the Bureau of Labor Statistics under subsection (d)(1)(A) (including, but not limited to, the occupations, establishment sizes, and industries to be surveyed, and how pay localities are to be surveyed);

(iii) the process of comparing the rates of pay payable under the General Schedule with rates of pay for the same levels of work performed by non-Federal workers; and

(iv) the level of comparability payments that should be paid in order to eliminate or reduce pay disparities in accordance with the requirements of this section;

(B) give thorough consideration to the views and recommendations of employee organizations not represented on the Council regarding the subjects in subparagraph (A)(i)–(iv); and

(C) include in its report to the President the views and recommendations submitted as provided in this subsection by the Council, by any member of the Council, and by employee organizations not represented on the Council.

(f)(1) The pay agent may provide for such pay localities as the pay agent considers appropriate, except that—

(A) each General Schedule position in the United States, as defined under section 5921(4), and its territories and possessions, including the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands, shall be included within a pay locality; and

(B) the boundaries of pay localities shall be determined based on appropriate factors which may include local labor market patterns, commuting patterns, and practices of other employers.

(2)(A) The establishment or modification of any such boundaries shall be effected by regulations which, notwithstanding subsection (a)(2) of section 553, shall be promulgated in accordance with the notice and comment requirements of such section.

(B) Judicial review of any regulation under this subsection shall be limited to whether or not it was promulgated in accordance with the requirements referred to in subparagraph (A).

(g)(1) Except as provided in paragraph (2), comparability payments may not be paid at a rate which, when added to the rate of basic pay otherwise payable to the employee involved, would cause the total to exceed the rate of basic pay payable for level IV of the Executive Schedule.

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

(A) positions under subparagraphs (A) and (B) of subsection (h)(1);

(B) positions under subsection (h)(1)(C) not covered by appraisal systems certified under subsection 5307(d); and

(C) any positions under subsection (h)(1)(D) as the President may determine.

(3) The applicable maximum under this subsection shall be level II of the Executive Schedule for positions under subsection (h)(1)(C) covered by appraisal systems certified under section 5307(d).

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

(A) a position to which section 5372 applies (relating to administrative law judges appointed under section 3105);

(B) a position to which section 5372a applies (relating to contract appeals board members);

(C) a Senior Executive Service position under section 3132 or 3151 or a senior level position under section 5376 stationed within the United States, but outside the 48 contiguous States and the District of Columbia in which the incumbent was an individual who on the day before the effective date of section 1912 of the Non-Foreign Area Retirement Equity Assurance Act of 2009 was eligible to receive a cost-of-living allowance under section 5941 and who thereafter has served continuously in an area in which such an allowance was payable; and

(D) 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) a position to which subchapter IV applies (relating to prevailing rate systems);

(ii) a position as to which a rate of pay is authorized under section 5377 (relating to critical positions);

(iii) a position to which subchapter II applies (relating to the Executive Schedule);

(iv) a Senior Executive Service position under section 3132, except for a position covered by subparagraph (C);

(v) a position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service under section 3151, except for a position covered by subparagraph (C);

(vi) a position in a system equivalent to the system in clause (iv), as determined by the President's Pay Agent designated under subsection (d); or

(vii) a position to which section 5376 applies (relating to certain senior-level and scientific and professional positions), except for a position covered by subparagraph (C).

(2)(A) Notwithstanding subsection (c)(4) or any other provision of this section, but subject to subparagraph (B) and paragraph (3), upon the request of the head of an Executive agency with respect to 1 or more categories of positions, the

President may provide that each employee of such agency who holds a position within such category, and within the particular locality involved, shall be entitled to receive comparability payments.

(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) of paragraph (1), all positions described in the subparagraph or subparagraphs involved (excluding any under clause (i), (ii), (iii), (iv), (v), (vi), or (vii) of such paragraph); and

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

(C) Notwithstanding subsection (c)(4) or any other provision of law, but subject to paragraph (3), in the case of a category with positions that are in more than 1 Executive agency, the President may, on his own initiative, provide that each employee who holds a position within such category, and in the locality involved, shall be entitled to receive comparability payments. No later than 30 days before an employee receives comparability payments under this subparagraph, the President or the President's designee shall submit a detailed report to the Congress justifying the reasons for the extension, including consideration of recruitment and retention rates and the expense of extending locality pay.

(3) Comparability payments under this subsection—

(A) may be paid only in any calendar year in which comparability payments under the preceding provisions of this section are payable with respect to General Schedule positions within the same locality;

(B) shall take effect, within the locality involved, on the first day of the first applicable pay period commencing on or after such date as the President designates (except that no date may be designated which would require any retroactive payments), and shall remain in effect through the last day of the last applicable pay period commencing during that calendar year;

(C) shall be computed using the same percentage as is applicable, for the calendar year involved, with respect to General Schedule positions within the same locality; and

(D) shall be subject to the applicable limitation under subsection (g).

(i) The Office of Personnel Management may prescribe regulations, consistent with the provisions of this section, governing the payment of comparability payments to employees.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 459; Pub. L. 91-375, §6(c)(11), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-465, title II, §2314(c)(3), Oct. 17, 1980, 94 Stat. 2168; Pub. L. 101-509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1431; Pub. L. 102-378, §2(26), Oct. 2, 1992, 106 Stat. 1348; Pub. L. 108-136, div. A, title XI, §1125(a)(1), Nov. 24, 2003, 117 Stat. 1638; Pub. L. 108-411, title III, §302(a)(1), Oct. 30, 2004, 118 Stat.

2318; Pub. L. 110-372, §2(a), Oct. 8, 2008, 122 Stat. 4043; Pub. L. 111-84, div. A, title XIX, §1912(a), Oct. 28, 2009, 123 Stat. 2619.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1174.	Oct. 11, 1962, Pub. L. 87-793, § 505, 76 Stat. 842.

The words “agencies” and “regulations” are substituted for “departments” and “rules”, respectively.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The General Schedule, referred to in text, is set out under section 5332 of this title.

Section 5302(8)(C), referred to in subsec. (d)(1)(A), was redesignated 5302(8)(B) of this title by Pub. L. 103-89, §3(b)(1)(E)(i)(II), Sept. 30, 1993, 107 Stat. 981.

Levels II, III, and IV of the Executive Schedule, referred to in subsecs. (g) and (h)(1)(D), are set out in sections 5313, 5314, and 5315, respectively, of this title.

For the effective date of section 1912 of the Non-Foreign Area Retirement Equity Assurance Act of 2009 [Pub. L. 111-84], referred to in subsec. (h)(1)(C), see section 1919(b) of Pub. L. 111-84, set out in a note below.

AMENDMENTS

2009—Subsec. (f)(1)(A). Pub. L. 111-84, §1912(a)(1), added subpar. (A) and struck out former subpar. (A), which read as follows: “each General Schedule position (excluding any outside the continental United States, as defined in section 5701(6)) shall be included with a pay locality; and”.

Subsec. (g)(2)(B), (C). Pub. L. 111-84, §1912(a)(2)(A), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: “any positions under subsection (h)(1)(C) as the President may determine.”

Subsec. (g)(3). Pub. L. 111-84, §1912(a)(2)(B), added par. (3).

Subsec. (h)(1)(C), (D). Pub. L. 111-84, §1912(a)(3)(A)–(C), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (h)(1)(iv), (v). Pub. L. 111-84, §1912(a)(3)(D), (E), inserted “, except for a position covered by subparagraph (C)” before the semicolon.

Subsec. (h)(1)(vii). Pub. L. 111-84, §1912(a)(3)(F), inserted “, except for a position covered by subparagraph (C)” before the period.

Subsec. (h)(2)(B)(i). Pub. L. 111-84, §1912(a)(4)(A), substituted “through (C)” for “and (B)”.

Subsec. (h)(2)(B)(ii). Pub. L. 111-84, §1912(a)(4)(B), substituted “(1)(D)” for “(1)(C)”.

2008—Subsec. (g)(2). Pub. L. 110-372, §2(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

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

“(A) positions under subparagraphs (A)–(C) of subsection (h)(1); and

“(B) any positions under subsection (h)(1)(D) which the President may determine.”

Subsec. (h)(1). Pub. L. 110-372, §2(a)(2)(A)(ii), which directed amendment of subsec. (h)(1)(D) by striking “or” at end of cl. (v), substituting “; or” for period at end of cl. (vi), and adding at end a new cl. (vii), was executed by making the strike out and substitution in the cls. (v) and (vi) which follow subpar. (D) and by adding cl. (vii) after cl. (vi), to reflect the probable intent of Congress.

Subsec. (h)(1)(A) to (D). Pub. L. 110-372, §2(a)(2)(A)(i), (iii), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A) which read as follows: “a position to which section 5376 applies (relating to certain senior-level positions);”.

Subsec. (h)(2)(B)(i). Pub. L. 110-372, §2(a)(2)(B)(i), substituted “subparagraphs (A) and (B)” for “subparagraphs (A) through (C)” and “(vi), or (vii)” for “or (vi)”.

Subsec. (h)(2)(B)(ii). Pub. L. 110-372, §2(a)(2)(B)(ii), substituted “paragraph (1)(C)” for “paragraph (1)(D)” and “(vi), or (vii)” for “or (vi)”.

2004—Subsec. (g)(2)(A). Pub. L. 108-411, §302(a)(1)(A), substituted “(A)–(C)” for “(A)–(D)”.

Subsec. (h)(2)(B)(i). Pub. L. 108-411, §302(a)(1)(B), substituted “or (vi)” for “or (vii)”.

2003—Subsec. (g)(2)(A). Pub. L. 108-136, §1125(a)(1)(A)(i), substituted “subparagraphs (A)–(D)” for “subparagraphs (A)–(E)”.

Subsec. (g)(2)(B). Pub. L. 108-136, §1125(a)(1)(A)(ii), substituted “subsection (h)(1)(D)” for “subsection (h)(1)(F)”.

Subsec. (h)(1)(B) to (F). Pub. L. 108-136, §1125(a)(1)(B)(i), (ii), redesignated subpars. (D), (E), and (F) as (B), (C), and (D), respectively, and struck out former subpars. (B) and (C) which read as follows:

“(B) a Senior Executive Service position under section 3132;

“(C) a position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service under section 3151;”.

Subsec. (h)(1)(iv) to (vi). Pub. L. 108-136, §1125(a)(1)(B)(iii)–(v), added cls. (iv) to (vi).

