

“(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-

riod for which such employee is entitled to a higher rate of basic pay under any other provision of law. For purposes of this subsection, the term “basic pay” includes any applicable locality-based comparability payment under section 5304 or similar provision of law.

(i) If an employee who is receiving a rate of pay under this section becomes subject, by virtue of moving to a new official duty station, to a different pay schedule, such employee’s new rate of pay shall be initially established under conversion rules prescribed by the Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) in conformance with the following:

(1) First, determine the rate of pay to which such employee would be entitled at the new official duty station based on such employee’s position, grade, and step (or relative position in the rate range) before the move.

(2) Then, if (in addition to the change in pay schedule) the move also involves any personnel action or other change requiring a rate adjustment under any other provision of law, rule, or regulation, apply the applicable rate adjustment provisions, treating the rate determined under paragraph (1) as if it were the rate last received by the employee before the rate adjustment.

(j) A rate determined under a schedule of special rates established under this section shall be considered to be part of basic pay for purposes of subchapter III of chapter 83, chapter 84, chapter 87, subchapter V of chapter 55, and section 5941, and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe.

(Added Pub. L. 91–656, §3(a), Jan. 8, 1971, 84 Stat. 1946; amended Pub. L. 94–82, title II, §202(c), Aug. 9, 1975, 89 Stat. 420; Pub. L. 101–509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1436; Pub. L. 108–411, title III, §301(a)(2), Oct. 30, 2004, 118 Stat. 2313.)

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsecs. (a)(1) and (g)(2), is set out in section 5315 of this title.

The provisions of this title governing appointment in the competitive service, referred to in subsec. (a), are classified generally to section 3301 et seq. of this title.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–411, §301(a)(2)(A), added subsec. (a) and struck out former subsec. (a) relating to the President’s authority to establish higher minimum rates of basic pay for specified individuals where the Government’s recruitment or retention efforts are, or are likely to become, significantly handicapped.

Subsec. (b)(4). Pub. L. 108–411, §301(a)(2)(B), added par. (4) and struck out former par. (4) which read as follows: “any other circumstances which the President (or an agency duly authorized or designated by the President in accordance with the last sentence of subsection (a)) considers appropriate.”

Subsec. (d). Pub. L. 108–411, §301(a)(2)(C), substituted “Office of Personnel Management” for “President” and “(or by such other agency as the President may designate under the last sentence of subsection (a)(1))” for “or by such agency as he may designate”.

Subsec. (e). Pub. L. 108–411, §301(a)(2)(D), substituted “rate of pay” for “rate of basic pay”.

Subsec. (f). Pub. L. 108–411, §301(a)(2)(E), added subsec. (f) and struck out former subsec. (f) which read as follows: “The rate of basic pay established under this section and received by an individual immediately before a statutory increase, which becomes effective prior to, on, or after the date of enactment of the statute, in the pay schedule applicable to such individual of any pay system specified in subsection (c) of this section, shall be initially adjusted, effective on the effective date of the statutory increase, under conversion rules prescribed by the President or by such agency as the President may designate.”

Subsec. (g)(1). Pub. L. 108–411, §301(a)(2)(F), substituted “pay” for “basic pay” and “Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate)” for “President (or his designated agency)”.

Subsec. (h). Pub. L. 108–411, §301(a)(2)(G), added subsec. (h) and struck out former subsec. (h) which read as follows: “The rate of basic pay payable to an individual under this section may not, at any time, be less than the rate which would then be payable to such individual (taking comparability payments under section 5304 into account) if this section had never been enacted.”

Subsecs. (i), (j). Pub. L. 108–411, §301(a)(2)(H), added subsecs. (i) and (j).

1990—Pub. L. 101–509 amended section generally, substituting provisions authorizing President to make special pay increases whenever recruitment or retention efforts are handicapped for provisions requiring annual pay reports and adjustments, authorizing alternative plan in years of emergency or when economic conditions affect the general welfare, and setting forth procedure where Congressional committee disapproves such alternative plan.

1975—Subsec. (a)(3). Pub. L. 94–82, §202(c)(1), inserted provision relating to specification in the report to the Congress of the overall percentage of the adjustment in the rates of pay under the General Schedule and under other statutory pay systems.

