

**The President's Pay Agent**  
Washington, D.C. 20415-0001

October 27, 2008

**MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES**

**SUBJECT: Extension of Locality Payments to Non-General Schedule Employees**

Section 5304(h) of title 5, United States Code, requires that extensions of locality pay to non-General Schedule (GS) categories of employees be renewed each year. The President's Pay Agent has decided to extend the 2009 locality-based comparability payments to the same Governmentwide and single-agency categories of employees authorized to receive the 2008 locality payments.

Under the statute, locality payments may not be extended to members of the Senior Executive Service and similar pay systems, employees paid under the critical pay authority, senior executives in temporary organizations, prevailing rate employees, categories of positions paid Executive Schedule rates of pay, or any position that has a rate of basic pay higher than the rate for level IV of the Executive Schedule. Note that beginning April 12, 2009, employees in senior-level and scientific or professional (SL/ST) positions will begin receiving pay under the provisions of a new system established under P.L. 110-372 and will no longer be eligible to receive locality pay. The U.S. Office of Personnel Management (OPM) will issue additional information and guidance on the conversion of SL/ST employees into the new pay system without a loss of pay before the April 12, 2009, effective date.

Locality payments will be extended to the Governmentwide categories shown in Attachment 1 with no further action required by any agency. Under the statute, locality payments may be extended to single-agency categories of employees only at the request of the head of an Executive agency. Attachment 2 shows single-agency categories currently receiving locality pay, which will be extended locality pay in 2009 without any further action required by any agency unless the head of an Executive agency requests that an extension not be re-approved.

Please contact Allan Hearne, of OPM's Strategic Human Resources Policy Division, at (202) 606-2838 or by email at [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov), by **December 5, 2008**, if you do **not** want locality payments extended in 2009 to a single-agency employee category in your agency for which such payments were previously authorized by the Pay Agent. Please note that a decision not to extend locality payments in 2009 to a category of employees means that those employees would no longer be entitled to any locality payment. All employees in a given locality pay area who receive locality payments in 2009 must receive the same percentage as received by GS employees in that area.

New requests for extending locality-based comparability payments to single-agency categories of non-GS employees should be submitted by the agency head or his or her

designee to the following address no later than **December 5, 2008**, to ensure the extension takes effect beginning on the first day of the first pay period beginning on or after January 1, 2009:

The Honorable Michael W. Hager  
 Acting Director  
 U.S. Office of Personnel Management  
 1900 E Street, NW.  
 Washington, DC 20415-0001

In your request, please include the following information:

- (1) The legal authority under which the employees are paid;
- (2) The types of employees to be paid;
- (3) The number of employees to be covered by the extension; and
- (4) A contact person's name and telephone number at your agency.

A copy of new requests for extending locality-based comparability payments to single-agency categories also should be sent to the OPM Human Capital Officer for your agency.

Under 5 U.S.C. 5304(g) and 5 CFR 531.606, locality rates may not exceed the rate for level III of the Executive Schedule for administrative law judges, members of Boards of Contract Appeals, and employees in senior-level and scientific or professional positions. Locality rates for all other categories of non-GS employees may not exceed (1) the rate for level IV of the Executive Schedule when the maximum scheduled annual rate of pay for such positions is less than or equal to the maximum payable scheduled annual rate of pay for GS-15 or (2) the rate for level III of the Executive Schedule when the maximum scheduled annual rate of pay for such positions exceeds the maximum payable scheduled annual rate of pay for GS-15.

For the President's Pay Agent:

\_\_\_\_SIGNED\_\_\_\_

Michael W. Hager, Acting Director  
 U.S. Office of Personnel Management

#### Attachments

cc: The Honorable Elaine L. Chao  
 Secretary of Labor  
 The Honorable James A. Nussle  
 Director, Office of Management and Budget  
 Chief Human Capital Officers  
 Human Resources Directors

**LOCALITY PAY EXTENSIONS  
GOVERNMENTWIDE CATEGORIES  
OF NON-GENERAL SCHEDULE EMPLOYEES**

1. Administrative law judges (ALJs) paid under 5 U.S.C. 5372
2. Administrative appeals judges (AAJs) paid under 5 U.S.C. 5372b
3. Members of Boards of Contract Appeals (BCA) paid under 5 U.S.C. 5372a
4. Senior-level (SL) and scientific or professional (ST) positions paid under 5 U.S.C. 5376 (locality payments authorized until a new pay system goes into effect on April 12, 2009)
5. Members of the Foreign Service paid under 22 U.S.C. 3963

**LOCALITY PAY EXTENSIONS**  
**SINGLE-AGENCY CATEGORIES OF NON-GENERAL SCHEDULE EMPLOYEES**  
**(updated July 24, 2008)**

