



Legislative, Executive, and Judicial Officials: Process for Adjusting Pay and Current Salaries

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June 3, 2010

Congressional Research Service

7-5700

www.crs.gov

RL33245

Summary

Leaders and Members of the Senate and the House of Representatives, the Vice President, individuals in positions on the Executive Schedule (EX), and federal justices and judges—all hereafter referred to as federal officials—are to receive an annual pay adjustment under the Ethics Reform Act of 1989, P.L. 101-194 (103 Stat. 1716, at 1769, 5 U.S.C. §5318 note). The percentage change in the wages and salaries for the private industry workers element of the Employment Cost Index (ECI), minus 0.5% (December indicator), provides the basis for the pay adjustment. In January 2010, the Vice President and federal officials paid on the EX schedule received a 1.5% salary increase. Members of Congress did not receive a pay adjustment in January 2010; Section 103 of Division J of P.L. 111-8, the Omnibus Appropriations Act for FY2009, enacted on March 11, 2009, denied the adjustment. Federal justices and judges also have not received a January 2010 pay adjustment. Section 140 of P.L. 97-92, enacted on December 15, 1981, provides that any salary increase for justices and judges must be specifically authorized by Congress, and this authorization has not been provided for 2010.

The pay adjustment for federal officials required under the Ethics Reform Act of 1989 would be 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). P.L. 111-165, enacted on May 14, 2010, provides that Members of Congress will not receive a pay adjustment in FY2011. In addition, 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 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 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 continues.

Currently pending in the 111th Congress is legislation that would adjust the pay of federal justices and judges. The Federal Judicial Fairness Act of 2009, S. 2725, as introduced, would repeal the provision of law that requires Congress to specifically authorize any salary increases for justices and judges and amend current law to provide that justices and judges would receive the same overall average percentage pay adjustment as is authorized each year for the GS, the pay schedule that covers federal white-collar civilian employees in pay grades GS-1 through GS-15.

EX pay rates provide limitations on maximum basic pay rates for members of the Senior Executive Service (SES), employees in senior-level (SL) and scientific and professional (ST) positions, and on basic pay, basic pay and locality pay combined, and total compensation for employees in General Schedule positions.

This report will be updated as events dictate.

Contents

Legislative, Executive, and Judicial Officials	1
Pay Adjustments Since 1991	1
Judicial Pay Bill in the 111 th Congress	10
Senior Executive Service and Certain Senior-Level Positions	10
General Schedule GS-15 Positions	13

Tables

Table 1. Legislative, Executive, and Judicial Salaries, January 2004 to January 2010.....	5
Table 2. Senior Executive Service (SES) Pay.....	11
Table 3. Pay for Senior-Level (SL) and Scientific and Professional (ST) Employees.....	12
Table 4. Pay for General Schedule Grade GS-15.....	15

Contacts

Author Contact Information	16
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Legislative, Executive, and Judicial Officials

A provision in the Ethics Reform Act of 1989 provides for an annual salary adjustment for leaders and Members of the Senate and House of Representatives, the Vice President, individuals in positions on the Executive Schedule (EX), and federal justices and judges.¹ 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).² 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).³ The adjustment cannot, however, be less than zero or greater than 5%.⁴ 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.”⁵

The legislative, executive, and judicial officials are all hereafter referred to as federal officials in this report.

Pay Adjustments Since 1991

Since the enactment of the Ethics Reform Act, federal officials have received pay adjustments as follow:

¹ 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). For an analysis of pay adjustments for Members of Congress, see CRS Report 97-1011, *Salaries of Members of Congress: Recent Actions and Historical Tables*, by Ida A. Brudnick and CRS Report 97-615, *Salaries of Members of Congress: Congressional Votes, 1990-2010*, by Ida A. Brudnick.

² 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.

³ footnote 1 and 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).

⁴ 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).)

⁵ 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.

1991

Adjustment was 3.6%.⁶ P.L. 101-520, Title III, §321, November 5, 1990; 104 Stat. 2254, at 2285, authorized the judicial pay adjustment.

1992

Adjustment was 3.5%. P.L. 102-140, Title III, §305, October 28, 1991; 105 Stat. 782, at 810, authorized the judicial pay adjustment.

1993

Adjustment was 3.2%. P.L. 102-395, Title III, §304, October 6, 1992; 106 Stat. 1828, at 1859, authorized the judicial pay adjustment.

1994

Projected adjustment was 2.1%. Congress passed legislation freezing salaries for Members of Congress (P.L. 103-6, §7, March 4, 1993; 107 Stat. 33, at 35). Federal 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).