Subsec. (c)(1). Pub. L. 94–82, §202(c)(2), inserted provision relating to specification in the report to the Congress of the overall percentage of the adjustment in the rates of pay under the General Schedule and under other statutory pay systems.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–411 effective on the first day of the first applicable pay period beginning on or after the 180th day after Oct. 30, 2004, with provision relating to conversion rules, see section 301(d) of Pub. L. 108–411, set out as a note under section 5363 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 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 a note under section 5301 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section assigned to the Director of the Office of Personnel Management by section 1 of Ex. Ord. No. 13415, Dec. 1, 2006, 71 F.R. 70641, set out as a note under section 4505a of this title.

STAFFING DIFFERENTIALS

Pub. L. 101–509, title V, §529 [title II, §209], Nov. 5, 1990, 104 Stat. 1427, 1460, as amended by Pub. L. 102–378, §3(3), Oct. 2, 1992, 106 Stat. 1355, provided that:

“(a) IN GENERAL.—Effective on the first day of the first applicable pay period beginning on or after January 1, 1991, the President may establish staffing differentials equal to 5 percent of basic pay, which may be paid to each General Schedule employee whose position is in—

“(1) grade GS–5 or 7 of the General Schedule;

“(2) a 2-grade-interval occupational series, as determined by the Office of Personnel Management; or

“(3) any combination of classes of positions described in paragraph (1) or (2) for which the President determines a recruiting difficulty exists.

“(b) MANNER OF PAYMENT; REDUCTION OR ELIMINATION.—A staffing differential under this section—

“(1) shall be paid in the same manner and at the same time as the employee’s basic pay is paid, but may not be considered to be part of basic pay for any purpose; and

“(2) may be reduced or eliminated by the Office of Personnel Management in its sole discretion as the amendments made by this Act take effect [see Effective Date of 1990 Amendment and Short Title of 1990 Amendment notes set out under section 5301 of this title], except that no such reduction or elimination shall have the effect of reducing the total amount of pay (determined by adding basic pay and staffing differential) which any employee is receiving.”

[Authority of President under section 529 [title II, §209] of Pub. L. 101-509, set out above, delegated to Office of Personnel Management by Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521, eff. May 4, 1991, set out as a note under section 5301 of this title.]

FEDERAL LAW ENFORCEMENT PAY REFORM

Pub. L. 106-554, §1(a)(4) [div. B, title IX, §907(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-309, provided that: “Beginning on the effective date of this Act [see section 1(a)(4) [div. B, title IX, §909] of Pub. L. 106-554, set out in a Conversion to New Salary Schedule note under section 3056A of Title 18, Crimes and Criminal Procedure]—

“(1) no existing special salary rates shall be authorized for members of the United States Park Police under section 5305 of title 5, United States Code (or any previous similar provision of law); and

“(2) no special rates of pay or special pay adjustments shall be applicable to members of the United States Park Police pursuant to section 405 of the Federal Law Enforcement Pay Reform Act of 1990 [section 529 [title IV, §405] of Pub. L. 101-509, set out in a note below].”

Pub. L. 101-509, title V, §529 [title IV, §§401-407], Nov. 5, 1990, 104 Stat. 1427, 1465, as amended by Pub. L. 102-378, §3(5)-(9), Oct. 2, 1992, 106 Stat. 1356; Pub. L. 103-123, title VI, §628, Oct. 28, 1993, 107 Stat. 1266; Pub. L. 103-178, title III, §303(a), Dec. 3, 1993, 107 Stat. 2034; Pub. L. 105-61, title I, §118(e), Oct. 10, 1997, 111 Stat. 1288; Pub. L. 106-554, §1(a)(4) [div. B, title IX, §907(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-309; Pub. L. 108-411, title I, §101(b), title III, §301(b), Oct. 30, 2004, 118 Stat. 2309, 2317, provided that:

“SEC. 401. SHORT TITLE.

“This title [section 529 [title IV, §§401-412] of Pub. L. 101-509, enacting sections 4521 to 4523 of this title, amending sections 5541, 5542, 5547, 8335, and 8425 of this title, enacting provisions set out as notes under this section and sections 4521, 5541, and 8335 of this title, and amending provisions set out as a note under section 5541 of this title] may be cited as the ‘Federal Law Enforcement Pay Reform Act of 1990’.

“SEC. 402. DEFINITION.

“For the purposes of this title, except as otherwise provided, the term ‘law enforcement officer’ means any law enforcement officer within the meaning of section 5541(3) of title 5, United States Code, with respect to whom the provisions of chapter 51 of such title apply.

“SEC. 403. SPECIAL RATES FOR LAW ENFORCEMENT OFFICERS.

