



# Salary Linkage: Members of Congress and Certain Federal Executive and Judicial Officials

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## **Summary**

The salaries of Members of Congress, certain high-level federal officials (those paid at Level II of the Executive Schedule (EX)), and certain federal Justices and judges have, until recently, generally been in parity for many years. The Ethics Reform Act of 1989 provides for annual pay adjustments to be established for the Members, the Vice President, federal officials paid under the EX Schedule, and federal Justices and judges. The act also requires a Citizens' Commission on Public Service and Compensation and the President to recommend salaries in parity for these federal government positions. The commission has never been activated, and, thus, such recommendations have never been made.

This report will be updated as events dictate.

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The salaries of Members of Congress and certain high-level federal officials (those paid at EX Level II) have, until recently, generally been in parity since the Executive Schedule was established in 1964.<sup>1</sup> The Member salaries were in parity with those of district judges from 1955 to 1969 and have been again since 1987. During the period 1969 to 1987, Member pay was often in parity with the pay of federal appellate judges. There is no constitutional or statutory requirement (other than the provision of law establishing the commission procedure discussed below) that the salaries of federal executive branch officials and federal Justices and judges be limited by the salaries of Members of Congress, or that Member pay be limited by the salaries of these federal executive and judicial officials.<sup>2</sup>

## Ethics Reform Act

The Ethics Reform Act of 1989 includes two provisions under which pay rates for Members, the Vice President, federal officials paid under the EX, and certain federal Justices and judges can be set. The first of these provisions provides for a quadrennial review of the salaries of federal officials by a Citizens' Commission on Public Service and Compensation.<sup>3</sup> The commission is to make recommendations to the President. The law requires the commission and the President to submit recommendations to Congress providing that the salaries of the

- Speaker of the House of Representatives, the Vice President of the United States, and the Chief Justice of the United States shall be equal;
- Majority and Minority Leaders of the House of Representatives and the Senate, the President pro tempore of the Senate, and Level I of the Executive Schedule (Cabinet officers) shall be equal; and
- Senators, Members of the House of Representatives, the Resident Commissioner from Puerto Rico, Delegates to the House, Judges of the U.S. District Courts, Judges of the United States Court of International Trade, and Level II (Deputy secretaries of departments, secretaries of military departments, and heads of major agencies) of the Executive Schedule shall be equal.<sup>4</sup>

Although the law establishes the salary parity stated above upon quadrennial review, it is unclear what effect, if any, the provision has, since the commission has never been activated. The commission was initially funded in the 1993 Treasury, Postal Service, and General Government Appropriations Act, but that appropriation was rescinded in the 1994 act.<sup>5</sup>

<sup>1</sup> Government Employees Salary Reform Act of 1964, P.L. 88-426, §303, August 14, 1964; 78 Stat. 400, at 416. Positions paid under the Executive Schedule are listed in the *United States Code* at 5 U.S.C. §5312 through §5316 for Levels I through V, respectively. Salaries for some high-level federal officials in the legislative and judicial branches are set to correspond to Level II of the EX Schedule. For example, salaries for the Comptroller General of the United States (31 U.S.C. §703(f)(1)), the Librarian of Congress (2 U.S.C. §136a-2(1)), the Public Printer (44 U.S.C. §303), the Director of the Administrative Office of the United States Courts (salary of a district judge (Level II), 41 U.S.C. §603), and the Director of the Federal Judicial Center (28 U.S.C. §626) are set in this manner.

<sup>2</sup> See CRS Report RL33245, *Legislative, Executive, and Judicial Officials: Process for Adjusting Pay and Current Salaries*, by (name redacted), and CRS Report RL30014, *Salaries of Members of Congress: Current Procedures and Recent Adjustments*, by Paul Dwyer (available from CRS).

<sup>3</sup> Ethics Reform Act of 1989, P.L. 101-194, §701(a), November 30, 1989; 103 Stat. 1716, at 1763; 2 U.S.C. §351.