Subsec. (h)(2)(B)(i). Pub. L. 108-136, §1125(a)(1)(C)(i), substituted “subparagraphs (A) through (C)” for “subparagraphs (A) through (E)” and “clause (i), (ii), (iii), (iv), (v), or (vii)” for “clause (i) or (ii)”.

Subsec. (h)(2)(B)(ii). Pub. L. 108-136, §1125(a)(1)(C)(ii), substituted “paragraph (1)(D)” for “paragraph (1)(F)” and “clause (i), (ii), (iii), (iv), (v), or (vi)” for “clause (i) or (ii)”.

1992—Subsec. (a)(3). Pub. L. 102-378, §2(26)(A)(i), substituted “Subject to paragraph (4),” for “Subject to paragraphs (4) and (5),” and “a comparability payment” for “a comparative payment”.

Subsec. (a)(3)(H). Pub. L. 102-378, §2(26)(A)(ii), inserted “and” after semicolon at end.

Subsec. (a)(3)(I). Pub. L. 102-378, §2(26)(A)(iii), substituted a period for semicolon at end.

Subsec. (d)(1)(A). Pub. L. 102-378, §2(26)(B), inserted “(disregarding any described in section 5302(8)(C))” after “General Schedule” and struck out “annual” before “surveys”.

Subsec. (e)(1). Pub. L. 102-378, §2(26)(C)(i), inserted after second sentence “However, members under subparagraph (A) may be paid expenses in accordance with section 5703.”

Subsec. (e)(2)(A)(ii). Pub. L. 102-378, §2(26)(C)(ii), substituted “surveys of pay localities” for “annual survey” and “industries” for “industries.”

Subsec. (g)(2). Pub. L. 102-378, §2(26)(D), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “For positions under subparagraphs (A)–(E) of subsection (h)(1), the applicable maximum under this subsection shall be level III of the Executive Schedule.”

Subsec. (h)(1)(F). Pub. L. 102-378, §2(26)(E)(i)(I), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “a position within an Executive agency not covered under any of the preceding subparagraphs, the rate of basic pay for which is (or, but for this section, would be) less than the rate payable for level V of the Executive Schedule;”.

Subsec. (h)(1)(iii). Pub. L. 102-378, §2(26)(E)(i)(II)–(IV), added cl. (iii).

Subsec. (h)(2)(C). Pub. L. 102-378, §2(26)(E)(ii), added subpar. (C).

Subsec. (h)(3)(B). Pub. L. 102-378, §2(26)(E)(iii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “shall be payable, within the locality involved, for the entirety of each calendar year for which authority is granted by the President;”.

1990—Pub. L. 101-509 amended section generally, substituting provisions relating to locality-based comparability payments for provisions making functions,

duties, and regulations of agencies and Office of Personnel Management with respect to this subchapter subject to Presidential policies and regulations.

1980—Pub. L. 96-465 substituted “the Foreign Service Act of 1980” for “chapter 14 of title 22” in provisions preceding par. (1).

1978—Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission”.

1970—Pub. L. 91-375 struck out provisions making functions, duties and regulations of the agencies and the Civil Service Commission with respect to the provisions of part III of title 39 relating to employees in the postal field service subject to Presidential policies and regulations.

#### EFFECTIVE DATE OF 2009 AMENDMENT

For effective date of amendment by Pub. L. 111-84, see section 1919 of Pub. L. 111-84, set out in a Non-Foreign Area Retirement Equity Assurance note below.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-372 effective on the first day of the first pay period beginning on or after the 180th day following Oct. 8, 2008, see section 2(d) of Pub. L. 110-372, set out as a note under section 5376 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-411, title III, §302(a)(2), Oct. 30, 2004, 118 Stat. 2318, provided that: “The amendments made by this subsection [amending this section] shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136).”

#### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-136, div. A, title XI, §1125(c), Nov. 24, 2003, 117 Stat. 1640, provided that:

“(1) The amendments made by this section [enacting section 7302 of this title and amending this section, sections 5382 and 5383 of this title, and section 207 of Title 18, Crimes and Criminal Procedure] shall take effect on the first day of the first pay period beginning on or after the first January 1 following the date of the enactment of this section [Nov. 24, 2003].

“(2) The amendments made by subsection (a) [amending this section and sections 5382 and 5383 of this title] may not result in a reduction in the rate of basic pay for any senior executive during the first year after the effective date of those amendments.

“(3) For the purposes of paragraph (2), the rate of basic pay for a senior executive shall be deemed to be the rate of basic pay set for the senior executive under section 5383 of title 5, United States Code, plus applicable locality pay paid to that senior executive, as of the date of the enactment of this Act [Nov. 24, 2003].

“(4) Until otherwise provided by law, or except as otherwise provided by this section, any reference in a provision of law to a rate of basic pay that is above the minimum payable and below the maximum payable to a member of the Senior Executive Service shall be considered a reference to the rate of basic pay payable for level IV of the Executive Schedule.”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, with provision that first calendar year in which comparability payments under this section are paid shall be calendar year beginning Jan. 1, 1994, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

#### DELEGATION OF FUNCTIONS

For designation of agents of President under subsecs. (d)(1) and (h) of this section, see Ex. Ord. No. 12748, §2(a), Feb. 1, 1991, 56 F.R. 4521, eff. Feb. 3, 1991, set out as a note under section 5301 of this title.

#### NON-FOREIGN AREA RETIREMENT EQUITY ASSURANCE

Pub. L. 111-84, div. A, title XIX, subtitle B, Oct. 28, 2009, 123 Stat. 2619, as amended by Pub. L. 111-383, div. A, title X, §1075(d)(22), Jan. 7, 2011, 124 Stat. 4374, provided that:

“SEC. 1911. SHORT TITLE.

“This subtitle may be cited as the ‘Non-Foreign Area Retirement Equity Assurance Act of 2009’ or the ‘Non-Foreign AREA Act of 2009’.

“SEC. 1912. EXTENSION OF LOCALITY PAY.

“(a) LOCALITY-BASED COMPARABILITY PAYMENTS.—[Amended this section.]

“(b) ALLOWANCES BASED ON LIVING COSTS AND CONDITIONS OF ENVIRONMENT.—[Amended section 5941 of this title.]

“SEC. 1913. ADJUSTMENT OF SPECIAL RATES.

“(a) IN GENERAL.—Each special rate of pay established under section 5305 of title 5, United States Code, and payable in an area designated as a cost-of-living allowance area under section 5941(a) of that title, shall be adjusted, on the dates prescribed by section 1914, in accordance with regulations prescribed by the Director of the Office of Personnel Management under section 1918.

“(b) AGENCIES WITH STATUTORY AUTHORITY.—

“(1) IN GENERAL.—Each special rate of pay established under an authority described under paragraph (2) and payable in a location designated as a cost-of-living allowance area under section 5941(a)(1) of title 5, United States Code, shall be adjusted in accordance with regulations prescribed by the applicable head of the agency that are consistent with the regulations issued by the Director of the Office of Personnel Management under subsection (a).

“(2) STATUTORY AUTHORITY.—The authority referred to under paragraph (1), [sic] is any statutory authority that—

“(A) is similar to the authority exercised under section 5305 of title 5, United States Code;

“(B) is exercised by the head of an agency when the head of the agency determines it to be necessary in order to obtain or retain the services of persons specified by statute; and

“(C) authorizes the head of the agency to increase the minimum, intermediate, or maximum rates of basic pay authorized under applicable statutes and regulations.

“(c) TEMPORARY ADJUSTMENT.—Regulations issued under subsection (a) or (b) may provide that statutory limitations on the amount of such special rates may be temporarily raised to a higher level during the transition period described in section 1914 ending on the first day of the first pay period beginning on or after January 1, 2012, at which time any special rate of pay in excess of the applicable limitation shall be converted to a retained rate under section 5363 of title 5, United States Code.

“SEC. 1914. TRANSITION SCHEDULE FOR LOCALITY-BASED COMPARABILITY PAYMENTS.

“Notwithstanding any other provision of this subtitle or section 5304 or 5304a of title 5, United States Code,

in implementing the amendments made by this subtitle, for each non-foreign area determined under section 5941(b) of such title, the applicable rate for the locality-based comparability adjustment that is used in the computation required under section 5941(c) of such title shall be adjusted, effective on the first day of the first pay period beginning on or after January 1—

“(1) in calendar year 2010, by using 1/3 of the locality pay percentage for the rest of United States locality pay area;

“(2) in calendar year 2011, by using 2/3 of the otherwise applicable comparability payment approved by the President for each non-foreign area; and

“(3) in calendar year 2012 and each subsequent year, by using the full amount of the applicable comparability payment approved by the President for each non-foreign area.

“SEC. 1915. SAVINGS PROVISION.

“(a) SENSE OF CONGRESS.—It is the sense of Congress that—

“(1) the application of this subtitle to any employee should not result in a decrease in the take home pay of that employee;

“(2) in calendar year 2012 and each subsequent year, no employee shall receive less than the Rest of the U.S. locality pay rate;

“(3) concurrent with the surveys next conducted under the provisions of section 5304(d)(1)(A) of title 5, United States Code, beginning after the date of the enactment of this Act [Oct. 28, 2009], the Bureau of Labor Statistics should conduct separate surveys to determine the extent of any pay disparity (as defined by section 5302 of that title) that may exist with respect to positions located in the State of Alaska, the State of Hawaii, and the United States territories, including American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the United States Virgin Islands;

“(4) if the surveys under paragraph (3) indicate that the pay disparity determined for the State of Alaska, the State of Hawaii, or any 1 of the United States territories including American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the United States Virgin Islands exceeds the pay disparity determined for the locality which (for purposes of section 5304 of that title) is commonly known as the ‘Rest of the United States’, the President’s Pay Agent should take appropriate measures to provide that each such surveyed area be treated as a separate pay locality for purposes of that section; and

“(5) the President’s Pay Agent will establish 1 locality area for the entire State of Hawaii and 1 locality area for the entire State of Alaska.

“(b) SAVINGS PROVISIONS.—

“(1) IN GENERAL.—During the transition period described in section 1914 ending on the first day of the first pay period beginning on or after January 1, 2012, an employee paid a special rate under 5305 of title 5, United States Code, who the day before the date of enactment of this Act [Oct. 28, 2009] was eligible to receive a cost-of-living allowance under section 5941 of title 5, United States Code, and who continues to be officially stationed in an allowance area, shall receive an increase in the employee’s special rate consistent with increases in the applicable special rate schedule. For employees in allowance areas, the minimum step rate for any grade of a special rate schedule shall be increased at the time of an increase in the applicable locality rate percentage for the allowance area by not less than the dollar increase in the locality-based comparability payment for a non-special rate employee at the same minimum step provided under section 1914 of this subtitle, and corresponding increases shall be provided for all step rates of the given pay range.

