

valuations following mass withdrawal under part 4281 apply to valuation dates occurring in January 2008.

**FOR FURTHER INFORMATION CONTACT:**  
Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:**

**Variable-Rate Premiums**

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. Pursuant to the Pension Protection Act of 2006, for premium payment years beginning in 2006 or 2007, the required interest rate is the "applicable percentage" of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year").

On February 2, 2007 (at 72 FR 4955), the Internal Revenue Service (IRS) published final regulations containing updated mortality tables for determining current liability under section 412(l)(7) of the Code and section 302(d)(7) of ERISA for plan years beginning on or after January 1, 2007. As a result, in accordance with section 4006(a)(3)(E)(iii)(II) of ERISA, the "applicable percentage" to be used in determining the required interest rate for plan years beginning in 2007 is 100 percent.

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in December 2007 is 6.14 percent (i.e., 100 percent of the 6.14 percent composite corporate bond rate for November 2007 as determined by the Treasury).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between January 2007 and December 2007.

For premium payment years beginning in:	The required interest rate is:
January 2007 .....	5.75

For premium payment years beginning in:	The required interest rate is:
February 2007 .....	5.89
March 2007 .....	5.85
April 2007 .....	5.84
May 2007 .....	5.98
June 2007 .....	6.01
July 2007 .....	6.32
August 2007 .....	6.33
September 2007 .....	6.33
October 2007 .....	6.23
November 2007 .....	6.14
December 2007 .....	6.14

**Multiemployer Plan Valuations Following Mass Withdrawal**

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in January 2008 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of December 2007.

**Vincent K. Snowbarger,**  
*Deputy Director, Pension Benefit Guaranty Corporation.*

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**OFFICE OF PERSONNEL MANAGEMENT**

**Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 98-7**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 98-7, We Need Important Information About Your Eligibility for Social Security Disability Benefits, is used by OPM to verify receipt of Social Security Administration (SSA) disability benefits, to lessen or avoid overpayment to Federal Employees Retirement System (FERS) disability retirees. It

notifies the annuitant of the responsibility to notify OPM if SSA benefits begin and the overpayment that will occur with the receipt of both benefits.

Approximately 3,000 RI 98-7 forms will be completed annually. The form takes approximately 5 minutes to complete. The annual burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, Fax (202) 418-3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov*. Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to:

Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415-3500 and

Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

*For Information Regarding Administrative Coordination:* Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606-0623.

U.S. Office of Personnel Management.

**Howard Weizmann,**

*Deputy Director.*

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**BILLING CODE 6325-38-P**

**OFFICE OF PERSONNEL MANAGEMENT**

**Proposed Personnel Demonstration Project; Performance-Based Pay Adjustments in the U.S. Department of Education/Federal Student Aid**

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Notice of a proposed demonstration project plan.

**SUMMARY:** Chapter 47 of title 5, United States Code, authorizes the U.S. Office of Personnel Management (OPM), directly or in agreement with one or more agencies, to conduct demonstration projects that experiment with new and different human resources management concepts to determine

whether changes in human resources policy or procedures would result in improved Federal human resources management. The U.S. Department of Education/Federal Student Aid and OPM propose to test a performance-based pay system within open pay ranges linked to the corresponding minimum and maximum rates for the grades of the General Schedule pay structure. Section 4703 of title 5 requires OPM to publish the proposed project plan in the **Federal Register**. This notice fulfills that requirement.

**DATES:** Written comments must be submitted on or before January 14, 2008. A public hearing will be held on the proposed project plan on Tuesday, January 22, 2008, at the U.S. Department of Education/Federal Student Aid, 830 First Street, NE., Washington, DC, beginning at 10 a.m. (Eastern Time).

At the time of the hearing, interested persons or organizations may present their written or oral comments on the proposed demonstration project. The hearing will be informal. However, anyone wishing to testify should contact the person listed under **FOR FURTHER INFORMATION CONTACT**, so that the U.S. Department of Education/Federal Student Aid and OPM can plan the hearing and provide sufficient time for all interested persons and organizations to be heard. Priority will be given to those on the schedule, with others speaking in any remaining available time. Each speaker's presentation will be limited to ten minutes. Written comments may be submitted to supplement oral testimony during the public comment period.

**ADDRESSES:** Comments may be mailed to Demonstration Projects, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7456, Washington, DC 20415 or submitted by e-mail to [Demoprojects@opm.gov](mailto:Demoprojects@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** (1) U.S. Department of Education/Federal Student Aid: Monica Woods, Human Resources and Workforce Services, (202) 377-3008; (2) U.S. Office of Personnel Management: Patsy Stevens, Systems Innovation Group Manager, (202) 606-1574, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7456, Washington, DC 20415.

**SUPPLEMENTARY INFORMATION:** The goal of this demonstration project is to make employees' pay increases more performance-sensitive, so that only employees whose performance is Successful or better will receive any pay

adjustments and the best performers will receive the largest pay adjustments.