<sup>4</sup> *Ibid.*, §701(i); 103 Stat. 1716, at 1766; 2 U.S.C. §362.

<sup>5</sup> Treasury, Postal Service, and General Government Appropriations Act, 1993, P.L. 102-393, October 6, 1992; 106 (continued...)

A second provision in the Ethics Reform Act establishes an annual salary adjustment procedure for the Members, the Vice President, federal officials paid under the EX, and federal Justices and judges.<sup>6</sup> The adjustment is based on the percentage change in the wages and salaries (not seasonally adjusted) for the private industry workers element of the Employment Cost Index (ECI), minus 0.5% (December indicator).<sup>7</sup> It becomes effective at the same time as, and at a rate no greater than, the annual base pay rate adjustment for federal white-collar civilian employees under the General Schedule (GS).<sup>8</sup> The adjustment cannot, however, be less than zero or greater than 5%.<sup>9</sup>

While this provision of the Ethics Reform Act sets the rate of the judicial pay adjustment, a 1981 law provides that any salary increase for Justices and judges must be “specifically authorized by Act of Congress hereafter enacted.”<sup>10</sup> The Member pay raise becomes effective automatically unless Congress statutorily denies an increase or revises the adjustment, or the annual base pay adjustment for GS employees is established at a rate less than the scheduled increase for Members, in which case Members would be paid the lower rate.<sup>11</sup> The pay adjustment for federal officials paid under the EX also takes effect automatically unless Congress takes similar action. Such congressional action has generally occurred during consideration of the appropriations bill that funds the Department of the Treasury and General Government. Most recently, this occurred in the 105<sup>th</sup> Congress (1999) when Members voted to deny themselves and federal executive and judicial officials a pay adjustment.<sup>12</sup> Similar action occurred in 1994, 1995, 1996, and 1997.<sup>13</sup>

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Stat. 1729, at 1743, and Treasury, Postal Service, and General Government Appropriations Act, 1994, P.L. 103-123, October 28, 1993; 107 Stat. 1226, at 1239. The appropriation of \$250,000 was to remain available until September 30, 1994.

<sup>6</sup> Ethics Reform Act of 1989, P.L. 101-194, §704, November 30, 1989; 103 Stat. 1716, at 1769; 5 U.S.C. §5318 note. The law amended 2 U.S.C. §31(2), 3 U.S.C. §104, 5 U.S.C. §5318, and 28 U.S.C. §461(a).

<sup>7</sup> The term “base quarter” means the three-month period ending on December 31 of a year. The ECI for the last base quarter is reduced by the ECI for the second to last base quarter, the resulting difference is divided by the ECI for the second to last base quarter, and the quotient is multiplied by 100.

<sup>8</sup> *Ibid.* Government Management Reform Act of 1994, P.L. 103-356, Title I, §101(4), October 13, 1994; 108 Stat. 3410, at 3411. Under 5 U.S.C. §5318(a), salaries are rounded to the nearest multiple of \$100 (or if midway between multiples of \$100, to the next higher multiple of \$100).

<sup>9</sup> Article III, Section 1 of the *Constitution of the United States* provides that “The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.” The pay adjustment set under the Ethics Reform Act would not apply to the extent that it would reduce the salary of any individual whose compensation may not be diminished under Article III, Section 1. (28 U.S.C. §461(b).)

<sup>10</sup> Further Continuing Appropriations for Fiscal Year 1982, P.L. 97-92, §140, December 15, 1981; 95 Stat. 1183, at 1200; 28 U.S.C. §461 note. The law provides “[t]hat nothing in this limitation shall be construed to reduce any salary which may be in effect at the time of enactment of this joint resolution nor shall this limitation be construed in any manner to reduce the salary of any Federal judge or of any Justice of the Supreme Court.” Congress enacted this provision of law in the wake of a court decision (*U.S. v. Will*, 449 U.S. 2000 (1980)) brought by several judges on behalf of the entire judiciary which resulted in the restoration of two (1976 and 1979) of four (1976-1979) judicial pay adjustments that Congress had rejected. The provision was made permanent in the Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act, 2002, P.L. 107-77, Title VI, §625, November 28, 2001; 115 Stat. 748, at 803.