<b>Agency</b>	<b>Pay Authority [pay plan code]</b>	<b>Types of Employees [number of employees<sup>1</sup>]</b>	<b>Original Approval Date</b>
Agency for International Development	22 U.S.C. 2385 [AD]	Miscellaneous types of positions [66]	Jan. 7, 1994
	22 U.S.C. 2386 [EE, EG]	Experts and consultants under the Foreign Assistance Act [15]	Jan. 7, 1994
	5 U.S.C. 3109 [ED, EF]	Experts and consultants [15]	Jan. 7, 1994
Agriculture	5 CFR 213.3102(1) [EG]	Temporary, intermittent, and seasonal employees [1]	Feb. 9, 1994
	5 U.S.C. 3109 [ED, EF]	Experts and consultants [3]	Feb. 9, 1994
American Battle Monuments Commission	36 U.S.C. 2101 [AD]	Secretary of the American Battle Monuments Commission [1]	Nov. 25, 1996
Commerce	35 U.S.C. 3(c) [AD]	Examiners-in-chief on the Board of Patent Appeals and Interferences [8]	Jan. 4, 1994
	35 U.S.C. 3(e) [AD]	Attorney examiners (trademark) on the Trademark Trial & Appeal Board [48]	Jan. 4, 1994
Corporation for National and Community Service	42 U.S.C. 12651f(b)(1) [NX]	Senior level equivalent employees in pay band NX-2 of CNS' alternative personnel system [9]	June 15, 1995

<sup>1</sup> Number of employees as of the original approval date.

Defense	10 U.S.C. 1595 [AD]	National Defense University Directors, Deans, and Professors [72]	Jan. 3, 1997
	10 U.S.C. 4021 [AD]	United States Army Command and General Staff College Civilian Staff and Faculty [5]	Jan. 3, 1997
	10 U.S.C. 4331 and 4338 [AD]	United States Army Military Academy Civilian Staff and Faculty [97]	Jan. 3, 1997
	10 U.S.C. 6952 [AD]	United States Naval Academy Civilian Faculty [322]	Jan. 3, 1997
	10 U.S.C. 7043 [AD]	Naval Postgraduate School Academic Dean [1]	Jan. 3, 1997
	10 U.S.C. 7044 [AD]	Naval Postgraduate School Civilian Faculty [322]	Jan. 3, 1997
	10 U.S.C. 7478 [AD]	Naval War College Faculty [52]	Jan. 3, 1997
	10 U.S.C. 7478 [AD]	United States Marine Corps Command and Staff College Civilian Faculty [14]	Jan. 3, 1997
	10 U.S.C. 9021 [AD]	Air University Civilian Faculty [30]	Jan. 3, 1997
	10 U.S.C. 9314 [AD]	Air Force Institute of Technology Civilian Faculty [114]	Jan. 3, 1997
	10 U.S.C. 9338 [AD]	United States Air Force Academy Civilian Faculty [77]	Jan. 3, 1997
	10 U.S.C. 1746 [AD]	Defense Acquisition University Faculty [305]	April 12, 2000
	Sec. 1101 of PL 105-261[AD]	Defense Advanced Research Projects Agency (DARPA) Experimental Personnel Management Program [20]	July 28, 2000
Defense Nuclear Facilities Safety Board	Section 161d of the Atomic Energy Act of 1954 (Public Law 101-510) [DN]	Professional scientific and technical personnel [59]	Dec. 30, 1996

Energy	42 U.S.C. 7231(d) [EJ]	Scientific, engineering, professional, and administrative employees [200]	Dec. 30, 1994
	P.L. 103-337 [EK]	Scientific, engineering, and technical employees [200]	Dec. 30, 1994
	5 U.S.C. 3109 & 42 U.S.C. 7233 [ED, EF]	Experts and consultants [105]	Dec. 30, 1994
	Section 3241 of P.L. 106-65 [EN]	Scientific, engineering, and technical positions in the National Nuclear Security Administration [300]	Jan. 13, 2003
Education	20 U.S.C. 9011 [AD]	Executive Director of the National Assessment Governing Board [1]	June 26, 2002
Environmental Protection Agency	P.L. 95-190 [AD]	Miscellaneous types of positions [19]	Jan. 4, 1994
Export-Import Bank	P.L. 102-583 [AD]	Miscellaneous types of positions [35]	Jan. 24, 1994
General Services Administration	5 U.S.C. 3109 [ED, EF ]	Experts and consultants [10]	June 7, 1999
Homeland Security	P.L. 105-261 and P.L. 107-296 [AD]	Scientists and engineers at the Homeland Security Advanced Research Projects Agency (HSARPA) [1 (1 as of approval date, but HSARPA was new and in the process of adding positions and recruiting--limited to 20 under Section 1101 of P.L. 105-261)]	Oct. 3, 2003
	Title 14, Section 186 [AD]	Civilian faculty members at the U.S. Coast Guard Academy [68]	Oct. 31, 2003
	Title 4 of the D.C. Code [LE]	Uniformed Division of the U.S. Secret Service [1095]  (Note: Under section 4-416(c)(3) of the D.C. Code, United States Secret Service Uniformed Division officers are entitled to locality pay under 5 U.S.C. 5304 by law, not by administrative action. See P.L. 108-7, February 20, 2003, and section 902(b) of Public Law 106-554, December 21, 2000.)	Jan. 31, 1994
Interior	Title 4 of D.C. Code [SP]	United States Park Police [620]	Aug. 10, 1998