1995

Projected adjustment was 2.6%, but would have been limited to GS base pay adjustment of 2.0%. Federal officials did not receive a pay adjustment (P.L. 103-329, §630(a)(2), September 30, 1994; 108 Stat. 2382, at 2424).

1996

Projected adjustment was 2.3%, but would have been limited to GS base pay adjustment of 2.0%. Federal officials did not receive a pay adjustment (P.L. 104-52, §633, November 19, 1995; 109 Stat. 468, at 507).

1997

Projected adjustment was 2.3%. Federal officials did not receive a pay adjustment (P.L. 104-208, §637, September 30, 1996; 110 Stat. 3009, at 3009-364).

⁶ Under the Ethics Reform Act of 1989 (P.L. 101-194, §703, November 30, 1989; 103 Stat. 1716, at 1768, 5 U.S.C. 5318 note), federal officials (but not Senators) also received a 25% pay adjustment which was compounded with the 3.6% annual pay adjustment. The Senate later passed legislation (Legislative Branch Appropriations Act, 1992, P.L. 102-90, August 14, 1991; 105 Stat. 450-451) which became effective on the day of enactment and provided Senators with the same pay as Representatives. For a discussion of the Senate action, see, CRS Report RL30014, *Salaries of Members of Congress: Current Procedures and Recent Adjustments*, by Paul Dwyer (available from CRS).

1998

Projected adjustment was 2.9%. Adjustment was 2.3%, the same as the GS base pay adjustment. P.L. 105-119, Title III, §306, November 26, 1997; 111 Stat. 2440, at 2493, authorized the judicial pay adjustment.

1999

Projected adjustment was 3.4%, but would have been limited to GS base pay adjustment of 3.1%. Federal officials did not receive a pay adjustment (P.L. 105-277, §621, October 21, 1998; 112 Stat. 2681, at 2681-518).

2000

Adjustment was 3.4%. P.L. 106-113, Div. B, §1000(a)(1) [Title III, §304], November 29, 1999; 113 Stat. 1501, at 1535, 1501A-36-A37, authorized the judicial pay adjustment.

2001

Projected adjustment was 3.0%. Adjustment was 2.7%, the same as the GS base pay adjustment. P.L. 106-553, §1(a)(2) [Title III, §309], December 21, 2000; 114 Stat. 2762 at, 2762A-89, authorized the judicial pay adjustment.

2002

Adjustment was 3.4%. P.L. 107-77, Title III, §305, November 28, 2001; 115 Stat. 748, at 783, authorized the judicial pay adjustment.

2003

Projected adjustment was 3.3%. Adjustment was 3.1%, the same as the GS base pay adjustment. P.L. 108-6, §1, February 13, 2003; 117 Stat. 10, authorized the judicial pay adjustment.

2004

Adjustment was 2.2%. Adjusted temporarily at 1.5% pending enactment of P.L. 108-199. P.L. 108-167, §1, December 6, 2003; 117 Stat. 2031, authorized the judicial pay adjustment.

2005

Adjustment was 2.5%. P.L. 108-447, §306, December 8, 2004; 118 Stat. 2809, at 2895, authorized the judicial pay adjustment.

2006

Adjustment was 1.9%. P.L. 109-115, §405, November 30, 2005; 119 Stat. 2396, at 2470 authorized the judicial pay adjustment.

2007

Projected adjustment was 2.0%. Adjustment was 1.7%, the same as the GS base pay adjustment. The Vice President and federal officials paid on the EX schedule received the 1.7% pay increase. Section 115 of P.L. 110-5 denied the Members a pay adjustment in 2007.⁷ Justices and judges did not receive a pay adjustment because Congress did not authorize it as required by law. 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.⁸

2008

Projected adjustment was 2.7%. Adjustment was 2.5%, the same as the GS base pay adjustment. P.L. 110-161, Division D, §305, December 26, 2007; 121 Stat. 1844 authorized the judicial pay adjustment.

2009

Adjustment was 2.8%.⁹ The adjustment for legislative and executive officials was provided in P.L. 110-329, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (H.R. 2638) enacted on September 30, 2008 (which provided funds for government operations from October 1, 2008, through March 6, 2009), and H.R. 1105, Omnibus Appropriations Act, 2009, passed by the House of Representatives on February 25, 2009, on a 245-178 (Roll No. 86) vote and the Senate on March 10, 2009, by voice vote, and signed by President Obama on March 11, 2009 (which provides funds for government operations through September 30, 2009). Division D, Title III, Section 310 of H.R. 1105 authorized the adjustment for justices and judges.