<sup>11</sup> (name redacted), Analyst on the Congress, Government and Finance Division (7-....), covers the issue of Member of Congress pay. See her reports: CRS Report 97-1011, *Salaries of Members of Congress: Recent Actions and Historical Tables*, by (name redacted) and CRS Report 97-615, *Salaries of Members of Congress: Congressional Votes, 1990-2010*, by (name redacted).

<sup>12</sup> Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, P.L. 105-277, §621, October 21, (continued...)

There have been instances in which pay parity could have been, but was not, broken. In the 103<sup>rd</sup> Congress, for example, the Representatives and Senators passed legislation to forgo their pay adjustment for 1994.<sup>14</sup> Because base pay for the GS was not increased in 1994, the Members and federal executive and judicial officials did not receive a pay raise in January 1994. If GS base pay had been adjusted and these officials had received a pay adjustment in that year, pay parity would have been severed because of the action of the Members to deny themselves a pay increase. A provision to cut FY2000 spending across the board by 0.97% and to include Member pay in that reduction, if enacted in the 106<sup>th</sup> Congress, would have resulted in lower salaries for Members, but not for federal executive and judicial officials.<sup>15</sup> During the first session of the 109<sup>th</sup> Congress, the Senate agreed to a provision that would have denied Members of Congress a pay adjustment in January 2006. On October 18, 2005, during consideration of H.R. 3058, Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act for FY2006, the Senate agreed, on a 92 to 6 vote (No. 256), to an amendment (S.Amdt. 2062) offered by Senator Jon Kyl to forgo the Member pay adjustment.<sup>16</sup> The House version of the bill did not include this provision and it was not included in the enacted legislation.<sup>17</sup> The Members received the 1.9% pay adjustment granted to the executive and judicial officials in January 2006.<sup>18</sup>

## Recent Pay Actions

In January 2007, however, while the Vice President and federal officials paid on the EX received a 1.7% pay increase,<sup>19</sup> Members of Congress and Justices and judges did not receive the pay increase. Section 115 of P.L. 110-5, the Revised Continuing Appropriations Resolution for

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1998; 112 Stat. 2681, at 2681-518; 5 U.S.C. §5303 note.

<sup>13</sup> In 1994, Congress passed legislation freezing salaries for Members of Congress (P.L. 103-6, §7, March 4, 1993; 107 Stat. 33, at 35), and federal executive and judicial officials did not receive a pay adjustment because GS base pay was not adjusted (P.L. 103-123, §517B, §615, October 28, 1993; 107 Stat. 1226, at 1253-1254, 1261-1263). Legislative, executive, and judicial officials also did not receive a pay adjustment in 1995 (P.L. 103-329, §630(a)(2), September 30, 1994; 108 Stat. 2382, at 2424), 1996 (P.L. 104-52, §633, November 19, 1995; 109 Stat. 468, at 507), and 1997 (P.L. 104-208, §637, September 30, 1996; 110 Stat. 3009, at 3009-364).

<sup>14</sup> Emergency Unemployment Compensation Amendments of 1993, P.L. 103-6, §7, March 4, 1993; 107 Stat. 33, at 35; 2 U.S.C. §31 note.

<sup>15</sup> U.S. Congress, Conference Committees, 1999, *Making Appropriations for the Government of the District of Columbia and Other Activities Chargeable in Whole or in Part Against Revenues of Said District For the Fiscal Year Ending September 30, 2000, and For Other Purposes*, conference report to accompany H.R. 3064, 106<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 106-419 (Washington: GPO, 1999), pp. 93-94 and 254. Division C, Sec. 1001(e) of H.R. 3064 included the provision on Member pay. The bill was vetoed by President William Clinton on November 3, 1999, because, among other reasons, he said the 0.97% across-the-board reduction was “misguided.”

