

vey (but only with respect to prevailing rate employees described in section 5342(a)(2)(A) of that title).

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

1972—Pub. L. 92-210, §3, Dec. 22, 1971, 85 Stat. 753, provided that: “Notwithstanding any provision of section 3(c) of the Federal Pay Comparability Act of 1970 (Public Law 91-656), or of section 5305 of title 5, United States Code, as added by section 3(a) of Public Law 91-656, and the provisions of the alternative plan submitted by the President to the Congress pursuant thereto on August 31, 1971, such comparability adjustments in the rates of pay of each Federal statutory pay system as may be required under such sections 5305 and 3(c), based on the 1971 Bureau of Labor Statistics survey—

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

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

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

ALLOWED DEVIATIONS FROM PROVISIONS OF SUBCHAPTER I FOR ADJUSTMENTS MADE IN 1971 AND 1972

Pub. L. 91-656, §3(c), Jan. 8, 1971, 84 Stat. 1951, provided that: “The President may make the initial adjustment required by subchapter I of chapter 53 of title 5, United States Code, as amended by this Act, without regard to the provisions of such subchapter relating to the Advisory Committee on Federal Pay and the Federal Employees Pay Council. Notwithstanding any provision of such subchapter I prescribing an effective date of October 1 for any pay adjustment made by the President, the initial adjustment based on the 1970 Bureau of Labor Statistics survey and the adjustment based on the 1971 Bureau of Labor Statistics survey shall become effective on the first day of the first applicable pay period that begins on or after January 1, 1971, and January 1, 1972, respectively. Notwithstanding the provisions of such subchapter I, the President's agent for purposes of the 1971 and 1972 adjustments shall be the Director, Office of Management and Budget and the Chairman, United States Civil Service Commission. Adjustments under the provisions of such subchapter I shall not apply to employees of the Post Office Department whose basic pay is fixed under the General Schedule.”

SPECIAL ADJUSTMENTS MADE BY PRESIDENT FOR 1968 AND 1969

Pub. L. 90-206, title II, §212, Dec. 16, 1967, 81 Stat. 634, provided that: “In order to complete the implementation of the policy of the Congress set forth in paragraph (2) of section 5301 of title 5, United States Code, the President, after seeking the views of such employee organizations as he considers appropriate and in such manner as he may provide, shall—

“(1) effective on the first day of the first pay period beginning on or after July 1, 1968, adjust the rates of basic pay, basic compensation, and salary, as in effect by reason of the enactment of the provisions of this

title [see Short Title note under section 5332 of this title] other than this section and sections 205, 210, 213, 214, 215, and 219—

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

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

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

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

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

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

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

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

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

Executive Documents

DELEGATION OF FUNCTIONS

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

§ 5304. Locality-based comparability payments

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) the percentage for the ninth calendar year in which any amounts are payable under this section, and any year thereafter, may not be less than the full amount nec-

essary to reduce the pay disparity of the locality involved to 5 percent.

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

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

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

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

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

(2) A comparability payment—

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

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

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

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

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

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

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

(A) compares the rates of pay under the General Schedule (disregarding any described in section 5302(8)(C))¹ with the rates

¹ See References in Text note below.

of pay generally paid to non-Federal workers for the same levels of work within each pay locality, as determined on the basis of appropriate surveys that shall be conducted by the Bureau of Labor Statistics;

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

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

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

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

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

(A) identify each pay locality;

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

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

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

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

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

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

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

(2) The pay agent shall—

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

(i) the establishment or modification of pay localities;

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

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

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

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

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

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

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

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

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

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

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

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

- (A) positions under subparagraphs (A) and (B) of subsection (h)(1);
- (B) positions under subsection (h)(1)(C) not covered by appraisal systems certified under subsection 5307(d); and
- (C) any positions under subsection (h)(1)(D) as the President may determine.

