

OPM Guidance on Freeze on Pay Adjustments for Federal Civilian Employees

Authority for Pay Freeze

Section 147 of the Continuing Appropriations Act, 2011 (Pub. L. 111-242, September 30, 2010), as amended by section 1(a) of the Continuing Appropriations and Surface Transportation Extensions Act, 2011 (Pub. L. 111-322, December 22, 2010), prohibits statutory pay adjustments for most Federal civilian employees. Also, President Obama issued a memorandum on December 22, 2010, which stated that agencies should forgo similar increases to pay systems and pay schedules that are set by administrative discretion. (See Attachments 1 and 2 of this OPM memorandum.)

Time Period for Pay Freeze

The pay freeze for all covered employees and pay adjustments described below is in effect for the period beginning on January 1, 2011, and ending on December 31, 2012. The freeze applies to covered adjustments that would otherwise take effect during the freeze period.

Employees Covered by the Pay Freeze

The pay freeze covers Federal civilian employees in Executive agencies, as defined in 5 U.S.C. 105 (including Executive departments, Government corporations, and independent establishments). Covered employees include any civilian employee (including political appointees), as defined in 5 U.S.C. 2105 (including an individual to whom subsection (a), (b), (c), or (f) of section 2105 pertains), who would otherwise receive a statutory pay adjustment. This includes General Schedule, prevailing rate, Foreign Service, Executive Schedule, Senior Executive Service, Senior Foreign Service, senior-level and scientific and professional (SL and ST) employees, and senior executives and senior-level employee equivalents. Special provisions apply to senior executives and senior-level employees.

Employees of the United States Postal Service and the Postal Regulatory Commission are not covered by the pay freeze, nor are members of the uniformed services (as defined in 37 U.S.C. 101(3), i.e., Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service).

Except for Legislative branch employees covered by the General Schedule, the pay freeze legislation does not apply to employees outside the Executive branch.

The Presidential memorandum provides that agencies should forgo increases for Executive branch employees who are covered by pay systems or pay schedules adjusted by administrative discretion.

Adjustments Covered by the Pay Freeze

As a guiding principle, the pay freeze covers general adjustments in pay schedules and employee rates (including adjustments in geographic supplements or other position-based basic pay supplements). As summarized in the section entitled “Authority for Pay Freeze,” above, the pay freeze legislation covers “statutory pay adjustments,” which are defined as across-the-board increases under 5 U.S.C. 5303 (affecting the General Schedule, the Foreign Service schedule, and certain schedules for the Veterans Health Administration of the Department of Veterans Affairs), locality pay increases under 5 U.S.C. 5304 or 5304a (except for certain employees in nonforeign areas), increases in Executive Schedule rates under 5 U.S.C. 5318, increases in prevailing rates under 5 U.S.C. 5343(a), and any similar adjustment required by statute for employees in an Executive agency. The Presidential memorandum states that agencies should extend the pay freeze to cover similar pay adjustments that are set by administrative discretion (see “Administratively Determined Adjustments,” below).

Under the pay freeze legislation, special restrictions apply to senior executives and senior-level employees. During the freeze period, no senior executive or senior-level employee may receive any increase in his or her rate of basic pay, except for increases based on a change of position involving a substantial increase in responsibility, or a promotion.

The pay freeze legislation establishes a narrow exception allowing locality pay increases for certain employees in nonforeign areas (including Alaska and Hawaii) covered by the Non-Foreign Area Retirement Equity Assurance Act of 2009 (subtitle B of title XIX of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84, October 28, 2009)), under which employees receive locality pay increases to offset reductions in cost-of-living allowances.

Similar Adjustments Required by Statute

As explained above, the pay freeze legislation bars adjustments required by statute that are similar to certain adjustments in specifically cited provisions of law. An adjustment is considered to be “required by statute” if a law mandates that a given type of adjustment be made (including a determination to provide a zero adjustment) based on the existence of specific conditions. This does not mean that the law must specify the exact amount of the adjustment. Both General Schedule across-the-board increases and locality pay increases are required by statute based on specified conditions, but the governing laws leave room for determining the amount of the adjustment and allow for the possibility of a zero increase. Other pay systems may be governed by similar laws.

Administratively Determined Adjustments

The Presidential memorandum provides that agencies should extend the pay freeze to cover certain pay adjustments set by administrative discretion—namely, increases in pay systems or pay schedules and general increases (including general increases for a geographic area, such as locality pay) in employees’ rates of pay. These administrative adjustments may be similar to the General Schedule (GS) across-the-board base pay adjustment under 5 U.S.C. 5303, GS locality

pay adjustments under 5 U.S.C. 5304 or 5304a, or prevailing rate adjustments under 5 U.S.C. 5343(a), except that they are not required by statute.