2010

Projected adjustment was 2.1%.¹⁰ Adjustment was 1.5%, the same as the GS base pay adjustment. The Vice President and federal officials paid on the EX schedule received the 1.5% pay increase. Section 103 of Division J of P.L. 111-8 denied the Members a pay adjustment in 2010.¹¹ Justices and judges have not received 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.

⁷ 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.

⁸ 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.

⁹ U.S. Department of Labor, Bureau of Labor Statistics, *Employment Cost Index—December 2007* (Washington: January 31, 2008), pp. 2, 15. The calculation is 3.3% minus 0.5% = 2.8%.

¹⁰ U.S. Department of Labor, Bureau of Labor Statistics, *Employment Cost Index—December 2008* (Washington: January 30, 2009), pp. 2, 17. The calculation is 2.6% minus 0.5% = 2.1%.

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

2011

Projected adjustment would be 0.9%.¹² This is 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 GS.¹³ P.L. 111-165, enacted on May 14, 2010, provides that Members of Congress will not receive a pay adjustment in FY2011.¹⁴ In addition, 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 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 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 continues.¹⁵

Table 1, below, shows the salaries for federal officials from January 2004 to January 2010.

Table 1. Legislative, Executive, and Judicial Salaries, January 2004 to January 2010

Position	January 2004	January 2005	January 2006	January 2007	January 2008	January 2009	January 2010
Legislative Branch							
Vice President of the United States (President of the Senate)	\$203,000	\$208,100	\$212,100	\$215,700	\$221,100	\$227,300	\$230,700
Speaker of the House of Representatives	203,000	208,100	212,100	212,100	217,400	223,500	223,500
President Pro Tempore of the Senate	175,700	180,100	183,500	183,500	188,100	193,400	193,400
Majority and Minority Leaders—House and	175,700	180,100	183,500	183,500	188,100	193,400	193,400

¹² U.S. Department of Labor, Bureau of Labor Statistics, *Employment Cost Index—December 2009* (Washington: January 29, 2010), pp. 2, 17. The calculation is 1.4% minus 0.5% = 0.9%.

¹³ U.S. Department of Labor, Bureau of Labor Statistics, *Employment Cost Index-September 2009* (Washington: October 30, 2009), pp. 2, 17. The calculation is 1.4% minus 0.5% = 0.9%.

¹⁴ 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.

¹⁵ 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.

Position	January 2004	January 2005	January 2006	January 2007	January 2008	January 2009	January 2010
Senate							
Senators, Representatives, Resident Commissioner of Puerto Rico, and Delegates	158,100	162,100	165,200	165,200	169,300	174,000	174,000
Comptroller General of the United States	158,100	162,100	165,200	168,000	172,200	177,000	179,700
Deputy Comptroller General	145,600	149,200	152,000	154,600	158,500	162,900	165,300
Librarian of Congress	158,100	162,100	165,200	168,000	172,200	177,000	179,700
Deputy Librarian	145,600	149,200	152,000	154,600	158,500	162,900	165,300
Register of Copyrights	145,600	149,200	152,000	154,600	158,500	162,900	165,300
Director, Congressional Research Service	145,600	149,200	152,000	154,600	158,500	162,900	165,300
Public Printer	158,100	162,100	165,200	168,000	172,200	177,000	179,700
Deputy Public Printer	145,600	149,200	152,000	154,600	158,500	162,900	165,300
Director, Congressional Budget Office	156,600	160,600	Deputy Director serving as Acting Director on Deputy Salary	163,700	167,800	172,500	172,500
Deputy Director, Congressional Budget Office	155,600	159,600	162,700	162,700	166,800	171,500	171,500
Architect of the Capitol	156,600	160,600	163,700	163,700	167,800	172,500	172,500
Executive Branch							
President of the United States	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000
Vice President of the United States	203,000	208,100	212,100	215,700	221,100	227,300	230,700
Executive Schedule (EX)	175,700	180,100	183,500	186,600	191,300	196,700	199,700

