

The President's Pay Agent

Washington, DC 20415-0001

November 30, 2022

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Continuation of Locality Payments for Non-General Schedule Employees

The law requires that locality pay for non-General Schedule (GS) categories of employees must be renewed each year (5 U.S.C. 5304(h)). Each year, the President's Pay Agent issues a memorandum to continue locality pay for non-GS categories. This memorandum continues locality payments in 2023 for the Governmentwide and single-agency categories of employees authorized to receive 2022 locality payments, including two single-agency categories of employees to which the Pay Agent extended locality pay in 2022: (1) certain Department of Education positions appointed under 5 U.S.C. 3109, and (2) certain National Indian Gaming Commission positions appointed under 25 U.S.C. 2707.

Locality payments will continue for the Governmentwide categories shown in Attachment 1 with no further action required by any agency. Under the statute, locality payments may be made to single-agency categories of employees only at the request of the head of an Executive agency. Attachment 2 shows single-agency categories that will continue to receive locality pay in 2023 without any further action required by any agency unless the head of an Executive agency requests that payments cease.

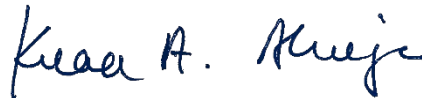
Under the statute, locality payments may not be received by employees paid under the senior level (SL) and scientific and professional (ST) pay systems, members of the Senior Executive Service (SES) and similar pay systems (except certain SL/ST and SES employees in nonforeign areas, as described below), employees paid under the critical pay authority, senior executives in temporary organizations (as described in 5 U.S.C. 3161), prevailing rate employees, categories of positions paid Executive Schedule (EX) rates of pay, or any position that has a rate of basic pay higher than the rate for level IV of the Executive Schedule (EX-IV).

The Non-Foreign Area Retirement Equity Assurance Act (NAREAA; sections 1911-1919 of Public Law 111-84, October 28, 2009) provided locality pay to employees in SES, SL, and ST positions whose official worksite was located in a nonforeign area (as defined in 5 U.S.C. 5941) on the day before the first day of the first pay period beginning on or after January 1, 2010. Therefore, these SES, SL, and ST employees will receive the locality pay rate for their area, subject to the applicable locality rate cap established by 5 U.S.C. 5304(g)—i.e., EX-II if the employee is covered by an appraisal system certified under 5 U.S.C. 5307(d), or EX-III if not so covered. For additional information, see CPM 2009-27, December 30, 2009, which is available at <https://www.chcoc.gov/content/nonforeign-area-retirement-equity-assurance-act>. In particular, see the section on "SES and SL/ST Employees" and the example provided in Attachment 3.

Please contact Joe Ratcliffe, U.S. Office of Personnel Management's Pay Systems staff, by **Friday, December 2, 2022**, via email at pay-leave-policy@opm.gov, if you do not want locality payments continued in 2023 for a single-agency employee category in your agency for which such payments were previously authorized by the President's Pay Agent. Please note that a decision not to continue locality payments in 2023 for a category of employees means that those employees would no longer be entitled to any locality payment. All employees in a given locality pay area who receive locality payments in 2023 must receive the same percentage as received by GS employees in that area, subject to applicable pay caps.

Under 5 U.S.C. 5304(g) and 5 CFR 531.606, locality rates may not exceed the rate for level III of the Executive Schedule for administrative law judges and members of Boards of Contract Appeals. Locality rates for all other categories of non-GS employees (except experts and consultants appointed under 5 U.S.C. 3109 and certain SES, SL, and ST employees in nonforeign areas as previously described) may not exceed (1) the rate for level IV of the Executive Schedule when the maximum scheduled annual rate of pay for such positions is less than or equal to the maximum payable scheduled annual rate of pay for GS-15 or (2) the rate for level III of the Executive Schedule when the maximum scheduled annual rate of pay for such positions exceeds the maximum payable scheduled annual rate of pay for GS-15. Experts and consultants appointed under 5 U.S.C. 3109 are subject to the pay limitations described in 5 CFR 304.105.