“(2) CONTINUATION OF COST OF LIVING ALLOWANCE RATE.—If an employee, who the day before the date of enactment of this Act was eligible to receive a cost-

of-living allowance under section 5941 of title 5, United States Code, would receive a rate of basic pay and applicable locality-based comparability payment which is in excess of the maximum rate limitation set under section 5304(g) of title 5, United States Code, for his position (but for that maximum rate limitation) due to the operation of this subtitle, the employee shall continue to receive the cost-of-living allowance rate in effect on December 31, 2009 without adjustment until—

“(A) the employee leaves the allowance area or pay system; or

“(B) the employee is entitled to receive basic pay (including any applicable locality-based comparability payment or similar supplement) at a higher rate, but, when any such position becomes vacant, the pay of any subsequent appointee thereto shall be fixed in the manner provided by applicable law and regulation.

“(3) LOCALITY-BASED COMPARABILITY PAYMENTS.—Any employee covered under paragraph (2) shall receive any applicable locality-based comparability payment extended under section 1914 of this subtitle which is not in excess of the maximum rate set under section 5304(g) of title 5, United States Code, for his position including any future increase to statutory pay limitations under 5318 of title 5, United States Code. Notwithstanding paragraph (2), to the extent that an employee covered under that paragraph receives any amount of locality-based comparability payment, the cost-of-living allowance rate under that paragraph shall be reduced accordingly, as provided under section 5941(c)(2)(B) of title 5, United States Code.

“SEC. 1916. APPLICATION TO OTHER ELIGIBLE EMPLOYEES.

“(a) IN GENERAL.—

“(1) DEFINITION.—In this subsection, the term ‘covered employee’ means—

“(A) any employee who—

“(i) on the day before the date of enactment of this Act [Oct. 28, 2009]—

“(I) was eligible to be paid a cost-of-living allowance under 5941 of title 5, United States Code; and

“(II) was not eligible to be paid locality-based comparability payments under 5304 or 5304a of that title; or

“(ii) on or after the date of enactment of this Act becomes eligible to be paid a cost-of-living allowance under 5941 of title 5, United States Code; or

“(B) any employee who—

“(i) on the day before the date of enactment of this Act—

“(I) was eligible to be paid an allowance under section 1603(b) of title 10, United States Code;

“(II) was eligible to be paid an allowance under section 1005(b) of title 39, United States Code;

“(III) was employed by the Transportation Security Administration of the Department of Homeland Security and was eligible to be paid an allowance based on section 5941 of title 5, United States Code; or

“(IV) was eligible to be paid under any other authority a cost-of-living allowance that is equivalent to the cost-of-living allowance under section 5941 of title 5, United States Code; or

“(ii) on or after the date of enactment of this Act [Oct. 28, 2009]—

“(I) becomes eligible to be paid an allowance under section 1603(b) of title 10, United States Code;

“(II) becomes eligible to be paid an allowance under section 1005(b) of title 39, United States Code;

“(III) is employed by the Transportation Security Administration of the Department of

Homeland Security and becomes eligible to be paid an allowance based on section 5941 of title 5, United States Code; or

“(IV) becomes eligible to be paid under any other authority a cost-of-living allowance that is equivalent to the cost-of-living allowance under section 5941 of title 5, United States Code.

“(2) APPLICATION TO COVERED EMPLOYEES.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, for purposes of this subtitle (including the amendments made by this subtitle) any covered employee shall be treated as an employee to whom section 5941 of title 5, United States Code (as amended by section 1912 of this subtitle), and section 1914 of this subtitle apply.

“(B) PAY FIXED BY STATUTE.—Pay to covered employees under section 5304 or 5304a of title 5, United States Code, as a result of the application of this subtitle shall be considered to be fixed by statute.

“(C) PERFORMANCE APPRAISAL SYSTEM.—With respect to a covered employee who is subject to a performance appraisal system no part of pay attributable to locality-based comparability payments as a result of the application of this subtitle including section 5941 of title 5, United States Code (as amended by section 1912 of this subtitle), may be reduced on the basis of the performance of that employee.

“(b) POSTAL EMPLOYEES IN NON-FOREIGN AREAS.—

“(1) IN GENERAL.—[Amended section 1005 of Title 39, Postal Service.]

“(2) CONTINUATION OF COST OF LIVING ALLOWANCE.—

“(A) IN GENERAL.—Notwithstanding any other provision of this subtitle, any employee of the Postal Service (other than an employee covered by section 1003(b) and (c) of title 39, United States Code, whose duty station is in a nonforeign area) who is paid an allowance under section 1005(b) of that title shall be treated for all purposes as if the provisions of this subtitle (including the amendments made by this subtitle) had not been enacted, except that the cost-of-living allowance rate paid to that employee—

“(i) may result in the allowance exceeding 25 percent of the rate of basic pay of that employee; and

“(ii) shall be the greater of—

“(I) the cost-of-living allowance rate in effect on December 31, 2009 for the applicable area; or

“(II) the applicable locality-based comparability pay percentage under section 1914.

“(B) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to—

“(i) provide for an employee described under subparagraph (A) to be a covered employee as defined under subsection (a); or

“(ii) authorize an employee described under subparagraph (A) to file an election under section 1917 of this subtitle.

“SEC. 1917. ELECTION OF ADDITIONAL BASIC PAY FOR ANNUITY COMPUTATION BY EMPLOYEES.

“(a) DEFINITION.—In this section the term ‘covered employee’ means any employee—

“(1) to whom section 1914 applies;

“(2) who is separated from service by reason of retirement under chapter 83 or 84 of title 5, United States Code, during the period of January 1, 2010, through December 31, 2012; and

“(3) who files an election with the Office of Personnel Management under subsection (b).

“(b) ELECTION.—

“(1) IN GENERAL.—An employee described under subsection (a)(1) and (2) may file an election with the Office of Personnel Management to be covered under this section.

“(2) DEADLINE.—An election under this subsection may be filed not later than December 31, 2012.

“(c) COMPUTATION OF ANNUITY.—

“(1) IN GENERAL.—Except as provided under paragraph (2), for purposes of the computation of an annu-

ity of a covered employee any cost-of-living allowance under section 5941 of title 5, United States Code, paid to that employee during the first applicable pay period beginning on or after January 1, 2010 through the first applicable pay period ending on or after December 31, 2012, shall be considered basic pay as defined under section 8331(3) or 8401(4) of that title.

“(2) LIMITATION.—An employee’s cost-of-living allowance may be considered basic pay under paragraph (1) only to the extent that, when added to the employee’s locality-based comparability payments, the resulting sum does not exceed the amount of the locality-based comparability payments the employee would have received during that period for the applicable pay area if the limitation under section 1914 did not apply.

“(d) CIVIL SERVICE RETIREMENT AND DISABILITY RETIREMENT FUND.—

“(1) EMPLOYEE CONTRIBUTIONS.—A covered employee shall pay into the Civil Service Retirement and Disability Retirement Fund—

“(A) an amount equal to the difference between—

“(i) employee contributions that would have been deducted and withheld from pay under section 8334 or 8422 of title 5, United States Code, during the period described under subsection (c) of this section if the cost-of-living allowances described under that subsection had been treated as basic pay under section 8331(3) or 8401(4) of title 5, United States Code; and

“(ii) employee contributions that were actually deducted and withheld from pay under section 8334 or 8422 of title 5, United States Code, during that period; and

“(B) interest as prescribed under section 8334(e) of title 5, United States Code, based on the amount determined under subparagraph (A).

“(2) AGENCY CONTRIBUTIONS.—

“(A) IN GENERAL.—The employing agency of a covered employee shall pay into the Civil Service Retirement and Disability Retirement Fund an amount for applicable agency contributions based on payments made under paragraph (1).

“(B) SOURCE.—Amounts paid under this paragraph shall be contributed from the appropriation or fund used to pay the employee.

“(3) REGULATIONS.—The Office of Personnel Management may prescribe regulations to carry out this section.

“SEC. 1918. REGULATIONS.

“(a) IN GENERAL.—The Director of the Office of Personnel Management shall prescribe regulations to carry out this subtitle, including—

“(1) rules for special rate employees described under section 1913;

“(2) rules for adjusting rates of basic pay for employees in pay systems administered by the Office of Personnel Management when such employees are not entitled to locality-based comparability payments under section 5304 of title 5, United States Code, without regard to otherwise applicable statutory pay limitations during the transition period described in section 1914 ending on the first day of the first pay period beginning on or after January 1, 2012; and

“(3) rules governing establishment and adjustment of saved or retained rates for any employee whose rate of pay exceeds applicable pay limitations on the first day of the first pay period beginning on or after January 1, 2012.

“(b) OTHER PAY SYSTEMS.—With the concurrence of the Director of the Office of Personnel Management, the administrator of a pay system not administered by the Office of Personnel Management shall prescribe regulations to carry out this subtitle with respect to employees in such pay system, consistent with the regulations prescribed by the Office under subsection (a). With respect to employees not entitled to locality-based comparability payments under section 5304 of title 5, United States Code, regulations prescribed

under this subsection may provide for special payments or adjustments for employees who were eligible to receive a cost-of-living allowance under section 5941 of that title on the date before the date of enactment of this Act [Oct. 28, 2009].

“SEC. 1919. EFFECTIVE DATES.

“(a) IN GENERAL.—Except as provided by subsection (b), this subtitle (including the amendments made by this subtitle) shall take effect on the date of enactment of this Act [Oct. 28, 2009].

“(b) LOCALITY PAY AND SCHEDULE.—The amendments made by section 1912 and the provisions of section 1914 shall take effect on the first day of the first applicable pay period beginning on or after January 1, 2010.”

COMPARABILITY PAYMENTS BETWEEN 2002 AND 2007; COMPARISONS AND RECOMMENDATIONS; REVISION OF METHODOLOGY

Pub. L. 106-554, §1(a)(3) [title VI, §637], Dec. 21, 2000, 114 Stat. 2763, 2763A-165, provided that:

“(a) For purposes of this section—

“(1) the term ‘comparability payment’ refers to a locality-based comparability payment under section 5304 of title 5, United States Code;

“(2) the term ‘President’s pay agent’ refers to the pay agent described in section 5302(4) of such title; and

“(3) the term ‘pay locality’ has the meaning given such term by section 5302(5) of such title.