- **General Increases**

The term “general increases” refers to salary rate increases for employees covered by a particular pay schedule that are (1) system-wide, across-the-board increases, (2) provided to all employees in a pay system who have a positive performance rating, (3) applicable to all employees (or all employees who have a positive performance rating) across occupations who are stationed in a specified geographic area, (4) applicable generally to an occupational category of employees (except for special increases granted in extraordinary circumstances), or (5) any similar increase in salary rates that applies in a general manner to a category of positions (as opposed to being affected by individualized factors such as performance—see “Performance-based Increases” section below). General increases for employees usually correspond to increases in a given pay structure or schedule. In pay systems with structured steps or pay levels within the rate range for a grade or level, increases in a pay schedule automatically result in corresponding general increases for covered employees.

- **Special Rates Adjustments**

OPM will not authorize increases in existing special rates or approve new special rates under 5 U.S.C. 5305, except in extraordinary circumstances. Executive branch agencies with separate but similar special rate authorities should follow the same guidelines and should consult with OPM to ensure special rate programs are administered consistently. OPM will continue to authorize reductions and terminations of special rates as requested by agencies.

- **Performance-based Increases**

Administratively determined pay increases that are based solely on an individual employee’s performance are NOT covered by the pay freeze, except for senior executives and senior-level employees who are covered by special pay restrictions under the pay freeze legislation. This includes performance-based pay increases provided under alternative pay systems and personnel demonstration projects that are paid in lieu of and with funding that would have been used for within-grade increases, quality step increases, and, if applicable, promotions, if affected employees were under the GS system. However, the Presidential memorandum states that, to the extent an agency pay system provides performance-based increases in lieu of general increases, funds allocated for those performance-based increases should be correspondingly reduced to reflect the freezing of the employees’ base pay schedule. For example, if the funding for performance-based increases under an alternative pay system or personnel demonstration project is derived in part from funds that would have been used for GS general increases, the funding should be reduced proportionately to reflect the absence of a GS general increase in 2011 and 2012.

- **Promotion Increases**

Increases granted based on an employee's promotion to a higher grade or level are NOT covered by the pay freeze.

Special Provisions for Nonforeign Areas

As explicitly provided in the pay freeze legislation, the Nonforeign Area Retirement Equity Assurance Act of 2009 (NAREAA) (subtitle B of title XIX of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84, October 28, 2009)) shall be applied using the appropriate locality-based comparability payments established by the President as the applicable locality payments for the nonforeign area. (For additional information on NAREAA, including its application to SES, SL, and ST employees, see CPM 2009-27.) As provided under NAREAA, the locality rate for each nonforeign area will be set at two-thirds of the applicable locality rate in January 2011 and the full applicable locality rate in January 2012. (See the President's Executive order dated December 22, 2010, which includes nonforeign area locality rates for 2011, at Attachment 1 to CPM 2010-20.) Employees in nonforeign areas have corresponding reductions in their cost-of-living allowances (COLAs) when locality rates increase. The nonforeign areas are identified in 5 CFR 591.205. The COLA areas within those nonforeign areas are defined in 5 CFR 591.207. The locality rates and COLA rates for 2011 in each COLA area are provided in CPM 2010-20.

Effect of Pay Freeze on Governmentwide Pay Systems

Below we review the effect of the pay freeze on various Governmentwide pay systems (please note that this list is not exhaustive):

- **Executive Schedule**

Executive Schedule (EX) pay rates under 5 U.S.C. 5318 are covered by the pay freeze.

- **General Schedule, Foreign Service, and Veterans Health Administration Statutory Pay Systems**

The statutory pay systems (the General Schedule (GS pay plan)), the Foreign Service schedule (FO, FP), and certain schedules of the Veterans Health Administration of the Department of Veterans Affairs established under 38 U.S.C. chapter 74 are covered by the pay freeze. (See 5 U.S.C. 5302(1).) The base pay schedules for these systems are frozen. This includes the special base rates for General Schedule law enforcement officers (GL) at GS grades 3 through 10. Locality payments for employees in these systems are also frozen.

- **Senior Executive Service and Similar Senior Executives**

Members of the Senior Executive Service (SES), Federal Bureau of Investigation (FBI)-Drug Enforcement Administration (DEA) SES, Senior Foreign Service, and members of any similar senior executive service in an Executive agency are covered by the pay freeze.

Further, the pay freeze legislation bars all pay increases for such senior executives, except that agencies may grant pay increases to such senior executives that are based on a change of position that results in a substantial increase in responsibility, or a promotion.

During 2011 and 2012, the minimum rate of basic pay for the SES rate range under 5 U.S.C. 5382 will remain at \$119,554. Since the EX pay rates will be frozen during 2011 and 2012, the applicable maximum rate of basic pay for the SES will continue to be \$179,700 (EX-II) for SES members covered by a certified SES performance appraisal system and \$165,300 (EX-III) for SES members covered by an SES performance appraisal system that has not been certified.