For the President's Pay Agent:



Kiran A. Ahuja, Director
U.S. Office of Personnel Management

Attachments

cc: The Honorable Martin J. Walsh
Secretary of Labor
The Honorable Shalanda Young
Director, Office of Management and Budget
Chief Human Capital Officers (CHCOs)
Deputy CHCOs
Human Resources Directors

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

1. Administrative law judges (ALJs) paid under 5 U.S.C. 5372.
2. Administrative appeals judges (AAJs) paid under 5 U.S.C. 5372b.
3. Members of Boards of Contract Appeals (BCA) paid under 5 U.S.C. 5372a.
4. Members of the Foreign Service paid under 22 U.S.C. 3963.
5. Members of the Senior Executive Service (SES) or employees covered by Senior Level (SL) or Scientific and Professional (ST) pay systems with official worksites in a nonforeign area (as defined in 5 U.S.C. 5941) on the day before the first day of the first pay period that began on or after January 1, 2010.

CONTINUED LOCALITY PAY EXTENSIONS
SINGLE-AGENCY CATEGORIES OF NON-GENERAL SCHEDULE EMPLOYEES
(Updated November 30, 2022)

| Agency | Pay Authority [pay plan code] | Types of Employees [number of employees ¹] | Original Approval Date |
|---|----------------------------------|---|------------------------------|
| Agency for International Development | 22 U.S.C. 2385 [AD] | Miscellaneous types of positions [66] | Jan. 7, 1994 |
| | 22 U.S.C. 2386 [EE, EG] | Experts and consultants under the Foreign Assistance Act [15] | Jan. 7, 1994 |
| | 5 U.S.C. 3109 [ED, EF] | Experts and consultants [15] | Jan. 7, 1994 |
| Agriculture | 5 CFR 213.3102(l) [EG] | Temporary, intermittent, and seasonal employees [1] | Feb. 9, 1994 |
| | 5 U.S.C. 3109 [ED, EF] | Experts and consultants [3] | Feb. 9, 1994 |
| American Battle Monuments Commission | 36 U.S.C. 2101 [AD] | Secretary of the American Battle Monuments Commission [1] | Nov. 25, 1996 |
| Corporation for National and Community Service | 42 U.S.C. 12651f(b)(1) [NX] | Senior level equivalent employees in pay band NX-2 of CNS' alternative personnel system [9] | June 15, 1995 |
| Defense | 10 U.S.C. 1595 [AD] | National Defense University Directors, Deans, and Professors [72] | Jan. 3, 1997 |
| | 10 U.S.C. 342 [AD] | Defense Centers for Security, Defense, and Strategic Studies, Director, Deputy Director, professors, instructors, and lecturers. | July 27, 2010 |
| | 10 U.S.C. 7371 [AD] | United States Army Command and General Staff College Civilian Staff and Faculty [5] | Jan. 3, 1997 |
| | 10 U.S.C. 7431 and 7438 [AD] | United States Army Military Academy Civilian Staff and Faculty [97] | Jan. 3, 1997 |

¹ Number of employees as of the original approval date.