<sup>16</sup> *Congressional Record*, daily edition, vol. 151, no. 132, October 18, 2005, pp. S11458-60.

<sup>17</sup> P.L. 109-115, November 30, 2005; 119 Stat. 2396.

<sup>18</sup> P.L. 109-115, §405, November 30, 2005; 119 Stat. 2396, at 2470 authorized the judicial pay adjustment.

<sup>19</sup> U.S. President (Bush), “Adjustments of Certain Rates of Pay,” Executive Order 13420, *Federal Register*, vol. 71, December 26, 2006, pp. 77569-77580. The January 2007 pay adjustment provided for by the Ethics Reform Act was 2.0% (2.5% minus 0.5%) according to U.S. Department of Labor, Bureau of Labor Statistics, *Employment Cost Index—December 2005* (Washington: January 31, 2006), p. 14. The pay adjustment, however, can be no greater than the annual base pay rate adjustment for federal white-collar civilian employees under the General Schedule (GS). For January 2007, the GS base pay adjustment required by law was 1.7% according to U.S. Department of Labor, Bureau of Labor Statistics, *Employment Cost Index—September 2005* (Washington, DC: October 28, 2005), pp. 2, 14.

FY2007, enacted on February 15, 2007, denied the Members a pay adjustment.<sup>20</sup> Justices and judges did not receive a pay adjustment in 2007 because it was not authorized by Congress. S. 197, to provide the authorization, passed the Senate by unanimous consent on January 8, 2007, and was referred to the House Committee on the Judiciary, but no further action occurred.<sup>21</sup>

Likewise, in January 2010, the Vice President and federal officials paid on the EX schedule received a 1.5% pay increase.<sup>22</sup> Members of Congress and Justices and judges did not receive the pay increase. Section 103 of Division J of P.L. 111-8, the Omnibus Appropriations Act for FY2009, denied the Members a pay adjustment in 2010.<sup>23</sup> Justices and judges did not receive a pay adjustment because Congress did not authorize it as required by law. S. 1432, to provide the 2010 authorization, was reported to the Senate by the Committee on Appropriations (S.Rept. 111-43) on July 9, 2009, but no further action occurred.

## January 2011 Pay Adjustment

The pay adjustment for Members of Congress, federal officials paid on the EX schedule, and Justices and judges required under the Ethics Reform Act of 1989 would have been 0.9% in January 2011, the same as the January 2011 base pay adjustment required under the Federal Employees Pay Comparability Act of 1990, for federal civilian white-collar employees paid under the General Schedule (GS).<sup>24</sup> P.L. 111-165, enacted on May 14, 2010, denied Members of Congress a pay adjustment in FY2011.<sup>25</sup> The Vice President, federal officials paid on the EX schedule, and Justices and judges also did not receive a pay adjustment in January 2011 because GS base pay was not adjusted.<sup>26</sup> The *Budget of the U.S. Government* included President Barack Obama's order to freeze pay for senior political officials—the Vice President; individuals serving in Executive Schedule (EX) positions or in positions whose rate of pay is fixed by statute at an EX level and serving at the pleasure of the President or other appointing official; a chief of mission or ambassador at large; a noncareer appointee in the Senior Executive Service; any

<sup>20</sup> P.L. 110-5, §115, February 15, 2007, 121 Stat. 8, at 12; 2 U.S.C. §31 note. H.J.Res. 20 was introduced by Representative David Obey on January 29, 2007, and referred to the House Committee on Appropriations. The House passed the resolution on a 286 to 140 vote (Roll No. 72) on January 31, 2007. (The rule on consideration of the resolution was passed on a 225 to 191 vote (Roll No. 67) the same day.) The Senate passed H.J.Res. 20 on an 81 to 15 vote (No. 48) on February 14, 2007. The resolution continued appropriations through September 30, 2007.

<sup>21</sup> S. 197 was introduced on January 8, 2007, by Senator Patrick Leahy, for himself, and Senators John Cornyn, Dianne Feinstein, Harry Reid, and Arlen Specter.