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

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

- (A) a position to which section 5372 applies (relating to administrative law judges appointed under section 3105);
- (B) a position to which section 5372a applies (relating to contract appeals board members);
- (C) a Senior Executive Service position under section 3132 or 3151 or a senior level position under section 5376 stationed within the United States, but outside the 48 contiguous States and the District of Columbia in which the incumbent was an individual who on the day before the effective date of section 1912 of the Non-Foreign Area Retirement Equity Assurance Act of 2009 was eligible to receive a cost-of-living allowance under section 5941 and who thereafter has served continuously in an area in which such an allowance was payable; and
- (D) a position within an Executive agency not covered under the General Schedule or any of the preceding subparagraphs, the rate of basic pay for which is (or, but for this section, would be) no more than the rate payable for level IV of the Executive Schedule;

but does not include—

- (i) a position to which subchapter IV applies (relating to prevailing rate systems);
- (ii) a position as to which a rate of pay is authorized under section 5377 (relating to critical positions);
- (iii) a position to which subchapter II applies (relating to the Executive Schedule);
- (iv) a Senior Executive Service position under section 3132, except for a position covered by subparagraph (C);
- (v) a position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service under section 3151, except for a position covered by subparagraph (C);
- (vi) a position in a system equivalent to the system in clause (iv), as determined by the President's Pay Agent designated under subsection (d); or
- (vii) a position to which section 5376 applies (relating to certain senior-level and scientific and professional positions), except for a position covered by subparagraph (C).

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

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

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

- (i) with respect to the positions under subparagraphs (A) through (C) of paragraph (1), all positions described in the subparagraph or subparagraphs involved (excluding any under clause (i), (ii), (iii), (iv), (v), (vi), or (vii) of such paragraph); and
- (ii) with respect to positions under paragraph (1)(D), such positions as may be considered appropriate (excluding any under clause (i), (ii), (iii), (iv), (v), (vi), or (vii) of paragraph (1)).

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

(3) Comparability payments under this subsection—

- (A) may be paid only in any calendar year in which comparability payments under the preceding provisions of this section are payable with respect to General Schedule positions within the same locality;
- (B) shall take effect, within the locality involved, on the first day of the first applicable pay period commencing on or after such date as the President designates (except that no date may be designated which would require any retroactive payments), and shall remain in effect through the last day of the last applicable pay period commencing during that calendar year;
- (C) shall be computed using the same percentage as is applicable, for the calendar year involved, with respect to General Schedule positions within the same locality; and
- (D) shall be subject to the applicable limitation under subsection (g).

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

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

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

HISTORICAL AND REVISION NOTES

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

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

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

Editorial Notes

REFERENCES IN TEXT

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

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

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

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (h)(1)(A) to (D). Pub. L. 110-372, §2(a)(2)(A)(i), (iii), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A) which

read as follows: “a position to which section 5376 applies (relating to certain senior-level positions);”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1990—Pub. L. 101-509 amended section generally, substituting provisions relating to locality-based com-

parability payments for provisions making functions, duties, and regulations of agencies and Office of Personnel Management with respect to this subchapter subject to Presidential policies and regulations.

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

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

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2009 AMENDMENT

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

EFFECTIVE DATE OF 2008 AMENDMENT

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

EFFECTIVE DATE OF 2004 AMENDMENT

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

EFFECTIVE DATE OF 2003 AMENDMENT

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

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

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

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

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

EFFECTIVE DATE OF 1990 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L.

96-465, set out an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1970 AMENDMENT

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

LOCALITY PAY FOR FEDERAL EMPLOYEES WORKING OVERSEAS UNDER DOMESTIC EMPLOYEE TELEWORKING OVERSEAS AGREEMENTS

Pub. L. 117-263, div. I, title XCVII, §9717, Dec. 23, 2022, 136 Stat. 3922, provided that:

“(a) DEFINITIONS.—In this section:

“(1) CIVIL SERVICE.—The term ‘civil service’ has the meaning given the term in section 2101 of title 5, United States Code.

“(2) COVERED EMPLOYEE.—The term ‘covered employee’ means an employee who—

“(A) occupies a position in the civil service; and

“(B) is working overseas under a Domestic Employee Teleworking Overseas agreement.

“(3) LOCALITY PAY.—The term ‘locality pay’ means a locality-based comparability payment paid in accordance with subsection (b).

“(4) NONFOREIGN AREA.—The term ‘nonforeign area’ has the meaning given the term in section 591.205 of title 5, Code of Federal Regulations, or any successor regulation.

