

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

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

EXECUTIVE ORDER NO. 11073

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 No. 11173, Aug. 20, 1964, 29 F.R. 11999, which provided for Federal salary administration, was superseded by Ex.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

EXECUTIVE ORDER NO. 11721

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 No. 12107, Dec. 28, 1978, 44 F.R. 1055, which provided for administration of the Federal pay system, was revoked by Ex.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

EX. ORD. NO. 12764. FEDERAL SALARY COUNCIL

Ex. Ord. No. 12764, June 5, 1991, 56 F.R. 26587, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5304(e) of title 5, United States Code, as amended, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), an advisory committee on locality-based comparability payments for General Schedule employees, it is hereby ordered as follows:

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

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

(a) the establishment or modification of pay localities;

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

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

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

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

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

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

GEORGE BUSH.

LOCALITY-BASED COMPARABILITY PAYMENTS

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

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

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

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

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

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

(1) prepare and transmit to Congress, at least 1 month before those comparability payments (disregarding this section) would otherwise become payable, a report describing the alternative level of payments which the President instead intends to provide, including the reasons why such alternative level is considered necessary; and

(2) implement the alternative level of payments beginning on the same date as would otherwise apply, for the year involved, under section 5304.

(b) The requirements set forth in paragraphs (2) and (3), respectively, of section 5303(b) shall apply with respect to any decision to exercise any authority to fix an alternative level of comparability payments under this section.

(Added Pub. L. 101-509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1436.)

EFFECTIVE DATE

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

SPECIAL RULE RELATING TO COMPARABILITY PAYMENTS IN 1994

Pub. L. 101-509, title VI, §634, Nov. 5, 1990, 104 Stat. 1482, provided that:

"Notwithstanding any other provision of law (including any provision of the Federal Employees Pay Comparability Act of 1990 [see Short Title of 1990 Amendment note set out under section 5301 of this title] and any provision of law amended by such Act), for purposes of any comparability payments scheduled to take effect under section 5304 of title 5, United States Code (as amended by such Act) during calendar year 1994—

"(1) deem section 5304a of such title (as so amended) to be amended as follows:

"(A) in subsection (a), strike 'if' and all that follows thereafter through 'welfare,' and insert 'Subject to subsection (c), if'; and

"(B) add after subsection (b) the following:

"(c)(1) For the purpose of this section—

"(A) the "threshold amount" is \$1,800,000,000; and

"(B) "severe economic conditions" shall be considered to exist relative to comparability payments scheduled to take effect on a given date if, during the 12-month period ending 2 calendar quarters before such date, there occurred 2 consecutive quarters of negative growth in the GNP.

“(2) Authority under this section to provide an alternative level of comparability payments in any year may not be exercised except in accordance with the following:

“(A) If the estimated cost of the comparability payments which (but for this section) would otherwise be payable in such year would be equal to the threshold amount or less, no alternative level may be fixed under this section unless necessary because a state of war or severe economic conditions exist.

“(B) If the estimated cost of the comparability payments which (but for this section) would otherwise be payable in such year would be greater than the threshold amount, no alternative level may be fixed—

“(i) at a level which would result in an estimated cost equal to or greater than the threshold amount, unless necessary because of national emergency or serious economic conditions affecting the general welfare; or

“(ii) at a level which would result in an estimated cost less than the threshold amount, unless necessary because of either of the reasons set forth in subparagraph (A).

“(d)(1) The President's agent (as referred to in section 5304(d)) shall develop and include in the appropriate report under section 5304(d)(1) the methodology for estimating any costs under this section, and any estimate under this section shall be in accordance with such methodology.

“(2) In making any estimate under this section, costs attributable to any authority under section 5304(h) may not be taken into account.”; and

“(2) the President's pay agent (referred to in section 5304(d) of such title, as so amended) may use appropriate estimates in lieu of BLS survey data if such data is not available for use in preparing the agent's report with respect to comparability payments payable during calendar year 1994.”

### § 5305. Special pay authority

(a)(1) Whenever the Office of Personnel Management finds that the Government's recruitment or retention efforts with respect to 1 or more occupations in 1 or more areas or locations are, or are likely to become, significantly handicapped due to any of the circumstances described in subsection (b), the Office may establish for the areas or locations involved, with respect to individuals in positions paid under any of the pay systems referred to in subsection (c), higher minimum rates of pay for 1 or more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases in all rates of the pay range for each such grade or level. However, a minimum rate so established may not exceed the maximum rate of basic pay (excluding any locality-based comparability payment under section 5304 or similar provision of law) for the grade or level by more than 30 percent, and no rate may be established under this section in excess of the rate of basic pay payable for level IV of the Executive Schedule. In the case of individuals not subject to the provisions of this title governing appointment in the competitive service, the President may designate another agency to authorize special rates under this section.

(2) The head of an agency may determine that a category of employees of the agency will not be covered by a special rate authorization established under this section. The head of an agency shall provide written notice to the Office of Personnel Management (or other agency designated by the President to authorize special rates

under the last sentence of paragraph (1)) which identifies the specific category or categories of employees that will not be covered by special rates authorized under this section. If the head of an agency removes a category of employees from coverage under a special rate authorization after that authorization takes effect, the loss of coverage will take effect on the first day of the first pay period after the date of the notice.

(b) The circumstances referred to in subsection (a) are—

(1) rates of pay offered by non-Federal employers being significantly higher than those payable by the Government within the area, location, occupational group, or other class of positions under the pay system involved;

(2) the remoteness of the area or location involved;

(3) the undesirability of the working conditions or the nature of the work involved (including exposure to toxic substances or other occupational hazards); or

(4) any other circumstances which the Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) considers appropriate.

(c) Authority under subsection (a) may be exercised with respect to positions paid under—

(1) a statutory pay system; or

(2) any other pay system established by or under Federal statute for civilian positions within the executive branch.

(d) Within the limitations applicable under the preceding provisions of this section, rates of pay established under this section may be revised from time to time by the Office of Personnel Management (or by such other agency as the President may designate under the last sentence of subsection (a)(1)). The actions and revisions have the force and effect of statute.

(e) An increase in a rate of pay established under this section is not an equivalent increase in pay within the meaning of section 5335.

(f) When a schedule of special rates established under this section is adjusted under subsection (d), a covered employee's special rate will be adjusted in accordance with conversion rules prescribed by the Office of Personnel Management (or by such other agency as the President may under the last sentence of subsection (a)(1) designate).

(g)(1) The benefit of any comparability payments under section 5304 shall be available to individuals receiving rates of pay established under this section to such extent as the Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) considers appropriate, subject to paragraph (2) and subsection (h).

(2) Payments under this subsection may not be made if, or to the extent that, when added to basic pay otherwise payable, such payments would cause the total to exceed the rate of basic pay payable for level IV of the Executive Schedule.

(h) An employee shall not for any purpose be considered to be entitled to a rate of pay established under this section with respect to any pe-