

CRS Report for Congress

Federal White-Collar Pay: FY2009 Salary Adjustments

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Summary

Federal white-collar employees are intended by law to receive an annual pay adjustment and a locality-based comparability payment, effective in January of each year, under Section 529 of P.L. 101-509, the Federal Employees Pay Comparability Act (FEPCA) of 1990. The law has never been implemented as originally enacted; annual and locality payments pursuant to the statute have been reduced each year. Although the annual adjustment and the locality payment are sometimes referred to as cost-of-living adjustments, neither is based on changes in the cost of living.

The annual pay adjustment is based on the Employment Cost Index (ECI), which measures changes in private-sector wages and salaries. The size of the locality payment is determined by the President and is based on a comparison of non-federal and General Schedule (GS) salaries in 32 pay areas nationwide. (The GS is the pay schedule that covers white-collar employees under the Civil Service.) By law, the disparity between non-federal and federal salaries was to be gradually reduced to 5% during the years 1994 to 2002. Continuing in each year thereafter, FEPCA requires that amounts payable may not be less than the full amounts necessary to reduce the pay disparity to 5%. For the January 2009 pay adjustment, the ECI shows that the annual across-the-board increase would be 2.9%. The Federal Salary Council and the Pay Agent recommend that, to carry out FEPCA, the 2009 locality payments range from 23.40% in the "Rest of the United States" (RUS) pay area to 59.65% in the San Jose-San Francisco pay area, and be 53.94% in the Washington, DC, pay area. Because the new locality rates replace the existing locality rates, the rate change is derived by comparing 2008 locality payments with those recommended for 2009. This comparison results in recommended net increases for 2009, if the ECI and locality-based comparability payments were granted as required by law, of 12.19% in the RUS pay area, 23.96% in the San Jose-San Francisco pay area, and 31.03% in the Washington, DC, pay area.

The nationwide average net pay increase, if the ECI and locality-based comparability payments were granted as required by law, would be 19.24% in 2009. The Pay Agent stated that it would be unwise for the recommended locality payments to take effect because of the "current national emergency." The President's FY2009 budget proposed a 2.9% federal civilian pay adjustment. This percentage is the overall average increase, including locality pay adjustments. S.Con.Res. 70, the Concurrent Resolution on the Budget for FY2009, as agreed to by the House and Senate, includes the provision on parity between pay for federal civilians and the uniformed military at Section 518. The House and Senate versions of the Financial Services and General Government Appropriations Act for FY2009 (Section 737(a) of the draft House bill and Section 738(a) of S. 3260) would provide a 3.9% pay adjustment for federal civilian employees.

Legislation (S. 1046) passed the Senate and is pending in the House that would raise the limitation on basic pay for senior-level (SL) and scientific or professional (ST) positions to Executive Schedule Level II (\$172,200, as of January 2008) in those agencies whose performance appraisal systems are certified by the Office of Personnel Management. This report will be updated as events dictate.

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Federal White-Collar Pay: FY2009 Salary Adjustments

Introduction

Federal white-collar employees¹ paid under the General Schedule (GS), Foreign Service Schedule, and certain Veterans Health Administration Schedules are intended by law to receive an annual pay adjustment and a locality-based comparability payment, effective in January of each year, under Section 529 of P.L. 101-509, the Federal Employees Pay Comparability Act (FEPCA) of 1990.² Although the annual adjustment and the locality payment are sometimes referred to as cost-of-living adjustments, neither is based on measures of the cost of living.

In January 2008, federal white-collar employees received an average 3.5% pay increase allocated as a 2.5% annual adjustment and a 1.0% locality payment. Not all employees received the full amount of the pay adjustment because of statutory limitations on GS pay that correspond to Executive Schedule (EX) pay rates. Basic pay cannot exceed EX Level V (\$139,600, as of January 2008); basic pay and locality pay combined cannot exceed EX Level IV (\$149,000, as of January 2008); and total compensation cannot exceed EX Level I (\$191,300, as of January 2008).³ GS-15 employees at the upper end of that pay grade in 12 areas are currently affected by the EX Level IV cap on basic pay and locality pay combined as shown below:

- employees at step 10 in the (1) Boston-Worcester-Manchester, MA-RI-NH, Combined Statistical Area (CSA), plus Barnstable County, MA, and Berwick, Eliot, Kittery, South Berwick, and York towns in York County, ME; (2) Chicago-Naperville-Michigan City, IL-IN-WI, CSA; (3) Denver-Aurora-Boulder, CO, CSA, plus the Ft. Collins-Loveland, CO, MSA; (4) Detroit-Warren-Flint, MI, CSA,

¹ This report does not cover salary adjustments for federal executive and judicial branch officials, federal justices and judges, Members of Congress, or the United States Postal Service. See CRS Report RL33245, *Legislative, Executive, and Judicial Officials: Process for Adjusting Pay and Current Salaries*, by Barbara L. Schwemle; CRS Report RS20388, *Salary Linkage: Members of Congress and Certain Federal Executive and Judicial Officials*, by Barbara L. Schwemle; and CRS Report RL33128, *Senior Executive Service (SES) Pay for Performance System*, by L. Elaine Halchin. See also, CRS Report 97-615, *Salaries of Members of Congress: Congressional Votes, 1990-2008*, by Ida A. Brudnick; CRS Report 97-1011, *Salaries of Members of Congress: A List of Payable Rates and Effective Dates, 1789-2008*, by Ida A. Brudnick; and CRS Report RL30064, *Congressional Salaries and Allowances*, by Ida A. Brudnick.

² 104 Stat. 1389, at 1427.

³ 5 U.S.C. §5303(f), 5 U.S.C. §5304(g)(1), and 5 U.S.C. §5307(a)(1).

plus Lenawee County, MI; (5) Sacramento - Arden-Arcade - Yuba City, CA-NV, CSA, plus Carson City, NV; (6) San Diego-Carlsbad-San Marcos, CA, MSA; and (7) Washington-Baltimore-Northern Virginia, DC-MD-VA-WV, CSA, plus the Hagerstown-Martinsburg, MD-WV, MSA, the York-Hanover-Gettysburg, PA, CSA, and King George County, VA.