		(Note: Under section 4-416(c)(3) of the D.C. Code, United States Park Police are entitled to locality pay under 5 U.S.C. 5304 by law, not by administrative action. See P.L. 108-7, February 20, 2003, and section 902(b) of Public Law 106-554, December 21, 2000.)	
Justice	Section 371(a) of Public Law 104-208 and 8 U.S.C. 1101(b)(4) [IJ]	Immigration judges [200]  (Note: Immigration judges are entitled to locality pay under 5 U.S.C. 5304 by law, not by administrative action. See section 371(c)(2)(B) of Public Law 104-208, September 30, 1996.)	Dec. 29, 1996
Labor	U.S. Court of Federal Claims, 97-37, April 10, 1997	Administrative law judges with pay set pursuant to a settlement agreement in a lawsuit, <u>Levin and Miller v. U.S.</u> , entered into by the United States Court of Federal Claims in 1997. [2]	August 8, 2005
National Archives	44 U.S.C. 2102 Note [AD]	Director of the Center for Legislative Archives [1]	July 15, 1994
	44 U.S.C. 2503(a) [AD]	Executive Director, National Historical Publications and Records Commission [1]	July 15, 1994
National Science Foundation	42 U.S.C. 1873(a)(1) [AD, EE, EG]	Professional and technical employees, experts and consultants [264]	Jan. 4, 1994
	5 U.S.C. 3109 [ED, EF]	Experts and consultants [1]	Mar. 22, 1994
Nuclear Regulatory Commission	Atomic Energy Act of 1954 & Energy Reorganization Act of 1974 [SN, AJ]	Senior Level employees [41] and Administrative Judges [12]	Jan. 4, 1994
Office of Personnel Management	5 U.S.C. 3109 [EF, ED, EH]	Experts and consultants [2]	Jan. 7, 1994
Overseas Private Investment Corporation	Section 233(d) of the Foreign Assistance Act of 1961 [AD]	Miscellaneous types of positions [20]	Jan. 31, 1996
Peace Corps	22 U.S.C. 2506(a)(2) [AD]	Miscellaneous types of positions [83]	Jan. 7, 1994

	5 U.S.C. 3109 [EE]	Experts and consultants [34]	Jan. 7, 1994
Securities and Exchange Commission	Section 203 of the Securities Litigation Uniform Standards Act of 1998 [EZ]	Economists [15]	Dec. 23, 1998
Small Business Administration	P.L. 94-305 [AD]	Miscellaneous types of positions [34]	Jan. 4, 1994
	5 U.S.C. 3109 [ED, EF]	Experts and consultants [1]	Dec. 30, 1994
Smithsonian	5 U.S.C. 5375	Members of the police force of the National Zoological Park [13]	Jan. 7, 1994
State	22 U.S.C. 1474(l) [GG]	Non-U.S. citizen employees [307]	Jan. 4, 1994
	22 U.S.C. 4024 [GG]	Employees at the National Foreign Affairs Training Center [350]	Jan. 7, 1994
	22 U.S.C. 287 [GG]	Employees at the U.S. Mission to the United Nations [58]	Jan. 7, 1994
	22 U.S.C. 287 [AD]	Miscellaneous types of positions whose pay is linked to Foreign Service Officer pay under 22 U.S.C. 3963	Jan. 7, 1994
	5 U.S.C. 3109 [ED, EF]	Experts and consultants [50]	Jan. 7, 1994
Transportation	46 U.S.C. Append. 1295g [AD]	Professors, lecturers, and instructors at the U.S. Merchant Marine Academy [86]	July 23, 2008
Treasury	5 U.S.C. 5378 [TR]	Members of the police forces in the Bureau of Engraving and Printing and Bureau of the Mint [377]	Jan. 31, 1994
U.S. Trade and Development Agency	Section 661(c)(2)(C) of the Foreign Assistance Act of 1961 [AD]	Miscellaneous types of positions [2]	Dec. 9, 1998
Veterans Affairs	38 U.S.C. 7404(b)(1) [VN]	Physician assistants, optometrists, podiatrists, and expanded-function dental auxiliaries [1,139]	Jan. 4, 1994



	38 U.S.C. 7405(b)(2) [AD]	Medical support personnel, trainees, and students [631]	Jan. 4, 1994
	38 U.S.C. 7404(a) [SR]	Non-physician, non-dentist, and non-nurse employees [4]	April 5, 1994
	38 U.S.C. 7101A [AL]	Members of the Board of Veteran's Appeals [53]	Dec. 30, 1994