“(b) Notwithstanding any provision of section 5304 of title 5, United States Code, for purposes of determining appropriate pay localities and making comparability payment recommendations, the President’s pay agent may, in accordance with succeeding provisions of this section, make comparisons of General Schedule pay and non-Federal pay within any of the metropolitan statistical areas described in subsection (d)(3), using—

“(1) data from surveys of the Bureau of Labor Statistics;

“(2) salary data sets obtained under subsection (c); or

“(3) any combination thereof.

“(c) To the extent necessary in order to carry out this section, the President’s pay agent may obtain any salary data sets (referred to in subsection (b)) from any organization or entity that regularly compiles similar data for businesses in the private sector.

“(d)(1)(A) This paragraph applies with respect to the five metropolitan statistical areas described in paragraph (3) which—

“(i) have the highest levels of nonfarm employment (as determined based on data made available by the Bureau of Labor Statistics); and

“(ii) as of the date of the enactment of this Act [Dec. 21, 2000], have not previously been surveyed by the Bureau of Labor Statistics (as discrete pay localities) for purposes of section 5304 of title 5, United States Code.

“(B) The President’s pay agent, based on such comparisons under subsection (b) as the pay agent considers appropriate, shall: (i) determine whether any of the five areas under subparagraph (A) warrants designation as a discrete pay locality; and (ii) if so, make recommendations as to what level of comparability payments would be appropriate during 2002 for each area so determined.

“(C)(i) Any recommendations under subparagraph (B)(ii) shall be included—

“(I) in the pay agent’s report under section 5304(d)(1) of title 5, United States Code, submitted for purposes of comparability payments scheduled to become payable in 2002; or

“(II) if compliance with subclause (I) is impracticable, in a supplementary report which the pay agent shall submit to the President and the Congress no later than March 1, 2001.

“(ii) In the event that the recommendations are completed in time to be included in the report described in clause (i)(I), a copy of those recommendations shall be

transmitted by the pay agent to the Congress contemporaneous with their submission to the President.

“(D) Each of the five areas under subparagraph (A) that so warrants, as determined by the President’s pay agent, shall be designated as a discrete pay locality under section 5304 of title 5, United States Code, in time for it to be treated as such for purposes of comparability payments becoming payable in 2002.

“(2) The President’s pay agent may, at any time after the 180th day following the submission of the report under subsection (f), make any initial or further determinations or recommendations under this section, based on any pay comparisons under subsection (b), with respect to any area described in paragraph (3).

“(3) An area described in this paragraph is any metropolitan statistical area within the continental United States that (as determined based on data made available by the Bureau of Labor Statistics and the Office of Personnel Management, respectively) has a high level of nonfarm employment and at least 2,500 General Schedule employees whose post of duty is within such area.

“(e)(1) The authority under this section to make pay comparisons and to make any determinations or recommendations based on such comparisons shall be available to the President’s pay agent only for purposes of comparability payments becoming payable on or after January 1, 2002, and before January 1, 2007, and only with respect to areas described in subsection (d)(3).

“(2) Any comparisons and recommendations so made shall, if included in the pay agent’s report under section 5304(d)(1) of title 5, United States Code, for any year (or the pay agent’s supplementary report, in accordance with subsection (d)(1)(C)(i)(II)), be considered and acted on as the pay agent’s comparisons and recommendations under such section 5304(d)(1) for the area and the year involved.

“(f)(1) No later than March 1, 2001, the President’s pay agent shall submit to the Committee on Government Reform [now Committee on Oversight and Government Reform] of the House of Representatives, the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate, and the Committees on Appropriations of the House of Representatives and of the Senate, a report on the use of pay comparison data, as described in subsection (b)(2) or (3) (as appropriate), for purposes of comparability payments.

“(2) The report shall include the cost of obtaining such data, the rationale underlying the decisions reached based on such data, and the relative advantages and disadvantages of using such data (including whether the effort involved in analyzing and integrating such data is commensurate with the benefits derived from their use). The report may include specific recommendations regarding the continued use of such data.

“(g)(1) No later than May 1, 2001, the President’s pay agent shall prepare and submit to the committees specified in subsection (f)(1) a report relating to the ongoing efforts of the Office of Personnel Management, the Office of Management and Budget, and the Bureau of Labor Statistics to revise the methodology currently being used by the Bureau of Labor Statistics in performing its surveys under section 5304 of title 5, United States Code.

“(2) The report shall include a detailed accounting of any concerns the pay agent may have regarding the current methodology, the specific projects the pay agent has directed any of those agencies to undertake in order to address those concerns, and a time line for the anticipated completion of those projects and for implementation of the revised methodology.

“(3) The report shall also include recommendations as to how those ongoing efforts might be expedited, including any additional resources which, in the opinion of the pay agent, are needed in order to expedite completion of the activities described in the preceding provisions of this subsection, and the reasons why those additional resources are needed.”

FREEZE OF CURRENT RATE FOR LOCALITY-BASED  
COMPARABILITY ADJUSTMENTS

Pub. L. 106-554, §1(a)(4) [div. B, title IX, §902(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-304, which provided that notwithstanding any other law, no officer or member of the United States Secret Service Uniformed Division or Park Police was to be paid locality pay under section 5304 or 5304a of this title, at a percentage rate for the applicable locality in excess of the rate in effect for pay periods during calendar year 2000, ceased to be effective on the first day of the first pay period on or after Jan. 1, 2003, pursuant to Pub. L. 108-7, div. J, title VI, §643, Feb. 20, 2003, 117 Stat. 473.

COMPARABILITY PAYMENTS IN 1994 AND 1995

Pub. L. 103-329, title VI, §630(b), (c), Sept. 30, 1994, 108 Stat. 2424, provided that:

“(b) For purposes of any locality-based comparability payments taking effect in fiscal year 1995 under subchapter I of chapter 53 of title 5, United States Code (whether by adjustment or otherwise), section 5304(a) of such title shall be deemed to be without force or effect.

“(c) Notwithstanding section 5304(a)(3)(B) of title 5, United States Code, the annualized cost of pay adjustments made under section 5304 of such title in calendar year 1995 shall be equal to 0.6 percent of the estimated aggregate fiscal year 1995 executive branch civilian payroll—

“(1) as determined by the pay agent (within the meaning of section 5302 of such title); and

“(2) determined as if the rates of pay and comparability payments payable on September 30, 1994, had remained in effect.”

Section 8(b) of Pub. L. 102-378 provided that: “Notwithstanding section 5304 of title 5, United States Code, for purposes of any comparability payments scheduled to take effect under such section during calendar years 1994 and 1995, respectively—

“(1) the report required by subsection (d)(1) of such section may be submitted not later than 1 month before the start of the calendar year for purposes of which it is prepared; and

“(2) the surveys conducted by the Bureau of Labor Statistics for use in preparing any such report may be other than annual surveys, and shall, to the greatest extent practicable, be completed not later than 4 months before the start of the calendar year for purposes of which the surveys are conducted.”

INTERIM GEOGRAPHIC ADJUSTMENTS

Section 529 [title III, §302] of Pub. L. 101-509, as amended by Pub. L. 102-378, §3(4), Oct. 2, 1992, 106 Stat. 1356; Pub. L. 103-89, §3(b)(2), Sept. 30, 1993, 107 Stat. 982, provided that:

“(a) DEFINITIONS.—For the purpose of this section—

“(1) the term ‘area’ means any consolidated metropolitan statistical area, primary metropolitan statistical area, or metropolitan statistical area, with at least 5,000 General Schedule employees; and

“(2) the term ‘pay relative’ shall have the meaning given such term under regulations prescribed by the Bureau of Labor Statistics.

“(b) AUTHORITY.—(1) The President may establish geographic adjustments of up to 8 percent of basic pay which may be paid to each General Schedule employee whose duty station is within any area where such adjustment is needed (as determined under paragraph (2)).

“(2) In determining areas where an interim geographic adjustment is needed, the President shall consider available evidence of significant pay disparities, including BLS information on pay relatives and relevant commercial surveys, and recruitment or retention problems.

“(c) ADMINISTRATION.—(1) An adjustment under this section shall be administered, to the extent practicable, in the same manner as locality-based comparability payments under subchapter I of chapter 53 of title 5, United States Code (as amended by this Act), including in terms of—

“(A) the basic pay to which a percentage is applied in computing an amount payable under this section;

“(B) the purposes for which any amount under this section is to be considered part of basic pay;

“(C) the time and manner in which amounts under this section are to be paid (including any maximum rate limitation); and

“(D) the authority of the President, upon request of an agency head, to extend this section to employees who would not otherwise be covered.

“(2) No amount payable under this section shall be taken into account in any survey or computation under, or for any other purpose in the administration of, section 5304 of title 5, United States Code (as so amended).

“(d) COMMENCEMENT AND TERMINATION RULES.—(1) The effective date of an adjustment under this section shall be as determined by the President, but not later than January 1, 1994.

“(2)(A) The size of any payments under this section may be reduced or terminated after the amendments made by section 101 of this Act [section 529 [title I, §101] of Pub. L. 101-509, see Tables for classification] take effect [see Effective Date of 1990 Amendment note set out under section 5301 of this title], except that the reduction or termination of a payment under this section may not have the effect of reducing, for the individual involved, the total rate at which additional forms of basic pay (as defined in subparagraph (B)) are payable to such individual.

“(B) The total rate to which subparagraph (A) applies is the sum of—

“(i) the rate at which comparability payments (under section 5304 of title 5, United States Code, as amended by such Act), are payable; and

“(ii) the rate at which payments under this section are payable.

“(e) EMPLOYEES RECEIVING SPECIAL PAY RATES.—The President (or his designated agent) shall determine what, if any, geographic adjustment shall be payable under this section in the case of an employee whose rate of pay is fixed under section 5303 of title 5, United States Code (as in effect before the date of enactment of this Act [Nov. 5, 1990]), section 5305 of title 5, United States Code (as amended by section 101 of this Act), or any similar provision of law.

“(f) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act [Nov. 5, 1990].”

[Amendment by Pub. L. 103-89 to section 529 [title III, §302] of Pub. L. 101-509, set out above, effective Nov. 1, 1993, see section 3(c) of Pub. L. 103-89, set out as an Effective Date of 1993 Amendment note under section 3372 of this title.]

[Amendment by Pub. L. 102-378 to section 529 [title III, §302] of Pub. L. 101-509, set out above, effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102-378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.]