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| Defense (Continued) | 10 U.S.C. 8452 [AD] | United States Naval Academy Civilian Faculty [322] | Jan. 3, 1997 |
| | 10 U.S.C. 8543 [AD] | Naval Postgraduate School Academic Dean [1] | Jan. 3, 1997 |
| | 10 U.S.C. 8544 [AD] | Naval Postgraduate School Civilian Faculty [322] | Jan. 3, 1997 |
| | 10 U.S.C. 8748 [AD] | Naval War College Faculty [52] | Jan. 3, 1997 |
| | 10 U.S.C. 8748 [AD] | United States Marine Corps Command and Staff College Civilian Faculty [14] | Jan. 3, 1997 |
| | 10 U.S.C. 9371 [AD] | Air University Civilian Faculty [30] | Jan. 3, 1997 |
| | 10 U.S.C. 9433 [AD] | Air Force Institute of Technology Civilian Faculty [114] | Jan. 3, 1997 |
| | 10 U.S.C. 9438 [AD] | United States Air Force Academy Civilian Faculty [77] | Jan. 3, 1997 |
| | 10 U.S.C. 1746 [AD] | Defense Acquisition University Faculty [305] | April 12, 2000 |
| | Sec. 1101 of PL 105-261 [AD] | Defense Advanced Research Projects Agency (DARPA) Experimental Personnel Management Program [20] | July 28, 2000 |
| Defense Nuclear Facilities Safety Board | Section 161d of the Atomic Energy Act of 1954 (Public Law 101-510) [DN] | Professional scientific and technical personnel [59] | Dec. 30, 1996 |
| Education | 20 U.S.C. 9011 [AD] | Executive Director of the National Assessment Governing Board [1] | June 26, 2002 |
| | 20 U.S.C. 9621 [AD] | Deputy Executive Director of the National Assessment Governing Board [1] | July 13, 2009 |
| | 5 U.S.C. 3109 [ED, EF] | Experts and consultants [5] | Oct. 6, 2022 |
| Energy | 42 U.S.C. 7231(d) [EJ] | Scientific, engineering, professional, and administrative employees [200] | Dec. 30, 1994 |
| | 5 U.S.C. 3109 & 42 U.S.C. 7233 [ED, EF] | Experts and consultants [105] | Dec. 30, 1994 |
| | Section 3241 of P.L. 106-65 [EN] | Scientific, engineering, and technical positions in the National Nuclear Security Administration [300] | Jan. 13, 2003 |
| Environmental Protection Agency | P.L. 95-190 [AD] | Miscellaneous types of positions [19] | Jan. 4, 1994 |
| General Services Administration | 5 U.S.C. 3109 [ED, EF] | Experts and consultants [10] | June 7, 1999 |

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| Homeland Security | P.L 105-261 and P.L. 107-296 [AD] | Scientists and engineers at the Homeland Security Advanced Research Projects Agency (HSARPA) [1 (1 as of approval date, but HSARPA was new and in the process of adding positions and recruiting--limited to 20 under Section 1101 of P.L. 105-261)] | Oct. 3, 2003 |
| | Title 14, Section 186 [AD] | Civilian faculty members at the U.S. Coast Guard Academy [68] | Oct. 31, 2003 |
| | 5 U.S.C. chapter 102 [LE] | Uniformed Division of the U.S. Secret Service [1095] (Note: United States Secret Service Uniformed Division officers are entitled to locality pay under 5 U.S.C. 5304 by law, not by administrative action. See 5 U.S.C. 10203(b)(3) and Public Law 111-282, October 15, 2010.) | Jan. 31, 1994 |
| Interior | Title 4 of D.C. Code [SP] | United States Park Police [620] (Note: Under section 4-416(c)(3) of the D.C. Code, United States Park Police are entitled to locality pay under 5 U.S.C. 5304 by law, not by administrative action. See P.L. 108-7, February 20, 2003, and section 902(b) of Public Law 106-554, December 21, 2000.) | Aug. 10, 1998 |
| Justice | Section 371(a) of Public Law 104-208 and 8 U.S.C. 1101(b)(4) [IJ] | Immigration judges [200] (Note: Immigration judges are entitled to locality pay under 5 U.S.C. 5304 by law, not by administrative action. See section 371(c)(2)(B) of Public Law 104-208, September 30, 1996.) | Dec. 29, 1996 |
| Labor | U.S. Court of Federal Claims, 97-37, April 10, 1997 | Administrative law judges with pay set pursuant to a settlement agreement in a lawsuit, <u>Levin and Miller v. U.S.</u> , entered into by the United States Court of Federal Claims in 1997. [2] | August 8, 2005 |
| National Archives | 44 U.S.C. 2102 Note [AD] | Director of the Center for Legislative Archives [1] | July 15, 1994 |
| | 44 U.S.C. 2503(a) [AD] | Executive Director, National Historical Publications and Records Commission [1] | July 15, 1994 |
| National Indian Gaming Commission | 25 U.S.C. 2707 [AD] | Chief of Staff [1] and General Counsel [1] | Oct. 6, 2022 |
| National Science Foundation | 42 U.S.C. 1873(a)(1) [AD, EE, EG] | Professional and technical employees, experts and consultants [264] | Jan. 4, 1994 |
| | 5 U.S.C. 3109 [ED, EF] | Experts and consultants [1] | Mar. 22, 1994 |