Position	January 2004	January 2005	January 2006	January 2007	January 2008	January 2009	January 2010
Level I: Cabinet-level officials							
EX Level II: Deputy secretaries of departments, secretaries of military departments, and heads of major agencies	158,100	162,100	165,200	168,000	172,200	177,000	179,700
EX Level III: Under secretaries of departments and heads of middle-level agencies	145,600	149,200	152,000	154,600	158,500	162,900	165,300
EX Level IV: Assistant secretaries and general counsels of departments, heads of smaller agencies, members of certain boards and commissions	136,900	140,300	143,000	145,400	149,000	153,200	155,500
EX Level V: Administrators, commissioners, directors, and members of boards, commissions, or units of agencies	128,200	131,400	133,900	136,200	139,600	143,500	145,700
Judicial Branch							
Chief Justice of the United States	\$203,000	\$208,100	\$212,100	\$212,100	\$217,400	\$223,500	\$223,500
Associate Justices of the Supreme Court	194,300	199,200	203,000	203,000	208,100	213,900	213,900
Judges, U.S. Courts of Appeal	167,600	171,800	175,100	175,100	179,500	184,500	184,500
Judges, U.S. Court of Appeals for the Armed Services	167,600	171,800	175,100	175,100	179,500	184,500	184,500

Position	January 2004	January 2005	January 2006	January 2007	January 2008	January 2009	January 2010
Judges, U.S. District Courts	158,100	162,100	165,200	165,200	169,300	174,000	174,000
Judges, United States Court of Federal Claims	158,100	162,100	165,200	165,200	169,300	174,000	174,000
Judges, United States Court of International Trade	158,100	162,100	165,200	165,200	169,300	174,000	174,000
Judges, Tax Court of the United States	158,100	162,100	165,200	165,200	169,300	174,000	174,000
Judges, U.S. Court of Appeals for Veterans Claims	158,100	162,100	165,200	165,200	169,300	174,000	174,000
Bankruptcy Judges	145,500	149,132	151,984	151,984	155,756	160,080	160,080
Magistrate Judges	145,500	149,132	151,984	151,984	155,756	160,080	160,080
Director, Administrative Office of U.S. Courts	158,100	162,100	165,200	165,200	169,300	174,000	174,000
Deputy Director, Administrative Office of U.S. Courts	145,500	149,132	151,984	151,984	155,756	160,080	160,080
Director, Federal Judicial Center	158,100	162,100	165,200	165,200	169,300	174,000	174,000
Deputy Director, Federal Judicial Center	145,500	149,132	151,984	151,984	155,756	160,080	160,080
Counselor to the Chief Justice	up to 158,100	up to 162,100	up to 165,200	up to 165,200	up to 169,300	up to 174,000	up to 174,000
Circuit Executives	145,600	up to 162,100	up to 165,200	up to 165,200	up to 169,300	up to 174,000	up to 174,000

Notes: Section 115 of P.L. 110-5 denied a pay adjustment in 2007 to the Speaker of the House of Representatives, the President pro tempore of the Senate, the majority and minority leaders of the House and Senate, and the Senators, Representatives, Resident Commissioner of Puerto Rico, and Delegates. (P.L. 110-5, §115, February 15, 2007, 121 Stat. 8, at 12; 2 U.S.C. §31 note.) Section 103 of Division J of P.L. 111-8 denied a pay adjustment in 2010 to the Speaker of the House of Representatives, the President pro tempore of the Senate, the majority and minority leaders of the House and Senate, and the Senators, Representatives, Resident Commissioner of Puerto Rico, and Delegates. (P.L. 111-8, §103, Division J, March 11, 2009, 123 Stat. 524, at 988; 2 U.S.C. §31 note.) Ida A. Brudnick, Analyst on the Congress, Government and Finance Division (7-6460), provided the information on Member of Congress pay. See also, CRS Report 97-1011, *Salaries of Members of*

Congress: *Recent Actions and Historical Tables*, by Ida A. Brudnick and CRS Report 97-615, *Salaries of Members of Congress: Congressional Votes, 1990-2010*, by Ida A. Brudnick.

The salaries for the Director and Deputy Director of the Congressional Budget Office (CBO) also were not adjusted in January 2007 and January 2010, because Member of Congress pay was not adjusted. By statute (2 U.S.C. §601(a)(5)(A)(B)), the annual rate of compensation for the Director of CBO is equal to the lower of the highest annual rate of compensation of any officer of the Senate or the highest annual rate of compensation of any officer of the House. The annual rate of compensation for the Deputy Director of CBO is \$1,000 less than that of the Director. The Deputy Director continued as Acting Director, at the Deputy salary, until January 18, 2007, when the CBO Director assumed office. (Information provided to CRS by CBO staff by telephone and electronic mail on November 19, 2007, by electronic mail on January 23, 2008, and by electronic mail on March 24, 2009.) Speaker of the House, Nancy Pelosi, and House Committee on the Budget Chairman, Representative John Spratt, Jr., announced on December 30, 2008, that Douglas W. Elmendorf would be the new Director of CBO. On January 23, 2009, the Speaker of the House and the President pro tempore of the Senate, Senator Robert Byrd, appointed Dr. Elmendorf as the CBO Director.¹⁶