- employees at steps 9 and 10 in the (1) Hartford-West Hartford-Willimantic, CT, CSA, plus the Springfield, MA, MSA and New London County, CT; (2) Los Angeles-Long Beach-Riverside, CA, CSA, plus the Santa Barbara-Santa Maria-Goleta, CA, MSA and Edwards Air Force Base, CA; and (3) New York-Newark-Bridgeport, NY-NJ-CT-PA, CSA, plus Monroe County, PA, and Warren County, NJ;
- employees at steps 8, 9, and 10 in the Houston-Baytown, Huntsville, TX, CSA;
- employees at steps 7, 8, 9, and 10 in the San Jose-San Francisco-Oakland, CA, CSA, plus the Salinas, CA, MSA and San Joaquin County, CA.⁴

FEPCA has never been implemented as originally enacted. The annual pay adjustment was not made in 1994; in 1995, 1996, and 1998, reduced amounts of the annual adjustments were provided. For 1995 through 2008, reduced amounts of the locality payments were provided. **Table 1** (at the end of this report) shows the annual and locality pay adjustments made under FEPCA for the years 1991 to 2008.⁵

Pay Adjustments

Annual Pay Adjustment

Federal white-collar employees, including those paid under the General Schedule, usually receive an annual pay adjustment. The President also may annually adjust salaries of administrative law judges. Individuals in senior-level (SL) and scientific and professional (ST) positions may receive the annual adjustment at the

⁴ For an analysis of the pay cap, see CRS Report RL34380, *The Executive Schedule IV Pay Cap on General Schedule Compensation*, by Curtis W. Copeland.

⁵ For the 2008 salary adjustments, see CRS Report RL33732, *Federal White-Collar Pay: FY2008 Salary Adjustments*, by Barbara L. Schwemle.

discretion of agency heads.⁶ Annual adjustments for contract appeals board members depend on whether EX⁷ pay is adjusted.

FEPCA requires the annual pay adjustment for GS employees to be based on the Employment Cost Index (ECI), which measures change in private-sector wages and salaries. Basic pay rates are to be increased, beginning the first full pay period of a calendar year, by an amount that is 0.5 percentage points less than the percentage by which the ECI, for the quarter ending September 30 of the year before the preceding calendar year, exceeds the ECI for the comparable quarter of the next preceding year (if at all). For example, the annual adjustment for January 2008 is determined by comparing the ECI for the quarter ending September 30, 2006, with the ECI for the quarter ending September 30, 2005. The change in the ECI from the earlier September 30 (3.0%) is reduced by 0.5 percentage points, thereby yielding a 2.5% annual adjustment. Therefore, the data used to calculate the annual adjustment are 15 months old at the time of the adjustment.

In the event of a national emergency or serious economic conditions affecting the general welfare, FEPCA authorizes the President to issue an alternative pay plan that uses a different percentage increase from the one required by the ECI-based formula. The alternative plan must be submitted to Congress by September 1 preceding the scheduled effective date.⁸

Locality-Based Comparability Payments

GS employees are also intended to receive locality-based comparability payments.⁹ The Pay Agent¹⁰ may also extend these payments to employees in other

⁶ According to 5 U.S.C. §5376, the minimum rate of basic pay for SLs and STs is equal to 120% of the minimum rate of basic pay for GS-15; the maximum rate of basic pay for SLs and STs is equal to level IV of the Executive Schedule.

⁷ The EX schedule is the pay schedule for cabinet officers and other top government officials. It has five levels of pay in 2008 as follow: EX I-\$191,300, EX II-\$172,200, EX III-\$158,500, EX IV-\$149,000, and EX V-\$139,600.

⁸ 104 Stat. 1389, at 1429-1431; 5 U.S.C. §§5301-5303.

⁹ A locality rate of pay is considered as basic pay in computing danger pay allowances and post differentials (and for purposes of calculating retirement annuities) for certain employees who are temporarily assigned to foreign areas and for whom the Department of State has established allowances for danger. See 5 C.F.R. 531.610 for other purposes for which locality rates are treated as basic pay. (U.S. Office of Personnel Management, "Locality-Based Comparability Payments," *Federal Register*, vol. 69, August 5, 2004, pp. 47353-47354. U.S. Office of Personnel Management, "Changes in Pay Administration Rules for General Schedule Employees," *Federal Register*, vol. 70, May 31, 2005, pp. 31279-31280, 31305.) Blue-collar workers under the Federal Wage System (FWS) receive a prevailing rate adjustment that is generally capped at the average percentage pay adjustment received by federal white-collar employees. For FY2008, this provision is at Section 712 of P.L. 110-161, the Consolidated Appropriations Act for FY2008. Notwithstanding the cap, the blue-collar pay adjustment in most locations is no less than the increase received by GS employees in that location. Blue-collar workers in Alaska, Hawaii,

(continued...)

pay systems and has done so for employees in the Foreign Service and in senior-level, scientific and professional, administrative law judge, administrative appeals judge, and contract appeals board member positions.¹¹ The Pay Agent determines the applicable pay cap level for certain non-General Schedule employees to whom locality pay is extended.¹² The Office of Personnel Management (OPM) published final regulations in December 2001 to clarify and redefine the limitations.¹³

Among other groups of employees, GS special-rate employees receive either the special rate supplement or the locality payment, whichever is higher. Law enforcement officers receiving special rates under Section 403 of FEPCA receive both special rates and locality pay. White-collar federal employees in Alaska, Hawaii, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands receive a non-foreign cost-of-living (COLA) allowance ranging from 10.5% to 25%, rather than locality pay. Civilian employees of the Department of Defense who are covered by the National Security Personnel System (non-bargaining unit employees) receive a pay adjustment made up of a performance-based pay increase,

⁹ (...continued)

and certain other non-foreign areas receive a pay adjustment that is no less than the increase received by GS employees in the Rest of the United States (RUS) pay area. For FY2008, this provision is at Section 740(b) of P.L. 110-161, the Consolidated Appropriations Act for FY2008. The House and Senate versions of the Financial Services and General Government Appropriations Act for FY2009 (Sections 710 and 737(b) of the draft House bill and Sections 710 and 738(b) of S. 3260) would continue these provisions.