“(a) Notwithstanding the procedures of section 5305 of title 5, United States Code, as amended by section 101 of this Act, or similar provision of law, higher minimum rates and corresponding increases in all step rates of each designated General Schedule grade shall be established for law enforcement officers in accordance with the provisions of this section.

“(b)(1) Effective on the first day of the first applicable pay period beginning on or after January 1, 1992, the higher minimum rates to be established are as follows:

“GS-3	Step 4
“GS-4	Step 4
“GS-5	Step 4
“GS-6	Step 3
“GS-7	Step 3
“GS-8	Step 3
“GS-9	Step 2
“GS-10	Step 2

“(2) Effective on the first day of the first applicable pay period beginning on or after January 1, 1993, the higher minimum rates to be established are as follows:

“GS-3	Step 7
“GS-4	Step 7
“GS-5	Step 8
“GS-6	Step 6
“GS-7	Step 5
“GS-8	Step 3
“GS-9	Step 2
“GS-10	Step 2

“(c) The higher minimum rates and corresponding higher rates for each step rate of each designated grade shall apply to every law enforcement officer in the designated grades (except in the case of any law enforcement officer for whom a higher rate is authorized under section 5305 of title 5, United States Code, as amended by section 101 of this Act, or similar provision of law) and shall be basic pay for all purposes. The rates shall be adjusted at the time of adjustments in the General Schedule to maintain the step linkage set forth in subsection (b)(2).

“(d) Any interim entry-level adjustment under section 209 of this Act [section 529 [title II, §209] of Pub. L. 101-509, set out as a note above] which a law enforcement officer is receiving shall be eliminated on the day before the effective date of the higher minimum rates under subsection (b)(1).

“SEC. 404. SPECIAL PAY ADJUSTMENTS FOR LAW ENFORCEMENT OFFICERS IN SELECTED CITIES.

“(a) A law enforcement officer shall be paid any applicable special pay adjustment in accordance with the provisions of this section, but such special pay adjustment shall be reduced by the amount of any applicable interim geographic adjustment under section 302 of this Act [section 529 [title III, §302] of Pub. L. 101-509, set out as a note under section 5304 of this title], any applicable locality-based comparability payment under section 5304 of title 5, United States Code, as amended by section 101 of this Act, and, to the extent determined appropriate by the Office of Personnel Management, any applicable special rate of pay under section 5305 of such title, as so amended, or any similar provision of law (other than section 403).

“(b)(1) Except as provided in subsection (a), effective on the first day of the first applicable pay period beginning on or after January 1, 1992, each law enforcement officer whose post of duty is in one of the following areas shall receive an adjustment, which shall be a percentage of the officer’s rate of basic pay, as follows:

“Area	Differential
Boston-Lawrence-Salem, MA-NH Consolidated Metropolitan Statistical Area	16%
Chicago-Gary-Lake County, IL-IN-WI Consolidated Metropolitan Statistical Area	4%
Los Angeles-Anaheim-Riverside, CA Consolidated Metropolitan Statistical Area	16%
New York-Northern New Jersey-Long Island, NY-NJ-CT Consolidated Metropolitan Statistical Area	16%
Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD Consolidated Metropolitan Statistical Area	4%
San Francisco-Oakland-San Jose, CA Consolidated Metropolitan Statistical Area	16%
San Diego, CA Metropolitan Statistical Area	8%
Washington-Baltimore DC-MD-VA-WV Consolidated Metropolitan Statistical Area	4%

“(2) In the case of any area specified in paragraph (1) that includes a portion, but not all, of a county, the Office of Personnel Management may, at the request of the head of 1 or more law enforcement agencies, extend the area specified in paragraph (1) to include, for the purposes of this section, the entire county, if the Office determines that such extension would be in the interests of good personnel administration. Any such extension shall be applicable to each law enforcement officer whose post of duty is in the area of the extension.

“(c)(1) A special pay adjustment under this section shall be administered, to the extent practicable, in the same manner as a locality-based comparability payment under section 5304 of title 5, United States Code, as amended by section 101 of this Act, and shall be considered part of basic pay to the same degree as such a locality-based comparability payment.

“(2) The Office of Personnel Management may prescribe such regulations as it considers necessary concerning the payment of special pay adjustments to law enforcement officers under this section.

“SEC. 405. SAME BENEFITS FOR OTHER LAW ENFORCEMENT OFFICERS.

“(a) The appropriate agency head (as defined in subsection (c)) shall prescribe regulations under which the purposes of sections 403, 404, and 407 shall be carried out with respect to individuals holding positions described in subsection (b).