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| Nuclear Regulatory Commission | Atomic Energy Act of 1954 & Energy Reorganization Act of 1974 [SN, AJ] | Senior Level employees [41] and Administrative Judges [12] | Jan. 4, 1994 |
| Office of Personnel Management | 5 U.S.C. 3109 [EF, ED, EH] | Experts and consultants [2] | Jan. 7, 1994 |
| Overseas Private Investment Corporation | Section 233(d) of the Foreign Assistance Act of 1961 [AD] | Miscellaneous types of positions [20] | Jan. 31, 1996 |
| Peace Corps | 22 U.S.C. 2506(a)(2) [AD] | Miscellaneous types of positions [83] | Jan. 7, 1994 |
| | 5 U.S.C. 3109 [EE] | Experts and consultants [34] | Jan. 7, 1994 |
| Small Business Administration | P.L. 94-305 [AD] | Miscellaneous types of positions [34] | Jan. 4, 1994 |
| | 5 U.S.C. 3109 [ED, EF] | Experts and consultants [1] | Dec. 30, 1994 |
| Smithsonian | 5 U.S.C. 5375 | Members of the police force of the National Zoological Park [13] | Jan. 7, 1994 |
| State | 22 U.S.C. 1474(l) [GG] | Non-U.S. citizen employees [307] | Jan. 4, 1994 |
| | 22 U.S.C. 4024 [GG] | Employees at the National Foreign Affairs Training Center [350] | Jan. 7, 1994 |
| | 22 U.S.C. 287 [GG] | Employees at the U.S. Mission to the United Nations [58] | Jan. 7, 1994 |
| | 22 U.S.C. 287 [AD] | Miscellaneous types of positions whose pay is linked to Foreign Service Officer pay under 22 U.S.C. 3963 | Jan. 7, 1994 |
| | 5 U.S.C. 3109 [ED, EF] | Experts and consultants [50] | Jan. 7, 1994 |
| Transportation | 46 U.S.C. Append. 1295g [AD] | Professors, lecturers, and instructors at the U.S. Merchant Marine Academy [86] | July 23, 2008 |
| Treasury | 5 U.S.C. 5378 [TR] | Members of the police forces in the Bureau of Engraving and Printing and Bureau of the Mint [377] | Jan. 31, 1994 |
| U.S. Trade and Development Agency | Section 661(c)(2)(C) of the Foreign Assistance Act of 1961 [AD] | Miscellaneous types of positions [2] | Dec. 9, 1998 |

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| Veterans Affairs | 38 U.S.C. 7404(b) [VN] | Optometrists and expanded-function dental auxiliaries [1,139] | Jan. 4, 1994 |
| | 38 U.S.C. 7404(b) [VN] | Chiropractors [167] | Aug. 5, 2020 |
| | 38 U.S.C. 7405(b)(2) [AD] | Medical support personnel, trainees, and students [631] | Jan. 4, 1994 |
| | 38 U.S.C. 7404(a) [SR] | Non-physician, non-dentist, and non-nurse employees [4] | April 5, 1994 |
| | 38 U.S.C. 7101A [AL] | Members of the Board of Veteran's Appeals [53] | Dec. 30, 1994 |