¹⁰ The Pay Agent comprises the Secretary of Labor (Elaine L. Chao), the Director of the Office of Management and Budget (Jim Nussle), and the Director of the Office of Personnel Management (Linda M. Springer).

¹¹ The President, by Executive Order, delegated to the Pay Agent the authority to extend locality-based comparability payments to certain categories of positions not otherwise covered. U.S. President (Clinton), "Delegating a Federal Pay Administration Authority," Executive Order 12883, *Federal Register*, vol. 58, December 1, 1993, p. 63281.

¹² The President, by Executive Order, delegated to the Pay Agent the authority to determine the applicable pay cap level for certain non-General Schedule employees to whom locality pay is extended. U.S. President (Clinton), "Adjustments of Certain Rates of Pay and Delegation of a Federal Pay Administration Authority," Executive Order 13106, *Federal Register*, vol. 63, December 9, 1998, p. 68152.

¹³ The regulations stated the following: "To provide consistent treatment between General Schedule (GS) and non-GS employees receiving locality payments, OPM proposes to provide that (1) non-GS positions whose maximum scheduled annual rate of pay is less than or equal to the maximum payable scheduled annual rate of pay for GS-15 will be subject to a locality pay cap equal to the rate for level IV of the Executive Schedule, and (2) non-GS positions whose maximum scheduled annual rate of pay exceeds the maximum payable scheduled annual rate of pay for GS-15, but is not more than the rate for level IV of the Executive Schedule, will be subject to a locality pay cap equal to the rate for level III of the Executive Schedule." U.S. Office of Personnel Management, "Locality-Based Comparability Payments," *Federal Register*, vol. 65, March 24, 2000, pp. 15875-15877. U.S. Office of Personnel Management, "Locality-Based Comparability Payments," *Federal Register*, vol. 66, December 28, 2001, pp. 67069-67070.

an adjustment to base salary, and a local market supplement that is equivalent to GS pay.¹⁴

The locality-based comparability payments procedure established by FEPCA provides that payments are to be made within each locality determined to have a non-federal/federal pay disparity greater than 5%. When uniformly applied to GS employees within a locality, the adjustment is intended to make their pay rates substantially equal, in the aggregate, to those of non-federal workers for the same levels of work in the same locality.

FEPCA authorizes the President to fix an alternative level of locality-based comparability payments if, because of a national emergency or serious economic conditions affecting the general welfare, the President considers the level that would otherwise be payable inappropriate. At least one month before these comparability payments would be payable (by November 30, 2008, for the 2009 payment), the President would have to prepare and transmit to Congress a report describing the intended alternative level of payments, including the reasons why the alternative level would be necessary.¹⁵

Once the annual and locality pay percentage amounts are determined, the actual pay rates are calculated in the following way. First, the basic General Schedule (GS) is increased by the annual adjustment percentage, resulting in a new GS schedule. These new basic GS rates are then increased by the locality payments. For 2009, the resulting pay rates (annual + locality) are compared with the 2008 pay rates (annual + locality) to derive the net increases in pay. According to OPM, the net increase is calculated using this formula: 1 plus the new local rate divided by one plus the old local rate times the percentage for the across-the-board increase minus 1 times 100.

Methodology for Determining the Locality-Based Comparability Payments. Under the law, the Bureau of Labor Statistics (BLS) conducts surveys that document non-federal rates of pay in each locality pay area. (In January 2009, there will be 32 pay areas nationwide.) Prior to October 1996, the surveys were conducted under the Occupational Compensation Survey Program (OCSP), which had been approved by the Federal Salary Council¹⁶ and the Pay Agent. Since then, the surveys have been conducted under the National Compensation Survey (NCS) program. The NCS results, however, were not approved for use with the January

¹⁴ In January 2008, the average pay adjustment under the National Security Personnel System was 7.6%, resulting from an average 5.9% salary adjustment and an average 1.7% bonus.

¹⁵ 104 Stat. 1389, at 1429-1436, as amended by 106 Stat. 1355-1356 and 1360; 5 U.S.C. §§5301-5302 and §§5304-5304a.

¹⁶ The council includes nine members. Members generally recognized for their impartiality, knowledge, and experience in labor relations and pay policy are Terri Lacy, chair; George Nesterzuk, vice-chair; and Rudy J. Maestas. The other members represent the American Federation of Government Employees (J. David Cox); the National Treasury Employees Union (Colleen M. Kelley); the National Federation of Federal Employees (Richard N. Brown); the Association of Civilian Technicians (Thomas G. Bastas); and the Fraternal Order of Police (James Pasco).

2000 through January 2003 locality payments. In its memorandum to the Pay Agent on the January 2001 locality payments, the council recommended five improvements in the NCS program.¹⁷ For the January 2004 through January 2006 locality payments, a phase-in of NCS survey data was approved.¹⁸ The Federal Salary Council recommended that 100% of the NCS data be used beginning with the January 2007 locality payments.

Four of the improvements to the NCS survey have been fully implemented. The fifth enhancement, on the use of four factors to assign the correct federal grade level to non-federal jobs, will not be fully implemented for an estimated three years. According to the council's memorandum on the January 2009 locality payments, "The average pay gap was about 6 points higher in 2007 than in 2006," and the gaps in all locality pay areas, except for Dayton, OH,¹⁹ increased. The Huntsville, AL, and Washington, DC-Baltimore, MD, locality pay areas showed the largest increases in the pay gap from 2006 to 2007; +12.33% and +9.72, respectively. The council stated that "This likely means the new survey methods tend to match survey jobs to lower General Schedule grades."²⁰

As requested by the council, the BLS surveys provided pay data both by establishments of all sizes and by establishments with fewer than 50 employees (referred to as small establishments). The council reported that the inclusion of the data from the small establishments "increases the number of non-Federal employees represented by the data by more than 25 percent" and had a "modest" impact on the pay gaps. While not ruling out the possibility that data from small establishments could be used in the future, the council recommended that the data not be used in

¹⁷ These recommendations, endorsed by the Pay Agent, were that (1) four factors, rather than nine, be used to assign the correct federal grade levels to the non-federal jobs surveyed, and grade level guides for occupational families be provided; (2) a model be developed to estimate missing data; (3) the matching of federal survey jobs with non-federal survey jobs be improved, and subcategories be provided for occupations that are not elsewhere classified; (4) for supervisory occupations, the highest level of work supervised be graded and the grade level be adjusted based on the level of supervision, instead of grading the supervisory job itself; and (5) criteria be developed to identify and exclude jobs that would be classified above GS-15 in government. (Memorandum for the President's Pay Agent from the Federal Salary Council, *Level of Comparability Payments for January 2001 and Other Matters Pertaining to the Locality Pay Program* [Washington: October 22, 1999], p. 8.)