Interim geographic adjustments pursuant to section 529 [title III, §302] of Pub. L. 101-509, set out above, were provided by the following executive orders, formerly set out as notes under section 5332 of this title, effective on the first day of first pay period beginning on or after the effective date shown:

Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, effective Jan. 1, 1995.

Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909, effective Jan. 1, 1993.

Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453, effective Jan. 1, 1992.

Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385, effective Jan. 1, 1991.

EXECUTIVE ORDER NO. 11073

Ex. Ord. No. 11073, Jan. 7, 1963, 28 F.R. 203, as amended by Ex. Ord. No. 11173, Aug. 20, 1964, 29 F.R. 11999, which provided for Federal salary administration, was superseded by Ex. Ord. No. 11721, May 23, 1973, 38 F.R. 13717, formerly set out below.

## EXECUTIVE ORDER NO. 11721

Ex. Ord. No. 11721, May 23, 1973, 38 F.R. 13717, as amended by Ex. Ord. No. 12004, July 20, 1977, 42 F.R. 37527; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which provided for administration of the Federal pay system, was revoked by Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521, eff. Feb. 3, 1991, set out under section 5301 of this title.

## EX. ORD. NO. 12764. FEDERAL SALARY COUNCIL

Ex. Ord. No. 12764, June 5, 1991, 56 F.R. 26587, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5304(e) of title 5, United States Code, as amended, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), an advisory committee on locality-based comparability payments for General Schedule employees, it is hereby ordered as follows:

SECTION 1. *Establishment.* There is established a Federal Salary Council (the "Council"). The Council shall be composed of nine members appointed by the President in accordance with section 5304(e)(1) of title 5, United States Code. The President shall designate one of the members to serve as Chairman of the Council and shall designate another member to serve as Vice Chairman of the Council. The Vice Chairman shall act as Chairman in the absence of the Chairman.

SEC. 2. *Function.* The Council shall meet with the President's Pay Agent, as designated under section 2(a) of Executive Order No. 12748 of February 1, 1991 [5 U.S.C. 5301 note], to provide views and recommendations regarding:

(a) the establishment or modification of pay localities;

(b) the coverage of annual surveys conducted by the Bureau of Labor Statistics under subsection 5304(d)(1)(A) of title 5, United States Code (including, but not limited to, the occupations, establishment sizes, and industries to be surveyed, and how pay localities are to be surveyed);

(c) the process of comparing the rates of pay payable under the General Schedule with rates of pay for the same levels of work performed by non-Federal workers; and

(d) the level of comparability payments that should be paid in order to eliminate or reduce pay disparities in accordance with the requirements of section 5304 of title 5, United States Code [sic].

SEC. 3. *Administration.* (a) Members of the Council shall receive no pay by reason of their service on the Council.

(b) To the extent permitted by law and subject to the availability of appropriations, the Office of Personnel Management (the "Office") shall provide such facilities and administrative support to the Council as the Director of the Office determines appropriate.

(c) Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended [5 U.S.C. App.], except that of reporting to the Congress, which are applicable to the Council, shall be performed by the Director of the Office, in accordance with the guidelines and procedures established by the Administrator of General Services.

GEORGE BUSH.

## LOCALITY-BASED COMPARABILITY PAYMENTS

For adjustment of locality-based comparability payments under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of this title.

Approvals of locality-based comparability payments recommended by the Director of the Office of Personnel Management were contained in the following:

Memorandum of President of the United States, Nov. 30, 1994, 59 F.R. 62549.

Memorandum of President of the United States, Dec. 1, 1993, 58 F.R. 64097.

## § 5304a. Authority to fix an alternative level of comparability payments

(a) If, because of national emergency or serious economic conditions affecting the general welfare, the President should consider the level of comparability payments which would otherwise be payable under section 5304 in any year to be inappropriate, the President shall—

(1) prepare and transmit to Congress, at least 1 month before those comparability payments (disregarding this section) would otherwise become payable, a report describing the alternative level of payments which the President instead intends to provide, including the reasons why such alternative level is considered necessary; and

(2) implement the alternative level of payments beginning on the same date as would otherwise apply, for the year involved, under section 5304.

(b) The requirements set forth in paragraphs (2) and (3), respectively, of section 5303(b) shall apply with respect to any decision to exercise any authority to fix an alternative level of comparability payments under this section.

(Added Pub. L. 101-509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1436.)

## EFFECTIVE DATE

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

## SPECIAL RULE RELATING TO COMPARABILITY PAYMENTS IN 1994

Section 634 of Pub. L. 101-509 provided that:

"Notwithstanding any other provision of law (including any provision of the Federal Employees Pay Comparability Act of 1990 [see Short Title of 1990 Amendment note set out under section 5301 of this title] and any provision of law amended by such Act), for purposes of any comparability payments scheduled to take effect under section 5304 of title 5, United States Code (as amended by such Act) during calendar year 1994—

"(1) deem section 5304a of such title (as so amended) to be amended as follows:

"(A) in subsection (a), strike 'If' and all that follows thereafter through 'welfare,' and insert 'Subject to subsection (c), if'; and

"(B) add after subsection (b) the following:

"(c)(1) For the purpose of this section—

"(A) the "threshold amount" is \$1,800,000,000; and

"(B) "severe economic conditions" shall be considered to exist relative to comparability payments scheduled to take effect on a given date if, during the 12-month period ending 2 calendar quarters before such date, there occurred 2 consecutive quarters of negative growth in the GNP.

"(2) Authority under this section to provide an alternative level of comparability payments in any year may not be exercised except in accordance with the following:

"(A) If the estimated cost of the comparability payments which (but for this section) would otherwise be payable in such year would be equal to the threshold amount or less, no alternative level may be fixed under this section unless necessary because a state of war or severe economic conditions exist.

"(B) If the estimated cost of the comparability payments which (but for this section) would otherwise be payable in such year would be greater than the threshold amount, no alternative level may be fixed—

“(i) at a level which would result in an estimated cost equal to or greater than the threshold amount, unless necessary because of national emergency or serious economic conditions affecting the general welfare; or

“(ii) at a level which would result in an estimated cost less than the threshold amount, unless necessary because of either of the reasons set forth in subparagraph (A).

“(d)(1) The President’s agent (as referred to in section 5304(d)) shall develop and include in the appropriate report under section 5304(d)(1) the methodology for estimating any costs under this section, and any estimate under this section shall be in accordance with such methodology.

“(2) In making any estimate under this section, costs attributable to any authority under section 5304(h) may not be taken into account; and

“(2) the President’s pay agent (referred to in section 5304(d) of such title, as so amended) may use appropriate estimates in lieu of BLS survey data if such data is not available for use in preparing the agent’s report with respect to comparability payments payable during calendar year 1994.”

### § 5305. Special pay authority

(a)(1) Whenever the Office of Personnel Management finds that the Government’s recruitment or retention efforts with respect to 1 or more occupations in 1 or more areas or locations are, or are likely to become, significantly handicapped due to any of the circumstances described in subsection (b), the Office may establish for the areas or locations involved, with respect to individuals in positions paid under any of the pay systems referred to in subsection (c), higher minimum rates of pay for 1 or more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases in all rates of the pay range for each such grade or level. However, a minimum rate so established may not exceed the maximum rate of basic pay (excluding any locality-based comparability payment under section 5304 or similar provision of law) for the grade or level by more than 30 percent, and no rate may be established under this section in excess of the rate of basic pay payable for level IV of the Executive Schedule. In the case of individuals not subject to the provisions of this title governing appointment in the competitive service, the President may designate another agency to authorize special rates under this section.

(2) The head of an agency may determine that a category of employees of the agency will not be covered by a special rate authorization established under this section. The head of an agency shall provide written notice to the Office of Personnel Management (or other agency designated by the President to authorize special rates under the last sentence of paragraph (1)) which identifies the specific category or categories of employees that will not be covered by special rates authorized under this section. If the head of an agency removes a category of employees from coverage under a special rate authorization after that authorization takes effect, the loss of coverage will take effect on the first day of the first pay period after the date of the notice.

(b) The circumstances referred to in subsection (a) are—

(1) rates of pay offered by non-Federal employers being significantly higher than those

payable by the Government within the area, location, occupational group, or other class of positions under the pay system involved;

(2) the remoteness of the area or location involved;

(3) the undesirability of the working conditions or the nature of the work involved (including exposure to toxic substances or other occupational hazards); or

(4) any other circumstances which the Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) considers appropriate.

(c) Authority under subsection (a) may be exercised with respect to positions paid under—

(1) a statutory pay system; or

(2) any other pay system established by or under Federal statute for civilian positions within the executive branch.

(d) Within the limitations applicable under the preceding provisions of this section, rates of pay established under this section may be revised from time to time by the Office of Personnel Management (or by such other agency as the President may designate under the last sentence of subsection (a)(1)). The actions and revisions have the force and effect of statute.

(e) An increase in a rate of pay established under this section is not an equivalent increase in pay within the meaning of section 5335.

(f) When a schedule of special rates established under this section is adjusted under subsection (d), a covered employee’s special rate will be adjusted in accordance with conversion rules prescribed by the Office of Personnel Management (or by such other agency as the President may under the last sentence of subsection (a)(1) designate).

(g)(1) The benefit of any comparability payments under section 5304 shall be available to individuals receiving rates of pay established under this section to such extent as the Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) considers appropriate, subject to paragraph (2) and subsection (h).

(2) Payments under this subsection may not be made if, or to the extent that, when added to basic pay otherwise payable, such payments would cause the total to exceed the rate of basic pay payable for level IV of the Executive Schedule.

(h) An employee shall not for any purpose be considered to be entitled to a rate of pay established under this section with respect to any period for which such employee is entitled to a higher rate of basic pay under any other provision of law. For purposes of this subsection, the term “basic pay” includes any applicable locality-based comparability payment under section 5304 or similar provision of law.

(i) If an employee who is receiving a rate of pay under this section becomes subject, by virtue of moving to a new official duty station, to a different pay schedule, such employee’s new rate of pay shall be initially established under conversion rules prescribed by the Office of Personnel Management (or such other agency as the

President may under the last sentence of subsection (a)(1) designate) in conformance with the following:

(1) First, determine the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the rate range) before the move.

(2) Then, if (in addition to the change in pay schedule) the move also involves any personnel action or other change requiring a rate adjustment under any other provision of law, rule, or regulation, apply the applicable rate adjustment provisions, treating the rate determined under paragraph (1) as if it were the rate last received by the employee before the rate adjustment.

(j) A rate determined under a schedule of special rates established under this section shall be considered to be part of basic pay for purposes of subchapter III of chapter 83, chapter 84, chapter 87, subchapter V of chapter 55, and section 5941, and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe.

