



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Thursday, March 28, 2019
CPM 2019-11

MEMORANDUM FOR: HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: MARGARET M. WEICHERT, ACTING DIRECTOR

Subject: Retroactive 2019 Pay Adjustment

The President has signed an Executive order to implement a retroactive pay adjustment required by the Consolidated Appropriations Act, 2019 (Public Law 116-6, February 15, 2019). (See Attachment 1.) Consistent with the Act, the Executive order authorizes a 1.4 percent across-the-board increase for statutory pay systems and locality pay increases costing approximately 0.5 percent of basic payroll, reflecting an overall average pay increase of 1.9 percent for 2019. This memorandum reviews relevant portions of the Executive order. The pay rates in Executive Order 13856, which the U.S. Office of Personnel Management (OPM) memorandum [CPM 2018-23](#) transmitted on December 28, 2018, are superseded.

The retroactive pay adjustment guidance in this memorandum does not apply to senior political officials that have been covered by a pay freeze. The Act continues a modified pay freeze for such officials. We will issue separate guidance regarding the modified pay freeze.

New 2019 Salary Tables and Effective Date

We have posted the new 2019 salary tables on OPM's website at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>. The 2019 pay schedules are effective the first day of the first applicable pay period beginning on or after January 1, 2019 (January 6, 2019, based on the standard biweekly payroll cycle).

The General Schedule and Other Statutory Pay Systems

The Executive order provides an across-the-board increase of 1.4 percent in the rates of basic pay for the statutory pay systems—the General Schedule (GS), the Foreign Service schedule, and certain schedules for the Veterans Health Administration of the U.S. Department of Veterans Affairs. Special base rates for law enforcement officers at GS grades 3 through 10 are also increased by 1.4 percent. (These law enforcement officers are assigned the “GL” pay plan code.)

Executive Schedule

Under 5 U.S.C. 5318, the official Executive Schedule (EX) rates of pay are increased by 1.4 percent (rounded to the nearest \$100). The official EX salary table is available on OPM's website at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2019/executive-senior-level/>. The official EX rates of pay are used in establishing pay limitations for employees

and pay systems unaffected by the pay freeze for certain senior political officials. The 2019 payable (frozen) EX rates that apply to officials covered by the senior political appointee pay freeze will be issued in separate guidance.

Senior Executive Service

Under 5 U.S.C. 5382, the minimum rate of basic pay for the Senior Executive Service (SES) rate range is adjusted to be consistent with the increase in the minimum rate of basic pay for senior-level positions under 5 U.S.C. 5376 (\$127,914 in 2019). The applicable maximum rate of basic pay for the SES is \$192,300 (EX-II) for SES members covered by an SES performance appraisal system certified pursuant to 5 U.S.C. 5307(d) and \$176,900 (EX-III) for SES members covered by an SES performance appraisal system that has not been certified. An SES member with a pay rate below the minimum rate of the new SES rate range must receive a pay increase because an SES member may not receive less than the minimum rate of the SES rate range. An increase to set an SES member's pay at the new minimum rate of the SES rate range must be made effective on the first day of the first applicable pay period beginning on or after January 1, 2019 (January 6, 2019, based on the standard biweekly payroll cycle). Such an increase would not count towards the 12-month rule in 5 CFR 534.404(c).

Other SES pay adjustments must generally be made based on individual performance, contribution to the agency's performance, or both, as determined under a rigorous performance management system, pursuant to 5 U.S.C. 5382. OPM's regulations for setting and adjusting SES pay are available at 5 CFR part 534, subpart D, and include provisions that an agency may apply to increase the pay of an SES member under the new 2019 SES rate range.

The regulations in 5 CFR 534.404(f) address two situations that could occur when there is an increase in the EX rates of pay after an agency has made pay adjustment determinations for its senior executives. A pay increase provided under § 534.404(f) is not considered a pay adjustment for the purpose of applying the 12-month rule in § 534.404(c).

- The first scenario in § 534.404(f)(1) applies when there is an "additional increase" in the EX rates in a calendar year and that increase becomes effective on the first day of the first pay period beginning on or after January 1 (January 6, 2019, based on the standard biweekly payroll cycle and current situation). OPM interprets the 2019 retroactive pay adjustment in EX rates of pay as an "additional increase," as that term is used in § 534.404(f)(1). An agency may review any previous determination to adjust the pay of a senior executive that was made effective on or after January 6, 2019, to determine whether, and to what extent, an additional pay increase may be warranted for senior executives based on the same criteria used for the previous determination. If the agency determines that an additional pay increase is warranted under § 534.404(f)(1), that increase must be made effective as of the effective date of the previous pay increase. If a senior executive was not able to receive a pay increase solely because the employee was at the maximum of the applicable SES rate range or at the top of an established tier in the SES rate range, an agency may review its previous determination regarding the employee's pay and provide a pay increase in addition to the zero increase that the employee received. In this case, the effective date of the pay increase would be the date that the agency provided pay increases to its other (uncapped) senior executives.