¹⁸ For the January 2004 locality payments, equal weights of 50% were applied to the NCS and OCSP results. For January 2005, weights of 75% and 25% were applied to the NCS and OCSP results, respectively. Weights of 90% NCS and 10% OCSP were applied for January 2006.

¹⁹ The council stated that the decrease in the pay gap for Dayton, OH, primarily resulted from the conversion of civilian employees at the Department of Defense from the General Schedule to the National Security Personnel System, thereby removing the employees from the pay comparisons that underlie the locality-based comparability payments.

²⁰ Memorandum for the President's Pay Agent from the Federal Salary Council, *Level of Comparability Payments for January 2009 and Other Matters Pertaining to the Locality Pay Program* (Washington: October 25, 2007), p. 3. (Hereafter referred to as Federal Salary Council Memorandum for January 2009.)

calculating locality payments for 2009, and that they “be reviewed again next year before making a decision” on its use. In making the recommendation, the council acknowledged that “some Council members have expressed concerns about how well jobs in small establishments match Federal jobs.”²¹ Since 1994, when locality pay was implemented, the BLS surveys have included data only from establishments with 50 or more workers.

The BLS survey results are submitted to the Office of Personnel Management (OPM), which serves as the staff to the Federal Salary Council and the Pay Agent. OPM documents federal rates of pay in each of the pay areas and compares non-federal and GS salaries, by grade, for each pay area. The average salaries at each grade, both federal and non-federal, are then aggregated and compared to determine an overall average percentage pay gap for each area. By law, the disparity between non-federal and federal salaries is to be reduced to 5%. Therefore, the overall average percentage pay gap for each pay area is adjusted annually to this level by OPM. This adjusted gap, called the target gap, is used to determine the locality rates for each pay area recommended to the President by the Pay Agent, after receiving advice from the Federal Salary Council. The pay gaps on which the locality payments are based are 22 months old by the effective date of the adjustment; thus, March 2007 gaps determine the January 2009 locality payments.

FEPCA also stipulates that a certain percentage of the target gap between GS average salaries and non-federal average salaries in each pay area is to be closed each year. Twenty percent of the gap was closed in 1994, the first year of locality pay, as authorized by FEPCA. An additional 10% of the gap was to be closed each year thereafter, meaning that 30% of the gap was to be closed in 1995, 40% in 1996, 50% in 1997, 60% in 1998, 70% in 1999, 80% in 2000, and 90% in 2001. By January 2002, and continuing each year thereafter, FEPCA specified that amounts payable could not be less than the full amounts necessary to reduce the pay disparity of the target gap to 5%. In each of the years since 1994, the locality pay increase has been implemented at a much lower percentage than the law requires. As a result, the gap is being reduced slowly; 23.5% of the gap was closed in 1995, 25.9% in 1996, 28.3% in 1997, 29.2% in 1998, 31% in 1999, 33.5% in 2000, 38.1% in 2001, 42.3% in 2002, 44% in 2003, 53.7% in 2004, 58.8% in 2005, 62.7% in 2006, 69.8% in 2007, and 58.3% in 2008.

Evaluating Areas in the Vicinity of Locality Pay Areas. To evaluate areas currently in the “Rest of the United States” pay area for possible inclusion in adjacent locality pay areas, the following criteria²² apply:

For adjacent Metropolitan Statistical Areas (MSAs) and Combined Statistical Areas (CSAs): To be included in an adjacent locality pay area, an

²¹ Ibid., p. 2.

²² *Report on Locality-Based Comparability Payments for the General Schedule, Annual Report of the President’s Pay Agent* (Washington: December 2003), p. 19.

adjacent MSA or CSA currently in the RUS locality pay area must have at least 1,500 GS employees and an employment interchange measure²³ of at least 7.5%.

For adjacent counties that are not part of a multi-county MSA or CSA: To be included in an adjacent locality pay area, an adjacent county that is currently in the RUS locality pay area must have at least 400 GS employees and an employment interchange measure of at least 7.5%.

For federal facilities that cross locality pay area boundaries: To be included in an adjacent locality pay area, the whole facility must have at least 500 GS employees, with the majority of those employees in the higher-paying locality pay area, or that portion of a federal facility outside a higher-paying locality pay area must have at least 750 GS employees; the duty stations of the majority of these employees must be within 10 miles of the separate locality pay area; and a significant number of these employees must commute to work from the higher-paying locality pay area.²⁴

Areas already included in a locality pay area through an application of the criteria are not subject to further review.

Requests for Changes in Locality Pay Area Boundaries. To be considered by the council, requests for changes in the boundaries of locality pay areas must include the following information:

- credentials of the requesting group that establish how the group represents GS employees in the area;
- identification of the geographic area covered by the proposal;
- the number of GS employees in the area, by agency;
- a detailed explanation of why the area should be added to the adjacent locality pay area;
- current job vacancy rates in the area for GS positions;

²³ The council recommended that commuting rates be calculated using the employment interchange measure, which is defined by the Office of Management and Budget as “A measure of the ties between two adjacent entities.” It is “the sum of the percentage of employed residents of the smaller entity who work in the larger entity and the percentage of the employment in the smaller entity that is accounted for by workers who reside in the larger entity.” (Memorandum for the President’s Pay Agent from the Federal Salary Council, *Level of Comparability Payments for January 2005 and Other Matters Pertaining to the Locality Pay Program* [Washington: October 28, 2003], p. 7. [Hereafter referred to as Federal Salary Council Memorandum for January 2005.]

²⁴ Memorandum for the President’s Pay Agent from the Federal Salary Council, *Level of Comparability Payments for January 2007 and Other Matters Pertaining to the Locality Pay Program* [Washington: October 21, 2005], p. 5, and *Report on Locality-Based Comparability Payments for the General Schedule, Annual Report of the President’s Pay Agent* [Washington: December 2005], p. 13.