(Added Pub. L. 91-656, §3(a), Jan. 8, 1971, 84 Stat. 1946; amended Pub. L. 94-82, title II, §202(c), Aug. 9, 1975, 89 Stat. 420; Pub. L. 101-509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1436; Pub. L. 108-411, title III, §301(a)(2), Oct. 30, 2004, 118 Stat. 2313.)

#### REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsecs. (a)(1) and (g)(2), is set out in section 5315 of this title.

The provisions of this title governing appointment in the competitive service, referred to in subsec. (a), are classified generally to section 3301 et seq. of this title.

#### AMENDMENTS

2004—Subsec. (a). Pub. L. 108-411, §301(a)(2)(A), added subsec. (a) and struck out former subsec. (a) relating to the President's authority to establish higher minimum rates of basic pay for specified individuals where the Government's recruitment or retention efforts are, or are likely to become, significantly handicapped.

Subsec. (b)(4). Pub. L. 108-411, §301(a)(2)(B), added par. (4) and struck out former par. (4) which read as follows: "any other circumstances which the President (or an agency duly authorized or designated by the President in accordance with the last sentence of subsection (a)) considers appropriate."

Subsec. (d). Pub. L. 108-411, §301(a)(2)(C), substituted "Office of Personnel Management" for "President" and "(or by such other agency as the President may designate under the last sentence of subsection (a)(1))" for "or by such agency as he may designate".

Subsec. (e). Pub. L. 108-411, §301(a)(2)(D), substituted "rate of pay" for "rate of basic pay".

Subsec. (f). Pub. L. 108-411, §301(a)(2)(E), added subsec. (f) and struck out former subsec. (f) which read as follows: "The rate of basic pay established under this section and received by an individual immediately before a statutory increase, which becomes effective prior to, on, or after the date of enactment of the statute, in the pay schedule applicable to such individual of any pay system specified in subsection (c) of this section, shall be initially adjusted, effective on the effective date of the statutory increase, under conversion rules prescribed by the President or by such agency as the President may designate."

Subsec. (g)(1). Pub. L. 108-411, §301(a)(2)(F), substituted "pay" for "basic pay" and "Office of Personnel

Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate)" for "President (or his designated agency)".

Subsec. (h). Pub. L. 108-411, §301(a)(2)(G), added subsec. (h) and struck out former subsec. (h) which read as follows: "The rate of basic pay payable to an individual under this section may not, at any time, be less than the rate which would then be payable to such individual (taking comparability payments under section 5304 into account) if this section had never been enacted."

Subsecs. (i), (j). Pub. L. 108-411, §301(a)(2)(H), added subsecs. (i) and (j).

1990—Pub. L. 101-509 amended section generally, substituting provisions authorizing President to make special pay increases whenever recruitment or retention efforts are handicapped for provisions requiring annual pay reports and adjustments, authorizing alternative plan in years of emergency or when economic conditions affect the general welfare, and setting forth procedure where Congressional committee disapproves such alternative plan.

1975—Subsec. (a)(3). Pub. L. 94-82, §202(c)(1), inserted provision relating to specification in the report to the Congress of the overall percentage of the adjustment in the rates of pay under the General Schedule and under other statutory pay systems.

Subsec. (c)(1). Pub. L. 94-82, §202(c)(2), inserted provision relating to specification in the report to the Congress of the overall percentage of the adjustment in the rates of pay under the General Schedule and under other statutory pay systems.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-411 effective on the first day of the first applicable pay period beginning on or after the 180th day after Oct. 30, 2004, with provision relating to conversion rules, see section 301(d) of Pub. L. 108-411, set out as a note under section 5363 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

#### DELEGATION OF FUNCTIONS

Functions of President under this section assigned to the Director of the Office of Personnel Management by section 1 of Ex. Ord. No. 13415, Dec. 1, 2006, 71 F.R. 70641, set out as a note under section 4505a of this title.

#### STAFFING DIFFERENTIALS

Section 529 [title II, §209] of Pub. L. 101-509, as amended by Pub. L. 102-378, §3(3), Oct. 2, 1992, 106 Stat. 1355, provided that:

"(a) IN GENERAL.—Effective on the first day of the first applicable pay period beginning on or after January 1, 1991, the President may establish staffing differentials equal to 5 percent of basic pay, which may be paid to each General Schedule employee whose position is in—

"(1) grade GS-5 or 7 of the General Schedule;

"(2) a 2-grade-interval occupational series, as determined by the Office of Personnel Management; or

"(3) any combination of classes of positions described in paragraph (1) or (2) for which the President determines a recruiting difficulty exists.

"(b) MANNER OF PAYMENT; REDUCTION OR ELIMINATION.—A staffing differential under this section—

"(1) shall be paid in the same manner and at the same time as the employee's basic pay is paid, but may not be considered to be part of basic pay for any purpose; and

"(2) may be reduced or eliminated by the Office of Personnel Management in its sole discretion as the amendments made by this Act take effect [see Effective Date of 1990 Amendment and Short Title of 1990 Amendment notes set out under section 5301 of this

title], except that no such reduction or elimination shall have the effect of reducing the total amount of pay (determined by adding basic pay and staffing differential) which any employee is receiving.”  
 [Authority of President under section 529 [title II, §209] of Pub. L. 101-509, set out above, delegated to Office of Personnel Management by Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521, eff. May 4, 1991, set out as a note under section 5301 of this title.]

FEDERAL LAW ENFORCEMENT PAY REFORM

Pub. L. 106-554, §1(a)(4) [div. B, title IX, §907(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-309, provided that: “Beginning on the effective date of this Act [see section 1(a)(4) [div. B, title IX, §909] of Pub. L. 106-554, set out in a Conversion to New Salary Schedule note under section 3056A of Title 18, Crimes and Criminal Procedure]—

“(1) no existing special salary rates shall be authorized for members of the United States Park Police under section 5305 of title 5, United States Code (or any previous similar provision of law); and

“(2) no special rates of pay or special pay adjustments shall be applicable to members of the United States Park Police pursuant to section 405 of the Federal Law Enforcement Pay Reform Act of 1990 [section 529 [title IV, §405] of Pub. L. 101-509, set out in a note below].”

Section 529 [title IV, §§401-407] of Pub. L. 101-509, as amended by Pub. L. 102-378, §3(5)-(9), Oct. 2, 1992, 106 Stat. 1356; Pub. L. 103-123, title VI, §628, Oct. 28, 1993, 107 Stat. 1266; Pub. L. 103-178, title III, §303(a), Dec. 3, 1993, 107 Stat. 2034; Pub. L. 105-61, title I, §118(e), Oct. 10, 1997, 111 Stat. 1288; Pub. L. 106-554, §1(a)(4) [div. B, title IX, §907(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-309; Pub. L. 108-411, title I, §101(b), title III, §301(b), Oct. 30, 2004, 118 Stat. 2309, 2317, provided that:

“SEC. 401. SHORT TITLE.

“This title [section 529 [title IV, §§401-412] of Pub. L. 101-509, enacting sections 4521 to 4523 of this title, amending sections 5541, 5542, 5547, 8335, and 8425 of this title, enacting provisions set out as notes under this section and sections 4521, 5541, and 8335 of this title, and amending provisions set out as a note under section 5541 of this title] may be cited as the ‘Federal Law Enforcement Pay Reform Act of 1990’.

“SEC. 402. DEFINITION.

“For the purposes of this title, except as otherwise provided, the term ‘law enforcement officer’ means any law enforcement officer within the meaning of section 5541(3) of title 5, United States Code, with respect to whom the provisions of chapter 51 of such title apply.

“SEC. 403. SPECIAL RATES FOR LAW ENFORCEMENT OFFICERS.

“(a) Notwithstanding the procedures of section 5305 of title 5, United States Code, as amended by section 101 of this Act, or similar provision of law, higher minimum rates and corresponding increases in all step rates of each designated General Schedule grade shall be established for law enforcement officers in accordance with the provisions of this section.

“(b)(1) Effective on the first day of the first applicable pay period beginning on or after January 1, 1992, the higher minimum rates to be established are as follows:

“GS-3 .....	Step 4
“GS-4 .....	Step 4
“GS-5 .....	Step 4
“GS-6 .....	Step 3
“GS-7 .....	Step 3
“GS-8 .....	Step 3
“GS-9 .....	Step 2
“GS-10 .....	Step 2

“(2) Effective on the first day of the first applicable pay period beginning on or after January 1, 1993, the higher minimum rates to be established are as follows:

“GS-3 .....	Step 7
“GS-4 .....	Step 7

“GS-5 .....	Step 8
“GS-6 .....	Step 6
“GS-7 .....	Step 5
“GS-8 .....	Step 3
“GS-9 .....	Step 2
“GS-10 .....	Step 2

“(c) The higher minimum rates and corresponding higher rates for each step rate of each designated grade shall apply to every law enforcement officer in the designated grades (except in the case of any law enforcement officer for whom a higher rate is authorized under section 5305 of title 5, United States Code, as amended by section 101 of this Act, or similar provision of law) and shall be basic pay for all purposes. The rates shall be adjusted at the time of adjustments in the General Schedule to maintain the step linkage set forth in subsection (b)(2).

“(d) Any interim entry-level adjustment under section 209 of this Act [section 529 [title II, §209] of Pub. L. 101-509, set out as a note above] which a law enforcement officer is receiving shall be eliminated on the day before the effective date of the higher minimum rates under subsection (b)(1).

“SEC. 404. SPECIAL PAY ADJUSTMENTS FOR LAW ENFORCEMENT OFFICERS IN SELECTED CITIES.

“(a) A law enforcement officer shall be paid any applicable special pay adjustment in accordance with the provisions of this section, but such special pay adjustment shall be reduced by the amount of any applicable interim geographic adjustment under section 302 of this Act [section 529 [title III, §302] of Pub. L. 101-509, set out as a note under section 5304 of this title], any applicable locality-based comparability payment under section 5304 of title 5, United States Code, as amended by section 101 of this Act, and, to the extent determined appropriate by the Office of Personnel Management, any applicable special rate of pay under section 5305 of such title, as so amended, or any similar provision of law (other than section 403).