<sup>22</sup> U.S. President (Obama), "Adjustments of Certain Rates of Pay," Executive Order 13525, *Federal Register*, vol. 74, December 30, 2009, pp. 69231-69242. The January 2010 pay adjustment provided for by the Ethics Reform Act was 2.1% (2.6% minus 0.5%) according to U.S. Department of Labor, Bureau of Labor Statistics, *Employment Cost Index—December 2008* (Washington: January 30, 2009), pp. 2, 17. The pay adjustment, however, can be no greater than the annual base pay rate adjustment for federal white-collar civilian employees under the General Schedule (GS).

<sup>23</sup> P.L. 111-8, §103, Division J, March 11, 2009, 123 Stat. 524, at 988; 2 U.S.C. §31 note.

<sup>24</sup> U.S. Department of Labor, Bureau of Labor Statistics, *Employment Cost Index—December 2009* (Washington: January 29, 2010), pp. 2, 17. U.S. Department of Labor, Bureau of Labor Statistics, *Employment Cost Index—September 2009* (Washington: October 30, 2009), pp. 3, 18. The calculation is 1.4% minus 0.5% = 0.9%.

<sup>25</sup> Senator Russell Feingold introduced S. 3244 on April 22, 2010, and the Senate passed the bill under unanimous consent the same day. Representative Harry Mitchell introduced H.R. 5146 on April 27, 2010, and the House passed the bill on a motion to suspend the rules and pass the bill on a vote (Roll No. 226) of 402-15, the same day. The Senate passed the bill under unanimous consent on April 28, 2010. President Barack Obama signed H.R. 5146 into law as P.L. 111-165 on May 14, 2010.

<sup>26</sup> Title I, Section 1(a)(2) of P.L. 111-322, December 22, 2010, denies the pay adjustment.

employee whose rate of basic pay (including locality payments) is at or above EX level IV who serves at the pleasure of the appointing official; and senior White House staff with salaries of more than \$100,000. The budget also reiterated that the policy prohibiting political appointees from receiving bonuses continued.<sup>27</sup>

## January 2012 Pay Adjustment

The pay adjustment for Members of Congress, federal officials paid on the EX schedule, and Justices and judges required under the Ethics Reform Act of 1989 would have been 1.3%.<sup>28</sup> This adjustment would have been limited to 1.1%, the January 2012 base pay adjustment required under the Federal Employees Pay Comparability Act of 1990 for federal civilian white-collar employees paid under the GS.<sup>29</sup> Under Title I, Section 1(a)(2) of P.L. 111-322, enacted on December 22, 2010, GS base pay is frozen through December 31, 2012, so Members of Congress, the Vice President, federal officials paid on the EX schedule, and Justices and judges will not receive a pay adjustment in January 2012, as any pay increase for these officials cannot be at a rate that is greater than the annual base pay rate adjustment for federal white-collar civilian employees under the GS.

## Report Recommendations

Several reports over the last few years have recommended that salary adjustments for Members and federal executive and judicial officials be determined separately. For example, the 2000 annual report on the federal judiciary recommended a 9.6% adjustment in judicial salaries, disengagement from the Member salary adjustment, and automatic pay adjustments under the Ethics Reform Act. Chief Justice William H. Rehnquist stated that “because Judges are appointed for life and expected to remain on the bench, increases in judicial compensation should not be tied to increases for non-career public servants.”<sup>30</sup> In a 2003 report, the National Commission on the Public Service, citing “the compelling need to recruit and retain the best people possible” to serve as executive branch officials and on the federal judiciary, also recommended separate salary adjustments. As an interim step toward implementation of its recommendations, the commission stated that “Congress should grant an immediate and significant increase in judicial, executive, and legislative salaries to ensure a reasonable relationship with other professional opportunities,” and “Its first priority in doing so should be an immediate and substantial increase in judicial salaries.”<sup>31</sup>

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<sup>27</sup> U.S. Executive Office of the President, Office of Management and Budget, *Budget of the U.S. Government Fiscal Year 2011* (Washington: GPO, February 2010), p. 41. U.S. Executive Office of the President, Office of Management and Budget, *Budget of the U.S. Government Fiscal Year 2011 Appendix* (Washington: GPO, February 2010), p. 15.