The salary for the Architect of the Capitol also was not adjusted in January 2007 and January 2010, because Member of Congress pay was not adjusted. By statute (2 U.S.C. §1802), the annual rate of compensation for the Architect is equal to the lesser of the annual salary for the Sergeant at Arms of the House of Representatives or the Sergeant at Arms and Doorkeeper of the Senate.

Salaries for the Comptroller General of the United States (31 U.S.C. §703(f)(1)), the Deputy Comptroller General (31 U.S.C. §703(f)(2)), the Librarian of Congress (2 U.S.C. §136a-2(1)), the Deputy Librarian (2 U.S.C. §136a-2(2)), the Register of Copyrights (17 U.S.C. §701(f)), the Director of the Congressional Research Service (2 U.S.C. §166(c)(1)), the Public Printer (44 U.S.C. §303), and the Deputy Public Printer (44 U.S.C. §303) are tied to the Executive Schedule by law. For an analysis of congressional staff salaries which are tied to Member of Congress pay rates, see CRS Memorandum, *Effect of Congressional Pay Freeze on Officer and Staff Salaries*, by Ida A. Brudnick (available to Members of Congress and their staff from the author).

The President's current salary became effective at noon on January 20, 2001, and was established by the Treasury and General Government Appropriations Act, 2000, P.L. 106-58, Title VI, §644, September 29, 1999; 113 Stat. 430, at 478; 3 U.S.C. §102. For a discussion of the President's salary, see CRS Report RS20115, *President of the United States: Compensation*, by Barbara L. Schwemle.

The salary for the Director of the Administrative Office (AO) of U.S. Courts is the same as that of U.S. District Court Judges (28 U.S.C. §603). The salary for the Deputy Director of the AO is 92% of the AO Director's salary (28 U.S.C. §603). The salary for the Director of the Federal Judicial Center (FJC) is the same as the AO Director's salary (28 U.S.C. §626). The salary for the Deputy Director of the FJC is the same as the Deputy AO Director's salary (28 U.S.C. §626). The salary for the Administrative Assistant to the Chief Justice cannot exceed the AO Director's salary (28 U.S.C. §677). Salaries for Circuit Executives are established by the Judicial Conference and may not exceed EX Level IV (28 U.S.C. §332(f)(1)). The salaries for Circuit Executives included in this report were provided to CRS by the AO by electronic mail on January 29, 2008, March 11, 2009, and January 25, 2010.

Total compensation for Circuit Executives, the AO Director, and the Deputy AO Director may be up to the Vice President's salary. (Homeland Security Act of 2002, P.L. 107-296, Title XIII, §1322, November 25, 2002; 116 Stat. 2135, at 2297-2298; 5 U.S.C. §5307(d)). This provision also applies to employees paid under 28 U.S.C. §604 which authorizes the AO Director to set compensation for clerks of court, deputies, librarians, criers, messengers, law clerks, secretaries, stenographers, clerical assistants, and other employees of the courts whose compensation is not otherwise fixed by law. Performance appraisal systems for employees, "as designed and applied," must make "meaningful distinctions based on relative performance." The AO Director is responsible for any regulations (which must be consistent with the Office of Personnel Management and Office of Management and Budget regulations for members of the SES and SL and ST employees), certifications, or other measures necessary to implement the provision. Certification is for a period of two calendar years, but may be terminated at any time upon a finding of nonconformance with applicable requirements. Judicial conference policy limits the total compensation of judicial executives to the salary for a U.S. District Court judge.

Justices and judges did not receive a pay adjustment in 2007, and have not received a pay adjustment in 2010, because it was not authorized by Congress. S. 197, to provide the 2007 authorization, passed the Senate by unanimous consent on January 8, 2007, and was referred to the House Committee on the Judiciary, but no

¹⁶ *Congressional Record*, daily edition, vol. 155, January 23, 2009, p. H487.

further action occurred. 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.