- The second scenario in 5 CFR 534.404(f)(2) only applies in the narrow circumstance where an agency provided a pay increase to a senior executive following the most recent performance appraisal cycle prior to January 6, 2019, and that increase resulted in setting the executive's pay at the maximum of the applicable SES rate range (i.e., the rate for EX-II or EX-III, as applicable). For example, this could apply when an agency's performance appraisal cycle is on a fiscal year basis (October 1, 2017, to September 30, 2018) and an agency provided a pay increase in the October 2018 to December 2018 time frame that set an executive's pay at the maximum rate of the applicable SES rate range. In this case, an agency may review any previous determination to increase the pay of a senior executive whose rate of basic pay is equal to the maximum rate of the applicable SES rate range to determine whether, and to what extent, an additional pay increase may be warranted for the senior executive based on the same criteria used for the previous determination. If an agency determines that an additional pay increase is warranted under § 534.404(f)(2), that increase must be made effective January 6, 2019.

The regulations in 5 CFR 534.404(b)(4)(i) provide that generally on the effective date of an increase in the minimum or maximum rate of basic pay of the SES rate range, an authorized agency official may increase the rate of basic pay of a senior executive who meets or exceeds his or her performance expectations by an amount that does not exceed the amount necessary to maintain the senior executive's relative position in the SES rate range. Since the minimum and maximum SES rates were retroactively increased effective on January 6, 2019 as a result of retroactive increases in General Schedule and Executive Schedule rates resulting from the Consolidated Appropriations Act, 2019, each agency may increase the rate of basic pay of such a senior executive under § 534.404(b)(4) retroactive to January 6, 2019, consistent with OPM regulations and the agency's plan for adjusting SES rates of basic pay. Since the official SES minimum and maximum rates are both increasing by approximately 1.4 percent effective on January 6, 2019, application of the maintain-relative-position rule would result in an increase of approximately 1.4 percent in an SES member's rate.

If an agency has not yet made pay adjustment determinations for its senior executives following the most recent performance appraisal cycle, an agency may adjust (increase or reduce) the rate of basic pay of a senior executive consistent with the agency's plan for setting and adjusting SES rates of basic pay as provided in 5 CFR 534.404(b)(1)-(3). Any such pay adjustments would be effective prospectively and count towards the 12-month rule in § 534.404(c). To the extent this shortens an agency's established executive appraisal and pay adjustment cycle, an exception to the 12-month rule in § 534.404(c)(4)(iv) may be used to get executives' pay back on cycle in January 2020.

Senior-Level and Scientific and Professional Positions

The minimum rate of basic pay for the senior-level (SL) and scientific and professional (ST) rate range is increased by 1.4 percent (\$127,914 in 2019), which is the amount of the GS increase. The applicable maximum rate of basic pay is \$192,300 (EX-II) for SL or ST employees covered by a certified SL/ST performance appraisal system and \$176,900 (EX-III) for SL or ST employees covered by an SL/ST performance appraisal system that has not been certified. An SL or ST employee with a pay rate below the minimum rate of the new SL/ST rate range must receive a pay increase because an SL or ST employee may not receive less than the minimum rate of the SL/ST rate range. An increase to set an SL/ST employee's pay at the new minimum

rate of the SL/ST rate range must be made effective on the first day of the first applicable pay period beginning on or after January 1, 2019 (January 6, 2019, based on the standard biweekly payroll cycle).

As provided in 5 U.S.C. 5376(b)(2) and 5 CFR 534.507(a)(1), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under 5 U.S.C. 5303 in the rates of basic pay under the General Schedule, the head of an agency must adjust an SL/ST employee's rate of basic pay by an amount he or she considers appropriate (including a zero adjustment), subject to the regulations in 5 CFR 534.507, and the agency's written procedures. Therefore, each agency must make an appropriate adjustment in each SL/ST employee's rate of basic pay because the General Schedule is being adjusted retroactively to the first day of the first pay period beginning on or after January 1, 2019. The adjustment of an SL/ST employee's pay rate under 5 CFR 534.507(a)(1) must be made effective on the first day of the first pay period beginning on or after January 1, 2019 (January 6, 2019, based on the standard biweekly payroll cycle).