<sup>28</sup> U.S. Department of Labor, Bureau of Labor Statistics, *Employment Cost Index—December 2010* (Washington: January 28, 2011), pp. 3, 16. The calculation is 1.8% minus 0.5% = 1.3%.

<sup>29</sup> U.S. Department of Labor, Bureau of Labor Statistics, *Employment Cost Index—September 2010* (Washington: October 29, 2011), pp. 3, 16. The calculation is 1.6% minus 0.5% = 1.1%.

<sup>30</sup> U.S. Supreme Court, *2000 Year-End Report on the Federal Judiciary*, January 1, 2001, available at <http://www.supremecourtus.gov/publicinfo/year-end/2000year-endreport.html>.

<sup>31</sup> The National Commission on the Public Service, *Urgent Business For America; Revitalizing the Federal Government for the 21<sup>st</sup> Century* (The National Commission, January 2003), pp. 25-26 and 32, available at <http://www.brookings.edu/gs/cps/volcker/reportfinal.pdf>.



Chief Justice John G. Roberts, Jr., reiterated the commission's recommendations in the 2005 annual report on the federal judiciary.<sup>32</sup> His 2006 annual report focused solely on the issue of judicial pay. Discussing the effects of inadequate salaries (increased by “only occasional and modest cost-of-living adjustments”) on the federal judiciary, the Chief Justice stated these concerns:

An important change is taking place in where judges come from—particularly trial judges. In the Eisenhower Administration, roughly 65% came from the practicing bar, with 35% from the private sector. Today the numbers are about reversed—roughly 60% from the private sector, less than 40% from private practice. It changes the nature of the federal judiciary when judges are no longer drawn primarily from among the best lawyers in the practicing bar.

Inadequate compensation directly threatens the viability of life tenure, and if tenure in office is made uncertain, the strength and independence judges need to uphold the rule of law—even when it is unpopular to do so—will be seriously eroded.

The dramatic erosion of judicial compensation will inevitably result in a decline in the quality of persons willing to accept a lifetime appointment as a federal judge. Our judiciary will not properly serve its constitutional role if it is restricted to (1) persons so wealthy that they can afford to be indifferent to the level of judicial compensation, or (2) people for whom the judicial salary represents a pay increase.... a judiciary drawn more and more from only those categories would not be the sort of judiciary on which we have historically depended to protect the rule of law in this country.<sup>33</sup>

## Judicial Pay Bill in the 111<sup>th</sup> Congress

The Federal Judicial Fairness Act of 2009, S. 2725, was introduced, but saw no further action, in the 111<sup>th</sup> Congress. Introduced by Senator Dianne Feinstein on November 3, 2009, and referred to the Senate Committee on the Judiciary, the bill would have repealed the provision of law, codified at 28 U.S.C. §461 note, that requires Congress to specifically authorize any salary increases for Justices and judges. It also would have amended 28 U.S.C. §461(a) to provide that Justices and judges would receive the same overall average percentage pay adjustment as is authorized each year for the General Schedule (GS), the pay schedule that covers federal white-collar civilian employees in pay grades GS-1 through GS-15.

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<sup>32</sup> U.S. Supreme Court, *2005 Year-End Report on the Federal Judiciary*, January 1, 2006, p. 4, available at <http://www.supremecourtus.gov/publicinfo/year-end/2005year-endreport.pdf>.

<sup>33</sup> U.S. Supreme Court, *2006 Year-End Report on the Federal Judiciary*, January 1, 2007, see pp. 3-7, available at <http://www.supremecourtus.gov/publicinfo/year-end/2006year-endreport.pdf>.

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