**Linda M. Springer,**  
*Director.*

## Table of Contents

- I. Executive Summary
- II. Introduction
  - A. Purpose
  - B. Problems With the Present System
  - C. Changes Required/Expected Benefits
  - D. Participating Organizations
  - E. Participating Employees
  - F. Project Design
- III. Personnel System Changes
  - A. Performance Appraisal
    - 1. Program Requirements
    - 2. Supervisory Accountability
    - 3. Reconsideration of Ratings
  - B. Open-Range Pay System
    - 1. Elimination of Fixed Steps
    - 2. Rate Range
    - 3. Pay Administration
  - C. Performance-Based Pay Adjustments
    - 1. Pay Pools
    - 2. Performance Shares
    - 3. Pay Adjustments
    - 4. Employees Who Do Not Receive a Pay Adjustment
    - 5. Locality Pay and Special Rate Supplement
- IV. Training
- V. Conversion
  - A. Conversion to the Demonstration Project
  - B. Conversion Back to the Former System
- VI. Project Modification
- VII. Project Duration
- VIII. Project Evaluation
- IX. Costs
  - A. Buy-In Costs
  - B. Recurring Costs
- X. Waiver of Laws and Regulations Required
  - A. Title 5, United States Code
  - B. Title 5, Code of Federal Regulations

### I. Executive Summary

This project was designed by the U.S. Department of Education/Federal Student Aid in consultation with OPM. The demonstration project will modify the General Schedule pay system by eliminating fixed steps within each grade and providing for annual pay adjustments based on performance. The proposed project will test the application of meaningful distinctions in levels of performance to the allocation of annual pay increases under the General Schedule.

### II. Introduction

#### A. Purpose

The purpose of the proposed project is to modify the General Schedule (GS) pay system to provide larger annual pay increases to employees who are better performers based on performance distinctions made under a credible, strategically-aligned performance appraisal program and thereby improve the results-oriented performance culture within the organization.

#### B. Problems With the Present System

The current GS pay system provides annual pay increases to all employees, even those whose performance is less than Successful. Similarly, periodic within-grade pay increases are virtually automatic. Although an employee's performance must be determined to be at an "acceptable level of competence" in order for the employee to receive a within-grade increase (WGI), this is only a single-level threshold and no further distinctions in levels of performance play a role. All performance levels above the threshold are treated the same for purposes of determining the amount of the increase and the rate at which an employee advances through the rate range of his or her grade. The U.S. Department of Education/Federal Student Aid and OPM do not believe it is a wise use of the limited resources available for the compensation of Federal employees—nor does it serve taxpayers effectively or treat employees fairly—to pass on the same pay adjustments, year after year, to all employees regardless of differences in their performance.

The current GS pay system does provide one limited tool to address distinctions in levels of performance—namely, quality step increases (QSIs). QSIs are discretionary adjustments that are not integrated into the normal pay adjustment process; thus, limited funds are available to provide QSIs, and the decision-making process may not be very transparent. In addition, there is no flexibility as to the amount of the QSI; a full step increase is required. Also, QSIs may be used only for those with the highest rating of record. In summary, QSIs alone cannot be relied upon to establish an effective link between pay and performance based on meaningful distinctions among different levels of performance.

Under these constraints of the GS pay system, agencies are severely limited in their ability to establish a results-oriented performance culture as contemplated under the Human Capital Assessment and Accountability Framework (HCAAF). Within the HCAAF, a results-oriented performance culture effectively plans, monitors, develops, rates, and rewards employee performance, consistent with the merit system principle that "appropriate incentives and recognition should be provided for excellence in performance" (5 U.S.C. 2301(b)(3)).

#### C. Changes Required/Expected Benefits

The proposed demonstration project responds to the problem identified above by eliminating the 10 fixed steps

within each of the 15 GS grades and by making annual GS pay adjustments performance-sensitive. Pay adjustments will be funded from a pay pool consisting of the amounts that would otherwise be used to pay the annual GS pay adjustment, WGs, and QSIs to employees covered by the demonstration project. A share mechanism will be used to allocate pay increases among employees with different levels of performance, and managers will be expected to provide fair and equitable performance ratings. Implementation of the proposed pay system will result in larger pay

increases going to employees who demonstrate higher performance. By regularly rewarding better performance with better pay, participating organizations will strengthen their results-oriented performance cultures. Among other things, they will be better able to retain their good performers and recruit new ones.

**D. Participating Organizations**

The demonstration project will be conducted within the U.S. Department of Education/Federal Student Aid, which is committed to operating a credible, robust performance appraisal

program aligned to the organization's strategic goals and objectives, and has demonstrated a commitment to providing the training and resources that will be needed to make its performance management program highly effective and credible.

**E. Participating Employees**

The demonstration project will cover all GS rating officials in the Federal Student Aid organization. Table 1 shows the number of employees to be covered by the project by occupational series and grade.

TABLE 1.—COVERED EMPLOYEES, BY OCCUPATIONAL SERIES AND GRADE

OCC series	GS grade															Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
201 .....	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
301 .....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
303 .....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
340 .....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	3
343 .....	0	0	0	0	0	0	0	0	0	0	0	0	0	17	32	49
501 .....	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
510 .....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	6	6
560 .....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
1101 .....	0	0	0	0	0	0	0	0	0	0	0	0	1	26	2	29
1102 .....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
1160 .....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
2210 .....	0	0	0	0	0	0	0	0	0	0	0	0	0	5	6	11
<b>Total .....</b>	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	<b>105</b>

Management has provided initial notice to affected employees and will continue consultation throughout project implementation.

**F. Project Design**

The project has been designed simply to ensure that no participating employee with a rating of record of less than Successful will receive a pay increase and that funds available for pay adjustments will be allocated on the basis of performance.

**III. Personnel System Changes**

**A. Performance Appraisal**

U.S. Department of Education/Federal Student Aid recognizes the importance of maintaining a highly credible performance management program. The U.S. Department of Education/Federal Student Aid will use a performance management program under the Department of Education appraisal system that has been approved by OPM consistent with chapter 43 of title 5, United States Code. Throughout the duration of the demonstration project, the effectiveness of performance management within the project will be monitored by examining metrics and

assessments that OPM and agencies generally apply to performance management and programs.