Post-Employment Restrictions

Agencies are required to notify SES members, SL and ST employees, and other individuals who are paid at a rate of basic pay equal to or greater than 86.5 percent of the rate for EX-II (\$192,300 x 86.5 percent = \$166,340 in 2019) that they are subject to certain post-employment restrictions in 18 U.S.C. 207(c)(2)(A)(ii). The new salary threshold is retroactive to the first day of the first pay period beginning on or after January 1, 2019 (January 6, 2019 based on the standard biweekly payroll cycle). OPM's regulations requiring notification of post-employment restrictions are available at 5 CFR part 730. Agencies may continue to use the sample notice OPM provided in its memorandum of January 6, 2004 (CPM 2004-01), to notify an SES member, an SL or ST employee, or other individual that he or she is subject to the post-employment restrictions in 18 U.S.C. 207(c). (Agencies will need to update the pay system, salary threshold, and effective date, as appropriate.) The sample notice is available at <https://www.chcoc.gov/content/notification-changes-post-employment-restrictions-coverage-members-senior-executive-service>.

Aggregate Limitation on Pay

The aggregate limitation on pay for calendar year 2019 is \$213,600 (equivalent to the rate for EX-I). SES members and employees in SL/ST positions who are covered by a certified performance appraisal system are subject to a higher aggregate limitation on pay of the Vice President's salary (\$246,900 in 2019). (See 5 U.S.C. 5307 and 5 CFR part 530, subpart B.)

Administrative Law Judges

The Executive order reflects a decision by the President to increase the rates of basic pay for administrative law judges (ALJs) by 1.4 percent, rounded to the nearest \$100. The rate of basic pay for AL-1 is \$166,500 (equivalent to the rate for EX-IV). The rate of basic pay for AL-2 is \$162,300. The rates of basic pay for AL-3/A through 3/F range from \$111,100 to \$153,800. The new ALJ salary table is available on OPM's website at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2019/executive-senior-level/>.

Administrative Appeals Judges

Under 5 U.S.C. 5372b, the rates of basic pay for administrative appeals judge (AAJ) positions must be set at a rate not less than the minimum rate of basic pay for level AL-3 and not more than the maximum rate of basic pay for level AL-3 of the ALJ pay system established under 5 U.S.C. 5372. At 5 CFR 534.603, OPM's regulations link the structure of the AAJ pay system directly to the structure for level AL-3 of the ALJ pay system. The AAJ pay system includes six rates of basic pay—AA-1, 2, 3, 4, 5, and 6. These rates correspond to the rates of basic pay for AL-3/A, B, C, D, E, and F of the ALJ pay system. The new AAJ salary table is available on OPM's website at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2019/executive-senior-level/>.

Locality Pay Areas

On December 7, 2018, OPM published a final rule in the Federal Register on behalf of the President's Pay Agent establishing six new locality pay areas, making certain changes to the definitions of existing locality pay areas, and making minor clarifying changes to the names of two locality pay areas. The changes applied the first day of the first applicable pay period beginning on or after January 1, 2019 (January 6, 2019, based on the standard biweekly payroll cycle). The final rule can be found at <https://www.federalregister.gov/documents/2018/12/07/2018-26519/general-schedule-locality-pay-areas>. Locality pay area definitions are available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2019/locality-pay-area-definitions/>.

Locality Payments

The President's Executive order reflects the amounts of the new locality payments for GS employees. Attachment 2 provides a table showing the 2019 locality pay percentage and total percentage increase in each locality pay area (reflecting the combined effect of the 1.4 percent across-the-board increase and the applicable increase in the locality pay percentage). Attachment 3 provides a chart showing an example of how the 2019 locality rate and total increase are computed for an employee in the Rest of U.S. locality pay area. GS locality rates are limited to the rate for EX-IV. (See 5 U.S.C. 5304(g)(1) and the "Executive Schedule" section, above.) The new 2019 locality pay tables for the General Schedule are available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2019/general-schedule/>.

Locality Pay Extensions

On November 9, 2018, OPM issued a memorandum on behalf of the President's Pay Agent (the Secretary of Labor and the Directors of the U.S. Office of Management and Budget and OPM) that continues GS locality payments for ALJs and certain other non-GS employee categories in 2019. The memo is available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/continuation-of-locality-payments-for-non-general-schedule-employees-november-9-2018.pdf>. Based on this action, the new 2019 locality payments that apply to GS employees also apply retroactively to these same categories of employees.