- documentation of recruitment or retention problems for GS employees in the area;
- documentation that agencies have tried other pay flexibilities, including requests for special salary rates and use of recruitment, retention, and relocation payments, and that these flexibilities did not solve recruitment and retention problems;
- an indication that the headquarters of affected agencies know about and support the request;
- distance measures, by road, between the requesting area and the locality pay area;
- a summary of transportation facilities linking the requesting area and the locality pay area, including commuter rail or other mass transit facilities; and
- agency organizational relationships between activities covered by the proposal and activities in another locality pay area.²⁵

January 2009 Pay Adjustment

Annual Pay Adjustment

Recent ECI data indicate that the annual across-the-board pay adjustment in January 2009 should be 2.9%. This figure reflects the September 2006 to September 2007 change in private-sector wages and salaries of 3.4%, minus 0.5%.²⁶

Locality-Based Comparability Payments

The Federal Salary Council reported that as of March 2007, the overall gap between GS average salaries (excluding existing locality payments, special rates, and certain other payments) and non-federal average salaries was 43.73%.²⁷ The amount needed to reduce this disparity to 5%, as mandated by FEPCA, averages 36.89% for 2009. To meet the target for closing the pay gap, the council recommends locality pay raises ranging from 23.40% in the “Rest of the United States” (RUS) pay area to 59.65% in the San Jose-San Francisco pay area. The payment recommended for the

²⁵ Federal Salary Council Memorandum for January 2005, p. 10.

²⁶ U.S. Department of Labor, Bureau of Labor Statistics, Employment Cost Index — September 2007 (Washington: October 31, 2007), pp. 2, 14.

²⁷ The calculation of the overall average pay gap excludes the locality payments made in 2007. The average locality rate paid in 2007 was 16.88%; the overall average pay gap in 2006 was 22.97%.

Washington, DC, pay area is 53.94%.²⁸ Because the new locality rates replace the existing locality rates, the rate change is derived by comparing 2008 locality payments with those recommended for 2009. This comparison results in recommended net increases for 2009, if the ECI and locality-based comparability payments were granted as required by law, of 12.19% in the RUS pay area, 23.96% in the San Jose-San Francisco pay area, and 31.03% in the Washington, DC, pay area. The nationwide average net pay increase, if the ECI and locality-based comparability payments were granted as required by law, would be 19.24% in 2009.

The council recommended that the 32 locality pay areas recommended for 2008 continue in 2009. In not recommending any new pay areas, the council noted that, were new areas to be proposed, criteria for their establishment would have to be developed and the BLS would need additional funding. According to the council, “BLS has indicated that, based on its current funding and resources, it cannot expand its current NCS program to increase samples in existing locality pay areas or to cover more areas.”²⁹ The pay gaps in Louisville, KY, Austin, TX, and Memphis, TN, will continue to be reviewed as the BLS continues the redesign of the salary survey. The council’s memorandum on the 2009 locality payments found that the pay gap in Louisville, KY, was 0.33 points above the pay gap in RUS, while the pay gaps in Austin, TX, and Memphis, TN, were below that in RUS by 1.56 and 3.65 points, respectively.³⁰

The memorandum also noted the pay gaps in Anchorage, AK (54.96%), and Honolulu, HI (41.72%), and that the BLS plans to conduct future surveys in Honolulu, but not Anchorage. On May 30, 2007, OPM submitted a legislative proposal to Congress that would gradually replace the cost-of-living allowance currently paid in the non-foreign areas (Alaska, Hawaii, Guam, Puerto Rico, the Northern Mariana Islands, and the U.S. Virgin Islands) with locality pay. The legislation has not been introduced. The council recommended that, were the legislation to be enacted, BLS reinstate the Anchorage survey and “ensure that both the Anchorage and Honolulu surveys are as robust as feasible.”³¹

After considering the council’s recommendations, the Pay Agent endorsed them in its December 6, 2007, annual report to the President on the 2009 locality payments. The Pay Agent stated that, “Given the current national emergency, however, ... it would be unwise to allow the locality pay increases shown in [its] report to take effect in January 2009.”³²

The Pay Agent estimated that the cost of the January 2009 locality-based comparability payments would be about \$12.1 billion if the full amount necessary to reduce the pay disparity of the target gap to 5% were provided in January 2009 as

²⁸ Federal Salary Council Memorandum for January 2009, p. 3 and Attachment 3.

²⁹ *Ibid.*, p. 6.

³⁰ *Ibid.*, pp. 4-5.

³¹ *Ibid.*, p. 9.

³² *Report on Locality-Based Comparability Payments for the General Schedule, Annual Report of the President’s Pay Agent* (Washington: December 6, 2007).

required by FEPCA.³³ **Table 2** shows the council's and the Pay Agent's recommended locality payments for January 2009.

As for the improvements in the BLS National Compensation Survey (NCS) Program, the Pay Agent noted that "four of the five NCS improvements are fully incorporated into surveys used this year."³⁴ The Pay Agent agreed with the council's recommendations regarding the survey data from small establishments and that new locality pay areas for 2009 not be designated.³⁵

The Pay Agent reiterated that it "has serious concerns about the utility of a process that requires a single percentage adjustment in the pay of all white-collar civilian Federal employees in each locality pay area without regard to the differing labor markets for major occupational groups or the performance of individual employees" and "continue[s] to believe it is imperative to develop performance-sensitive compensation systems."³⁶

A hearing conducted on June 26, 2008, by the House Subcommittee on Federal Service, Postal Service, and the District of Columbia of the Committee on Oversight and Government Reform included an examination of the federal locality pay program. The subcommittee received testimony reiterating that FEPCA should be fully implemented and recommending that the government consider initiatives that would help federal employees in areas where housing costs are particularly high. For example, the representative for the American Federation of Government Employees (AFGE) recommended that

the federal government begin to provide a variety of housing assistance programs, under well-defined circumstances. We propose pilot programs that would address the particularly acute problems faced by federal employees and agencies in counties with median house prices that are at least 25% above the median house price within a locality.... In addition ... agencies should be able to provide lump sum housing allowances equivalent to those provided to the military.³⁷

The President's Recommendation

The President usually includes a proposal on the federal civilian pay adjustment in the *Budget of the United States* issued in February of each year. The FY2009 budget included a proposed 2.9% pay adjustment for federal civilian employees. This percentage is the overall average increase, including locality pay adjustments.³⁸

³³ Ibid., p. 21.