“(b) This subsection applies with respect to any—

“(1) special agent within the Diplomatic Security Service;

“(2) probation officer (referred to in section 3672 of title 18, United States Code); or

“(3) pretrial services officer (referred to in section 3153 of title 18, United States Code).

“(c) For purposes of this section, the term ‘appropriate agency head’ means—

“(1) with respect to any individual under subsection (b)(1), the Secretary of State; or

“(2) with respect to any individual under subsection (b)(2) or (b)(3), the Director of the Administrative Office of the United States Courts.

“SEC. 406. FBI NEW YORK FIELD DIVISION.

“(a) The total pay of an employee of the Federal Bureau of Investigation assigned to the New York Field Division before the date of September 29, 1993, in a position covered by the demonstration project conducted under section 601 of the Intelligence Authorization Act for Fiscal Year 1989 (Public Law 100-453) [102 Stat. 1911] shall not be reduced as a result of the termination of the demonstration project during the period that employee remains employed after that date in a position covered by the demonstration project.

“(b) Beginning on September 30, 1993, any periodic payment under section 601(a)(2) of the Intelligence Authorization Act for Fiscal Year 1989 [Pub. L. 100-453, 102 Stat. 1911] for any such employee shall be reduced by the amount of any increase in basic pay under title 5, United States Code, including the following provisions: an annual adjustment under section 5303, locality-based comparability payment under section 5304, initiation or increase in a special pay rate under section 5305, promotion under section 5334, periodic step increase under section 5335, merit increase under section 5404, or other increase to basic pay under any provision of law.”

[Section 303(b) of Pub. L. 103-178 provided that: “The amendment made by subsection (a) [amending section 529 [title IV, §406] of Pub. L. 101-509, set out above] shall take effect as of September 30, 1993, and shall apply to the pay of employees to whom the amendment applies that is earned on or after that date.”]

[For effective dates of amendments by section 3(5)-(9) of Pub. L. 102-378 to section 529 [title IV, §§402, 403(d), 404(a), (b), 405(a)] of Pub. L. 101-509, set out above, see section 9(a), (b)(6), (9) of Pub. L. 102-378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.]

REPORTING REQUIREMENT

Pub. L. 101-509, title V, §529 [title IV, §412], Nov. 5, 1990, 104 Stat. 1427, 1469, provided that not later than

Jan. 1, 1993, the Office of Personnel Management should submit to Congress a written plan to establish a separate pay and classification system for law enforcement officers and specifications for legislation to implement such plan.

§ 5306. Pay fixed by administrative action

(a) Notwithstanding sections 1341, 1342, and 1349-1351 and subchapter II of chapter 15 of title 31—

(1) the rates of pay of—

(A) employees in the legislative, executive, and judicial branches of the Government of the United States (except employees whose pay is disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives) and of the government of the District of Columbia, whose rates of pay are fixed by administrative action under law and are not otherwise adjusted under this subchapter;

(B) employees under the Architect of the Capitol, whose rates of pay are fixed under section 166b-3a¹ of title 40, and the Superintendent of Garages, House office buildings; and

(C) persons employed by the county committees established under section 590h(b) of title 16; and

(2) and minimum or maximum rate of pay (other than a maximum rate equal to or greater than the maximum rate then currently being paid under the General Schedule as a result of a pay adjustment under section 5303 (or prior corresponding provision of law)), and any monetary limitation on or monetary allowance for pay, applicable to employees described in subparagraphs (A), (B), and (C) of paragraph (1);

may be adjusted, by the appropriate authority concerned, effective at the beginning of the first applicable pay period commencing on or after the day on which a pay adjustment becomes effective under section 5303 (or prior provision of law), by whichever of the following methods the appropriate authority concerned considers appropriate—

(i) by an amount or amounts not in excess of the pay adjustment provided under section 5303 for corresponding rates of pay in the appropriate schedule or scale of pay;

(ii) if there are no corresponding rates of pay, by an amount or amounts equal or equivalent, insofar as practicable and with such exceptions and modifications as may be necessary to provide for appropriate pay relationships between positions, to the amount of the pay adjustment provided under section 5303; or

(iii) in the case of minimum or maximum rates of pay, or monetary limitations of allowances with respect to pay, by an amount rounded to the nearest \$100 and computed on the basis of a percentage equal or equivalent, insofar as practicable and with such variations as may be appropriate, to the percentage of the pay adjustment provided under section 5303.

(b) An adjustment under subsection (a) in rates of pay, minimum or maximum rates of

¹ See References in Text note below.