Cost-of-Living Allowance Rates for Nonforeign Areas

As provided under the Nonforeign Area Retirement Equity Assurance Act of 2009 (subtitle B of title XIX of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84, October 28, 2009)), employees in nonforeign areas entitled to cost-of-living allowances (COLAs) have corresponding reductions in their COLAs when locality rates increase. The locality and COLA rates in each COLA area are available at <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/nonforeign-areas/>.

Special Rates

The 2019 special rate schedules have been updated to reflect the 1.4 percent increase in the General Schedule rates of basic pay. We have posted the new 2019 special rate tables at <https://apps.opm.gov/SpecialRates/Index.aspx>. The new tables are effective as of the first day of the first applicable pay period beginning on or after January 1, 2019 (January 6, 2019, based on the standard biweekly payroll cycle). Since a special rate employee receives the greater of the applicable special rate or the locality rate for his or her grade and step, agencies must compare an employee's special rate with the new locality pay rate to ensure he or she is paid from the proper schedule. We are issuing a separate memorandum with additional information regarding the 2019 special rate adjustments.

Prevailing Rate Pay Adjustments

We are issuing a separate memorandum on pay adjustments for certain prevailing rate (wage) employees.

2019 Premium Pay Caps

Under 5 U.S.C. 5547(a) and 5 CFR 550.105, GS and other covered employees may receive certain types of premium pay in a biweekly pay period only to the extent that the sum of basic pay, and such premium pay for the pay period does not exceed the greater of the biweekly rate payable for (1) GS-15, step 10 (including any applicable locality payment or special rate supplement), or (2) the rate payable for EX-V (\$156,000 in 2019). In certain emergency or mission-critical situations, an agency may apply an annual premium pay cap instead of a biweekly premium pay cap, subject to the conditions prescribed in law and regulation. (See 5 U.S.C. 5547(b) and 5 CFR 550.106–550.107.) We have revised the 2019 biweekly premium pay caps fact sheet to reflect the retroactive pay increase on OPM's website at <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/#url=Biweekly-Pay-Caps>.

Under section 1104 of the National Defense Authorization Act for Fiscal Year 2019, the head of an agency may waive, during calendar year 2019, the premium pay cap under 5 U.S.C. 5547 for certain civilian employees working in certain overseas locations. We will issue a separate memorandum with additional information on this authority and other recent legislative changes.

The retroactive pay increase may affect the amount of premium pay due for such entitlements, such as overtime, night pay, Sunday premium, and holiday pay. Agencies must review each employee's payroll records for work performed and then make the necessary payroll adjustments to reflect the new 2019 pay rates for premium pay hours worked since the effective date of the

retroactive pay increase. Agencies, or their payroll providers, must also take into account the revised biweekly or annual premium pay limitations when performing these retroactive payroll adjustments.

Adjusting Retained Rates

Certain employees are entitled to retained rates above the applicable rate range under 5 U.S.C. 5363 and 5 CFR part 536. As provided in 5 U.S.C. 5363(b)(2)(B) and 5 CFR 536.305, when the maximum rate of the highest applicable rate range for an employee's position of record is increased while the employee is receiving a retained rate, the employee is entitled to 50 percent of the amount of the increase in that maximum rate. An example of adjusting a retained rate in can be found in the fact sheet at [opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/January-2019-pay-examples](https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/January-2019-pay-examples). We have also updated our fact sheet on pay retention for former National Security Personnel System employees at <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/pay-retention-for-former-nsps-employees/>.

Pay Administration

We have updated examples of pay computations to reflect the retroactive pay adjustment for GS employees:

Examples of January 2019 Pay Computations – See [opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/January-2019-pay-examples/](https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/January-2019-pay-examples/).

How to Compute Rates of Pay – See <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/how-to-compute-rates-of-pay/>.

How to Compute Fair Labor Standards Act Overtime Pay – See <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/how-to-compute-flsa-overtime-pay/>.

Processing and Documenting Retroactive Pay Adjustments

Information on processing personnel actions is contained in the Guide to Processing Personnel Actions at <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/personnel-documentation/#url=Processing-Personnel-Actions>.

Agencies must correct any intervening personnel actions that took effect between the first day of the first pay period in January 2019 (January 6, 2019, based on the standard biweekly payroll cycle) and the date the retroactive pay adjustment is processed. For example, intervening GS within-grade increase or promotion actions must be corrected retroactively to reflect the new pay rates.