**1. Program Requirements**

The U.S. Department of Education/Federal Student Aid performance appraisal program requires written performance plans for each covered employee containing the employee's performance elements and standards. The performance plan links the performance elements and standards for individual employees to the organization's strategic goals and objectives. Ongoing feedback and dialogue between employees and their supervisors regarding performance is required. In addition, the program provides for, at a minimum, one mid-year progress review.

The appraisal program, including its performance levels and standards, provides for making meaningful distinctions in performance. Its summary level pattern under 5 CFR 430.208(d) uses Levels 1, 2, 3, 4, and 5, which the U.S. Department of Education/Federal Student Aid has labeled Unacceptable, Minimally Successful, Successful, Highly

Successful, and Outstanding, respectively. Employees must be covered by the appraisal program for at least 120 days before they can be assigned a performance rating. Supervisors and managers apply the program to make appropriate differentiations in performance, as shown through ratings distributions, that reflect overall organizational performance. Employees receive a written performance appraisal (i.e., a rating of record) annually. Forced distribution of ratings is prohibited. Each annual appraisal period will begin on October 1 and end on the following September 30. New employees on a 120-day performance plan that extends beyond the official appraisal period end date, but ends on or before December 31, will receive a rating of record at the conclusion of that performance plan's cycle, and will receive a prorated pay adjustment in accordance with section III.C. Performance appraisals will be completed in a timely manner to support pay decisions in accordance with section III.C.

Additional guidance on the U.S. Department of Education/Federal Student Aid performance appraisal

program will be provided through internal policies and operating directives. Performance appraisal is an evolutionary process, and changes may be made during the course of the demonstration project based on findings from our ongoing evaluations and reviews. Any changes will be communicated to affected employees prior to the U.S. Department of Education/Federal Student Aid's implementing the changes.

## 2. Supervisory Accountability

Supervisors are responsible for recognizing exceptional performance and providing appropriate consequences for employee performance by addressing poor performance. The performance expectations for supervisors and managers include the degree to which supervisors and managers plan, assess, monitor, develop, correct, rate, and reward subordinate employees' performance. To effectively meet these performance expectations, supervisors must articulate clear job requirements and performance expectations, provide regular performance feedback, and support employee development through training opportunities, coaching, mentoring, and individual performance plans. It is recognized that specific training will be provided to prepare supervisors and managers to exercise these responsibilities.

## 3. Reconsideration of Ratings

To support fairness and transparency for the program and its consequences, employees have an opportunity to request reconsideration of a rating of record by a management official other than the rating official. Such reconsiderations must be in writing and initiated no more than 15 days after the official rating of record has been given to the employee. The management official must provide a decision on whether to adjust the official rating of record in accordance with the timeframes provided through internal policies and operating directives on administrative grievances. If the reconsideration of the appraisal results in a different rating of record, the revised rating of record will become the basis for the employee's pay adjustment(s) in accordance with section III.C. If the adjustment occurs after all pay deliberations have been finalized, it does not result in a recalculation of other employees' pay adjustments.

### B. Open-Range Pay System

Employees will continue to be covered by the 15-grade GS position

classification system established under 5 U.S.C. chapter 51; however, the GS pay system established under 5 U.S.C. chapter 53, subchapter III, will be modified as described in the following sections. Except as otherwise provided in this plan, demonstration project employees will be considered to be GS employees in applying other laws, regulations, and policies.

### 1. Elimination of Fixed Steps

The ten fixed steps of each GS grade will not apply to employees participating in the demonstration project. The fixed-step system was designed to reward longevity. An open-range pay system is an important element of any effort to make pay more performance-sensitive. No employee's pay will be reduced as a result of becoming covered by the demonstration project. However, demonstration project employees will no longer receive longevity-based, performance-insensitive within-grade pay increases at prescribed intervals. Instead, they will be granted annual performance adjustments as described in section III.C below.

### 2. Rate Range

The normal minimum and maximum rates of the rate range for each grade will equal the applicable step 1 rate and step 10 rate, respectively, in the General Schedule.

For employees with a rating of record below Successful, the minimum rate of the range is extended 5 percent below the normal minimum. An employee's rate may fall below the normal range minimum when that minimum increases as a result of a rate range adjustment and the employee cannot receive a pay adjustment because the employee's rating of record is below Successful, as described in section III.C.4.

The U.S. Department of Education/Federal Student Aid may, at its discretion, extend the maximum rate of each range by five percent above the normal maximum for employees with a summary rating level at the highest level (Outstanding). Before implementing this feature, the U.S. Department of Education/Federal Student Aid must notify demonstration project employees in writing. This upper range extension is designed to help ensure that the range of available pay rates will be adequate to recognize truly outstanding performance. If an employee within this range extension receives a rating below the highest level, the employee's rate may not be increased except as necessary to prevent the rate from falling below the normal range

maximum due to a rate range adjustment.

In addition to rates of basic pay within the rate range, employees may receive locality payments or special rate supplements as described in the next section.

### 3. Pay Administration

Performance-based pay adjustments described in section III.C will be made to the rate of basic pay. These adjustments are scheduled to be made on the same date that annual rate range adjustments normally take effect—i.e., the first day of the first pay period beginning on or after January 1.

Locality-based comparability payments under 5 U.S.C. 5304 and special rate supplements under 5 U.S.C. 5305, as applicable, will be paid on top of the rate of basic pay in the same manner as those payments apply to other GS employees, except as otherwise provided in this section. If the U.S. Department of Education/Federal Student Aid extends the maximum rate of each range by 5 percent above the normal maximum for Outstanding performers, an adjusted rate cap 5 percent higher than the normal EX-IV cap may be established to accommodate those Outstanding performers. This higher cap will apply only to employees with an Outstanding rating of record whose pay rate is in the upper range extension.