“(5) OVERSEAS.—The term ‘overseas’ means any geographic location that is not in—

“(A) the continental United States; or

“(B) a nonforeign area.

“(b) PAYMENT OF LOCALITY PAY.—Each covered employee shall be paid locality pay in an amount that is equal to the lesser of—

“(1) the amount of a locality-based comparability payment that the covered employee would have been paid under section 5304 or 5304a of title 5, United States Code, had the official duty station of the covered employee not been changed to reflect an overseas location under the applicable Domestic Employee Teleworking Overseas agreement; or

“(2) the amount of a locality-based comparability payment that the covered employee would be paid under section 1113 of the Supplemental Appropriations Act, 2009 (Public Law 111-32) [123 Stat. 1904], as limited under section 9802(c)(2) of this Act [136 Stat. 3924], if the covered employee were an eligible member of the Foreign Service (as defined in subsection (b) of such section 1113).

“(c) APPLICATION.—Locality pay paid to a covered employee under this section—

“(1) shall begin to be paid not later than 60 days after the date of the enactment of this Act [Dec. 23, 2022]; and

“(2) shall be treated in the same manner, and subject to the same terms and conditions, as a locality-based comparability payment paid under section 5304 or 5304a of title 5, United States Code.”

NON-FOREIGN AREA RETIREMENT EQUITY ASSURANCE

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

“SEC. 1911. SHORT TITLE.

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

“SEC. 1912. EXTENSION OF LOCALITY PAY.

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

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

“SEC. 1913. ADJUSTMENT OF SPECIAL RATES.

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

“(b) AGENCIES WITH STATUTORY AUTHORITY.—

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

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

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

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

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

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

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

“Notwithstanding any other provision of this subtitle or section 5304 or 5304a of title 5, United States Code, in implementing the amendments made by this subtitle, for each non-foreign area determined under section 5941(b) of such title, the applicable rate for the locality-based comparability adjustment that is used in the computation required under section 5941(c) of such title shall be adjusted, effective on the first day of the first pay period beginning on or after January 1—

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

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

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

“SEC. 1915. SAVINGS PROVISION.

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

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

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

“(3) concurrent with the surveys next conducted under the provisions of section 5304(d)(1)(A) of title 5,

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

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

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

“(b) SAVINGS PROVISIONS.—

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

“(2) CONTINUATION OF COST OF LIVING ALLOWANCE RATE.—If an employee, who the day before the date of enactment of this Act was eligible to receive a cost-of-living allowance under section 5941 of title 5, United States Code, would receive a rate of basic pay and applicable locality-based comparability payment which is in excess of the maximum rate limitation set under section 5304(g) of title 5, United States Code, for his position (but for that maximum rate limitation) due to the operation of this subtitle, the employee shall continue to receive the cost-of-living allowance rate in effect on December 31, 2009 without adjustment until—

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

“(B) the employee is entitled to receive basic pay (including any applicable locality-based comparability payment or similar supplement) at a higher rate,

but, when any such position becomes vacant, the pay of any subsequent appointee thereto shall be fixed in the manner provided by applicable law and regulation.

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

that an employee covered under that paragraph receives any amount of locality-based comparability payment, the cost-of-living allowance rate under that paragraph shall be reduced accordingly, as provided under section 5941(c)(2)(B) of title 5, United States Code.

“SEC. 1916. APPLICATION TO OTHER ELIGIBLE EMPLOYEES.

“(a) IN GENERAL.—

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

“(A) any employee who—

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

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

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

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

“(B) any employee who—

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

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

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

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

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

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

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

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

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

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

“(2) APPLICATION TO COVERED EMPLOYEES.—

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

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

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

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

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

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

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

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

“(ii) shall be the greater of—

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

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

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

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

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

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

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

“(1) to whom section 1914 applies;

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

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

“(b) ELECTION.—

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

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

“(c) COMPUTATION OF ANNUITY.—

“(1) IN GENERAL.—Except as provided under paragraph (2), for purposes of the computation of an annuity of a covered employee any cost-of-living allowance under section 5941 of title 5, United States Code, paid to that employee during the first applicable pay period beginning on or after January 1, 2010 through the first applicable pay period ending on or after December 31, 2012, shall be considered basic pay as defined under section 8331(3) or 8401(4) of that title.