In the case of an employee who **separated** from Federal employment on January 6, 2019, or after, the former employing agency is responsible for processing the retroactive adjustment in pay to ensure that the employee receives the additional pay to which he or she was entitled for

the period between January 6, 2019, and the date of separation. The former employing agency also is responsible for ensuring appropriate processing/distribution/filing of the personnel action(s).

In the case of an employee who **transferred** to a different Federal agency on January 6, 2019, or after, the employee's **current** employing agency and payroll provider are responsible for (1) processing the adjustment in pay retroactive to January 6, 2019, (2) paying that portion of the retroactive payment covering the period of time following the transfer, and (3) ensuring appropriate processing/distribution/filing of the personnel action(s). The **prior** employing agency and payroll provider are responsible for paying that portion of the retroactive payment covering the period between January 6, 2019, and the date of transfer.

Employees are **not** entitled to interest on any payments received as a result of processing the retroactive adjustments in pay. Back pay is payable under 5 CFR part 550, subpart H, whenever an employee has been affected by an "unjustified or unwarranted personnel action" that results in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee. The retroactive adjustment in pay does not meet the definition of "unjustified or unwarranted personnel action" and does not correct a "withdrawal, reduction or denial of pay." Therefore, employees are not entitled to any interest on the retroactive payment.

Other Affected Pay and Benefits

Payments Computed as a Percentage of Basic Pay

Agencies must review any awards, allowances, and incentives required to be computed as a percentage of basic pay that were paid between January 6, 2019, and the date the retroactive pay adjustment is processed and make any necessary adjustments to reflect the new 2019 pay rates.

Post-Separation Payments

An employee who separated or retired in late 2018 or early 2019 may be entitled to an adjustment in his or her lump-sum payment for annual leave to reflect the new 2019 pay rates. The lump-sum payment for annual leave must be calculated on the basis of the amount of pay the employee would have received if he or she had remained in Federal service and used the annual leave. The retroactive adjustment also may affect severance payments computed using the pay rates in effect before the retroactive adjustment.

Retirement

The retroactive pay adjustment is considered basic pay for retirement purposes. Federal payroll providers must submit the appropriate employee deductions and agency contributions due for any additional basic pay to OPM in accordance with standard reporting procedures. For employees who separated after the beginning of the first full pay period of the calendar year, agency payroll offices also must submit a supplemental Individual Retirement Record documenting the revised salary rate and additional employee deductions.

Federal Employees' Group Life Insurance (FEGLI)

If an employee's retroactive pay adjustment moves the employee into a different \$1,000 bracket, the amount of his or her Basic insurance increases. This increases the employee's withholding and the Government contribution. This increase in coverage and withholding also applies to Option B coverage if the employee has that coverage.

In computing any lump-sum catch-up salary payment, agencies must calculate the amount of FEGLI withholdings (and Government contributions) that should have been made based on the new salary and compare that amount with the amount actually withheld for pay periods beginning after January 1. Agencies must make any additional withholdings (and contributions) from the lump-sum catch-up adjustment and submit them to OPM in the usual manner.

Agencies will need to send OFEGLI a revised SF 2821 (Agency Certification of Insurance Status) for any employee who has died since the effective date of the pay raise, if the pay raise moved the employee into a different \$1,000 bracket.

Agencies will not need to complete new SF 2821s for employees who retired after the effective date of the pay raise. Agencies will be submitting a supplemental Individual Retirement Record to OPM showing the adjusted pay. The retirement office will use this to recompute the annuity and the amount of the annuitant's FEGLI coverage. However, as you now complete SF 2821s for employees retiring after January 1, 2019, please indicate on the SF 2821 which salary you used in item 10 (the salary based on the original, lower, pay raise or the salary after the adjustment for the retroactive pay raise). This will be very helpful to the OPM office processing retirement applications.

The SF 2821 is necessary for employees who wish to convert when their coverage terminates due to separation or completion of 12 months in nonpay status; however, most employees whose coverage terminates do not choose to convert. Since the number of individuals who convert their coverage is small, you will not need to complete revised SF 2821s for all employees who separated or completed 12 months in nonpay status since the effective date of the retroactive pay increase. OFEGLI (the Office of Federal Employees' Group Life Insurance) will identify anyone who has converted or has started the conversion process and will contact agencies for a revised SF 2821 when necessary for those specific individuals.

Questions

Agency headquarters-level human resources offices may contact OPM at pay-leave-policy@opm.gov. Employees should contact their agency human resources offices for assistance.

Attachments: See 508-conformant PDFs below

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, and Human Resources Directors