³⁴ Ibid., p. 3.

³⁵ Ibid., p. 13.

³⁶ Ibid., cover letter.

³⁷ Testimony of Jacqueline Simon, Public Policy Director, American Federation of Government Employees, AFL-CIO, June 26, 2008, pp. 4-5.

³⁸ U.S. Executive Office of the President, Office of Management and Budget, *Budget of the* (continued...)

(The President's budget also included a proposed 3.4% pay raise for the uniformed military.³⁹ Section 601 of H.R. 5658, the National Defense Authorization Act for FY2009, as passed by the House on May 22, 2008, on a 384-23 (Roll No. 365) vote, and Section 601 of S. 3002, the Department of Defense Authorization Act for Fiscal Year 2009, as reported (without written report) by the Senate Committee on Armed Services on May 12, 2008, would provide a 3.9% pay adjustment for the uniformed military.)

As in the previous two fiscal years, the FY2009 budget states that OPM will support pay-for-performance demonstration projects in the executive branch agencies that would replace the General Schedule with a system for classification, pay, and performance management that is modern, focused on results, and based on the market.⁴⁰ It does not provide any details on this initiative. No legislation is currently pending in the 110th Congress to amend the annual and locality pay adjustment process established under FEPCA.

Congressional Recommendations

The pay adjustment is considered annually by Congress, which may legislate an adjustment that is different from the one recommended by the President or that might be authorized by the President in an alternative plan. The January 1999, January 2000, and January 2002 through January 2006 overall pay adjustment amounts were set by Congress.⁴¹ On January 30, 2008, 10 Members of Congress from the Washington, DC, metropolitan area wrote a letter to President Bush asking him to “embrace the principle of pay parity” between federal civilian employees and the uniformed military. The Members stated that, “with many of our most experienced employees poised to retire,” the ability “to recruit and retain quality employees” is critical.⁴²

The Concurrent Resolution on the Budget, which provides the framework within which Congress subsequently considers spending legislation, has several times in the

³⁸ (...continued)

United States Government Fiscal Year 2009; Analytical Perspectives (Washington: GPO, 2008), p. 172

³⁹ See CRS Report RL33446, *Military Pay and Benefits: Key Questions and Answers*, by Charles A. Henning.

⁴⁰ U.S. Executive Office of the President, Office of Management and Budget, *Budget of the United States Government Fiscal Year 2009; Appendix* (Washington: GPO, 2008), p. 1097. See also, CRS Report RL34529, *Pay for Performance: Linking Employee Pay to Performance Appraisal*, by Wendy R. Ginsberg.

⁴¹ P.L. 105-277, P.L. 106-58, P.L. 107-67, P.L. 108-7, P.L. 108-199, P.L. 108-447, and P.L. 109-115, respectively, provided the pay adjustments but reserved to the President the decision as to how the increases would be allocated between the annual and locality pay adjustments.

⁴² The letter was signed by Representatives Elijah E. Cummings, Thomas M. Davis, III, Steny H. Hoyer, James P. Moran, C.A. “Dutch” Ruppberger, John P. Sarbanes, Chris Van Hollen, Frank R. Wolf, and Albert R. Wynn, and Delegate Eleanor Holmes Norton.

past included language expressing the sense of Congress on the federal civilian pay adjustment. The FY2009 budget resolution as agreed to by the House (H.Con.Res. 312) on March 13, 2008, by a 212-207 vote (Roll No. 141), includes such a provision at Section 610 which states the Sense of the House that federal civilian pay should be adjusted at the same time and in the same proportion as pay for the uniformed military. The Senate's version of the budget resolution (S.Con.Res. 70) as agreed to by the Senate on March 14, 2008, by a 51-44 vote (No. 85), does not include such a provision. The Senate Committee on the Budget report (S. Prt. 110-039) included the views of Senator Susan Collins expressing her continued support for parity in the pay adjustments for federal civilians and the uniformed military to ensure that talented individuals are recruited and retained in public service.⁴³ S.Con.Res. 70, as agreed to by the House and Senate, includes the provision on parity between pay for federal civilians and the uniformed military at Section 518.⁴⁴

Financial Services and General Government Appropriations Act.

Any congressional recommendation on the pay adjustment has usually been included in the appropriations bill which provides funding for the general government. In the 110th Congress this bill is called the Financial Services and General Government Appropriations (FSGG) Bill. The House and Senate versions of the Financial Services and General Government Appropriations Act for FY2009 (Section 737(a) of the draft House bill and Section 738(a) of S. 3260) would provide a 3.9% pay adjustment for federal civilian employees, including civilian employees in the Department of Homeland Security.⁴⁵

At this writing, the schedule for House and Senate consideration of the FY2009 appropriations acts is uncertain. Reportedly, a continuing resolution that would

⁴³ U.S. Congress, Senate Committee on the Budget, *Concurrent Resolution on the Budget FY2009*, S. Prt. 110-039, 110th Cong., 2nd sess. (Washington: GPO, 2008), p. 169.

⁴⁴ S.Con.Res. 70, Enrolled, June 5, 2008, as agreed to by the House and Senate, p. 46. See also, U.S. Congress, Conference Committees, 2008, *Concurrent Resolution on the Budget for Fiscal Year 2009*, conference report to accompany S.Con.Res. 70, 110th Cong., 2nd sess., H.Rept. 110-659 (Washington: GPO, 2008), p. 47. The Senate agreed to the conference report on a 48-45 (Record No. 142) vote on June 4, 2008. The House agreed to the conference report on a 214-210 (Roll No. 382) vote on June 5, 2008.