If the locality rate for an employee at the normal grade maximum is affected by the EX-IV cap, resulting in an "effective locality pay percentage" that is less than the regular locality pay percentage, the locality rate for an employee in the upper rate range extension of the same grade will be computed using that same effective locality pay percentage. For example, if the regular locality pay percentage is 30 percent, but the EX-IV cap causes the amount of locality pay actually received by an employee at the normal grade maximum to be 20 percent, that effective locality pay percentage of 20 percent would be used to compute locality pay for an employee in the upper range extension of the same grade. Similarly, if the special rate supplement-adjusted rate for an employee at the normal grade maximum is affected by the EX-IV cap, resulting in an "effective special rate supplement percentage" that is less than the regular special rate supplement percentage, the adjusted rate for an employee in the upper rate range extension of the same grade will be computed using that same effective special rate supplement percentage.

Subject to guidance provided by OPM, the U.S. Department of Education/Federal Student Aid will establish pay administration rules for determining an employee's rate of pay upon initial appointment, promotion, demotion, transfer, reassignment, or other position change. In addressing geographic conversions and simultaneous pay actions, such rules must be consistent with 5 CFR 531.205 and 5 CFR 531.206, respectively.

Upon promotion, an employee is entitled to an increase of 8 percent, or a higher increase as necessary to set the employee's rate at the minimum of the range for the higher grade. U.S. Department of Education/Federal Student Aid may establish exceptions to this policy to deal with employees receiving a retained rate, employees who are re-promoted shortly after a demotion, employees with exceptional performance warranting a larger increase with higher management approval, etc.

The grade retention provisions in 5 U.S.C. 5362 and 5 CFR part 536 apply to demonstration project employees. The pay retention rules in 5 U.S.C. 5363 and 5 CFR part 536 apply to demonstration project employees, subject to exceptions described in this section. One exception is that an employee with a rating of record below Successful may not receive an increase in his or her retained rate under 5 U.S.C. 5363(b)(2)(B). For such an employee, the retained rate is frozen and not subject to adjustment. When such an employee's retained rate falls below the applicable adjusted rate for the grade maximum, the employee's retained rate will be terminated, and the employee's pay will be set at an adjusted rate equal to the retained rate (i.e., the rate is not set at the range maximum).

If the U.S. Department of Education/Federal Student Aid extends the maximum rate of each range by 5 percent above the normal maximum for Outstanding employees and establishes a locality and special rate cap 5 percent higher than the normal EX-IV cap, the following special rules would apply:

(1) The cap on retained rates will be equal to the rate for level IV of the Executive Schedule plus 5 percent (instead of the EX-IV cap established under 5 CFR 536.306) in order to accommodate the upper range extension.

(2) An employee in the upper range extension who is rated below Outstanding will be converted to a retained rate before processing any other pay action.

(3) The range maximum rate used in computing retained rate adjustments

will always be the applicable adjusted rate for the normal range maximum (including any applicability locality payment or special rate supplement), not the upper range extension maximum, regardless of the employee's rating of record.

(4) If an employee is receiving a retained rate that is less than the applicable adjusted maximum rate (including any applicable locality payment or special rate supplement) for the upper range extension for the employee's grade, and if that employee receives a rating of record of Outstanding, the employee's retained rate will be terminated and converted to an equal adjusted rate (base rate in upper range extension plus applicable locality payment or special rate supplement). This conversion must be processed before any other pay adjustment.

(5) For a retained rate employee with a rating of record of Outstanding, if a retained rate adjustment provided at the time of a range adjustment results in the retained rate falling below the applicable adjusted rate for the upper range extension maximum, the employee's retained rate will be terminated, and the employee's pay will be set at the maximum rate of the upper range extension.

(6) For a retained rate employee with a rating of record of Successful or Highly Successful, if a retained rate increase provided at the time of a range adjustment results in the retained rate falling below the applicable adjusted rate for the normal grade maximum, the employee's retained rate will be terminated, and the employee's pay will be set at the normal grade maximum rate.

As required by 5 CFR 536.304(a)(2) and 536.305(a)(2), any general pay adjustment, including a retained rate adjustment as described in the preceding paragraphs, must be processed before any other simultaneous pay action (such as a geographic pay conversion).

When applicable, the saved pay rules in 5 U.S.C. 3594 and 5 CFR 359.705 for former members of the Senior Executive Service continue to apply to demonstration project employees, except that (1) an employee with a rating of record below Successful may not receive an increase in his or her saved rate under 5 U.S.C. 3594(c)(2); and (2) the 50-percent adjustment rule must be applied in the same manner as it is applied for a retained rate under 5 U.S.C. 5363, subject to the modifications described in the preceding paragraphs. The rules regarding termination of a saved rate when it falls below the

applicable adjusted maximum rate must be parallel to those governing termination of a retained rate under 5 U.S.C. 5363, subject to the modifications described in the preceding paragraphs.

An employee's rate of basic pay may not exceed the normal maximum rate for the employee's grade unless the employee is receiving a retained rate under 5 U.S.C. 5363, a saved rate under 5 U.S.C. 3594, or is entitled to a rate within the upper range extension for employees with an Outstanding rating of record as provided under section III.B.2. An employee's rate of basic pay may not be below the normal minimum rate for the employee's grade unless the employee's most recent rating of record is below Successful.