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

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

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

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

“(i) employee contributions that would have been deducted and withheld from pay under section 8334 or 8422 of title 5, United States Code, during the period described under subsection (c) of this section if the cost-of-living allowances de-

scribed under that subsection had been treated as basic pay under section 8331(3) or 8401(4) of title 5, United States Code; and

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

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

“(2) AGENCY CONTRIBUTIONS.—

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

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

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

“SEC. 1918. REGULATIONS.

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

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

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

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

“(b) OTHER PAY SYSTEMS.—With the concurrence of the Director of the Office of Personnel Management, the administrator of a pay system not administered by the Office of Personnel Management shall prescribe regulations to carry out this subtitle with respect to employees in such pay system, consistent with the regulations prescribed by the Office under subsection (a). With respect to employees not entitled to locality-based comparability payments under section 5304 of title 5, United States Code, regulations prescribed under this subsection may provide for special payments or adjustments for employees who were eligible to receive a cost-of-living allowance under section 5941 of that title on the date before the date of enactment of this Act [Oct. 28, 2009].

“SEC. 1919. EFFECTIVE DATES.

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

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

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

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

“(a) For purposes of this section—

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

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

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

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

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

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

“(3) any combination thereof.

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

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

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

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

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

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

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

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

“(i) In the event that the recommendations are completed in time to be included in the report described in clause (i)(I), a copy of those recommendations shall be transmitted by the pay agent to the Congress contemporaneous with their submission to the President.

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

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

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

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

only with respect to areas described in subsection (d)(3).

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

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

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

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

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

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

FREEZE OF CURRENT RATE FOR LOCALITY-BASED COMPARABILITY ADJUSTMENTS

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

COMPARABILITY PAYMENTS IN 1994 AND 1995

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

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

“(c) Notwithstanding section 5304(a)(3)(B) of title 5, United States Code, the annualized cost of pay adjustments made under section 5304 of such title in calendar

year 1995 shall be equal to 0.6 percent of the estimated aggregate fiscal year 1995 executive branch civilian payroll—

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

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

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

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

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

INTERIM GEOGRAPHIC ADJUSTMENTS

Pub. L. 101-509, Nov. 5, 1990, 104 Stat. 1427, 1462, as amended by Pub. L. 102-378, §3(4), Oct. 2, 1992, 106 Stat. 1356; Pub. L. 103-89, §3(b)(2), Sept. 30, 1993, 107 Stat. 982, provided that:

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

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

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

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

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

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

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

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

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

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

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

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

“(2)(A) The size of any payments under this section may be reduced or terminated after the amendments made by section 101 of this Act [section 529 [title I, §101] of Pub. L. 101-509, see Tables for classification] take effect [see Effective Date of 1990 Amendment note set out under section 5301 of this title], except that the reduction or termination of a payment under this sec-

tion may not have the effect of reducing, for the individual involved, the total rate at which additional forms of basic pay (as defined in subparagraph (B)) are payable to such individual.

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

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

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

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

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

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

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

Executive Documents

DELEGATION OF FUNCTIONS

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

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

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

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

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

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

EXECUTIVE ORDER No. 11073

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

EXECUTIVE ORDER No. 11721

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

EX. ORD. No. 12764. FEDERAL SALARY COUNCIL

Ex. Ord. No. 12764, June 5, 1991, 56 F.R. 26587, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5304(e) of title 5, United States Code, as amended, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended ([former] 5 U.S.C. App.)

[see 5 U.S.C. 1001 et seq.], an advisory committee on locality-based comparability payments for General Schedule employees, it is hereby ordered as follows:

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

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

(a) the establishment or modification of pay localities;

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

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

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

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

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

(c) Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended [see 5 U.S.C. 1001 et seq.], except that of reporting to the Congress, which are applicable to the Council, shall be performed by the Director of the Office, in accordance with the guidelines and procedures established by the Administrator of General Services.

GEORGE BUSH.

LOCALITY-BASED COMPARABILITY PAYMENTS

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

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

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

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

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

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

(1) prepare and transmit to Congress, at least 1 month before those comparability payments (disregarding this section) would otherwise become payable, a report describing the alternative level of payments which the Presi-