⁴⁵ U.S. Congress, House Committee on Appropriations, Financial Services and General Government Appropriations Bill, 2009, draft report to accompany draft bill, p. 107 (provided to CRS by the subcommittee). The House Subcommittee on Financial Services and General Government marked up the bill and forwarded it to the full committee by voice vote on June 17, 2008. The Committee on Appropriations marked up the bill and ordered it reported by voice vote on June 25, 2008. U.S. Congress, Senate Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2009*, report to accompany S. 3260, 110th Cong., 2nd sess., S.Rept. 110-417 (Washington: GPO, 2008), p. 124. The Senate Subcommittee on Financial Services and General Government marked up the bill and forwarded it to the full committee by a 9-0 roll call vote on July 9, 2008. The Committee on Appropriations marked up the bill and ordered it reported by a 29-0 roll call vote on July 10, 2008, and reported S. 3260 on July 14, 2008.

extend the government's funding into 2009 may be considered by Congress in the fall.⁴⁶

Proposed Legislation Related to Pay

Legislation that would require federal employees to receive a summary performance rating of at least fully successful to receive a pay adjustment (S. 1045) and increase the limitation on basic pay for senior-level and scientific and professional positions (S. 1046) is pending in the 110th Congress.

Performance Appraisal. On March 29, 2007, Senator George Voinovich, Ranking Member of the Senate Homeland Security and Governmental Affairs' Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, introduced S. 1045, the Federal Workforce Performance Appraisal and Management Improvement Act of 2007. (He introduced similar legislation, S. 3492, in the 109th Congress.) It was referred to the Senate Committee on Homeland Security and Governmental Affairs. Among other provisions, the bill would require agencies to establish one or more performance appraisal systems having at least three summary rating levels — unacceptable, fully successful, and above fully successful; make it mandatory that managers and supervisors receive training in performance management; and require agencies to establish comprehensive management succession programs providing training to develop employees to become managers. S. 1045 also would require an employee to receive a summary performance rating of at least fully successful to receive a within-grade increase, an annual pay adjustment, a locality pay adjustment, a special rate, or a prevailing rate (blue-collar) adjustment. Agencies would be required to provide employees with annual performance evaluations in writing.

Basic Pay Limitation for Senior-Level (SL) and Scientific or Professional (ST) Positions. Senator Voinovich also introduced S. 1046, the Senior Professional Performance Act of 2008, on March 29, 2007. (In the 109th Congress, similar provisions were included in S. 3492 at Section 6.) In his statement upon introducing the bills, Senator Voinovich stated that “employees should receive annually a rigorous evaluation” with pay determined “by the productivity, effectiveness, and the contributions of an employee.” He stated that the amendments proposed in S. 1046 would keep SL and ST employees “on equal footing” with members of the Senior Executive Service in terms of pay and performance management.⁴⁷ The bill was referred to the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia of the Committee on Homeland Security and Governmental Affairs. It was marked up and ordered reported without amendment by the full committee on June 13, 2007. The committee reported S. 1046, without amendment, on April 22, 2008 (S.Rept.

⁴⁶ Josh Rogin and Edward Epstein, ‘Continuing Resolution’ in “House Panel Sets Defense Spending Markup for July 30,” *Congressional Quarterly*, July 24, 2008.

⁴⁷ Statement of Senator George Voinovich, *Congressional Record*, daily edition, vol. 153, March 29, 2007, p. S4180.

110-328).⁴⁸ During Senate consideration of the bill, a substitute amendment offered by Senator Voinovich was agreed to and the Senate passed S. 1046 by unanimous consent on July 11, 2008.⁴⁹ The bill as passed by the Senate was referred to the House Committee on Oversight and Government Reform on July 14, 2008. The Congressional Budget Office estimated that implementation of S. 1046 would cost “roughly \$7 million between 2008 and 2012.”⁵⁰

Under current law, SL and ST employees may receive basic pay up to Level IV of the Executive Schedule (\$149,000, as of January 2008).⁵¹ S. 1046 would amend current law to provide that SL and ST employees in agencies whose performance appraisal systems have been certified by OPM as making meaningful distinctions in performance, could receive basic pay up to Level II of the Executive Schedule (\$172,200, as of January 2008). In agencies whose performance appraisal systems have not been so certified by OPM, SL and ST employees could receive basic pay up to Level III of the Executive Schedule (\$158,500, as of January 2008).

⁴⁸ U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Senior Professional Performance Act of 2007*, report to accompany S. 1046, 110th Cong., 2nd sess. (Washington: GPO, 2008).

⁴⁹ *Congressional Record*, daily edition, vol. 154, July 11, 2008, pp. S6609-S6610.

⁵⁰ U.S. Congressional Budget Office, *Cost Estimate, S. 1046 Senior Professional Performance Act of 2007*, September 12, 2007.

⁵¹ 5 U.S.C. §5376(b)(1)(B).

**Table 1. Annual and Locality Pay Adjustments
under FEPCA, 1991 to 2008**

Year	ECI-Based Annual Adjustment Required by FEPCA	Annual Adjustment Authorized	Locality Payments Required by FEPCA (National Average)	Locality Payments Authorized (National Average)	Net Increase, Annual and Locality Pay (National Average, Weighted)
1991	—	4.1%	—	—	4.1%
1992	4.2%	4.2%	—	—	4.2%
1993	3.7%	3.7%	—	—	3.7%
1994	2.2%	0	3.95%	3.95%	3.95%
1995	2.6%	2.0%	6.44%	5.05%	3.08%
1996	2.4%	2.0%	8.58%	5.56%	2.49%
1997	2.3%	2.3%	11.29%	6.37%	3.09%
1998	2.8%	2.3%	14.30%	6.93%	2.84%
1999	3.1%	3.1%	16.95%	7.50%	3.65%
2000	3.8%	3.8%	20.62%	8.62%	4.89%
2001	2.7%	2.7%	23.12%	9.77%	3.76%
2002	3.6%	3.6%	25.92%	10.95%	4.72%
2003	3.1%	3.1%	27.59%	12.12%	4.21%
2004	2.7%	2.7%	25.71%	13.81%	4.24%
2005	2.5%	2.5%	25.51%	15.01%	3.54%
2006	2.1%	2.1%	25.85%	16.22%	3.19%
2007	1.7%	1.7%	24.15%	16.80%	2.24%
2008	2.5%	2.5%	31.02%	18.13%	3.58%