### *C. Performance-based Pay Adjustments*

#### *1. Pay Pools*

Participating employees whose most recent rating of record is below Successful will not receive the annual GS pay adjustment. Funds that otherwise would be spent on the across-the-board GS pay adjustment, WGIs, and QSIs for demonstration project employees will instead be placed into a pay pool, which will be used to fund annual performance-based pay increases for those employees whose rating of record is Successful or higher. If in any given year there is not an across-the-board GS pay increase, the pay pool used to fund the performance-based pay adjustments will consist only of those funds that otherwise would be used for WGIs and QSIs. A share mechanism will be used (1) to ensure that employees with higher ratings of record receive greater pay increases than employees with relatively lower ratings and (2) to control costs without resorting to a forced distribution of ratings. Each employee will be assigned a certain number of shares, based on his or her rating of record in accordance with section III.C.2. All employees in the normal rate range whose rating of record is at least Successful will receive an adjustment equal to at least the amount of the annual GS base pay comparability increase under 5 U.S.C. 5303.

The U.S. Department of Education/Federal Student Aid will determine which participating employees are covered by any pay pool and determine the dollar value of each pay pool. In setting the value of pay pools, the U.S. Department of Education/Federal Student Aid will allocate an amount for performance pay increases at least equal to the estimated value of the WGIs, QSIs, and annual GS pay adjustments that otherwise would have been paid to participating employees. In computing

the estimated value of WGIS and QSIs, the U.S. Department of Education/Federal Student Aid may use estimated Governmentwide averages, as computed by OPM.

## 2. Performance Shares

The U.S. Department of Education/Federal Student Aid will establish rating/share patterns for the pay pool—that is, the relationship between a rating of record and a single number of shares. Initially, the U.S. Department of Education/Federal Student Aid will use an approach under which the number of shares assigned to an employee with a Successful or higher rating of record will equal that employee's numerical performance score, which may range from 3.00 to 5.00. (Currently, performance scores are computed to the second decimal place.) Employees with a rating of record below Successful (performance score less than 3.00) will be assigned 0 shares. No shares may be assigned to an employee with a rating of record below Successful, since no pay increase is payable to employees with such a rating of record.

The U.S. Department of Education/Federal Student Aid may revise the rating/share pattern for employees with a Successful or higher rating of record in coordination with OPM and after giving affected employees advance notice. Employees will be informed in writing at least 180 days before the end of the appraisal period of any decision by the U.S. Department of Education/Federal Student Aid to change the rating/share pattern.

After the rating of record and shares are assigned to all employees, the value of a single share can be calculated.

## 3. Pay Adjustments

*In general:* The U.S. Department of Education/Federal Student Aid will determine an employee's performance payout by first multiplying the employee's rate of basic pay by the number of assigned shares, and then multiplying the result of that calculation by the determined value of a performance share. The performance share value, expressed as a percentage, will be an allocated portion of the pay pool funds based on the employee's performance rating. On the first day of the first pay period beginning on or after January 1 of each year, this amount must be paid as an increase in the employee's rate of basic pay, but only to the extent that it does not cause the employee's rate to exceed the applicable maximum of the employee's rate range. Notwithstanding the preceding sentence, employees in the upper range extension rated below the highest level

are subject to special rules as described in section III.B.2 and III.B.3. At the discretion of the Secretary or the Secretary's designee, any portion of the employee's performance pay increase amount not delivered as a basic pay increase may be paid out as a lump sum (with no charge to the pay pool). Such a lump-sum payment is not basic pay for any purpose and is not a cash award under chapter 45 of title 5, United States Code. Special rules apply to retained rate employees as described later in this section.

In no case may an employee with a rating of record of Successful or higher receive a performance payout that is less than the percentage value of any simultaneous base rate range adjustment, except for employees receiving a retained rate and employees receiving a rate in an upper range extension with a rating of record of Successful or Highly Successful, as provided in section III.B.2. This guaranteed amount will be used in place of any lower performance payout resulting from the share methodology. Any additional costs of using the guaranteed amount will be funded outside the pay pool. Otherwise, the guaranteed amount is applied in the same manner as the regular performance payout.

An employee who does not have a rating of record for the appraisal period most recently completed will be treated the same as employees in the pay pool who received the modal rating for that period.

The U.S. Department of Education/Federal Student Aid may establish policies on prorating the performance pay increases and/or lump-sum payments for an employee who, during the period between annual pay adjustments, was (1) hired or promoted, (2) in leave-without-pay status, (3) on a part-time work schedule, or (4) in other circumstances that make proration appropriate. Such proration policies will provide each affected employee with the full percentage adjustment used to adjust base rate ranges (if any) and will prorate any additional amount of performance pay increase that would be applicable to the employee but for the proration requirement. Such proration policies may establish a minimum employment period as a condition to receive any amount of a performance pay increase.

If an employee's rating of record that is the basis for a performance payout is retroactively revised through a reconsideration or grievance process, the employee's performance payout must be retroactively recomputed using the share value as originally

determined. Any such retroactive corrections are not funded out of the pay pool and do not affect the performance payouts provided to other employees in the pay pool. In setting the size of a future pay pool, management will take into account past and projected corrections.