“(b)(1) Except as provided in subsection (a), effective on the first day of the first applicable pay period beginning on or after January 1, 1992, each law enforcement officer whose post of duty is in one of the following areas shall receive an adjustment, which shall be a percentage of the officer’s rate of basic pay, as follows:

“Area	Differential
Boston-Lawrence-Salem, MA-NH Consolidated Metropolitan Statistical Area .....	16%
Chicago-Gary-Lake County, IL-IN-WI Consolidated Metropolitan Statistical Area .....	4%
Los Angeles-Anaheim-Riverside, CA Consolidated Metropolitan Statistical Area .....	16%
New York-Northern New Jersey-Long Island, NY-NJ-CT Consolidated Metropolitan Statistical Area .....	16%
Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD Consolidated Metropolitan Statistical Area .....	4%
San Francisco-Oakland-San Jose, CA Consolidated Metropolitan Statistical Area .....	16%
San Diego, CA Metropolitan Statistical Area .....	8%
Washington-Baltimore DC-MD-VA-WV Consolidated Metropolitan Statistical Area .....	4%

“(2) In the case of any area specified in paragraph (1) that includes a portion, but not all, of a county, the Office of Personnel Management may, at the request of the head of 1 or more law enforcement agencies, extend the area specified in paragraph (1) to include, for the purposes of this section, the entire county, if the Office determines that such extension would be in the interests of good personnel administration. Any such extension shall be applicable to each law enforcement officer whose post of duty is in the area of the extension.

“(c)(1) A special pay adjustment under this section shall be administered, to the extent practicable, in the

same manner as a locality-based comparability payment under section 5304 of title 5, United States Code, as amended by section 101 of this Act, and shall be considered part of basic pay to the same degree as such a locality-based comparability payment.

“(2) The Office of Personnel Management may prescribe such regulations as it considers necessary concerning the payment of special pay adjustments to law enforcement officers under this section.

“SEC. 405. SAME BENEFITS FOR OTHER LAW ENFORCEMENT OFFICERS.

“(a) The appropriate agency head (as defined in subsection (c)) shall prescribe regulations under which the purposes of sections 403, 404, and 407 shall be carried out with respect to individuals holding positions described in subsection (b).

“(b) This subsection applies with respect to any—

“(1) special agent within the Diplomatic Security Service;

“(2) probation officer (referred to in section 3672 of title 18, United States Code); or

“(3) pretrial services officer (referred to in section 3153 of title 18, United States Code).

“(c) For purposes of this section, the term ‘appropriate agency head’ means—

“(1) with respect to any individual under subsection (b)(1), the Secretary of State; or

“(2) with respect to any individual under subsection (b)(2) or (b)(3), the Director of the Administrative Office of the United States Courts.

“SEC. 406. FBI NEW YORK FIELD DIVISION.

“(a) The total pay of an employee of the Federal Bureau of Investigation assigned to the New York Field Division before the date of September 29, 1993, in a position covered by the demonstration project conducted under section 601 of the Intelligence Authorization Act for Fiscal Year 1989 (Public Law 100-453) [102 Stat. 1911] shall not be reduced as a result of the termination of the demonstration project during the period that employee remains employed after that date in a position covered by the demonstration project.

“(b) Beginning on September 30, 1993, any periodic payment under section 601(a)(2) of the Intelligence Authorization Act for Fiscal Year 1989 [Pub. L. 100-453, 102 Stat. 1911] for any such employee shall be reduced by the amount of any increase in basic pay under title 5, United States Code, including the following provisions: an annual adjustment under section 5303, locality-based comparability payment under section 5304, initiation or increase in a special pay rate under section 5305, promotion under section 5334, periodic step increase under section 5335, merit increase under section 5404, or other increase to basic pay under any provision of law.”

[Section 303(b) of Pub. L. 103-178 provided that: “The amendment made by subsection (a) [amending section 529 [title IV, §406] of Pub. L. 101-509, set out above] shall take effect as of September 30, 1993, and shall apply to the pay of employees to whom the amendment applies that is earned on or after that date.”]

[For effective dates of amendments by section 3(5)-(9) of Pub. L. 102-378 to section 529 [title IV, §§402, 403(d), 404(a), (b), 405(a)] of Pub. L. 101-509, set out above, see section 9(a), (b)(6), (9) of Pub. L. 102-378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.]

REPORTING REQUIREMENT

Section 529 [title IV, §412] of Pub. L. 101-509 provided that: “Not later than January 1, 1993, the Office of Personnel Management, in consultation with Federal law enforcement agencies and law enforcement employee groups, shall submit to Congress, in writing, a plan to establish a separate pay and classification system for law enforcement officers and specifications for legislation to implement such plan.”

**§ 5306. Pay fixed by administrative action**

(a) Notwithstanding sections 1341, 1342, and 1349-1351 and subchapter II of chapter 15 of title 31—

(1) the rates of pay of—

(A) employees in the legislative, executive, and judicial branches of the Government of the United States (except employees whose pay is disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives) and of the government of the District of Columbia, whose rates of pay are fixed by administrative action under law and are not otherwise adjusted under this subchapter;

(B) employees under the Architect of the Capitol, whose rates of pay are fixed under section 166b-3a<sup>1</sup> of title 40, and the Superintendent of Garages, House office buildings; and

(C) persons employed by the county committees established under section 590h(b) of title 16; and

(2) and minimum or maximum rate of pay (other than a maximum rate equal to or greater than the maximum rate then currently being paid under the General Schedule as a result of a pay adjustment under section 5303 (or prior corresponding provision of law)), and any monetary limitation on or monetary allowance for pay, applicable to employees described in subparagraphs (A), (B), and (C) of paragraph (1);

may be adjusted, by the appropriate authority concerned, effective at the beginning of the first applicable pay period commencing on or after the day on which a pay adjustment becomes effective under section 5303 (or prior provision of law), by whichever of the following methods the appropriate authority concerned considers appropriate—

(i) by an amount or amounts not in excess of the pay adjustment provided under section 5303 for corresponding rates of pay in the appropriate schedule or scale of pay;

(ii) if there are no corresponding rates of pay, by an amount or amounts equal or equivalent, insofar as practicable and with such exceptions and modifications as may be necessary to provide for appropriate pay relationships between positions, to the amount of the pay adjustment provided under section 5303; or

(iii) in the case of minimum or maximum rates of pay, or monetary limitations of allowances with respect to pay, by an amount rounded to the nearest \$100 and computed on the basis of a percentage equal or equivalent, insofar as practicable and with such variations as may be appropriate, to the percentage of the pay adjustment provided under section 5303.

(b) An adjustment under subsection (a) in rates of pay, minimum or maximum rates of pay, the monetary limitations or allowances with respect to pay, shall be made in such manner as the appropriate authority concerned considers appropriate.

(c) This section does not authorize any adjustment in the rates of pay of employees whose rates of pay are fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates or practices.

<sup>1</sup> See References in Text note below.

(d) This section does not impair any authority under which rates of pay may be fixed by administrative action.

(e) Pay may not be paid, by reason of any exercise of authority under this section, at a rate in excess of the rate of basic pay payable for level V of the Executive Schedule.

(Added Pub. L. 91-656, §3(a), Jan. 8, 1971, 84 Stat. 1949; amended Pub. L. 101-509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1437; Pub. L. 102-378, §2(27), Oct. 2, 1992, 106 Stat. 1350; Pub. L. 104-186, title II, §215(3), Aug. 20, 1996, 110 Stat. 1745.)

#### REFERENCES IN TEXT

Section 166b-3a of title 40, referred to in subsec. (a)(1)(B), means section 166b-3a of former Title 40, Public Buildings, Property, and Works, which was transferred to section 1848 of Title 2, The Congress.

The General Schedule, referred to in subsec. (a)(2), is set out under section 5332 of this title.

Level V of the Executive Schedule, referred to in subsec. (e), is set out in section 5316 of this title.

#### AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104-186 substituted “Chief Administrative Officer” for “Clerk”.

1992—Subsec. (a)(1)(B). Pub. L. 102-378 substituted “section 166b-3a” for “section 166b-3”.

1990—Pub. L. 101-509 amended section generally, substituting provisions authorizing adjustments in rates of pay, minimum or maximum rates of pay, and monetary limitations or allowances with respect to pay of certain Federal employees for provisions establishing Advisory Committee on Federal Pay and setting forth its duties.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

### § 5307. Limitation on certain payments

(a)(1) Except as otherwise permitted by or under law, or as otherwise provided under subsection (d), no allowance, differential, bonus, award, or other similar cash payment under this title may be paid to an employee in a calendar year if, or to the extent that, when added to the total basic pay paid or payable to such employee for service performed in such calendar year as an employee in the executive branch (or as an employee outside the executive branch to whom chapter 51 applies), such payment would cause the total to exceed the annual rate of basic pay payable for level I of the Executive Schedule, as of the end of such calendar year.

(2) This section shall not apply to any payment under—

(A) subchapter III or VII of chapter 55 or section 5596;

(B) chapter 57 (other than section 5753, 5754, 5755, or 5757);<sup>1</sup> or

(C) chapter 59 (other than section 5925, 5928, 5941(a)(2), or 5948).

(b)(1) Any amount which is not paid to an employee in a calendar year because of the limitation under subsection (a) shall be paid to such employee in a lump sum at the beginning of the following calendar year.

(2) Any amount paid under this subsection in a calendar year shall be taken into account for purposes of applying<sup>2</sup> the limitations under subsection (a) with respect to such calendar year.

(c) The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this section (subject to subsection (d)), including regulations (consistent with section 5582) concerning how a lump-sum payment under subsection (b) shall be made with respect to any employee who dies before an amount payable to such employee under subsection (b) is made.

(d)(1) Notwithstanding any other provision of this section, subsection (a)(1) shall be applied by substituting “the total annual compensation payable to the Vice President under section 104 of title 3” for “the annual rate of basic pay payable for level I of the Executive Schedule” in the case of any employee who—

(A) is paid under section 5376 or 5383 of this title or section 332(f), 603, or 604 of title 28; and

(B) holds a position in or under an agency which is described in paragraph (2).

(2) An agency described in this paragraph is any agency which, for purposes of applying the limitation in the calendar year involved, has a performance appraisal system certified under this subsection as making, in its design and application, meaningful distinctions based on relative performance.

(3)(A) The Office of Personnel Management and the Office of Management and Budget jointly shall promulgate such regulations as may be necessary to carry out this subsection, including the criteria and procedures in accordance with which any determinations under this subsection shall be made.

(B) The certification of an agency performance appraisal system under this subsection shall be for a period not to exceed 24 months beginning on the date of certification, unless extended by the Director of the Office of Personnel Management for up to 6 additional months, except that such certification may be terminated at any time upon a finding that the actions of such agency have not remained in conformance with applicable requirements.