An agency should determine whether an employee is a member of a “similar senior executive service” (as provided in the definition of “senior executive” in section 147(a)(2)(D) of the pay freeze legislation) based on whether the employee holds a position that would meet the definition of “Senior Executive Service position” in 5 U.S.C. 3132(a)(2), if section 3132 applied to the employee’s employing agency or subcomponent. An agency pay schedule or pay system (or an agency personnel system) may cover both senior executives and lower-level employees; however, only those whose position meets the definition in section 3132(a)(2) would be considered members of a “similar senior executive service.”

- **Senior-Level and Scientific and Professional and Similar Senior-Level Positions**

Senior-level (SL) and scientific and professional (ST) employees under 5 U.S.C. 5376 or any similar authority are covered by the pay freeze. Further, the pay freeze legislation bars all pay increases for such senior-level employees, except that agencies may grant pay increases to an SL/ST employee that are based on a change of position that results in a substantial increase in responsibility, or a promotion.

During 2011 and 2012, the minimum rate of basic pay for the SL/ST rate range under 5 U.S.C. 5376 will remain at \$119,554. The applicable maximum rate of basic pay will be \$179,700 (EX-II) for SL or ST employees covered by a certified SL/ST performance appraisal system and \$165,300 (EX-III) for SL or ST employees covered by an SL/ST performance appraisal system that has not been certified.

An agency should determine whether an employee is covered by a “similar authority” that is similar to 5 U.S.C. 5376 (as provided in the definition of “senior-level employee” in section 147(a)(3) of the pay freeze legislation) based on whether the employee holds a position that would meet the conditions in subsection (a)(1) and (2) of that section.

- **Prevailing Rate Systems**

Prevailing rate employees under 5 U.S.C. 5343(a) are covered by the pay freeze during calendar years 2011 and 2012. OPM will not authorize increases in existing special rates or approve new special rates for prevailing rate employees, except in extraordinary circumstances. OPM will continue to authorize reductions and terminations of special rates as requested by agencies. OPM has issued guidance to agencies regarding implementation of

the pay freeze with respect to prevailing rate pay adjustments in CPM 2010-22. The Department of Defense will post revised wage schedules at <http://www.cpms.osd.mil/wage>.

- **Administrative Law Judges**

The rates of basic pay for administrative law judges (ALJs) are covered by the freeze.

- **Administrative Appeals Judges**

Under 5 U.S.C. 5372b, the rates of basic pay for administrative appeals judges (AAJs) must be set at a rate not less than the minimum rate of basic pay for level AL-3 and not more than the maximum rate of basic pay for level AL-3 of the ALJ pay system established under 5 U.S.C. 5372. At 5 CFR 534.603, OPM's regulations link the structure of the AAJ pay system directly to the structure for level AL-3 of the ALJ pay system. The rates of basic pay for AAJs are covered by the pay freeze.

Impact on Collective Bargaining Agreements

The pay freeze policy in the Presidential memorandum may not, as a matter of Federal sector labor law, apply to any increase that is required by a collective bargaining agreement that has already been executed and is in effect as of the date of the Presidential memorandum. Each agency should consider the policy contained in the Presidential memorandum and consult with agency counsel to determine the agency's position in any collective bargaining that may occur going forward.

Exclusions from the Pay Freeze

- Additional payments, such as performance awards/bonuses; recruitment, relocation, and retention incentives; and premium payments (e.g., overtime pay), are not affected by the pay freeze and must be paid in accordance with requirements and limitations in law, regulations, and agency policy. The Office of Management and Budget (OMB) will provide explicit guidance to agencies on FY 2011 and 2012 expenditure levels.
- Promotions, periodic within-grade step increases based on fully successful level of performance, and quality step increases for outstanding performance are not affected by the pay freeze. Agencies should pay special attention to make sure these pay increases are based on performance and thus are not automatic, across-the-board increases.
- Adjustments in foreign areas to maintain a constant salary rate in U.S. dollars or local currency or to respond to foreign labor laws are not affected by the pay freeze.
- Pay-setting flexibilities, such as the GS superior qualifications and special needs pay-setting authority for newly appointed employees under 5 CFR 531.212 and the GS maximum payable rate rule under 5 CFR 531.221, are not affected by the pay freeze.

Effect of Pay Freeze on Pay Limitations

Pay limitations that are set equivalent to rates under the Executive Schedule or other pay schedules covered by the freeze will not be increased in 2011 and 2012 and will remain at 2010 levels. For example, the aggregate limitation on pay under 5 U.S.C. 5307 and the premium pay limitations under 5 U.S.C. 5547(a) will not be increased in 2011 and 2012 (except the biweekly premium pay cap in Alaska will increase). Additional information on these pay limitations for 2011 is found in CPM 2010-20.