*Special provisions for employees returning to duty after a period of service in the uniformed services or in receipt of workers' compensation benefits:* Special pay-setting provisions apply to employees who do not have a rating of record to support a pay adjustment but who are returning to duty status after a period of leave without pay or separation during which the employee (1) was serving in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) with legal restoration rights (e.g., 38 U.S.C. 4316), or (2) was receiving workers' compensation benefits under 5 U.S.C. chapter 81, subchapter I. In these cases, the U.S. Department of Education/Federal Student Aid will determine the employee's prospective rate of basic pay upon return to duty by making performance pay adjustments for the intervening period based on the modal rating of record for employees in the pay pool. The performance pay increases during the intervening period may not be prorated based on periods covered by this provision. In addition, a performance pay increase that is effective after the employee's return to duty may not be prorated based on periods covered by this provision. A lump-sum payment for a period including actual service performed after the employee's return to duty must be prorated (based on service covered by this provision) under the same agency proration policies that apply generally to periods of leave without pay.

*Special provision for employees receiving a retained rate of basic pay:* An employee receiving a retained rate under 5 U.S.C. 5363 or 5 U.S.C. 3594 is not eligible for a basic pay increase except in conjunction with a rate range adjustment, as described in section III.B.3. At the discretion of the Secretary or the Secretary's designee, a retained rate employee may receive the same lump-sum payment approved for an employee in the same pay pool who is at the applicable range maximum and who has the same performance rating and number of shares.

## 4. Employees Who Do Not Receive a Pay Adjustment

Employees with a rating of record below Successful are prohibited from receiving a pay increase, except if necessary to prevent an employee's rate

from falling more than five percent below the normal range minimum. When an employee does not receive a pay increase because of performance below the Successful level, his or her pay rate may fall below the minimum rate of the grade, since that range minimum may be increasing. However, in no case may an employee's rate of basic pay be set more than five percent below the normal range minimum.

If the U.S. Department of Education/Federal Student Aid chooses to give such an employee a new rating of record of Successful or higher before the end of the current appraisal period, the employee is entitled to an increase effective on the first day of the first pay period beginning on or after the date the new rating is final. The increase must be the same dollar amount as the increase the employee would have received if he or she had been rated Successful at the time the increase was initially denied.

Each employee who does not receive an increase in basic pay because his or her performance is less than Successful will be entitled to be notified promptly in writing of that fact. At the same time, the employee must be informed in writing of the right to request that the agency reconsider its determination, under the same procedures prescribed by OPM regarding the determination not to provide a within-grade increase under 5 U.S.C. 5335(c). The Merit Systems Protection Board will process any appeals under this section in the same manner that it processes appeals under 5 U.S.C. 5335(c).

#### 5. Locality Pay and Special Rate Supplement

When a locality-based comparability payment established under 5 U.S.C. 5304 is increased, a demonstration project employee whose most recent rating of record is below Successful is entitled to the increased locality rate, but his or her underlying rate of basic pay will be reduced in a manner that ensures the employee's total rate of pay does not increase. This reduction is necessary to ensure, in an administratively feasible way, that an employee rated less than Successful will not receive a pay increase; it does not constitute a reduction in pay for purposes of applying the adverse action procedures in chapter 75 of title 5, United States Code. (Exception: An employee's rate of basic pay may not be reduced under this paragraph to the extent that the reduction would cause an employee's rate to fall more than five percent below the normal range minimum.)

Similarly, when a special rate supplement established under 5 U.S.C.

5305 is increased, a demonstration project employee whose rating of record is below Successful is entitled to the increased supplement, but his or her underlying rate of basic pay will be reduced in a manner that ensures the employee's total rate of pay does not increase.

#### IV. Training

Training for all involved is essential to the success of the demonstration project. Training will be provided to affected employees before the project is launched and throughout the life of the project. It is important that employees perceive the performance management program as fair and transparent; therefore, supervisors and managers will be trained extensively in setting and communicating performance elements and standards; monitoring performance and providing timely feedback; developing employee performance and addressing poor performance; rating employees' performance based on their performance plans; and involving employees in the development and implementation of the performance appraisal program. Supervisors and managers will be held accountable for the effective management of the performance of employees they supervise through performance elements set for and appraisals made of their own performance in this regard.

All employees will be trained in the performance appraisal process and the pay adjustment mechanism. Various types of training are being considered, including videos, on-line tutorials, and train-the-trainer concepts.

#### V. Conversion

##### A. Conversion to the Demonstration Project

Employees whose positions are converted to the demonstration project will be converted with no change in their rate of basic pay. Any simultaneous pay action that was scheduled to take effect under the GS pay system on the date of conversion must be processed before processing the conversion to the modified GS pay system. Immediately after conversion, eligible employees will receive an increase in basic pay reflecting the prorated value of the next scheduled WGI. The prorated value is determined by calculating the portion of the time-in-step an employee has completed toward the waiting period for their next step increase. This additional within-grade "buy in" adjustment will not be made for (1) employees who are at the step 10 rate of their grade immediately before conversion to the demonstration

project, (2) employees who are receiving a retained rate of pay under 5 U.S.C. 5363 or a saved rate under 5 U.S.C. 3594 immediately before conversion to the demonstration project, or (3) employees whose performance has been determined to be below Successful. The first performance-based pay increase under the project's pay adjustment mechanism will be effective on the first day of the first pay period beginning on or after January 1, 2009.

For employees who enter the demonstration project by lateral reassignment, transfer, or change in position status, the U.S. Department of Education/Federal Student Aid may apply parallel pay conversion rules, including rules for providing a prorated adjustment reflecting time accrued toward a GS within-grade increase or similar within-range adjustment under another pay system. If conversion into the demonstration project is accompanied by a geographic move, the employee's pay entitlements under the former pay system in the new geographic area must be determined before the pay conversion. For employees who enter the demonstration project after the conversion date and receive a rating of record for a performance plan of at least 120 days, the U.S. Department of Education/Federal Student Aid will apply a prorated pay adjustment proportionate to the time accrued under the performance-based pay system, in accordance with section III.C.