Sources: Locality-based comparability payments began in 1994. For the ECI-required annual adjustment, see U.S. Department of Labor, Bureau of Labor Statistics, *Employment Cost Index*, September of each year. For the locality payments required by FEPCA, see *Report on Locality-Based Comparability Payments for the General Schedule, Annual Report of the President's Pay Agent*, December of each year. For the annual and locality pay adjustments authorized, see E.O. 12736, Dec. 12, 1990; E.O. 12786, Dec. 26, 1991; E.O. 12826, Dec. 30, 1992; Presidential memorandum of Dec. 1, 1993; E.O. 12944, Dec. 28, 1994; E.O. 12984, Dec. 28, 1995; E.O. 13033, Dec. 27, 1996; E.O. 13071, Dec. 29, 1997; E.O. 13106, Dec. 7, 1998; E.O. 13144, Dec. 21, 1999; E.O. 13182, Dec. 23, 2000; E.O. 13249, Dec. 28, 2001; E.O.s 13282, Dec. 31, 2002, and 13291, Mar. 21, 2003; E.O.s 13322, Dec. 30, 2003, and 13332, Mar. 3, 2004; E.O. 13368, Dec. 30, 2004; E.O. 13393, Dec. 22, 2005; E.O. 13420, Dec. 21, 2006; and E.O. 13454, Jan. 4, 2008.

Table 2. January 2009 Recommended Locality Payments

Pay Areas	2009 Recommended Locality Payments
Atlanta-Sandy Springs-Gainesville, GA-AL, CSA	35.99%
Boston-Worcester-Manchester, MA-RI-NH, CSA, plus Barnstable County, MA, and Berwick, Eliot, Kittery, South Berwick, and York towns in York County, ME	44.42%
Buffalo-Niagara-Cattaraugus, NY, CSA	30.66%
Chicago-Naperville-Michigan City, IL-IN-WI, CSA	42.73%
Cincinnati-Middletown-Wilmington, OH-KY-IN, CSA	25.44%
Cleveland-Akron-Elyria, OH, CSA	32.71%
Columbus-Marion-Chillicothe, OH, CSA	28.02%
Dallas-Fort Worth, TX, CSA	36.81%
Dayton-Springfield-Greenville, OH, CSA	24.84%
Denver-Aurora-Boulder, CO, CSA, plus the Ft. Collins-Loveland, CO, MSA	35.98%
Detroit-Warren-Flint, MI, CSA, plus Lenawee County, MI	37.92%
Hartford-West Hartford-Willimantic, CT, CSA, plus the Springfield, MA, MSA and New London County, CT	40.50%
Houston-Baytown-Huntsville, TX, CSA	40.66%
Huntsville-Decatur, AL, CSA	32.54%
Indianapolis-Anderson-Columbus, IN, CSA, plus Grant County, IN	24.27%
Los Angeles-Long Beach-Riverside, CA, CSA, plus the Santa Barbara-Santa Maria-Goleta, CA, MSA and Edwards Air Force Base, CA	43.90%
Miami-Fort Lauderdale-Pompano Beach, FL, MSA, plus Monroe County, FL	35.55%
Milwaukee-Racine-Waukesha, WI, CSA	30.53%
Minneapolis-St. Paul-St. Cloud, MN-WI, CSA	33.29%
New York-Newark-Bridgeport, NY-NJ-CT-PA, CSA, plus Monroe County, PA, and Warren County, NJ	50.28%
Philadelphia-Camden-Vineland, PA-NJ-DE-MD, CSA, plus Kent County, DE, Atlantic County, NJ, and Cape May County, NJ	36.76%
Phoenix-Mesa-Scottsdale, AZ, MSA	34.81%
Pittsburgh-New Castle, PA, CSA	28.84%
Portland-Vancouver-Beaverton, OR-WA, MSA, plus Marion County, OR, and Polk County, OR	33.56%
Raleigh-Durham-Cary, NC, CSA, plus the Fayetteville, NC, MSA, the Goldsboro, NC, MSA, and the Federal Correctional Complex, Butner, NC	25.23%

Pay Areas	2009 Recommended Locality Payments
Richmond, VA, MSA	25.92%
Sacramento - Arden-Arcade - Yuba City, CA-NV, CSA, plus Carson City, NV	39.35%
San Diego-Carlsbad-San Marcos, CA, MSA	43.49%
San Jose-San Francisco-Oakland, CA, CSA, plus the Salinas, CA, MSA and San Joaquin County, CA	59.65%
Seattle-Tacoma-Olympia, WA, CSA, plus Whatcom County, WA	39.35%
Washington-Baltimore-Northern Virginia, DC-MD-VA-WV, CSA, plus the Hagerstown-Martinsburg, MD-WV, MSA, the York-Hanover-Gettysburg, PA, CSA, and King George County, VA	53.94%
Rest of the U.S. (RUS)	23.40%
Average	36.89%

Sources: Memorandum for the President's Pay Agent from the Federal Salary Council, *Level of Comparability Payments for January 2009 and Other Matters Pertaining to the Locality Pay Program* (Washington: October 25, 2007), Attachment 3. *Report on Locality-Based Comparability Payments for the General Schedule, Annual Report of the President's Pay Agent* (Washington: December 6, 2007), p. 18. MSA refers to a Metropolitan Statistical Area. CSA refers to a Combined Statistical Area. The locality pay areas are listed at 5 C.F.R. §531.603. See also, U.S. Office of Personnel Management, "Locality Pay Areas," *Federal Register*, vol. 72, June 22, 2007, pp. 34361-34363.

Notes: The actual pay rates are calculated in the following way. First, the basic General Schedule (GS) is increased by the annual adjustment percentage, resulting in a new GS schedule. The new basic GS rates are then increased by the locality payments. The resulting pay rates (annual + locality) are compared with the pay rates (annual + locality) for the previous year to derive the net increases in pay for the current year. According to OPM, the net increase is calculated using this formula: $1 \text{ plus the new local rate divided by one plus the old local rate times } 1.025 \text{ for the across-the-board increase minus } 1 \text{ times } 100$. For example, the calculation for 2008, in the Washington, DC, pay area, is $1.2089/1.1859 \times 1.025 - 1 \times 100 = 4.49\%$. Salary tables for 2008 are available on the Internet at [<http://www.opm.gov>].