(C) Any certification or decertification under this subsection shall be made by the Office of Personnel Management, with the concurrence of the Office of Management and Budget.

(4) Notwithstanding any provision of paragraph (3), any regulations, certifications, or other measures necessary to carry out this subsection with respect to employees within the judicial branch shall be the responsibility of the Director of the Administrative Office of the United States Courts. However, the regulations under this paragraph shall be consistent with those promulgated under paragraph (3).

(Added Pub. L. 91-656, §3(a), Jan. 8, 1971, 84 Stat. 1950; amended Pub. L. 97-258, §3(a)(10), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 101-509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1438; Pub. L. 102-77, §2, July 26, 1991, 105 Stat. 369; Pub. L. 107-273, div. A, title II, §207(b), Nov. 2, 2002, 116 Stat. 1780; Pub. L. 107-296, title XIII,

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Probably should be “applying”.

§ 1322, Nov. 25, 2002, 116 Stat. 2297; Pub. L. 110-372, § 3(a), Oct. 8, 2008, 122 Stat. 4045.)

## REFERENCES IN TEXT

Level I of the Executive Schedule, referred to in subsecs. (a)(1) and (d)(1), is set out in section 5312 of this title.

Section 5757, referred to in subsec. (a)(2)(B), probably means the section 5757 of this title added by Pub. L. 107-273, relating to extended assignment incentive.

## AMENDMENTS

2008—Subsec. (d)(2). Pub. L. 110-372, § 3(a)(1), substituted “applying the limitation in the calendar year involved, has a performance appraisal system certified under this subsection as making, in its design and application, meaningful distinctions based on relative performance” for “the calendar year involved, has been certified under this subsection as having a performance appraisal system which (as designed and applied) makes meaningful distinctions based on relative performance”.

Subsec. (d)(3)(B). Pub. L. 110-372, § 3(a)(2), substituted “The certification of an agency performance appraisal system under this subsection shall be for a period not to exceed 24 months beginning on the date of certification, unless extended by the Director of the Office of Personnel Management for up to 6 additional months” for “An agency’s certification under this subsection shall be for a period of 2 calendar years” and struck out “, for purposes of either or both of those years,” after “time”.

2002—Subsec. (a)(1). Pub. L. 107-296, § 1322(b)(1), inserted “or as otherwise provided under subsection (d),” after “under law.”

Subsec. (a)(2)(B). Pub. L. 107-273 substituted “5755, or 5757” for “or 5755”.

Subsec. (c). Pub. L. 107-296, § 1322(b)(2), substituted “this section (subject to subsection (d)),” for “this section.”

Subsec. (d). Pub. L. 107-296, § 1322(a), added subsec. (d). 1991—Subsec. (a). Pub. L. 102-77, § 2(1)–(3), designated existing provisions as par. (1), substituted “cause the” for “cause to the”, and added par. (2).

Subsec. (b)(3). Pub. L. 102-77, § 2(4), struck out par. (3) which read as follows: “Paragraph (1) shall not apply to an amount if, or to the extent that, it is attributable to a payment the authority for which would derive from section 4505a(d), 5753(e), or 5754(e).”

1990—Pub. L. 101-509 amended section generally, substituting provisions prohibiting cash payments to employees in excess of annual rate of basic pay payable for level I of Executive Schedule in a calendar year, for provisions authorizing adjustments in rates of pay, minimum or maximum rates of pay, and monetary limitations or allowances with respect to pay of certain Federal employees.

1982—Subsec. (a). Pub. L. 97-258 substituted “sections 1341, 1342, and 1349-1351 and subchapter II of chapter 15” for “section 665”.

## EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-372, § 3(c), Oct. 8, 2008, 122 Stat. 4046, provided that: “The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Oct. 8, 2008].”

## EFFECTIVE DATE OF 2002 AMENDMENTS

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Pub. L. 107-273, div. A, title II, § 207(c), Nov. 2, 2002, 116 Stat. 1780, provided that: “The amendments made by this section [enacting section 5757 of this title and amending this section] shall take effect on the first day of the first applicable pay period beginning on or after 6 months after the date of enactment of this Act [Nov. 2, 2002].”

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

## EXTENSION OF CERTIFICATION

Pub. L. 110-372, § 3(b), Oct. 8, 2008, 122 Stat. 4045, provided that:

“(1) EXTENSION TO 2009.—

“(A) IN GENERAL.—For any certification of a performance appraisal system under section 5307(d) of title 5, United States Code, in effect on the date of enactment of this Act [Oct. 8, 2008] and scheduled to expire at the end of calendar year 2008, the Director of the Office of Personnel Management may provide that such a certification shall be extended without requiring additional justification by the agency.

“(B) LIMITATION.—The expiration of any extension under this paragraph shall be not later than the later of—

“(i) June 30, 2009; or

“(ii) the first anniversary of the date of the certification.

“(2) EXTENSION TO 2010.—

“(A) IN GENERAL.—For any certification of a performance appraisal system under section 5307(d) of title 5, United States Code, in effect on the date of enactment and scheduled to expire at the end of calendar year 2009, the Director of the Office of Personnel Management may provide that such a certification shall be extended without requiring additional justification by the agency.

“(B) LIMITATION.—The expiration of any extension under this paragraph shall be not later than the later of—

“(i) June 30, 2010; or

“(ii) the second anniversary of the date of the certification.”

## FREEZE ON DISCRETIONARY AWARDS, BONUSES, AND SIMILAR PAYMENTS FOR FEDERAL POLITICAL APPOINTEES

Memorandum of President of the United States, Aug. 3, 2010, 75 F.R. 47433, provided:

Memorandum for the Assistant to the President and Chief of Staff [and] The Heads of Executive Departments and Agencies

At a time when so many American families are struggling to make ends meet, I am committed to making sure the Federal Government is spending the taxpayers’ money wisely and carefully, and cutting costs wherever possible. I am committed to ending programs that do not work, streamlining those that do, and bringing a new responsibility for stewardship of tax dollars. Like households and businesses across the country, the Federal Government is tightening its belt. This effort began during my first days in office, when I froze the salaries of the senior members of my White House Staff.

As a next step in this effort, I direct you to suspend cash awards, quality step increases, bonuses, and similar discretionary payments or salary adjustments to any politically appointed Federal employee, commencing immediately, and continuing through the end of Fiscal Year 2011. I also direct the Office of Personnel Management to issue guidance, in consultation with the Office of Management and Budget, to assist departments and agencies in implementing this policy.

In addition to these actions freezing discretionary payments, I have proposed in my Budget for Fiscal Year 2011 a salary freeze for senior political appointees throughout the Federal Government. Unlike the administrative action I have taken today in this memorandum, my proposed salary freeze requires legislation, so it cannot be implemented absent legislative action by the Congress.

I appreciate the hard work of our Federal workforce, and understand how important these payments can be

to many workers and their families. Yet like households and businesses across the country, we need to make tough choices about how to spend our funds.

This memorandum shall be carried out to the extent permitted by law and consistent with executive departments' and agencies' legal authorities. Nothing in this memorandum shall be construed to affect payments or salary adjustments for Federal employees who are not political appointees. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

### [§ 5308. Omitted]

#### CODIFICATION

Section, added Pub. L. 91-656, §3(a), Jan. 8, 1971, 84 Stat. 1951, relating to pay limitation, was omitted in the general revision of this subchapter by Pub. L. 101-509.

### SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

#### § 5311. The Executive Schedule

The Executive Schedule, which is divided into five pay levels, is the basic pay schedule for positions, other than Senior Executive Service positions and positions in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, to which this subchapter applies.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 459; Pub. L. 95-454, title IV, §§408(b)(1), 414(b)(1), Oct. 13, 1978, 92 Stat. 1173, 1178; Pub. L. 96-54, §2(a)(24), Aug. 14, 1979, 93 Stat. 382; Pub. L. 100-325, §2(h)(1), (2), May 30, 1988, 102 Stat. 582; Pub. L. 101-509, title V, §529 [title I, §104(c)], Nov. 5, 1990, 104 Stat. 1427, 1447.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2210.	Aug. 14, 1964, Pub. L. 88-426, §302, 78 Stat. 415.

The words "There is hereby established" are omitted as executed. The word "offices" is omitted as included in "positions". The words "Executive Schedule" are substituted for "Federal Executive Salary Schedule".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### AMENDMENTS

1990—Pub. L. 101-509 struck out "(a)" before "The Executive Schedule, which" and struck out subsec. (b) which read as follows:

"(1) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Director of the Office of Personnel Management shall determine the number and classification of executive level positions in existence in the executive branch on that date of enactment, and shall publish the determination in the Federal Register. Effective beginning on the date of the publication, the number of executive level positions within the executive branch may not exceed the number published under this subsection.

"(2) For the purpose of this subsection, 'executive level position' means—

"(A) any office or position in the civil service the rate of pay for which is equal to or greater than the rate of basic pay payable for positions under section 5316 of this title, or

"(B) any such office or position the rate of pay for which may be fixed by administrative action at a rate equal to or greater than the rate of basic pay payable for positions under section 5316 of this title;

but does not include any Senior Executive Service position (as defined in section 3132(a) of this title) or any position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service."

1988—Subsec. (a). Pub. L. 100-325, §2(h)(1), inserted reference to positions in Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

Subsec. (b)(2). Pub. L. 100-325, §2(h)(2), substituted "(as defined in section 3132(a) of this title) or any position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service" for "as defined in section 3132(a) of this title" in concluding provision.

1979—Subsec. (b)(1). Pub. L. 96-54 inserted "of the Office of Personnel Management" after "Director".

1978—Pub. L. 95-454, §408(b)(1), inserted reference to Senior Executive Service positions.

Pub. L. 95-454, §414(b)(1), designated existing provisions as subsec. (a) and added subsec. (b).

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

#### PLAN FOR AUTHORIZING EXECUTIVE LEVEL POSITIONS IN EXECUTIVE BRANCH; PRESIDENTIAL SUBMISSION TO CONGRESS

Section 414(b)(2) of Pub. L. 95-454 required President to transmit by Jan. 1, 1980, a plan to Congress for authorizing executive level positions in executive branch.

#### § 5312. Positions at level I

Level I of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Secretary of State.  
Secretary of the Treasury.  
Secretary of Defense.  
Attorney General.  
Secretary of the Interior.  
Secretary of Agriculture.  
Secretary of Commerce.  
Secretary of Labor.  
Secretary of Health and Human Services.  
Secretary of Housing and Urban Development.  
Secretary of Transportation.  
United States Trade Representative.  
Secretary of Energy.