##### B. Conversion Back to the Former System

If a demonstration project employee is moving to a GS position not under the demonstration project, or if the project ends and each project employee must be converted back to a GS position not covered by the project, the employee's rate of basic pay under the demonstration project as in effect immediately before conversion will be used in applying any simultaneous pay actions under the regular GS pay system that are effective on the date of conversion (e.g., promotion, geographic movement). If the rate of basic pay falls between steps after applying any simultaneous pay actions, the employee's rate will be set at the next higher step.

If a demonstration project employee is receiving a retained rate immediately before conversion back to the regular GS pay system, the employee will continue to be entitled to a retained rate upon conversion, but the retained rate thereafter will be governed by 5 U.S.C. 5363 and 5 CFR part 536 or 5 CFR 359.705, as applicable.

If the U.S. Department of Education/Federal Student Aid establishes a five percent rate upper range extension for Outstanding performers and a demonstration project employee is receiving a rate in that range extension at the time the employee leaves the demonstration project and converts to the regular GS pay system, that rate will be converted to a retained rate, subject to the rules and limitations in 5 U.S.C. 5363 and 5 CFR part 536.

If a demonstration project employee is receiving a rate below the normal GS rate range because his or her rate has fallen within the lower range extension for less than Successful performers, that rate must be converted to the minimum rate for the grade upon conversion to the regular GS pay system.

#### **VI. Project Modification**

Demonstration projects require modification from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The U.S. Department of Education/Federal Student Aid may modify and adjust over time features and elements of this project plan. The Department/Federal Student Aid will coordinate such modifications with OPM and gain its approval prior to implementing the modification. Depending on the nature and extent of the modification, OPM may require that the modification be published as a notice in the **Federal Register**.

#### **VII. Project Duration**

The initial implementation period for the demonstration project will be 5 years. However, with OPM's concurrence, the project may be extended for additional testing or terminated before the expiration of the five-year period.

#### **VIII. Project Evaluation**

Chapter 47 of title 5, United States Code, requires an evaluation of the results of the demonstration project. The U.S. Department of Education/Federal Student Aid, in coordination with OPM, will develop a plan to evaluate the demonstration project to determine the extent to which the pay increases paid to participating employees reflect meaningful distinctions among their levels of performance. Workforce data will be analyzed to determine whether the project is achieving its goal and whether it is resulting in any adverse impact on particular groups of employees. Key indicators, including leadership commitment, communication, stakeholder involvement, training, planning,

mission alignment, and the rewarding of performance, will be assessed to ensure compliance with stated project goals. The evaluation will address the extent to which the project has incorporated the elements required by section 1126 of Public Law 108-136 (5 U.S.C. 4701 note). In addition, the project will be examined during each phase of the evaluation to assess whether costs are being managed effectively. Moreover, cost discipline will be examined during each phase of the evaluation to ensure spending remains within acceptable limits. Finally, employee feedback will be sought through surveys, interviews, and focus groups to assess employee perceptions of the fairness and integrity of the performance appraisal and pay adjustment processes.

#### **IX. Costs**

##### *A. Buy-in Costs*

There will be added costs resulting from the within-grade increase "buy-in" provision described in section V; however, those costs will be offset by the elimination of within-grade step increases that otherwise would have occurred.

##### *B. Recurring Costs*

All funding will be provided through the organization's budget. No additional funding will be requested specifically for this project; all costs will be charged to available funds through existing appropriations, including those incurred in the areas of project development, training, and project evaluation.

#### **X. Waiver of Laws and Regulations Required**

##### *A. Title 5, United States Code*

Chapter 35, section 3594: Saved pay for former members of the Senior Executive Service (only to the extent necessary to (1) bar employees with a rating of record below Successful from receiving a saved rate increase under 5 U.S.C. 3594(c)(2); and (2) apply rules parallel to those governing adjustment and termination of retained rates under 5 U.S.C. 5363, as modified under this plan).

Chapter 53, section 5302(1)(A), (8) and (9): Definitions (only to the extent necessary to provide that employees under the demonstration project are not considered to be GS employees for the purposes of annual adjustments under section 5303 or similar provision of law governing annual adjustments for employees covered by section 5303).

Chapter 53, section 5303: Annual adjustments to pay schedules.

Chapter 53, section 5304(g)(1): Locality-based comparability payments (only to the extent necessary to (1) provide that if the U.S. Department of Education/Federal Student Aid extends the maximum rate of a rate range by 5 percent above the normal maximum for Outstanding performers, a locality rate may not exceed the rate for EX-IV, plus 5 percent, for employees in that range extension; and (2) apply an "effective" locality pay percentage for employees in the upper range extension under circumstances described in this plan.

Chapter 53, section 5305(a)(1): Special pay authority (only to the extent necessary to (1) provide that if the U.S. Department of Education/Federal Student Aid extends the maximum rate of a rate range by 5 percent above the normal maximum for Outstanding performers, a special rate may not exceed the rate for EX-IV, plus 5 percent) for employees in that range extension; (2) to interpret the references to the minimum and maximum rates of a grade as references to the normal minimum and maximum rates of a grade under this plan; and (3) apply an "effective" special rate supplement percentage for employees in the upper range extension under circumstances described in this plan).

Chapter 53, subchapter III: General Schedule pay rates (except that, for purposes of applying any other laws, regulations, or policies that refer to GS employees or to subchapter III of chapter 53 of title 5, United States Code, the modified pay system established under this plan must be considered to be a GS pay system established under such subchapter III; this includes, but is not limited to, references to the General Schedule in section 5304 (relating to locality pay, except as provided in the waiver, above), section 5545(d) (relating to hazard pay), and sections 5753-5754 (dealing with recruitment, relocation, and retention incentives)).

Chapter 53, section 5363: Pay retention (only to the extent necessary to (1) bar employees with a less than Successful rating of record from receiving retained rate increases under 5 U.S.C. 5363(b)(2)(B); (2) provide the pay (including any locality adjustment or special rate supplement) of an employee in the upper range extension who is rated below Outstanding will be converted to a retained rate before processing any other actions; (3) provide a retained rate that is less than the maximum rate (including any locality adjustment or special rate supplement) of the upper range extension for an employee who receives a rating of record of Outstanding will be terminated and converted to an equal



adjusted rate; (4) provide the range maximum rate used to compute retained rate adjustments is the normal range maximum rate (including any locality adjustment or special rate supplement); and (5) provide when a frozen retained rate for an employee with a rating of record below Successful falls below the applicable adjusted rate for the normal grade maximum, the retained rate will be terminated and the employee's pay will be set at an adjusted rate equal to the retained rate).

Chapter 75, section 7512(4): Adverse actions (only to the extent necessary to provide that adverse actions do not apply to reductions in rates of basic pay to offset a locality pay or special rate supplement increase as a result of receiving a rating of record below Successful).

**Note:** If any of the provisions of title 5, United States Code, listed above are amended during the period this demonstration project is in effect, U.S. Department of Education/Federal Student Aid may choose to terminate the waiver of one or more such provisions with respect to employees participating in the project, without formally modifying the project itself. U.S. Department of Education/Federal Student Aid must notify OPM when any such waiver is terminated.

#### *B. Title 5, Code of Federal Regulations*

Part 359, subpart G, section 359.705: saved pay for former members of the Senior Executive Service (only to the extent necessary to (1) bar employees with a rating of record below Successful from receiving a saved rate increase under 5 CFR 359.705(d)(1); and (2) apply rules parallel to those governing adjustment and termination of retained rates under 5 U.S.C. part 536, as modified under this plan).

Part 430, subpart B, section 430.203: Definitions (only to the extent necessary to allow an additional rating of record to support a pay decision under sections III.C.3 or 4 of this project plan).

Part 530, section 530.304: Establishing or increasing special rates (only to the extent necessary to (1) provide that if the U.S. Department of Education/Federal Student Aid extends the maximum rate of a rate range by 5 percent above the normal maximum for Outstanding performers, a special rate may not exceed the rate for EX-IV, plus 5 percent) for employees in that range extension; (2) to interpret the references to the minimum and maximum rates of a grade as references to the normal minimum and maximum rates of a grade under this plan; and (3) apply an "effective" special rate supplement percentage for employees in the upper range extension under circumstances described in this plan.

Part 531, subpart B: Determining Rate of Basic Pay.

Part 531, subpart D: Within-Grade Increases.

Part 531, subpart E: Quality Step Increases.

Part 531, section 531.604: Determining an employee's locality rate (only to the extent necessary to apply an "effective" locality pay percentage for employees in the upper range extension under circumstances described in this plan).

Part 531, section 531.606: Maximum limits on locality rates (only to the extent necessary to provide that if the U.S. Department of Education/Federal Student Aid extends the maximum rate of a rate range by 5 percent above the normal maximum for Outstanding performers, a locality rate may not exceed the rate for EX-IV, plus 5 percent) for employees in that range extension.

Part 536, subpart C: Pay Retention (only to the extent necessary to (1) bar employees with a less than Successful rating of record from receiving retained rate increases under 5 CFR 536.305; (2) provide that if the U.S. Department of Education/Federal Student Aid extends the maximum rate of a rate range by 5 percent above the normal maximum for Outstanding performers, a retained rate may not exceed the rate for EX-IV, plus 5 percent; (3) provide the pay (including any locality adjustment or special rate supplement) of an employee in the upper range extension who is rated below Outstanding will be converted to a retained rate before processing any other actions; (4) provide a retained rate that is less than the maximum rate (including any locality adjustment or special rate supplement) of the upper range extension for an employee who receives a rating of record of Outstanding will be terminated and converted to an equal adjusted rate; (5) provide the range maximum rate used to compute retained rate adjustments is the normal range maximum rate (including any applicable locality adjustment or special rate supplement); and (6) provide when a frozen retained rate for an employee with a rating of record below Successful falls below the applicable adjusted rate for the normal grade maximum, the retained rate will be terminated and the employee's pay will be set at an adjusted rate equal to the retained rate).

Part 752, section 752.401(a)(4): Adverse actions (only to the extent necessary to provide that adverse action provisions do not apply to reductions in rates of basic pay to offset a locality pay or special rate supplement increase as a

result of receiving a rating of record below Successful).

**Note:** If any of the provisions of title 5, Code of Federal Regulations, listed above are revised during the period this demonstration project is in effect, U.S. Department of Education/Federal Student Aid may choose to terminate the waiver of one or more such provisions with respect to employees participating in the project, without formally modifying the project itself. U.S. Department of Education/Federal Student Aid must notify OPM when any such waiver is terminated.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56929; File No. SR-NASDAQ-2007-086]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Step-Outs and Transfers of Sales Fees

December 7, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 31, 2007, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by Nasdaq. Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to: (i) Offer, for a fee, a match/compare service for Nasdaq members to process step-outs between themselves and (ii) allow the transfer of Rule 7002 Sales Fees and similar fees of other self-regulatory organizations ("SROs") without an agreement between the transferring Nasdaq members when such transfers are accompanied by a transfer of the underlying shares.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).