Under Article I, Section 6 of the *Constitution of the United States*, “No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time....” This is commonly referred to as the Emoluments Clause. P.L. 110-455 (S.J.Res. 46) enacted on December 19, 2008, provides that the Secretary of State’s salary in 2009 will be \$186,600 (the salary in effect on January 1, 2007). S.J.Res. 3, as passed by the Senate on January 6, 2009, and the House of Representatives on January 7, 2009, provides that the Secretary of the Interior’s salary in 2009 will be \$180,100, the salary in effect on January 1, 2005.

Judicial Pay Bill in the 111th Congress

The Federal Judicial Fairness Act of 2009, S. 2725, is currently pending in the 111th Congress. Introduced by Senator Dianne Feinstein on November 3, 2009, and referred to the Senate Committee on the Judiciary, the bill would repeal 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 amend 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 GS, the pay schedule that covers federal white-collar civilian employees in pay grades GS-1 through GS-15.

Senior Executive Service and Certain Senior-Level Positions

Maximum basic pay rates for members of the Senior Executive Service (SES) and certain senior-level positions are tied to the Executive Schedule. An individual in an SES position (1) directs the work of an organizational unit; (2) is held accountable for the success of one or more specific programs or projects; (3) monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals; (4) supervises the work of employees other than personal assistants; or (5) otherwise exercises important policy-making, policy-determining, or other executive functions.¹⁷ Salaries for members of the SES are determined annually by agency heads “under a rigorous performance management system,” and range from the minimum rate of basic pay for a senior level (SL) employee (120% of the minimum basic pay rate for GS-15; \$119,554, as of January 2010) to either EX Level III (\$165,300, as of January 2010), in agencies whose performance appraisal systems have not been certified by the Office of Personnel Management (OPM) as making “meaningful distinctions based on relative performance,” or EX Level II (\$179,700, as of January 2010), in agencies whose performance appraisal systems have been so certified.¹⁸ Total compensation¹⁹ for members of the SES in

¹⁷ 5 U.S.C. §3132(a)(2).

¹⁸ National Defense Authorization Act for Fiscal Year 2004, P.L. 108-136, Div. A, Title XI, §1125(a)(2), November 24, 2003; 117 Stat. 1392, at 1638-1639; 5 U.S.C. §5382. The Office of Personnel Management published interim regulations on January 13, 2004, proposed regulations on July 29, 2004, and final regulations on December 6, 2004, to implement the pay system. U.S. Office of Personnel Management, “Senior Executive Service Pay and Performance Awards,” *Federal Register*, vol. 69, no. 8, January 13, 2004, pp. 2047-2052. U.S. Office of Personnel Management, “Senior Executive Service Pay and Performance Awards and Aggregate Limitation on Pay,” *Federal Register*, vol. 69, no. 145, July 29, 2004, pp. 45535-45546. U.S. Office of Personnel Management, “Senior Executive Service Pay and Performance Awards; Aggregate Limitation on Pay,” *Federal Register*, vol. 69, no. 233, December 6, 2004, pp. 70355-70367. See CRS Report RL33128, *Senior Executive Service (SES) Pay for Performance System*, by L. Elaine Halchin, for an analysis of the SES pay adjustment process.

agencies whose performance appraisal systems “as designed and applied” have been certified by OPM may be up to the Vice President’s salary (\$230,700, as of January 2010)²⁰ and up to EX Level I (\$199,700, as of January 2010) in agencies whose performance appraisal systems have not been so certified.²¹ **Table 2**, below, shows January 2004 through January 2010 salaries for the SES.

Table 2. Senior Executive Service (SES) Pay

Minimum	Maximum	Performance appraisal system status
Effective January 2004		
\$104,927	\$145,600	Agencies without a certified performance appraisal system
\$104,927	\$158,100	Agencies with a certified performance appraisal system
Effective January 2005		
\$107,550	\$149,200	Agencies without a certified performance appraisal system
\$107,550	\$162,100	Agencies with a certified performance appraisal system
Effective January 2006		
\$109,808	\$152,000	Agencies without a certified performance appraisal system
\$109,808	\$165,200	Agencies with a certified performance appraisal system
Effective January 2007		
\$111,676	\$154,600	Agencies without a certified performance appraisal system
\$111,676	\$168,000	Agencies with a certified performance appraisal system
Effective January 2008		
\$114,468	\$158,500	Agencies without a certified performance appraisal system
\$114,468	\$172,200	Agencies with a certified performance appraisal system
Effective January 2009		
\$117,787	\$162,900	Agencies without a certified performance appraisal system
\$117,787	\$177,000	Agencies with a certified performance appraisal system
Effective January 2010		
\$119,554	\$165,300	Agencies without a certified performance appraisal system
\$119,554	\$179,700	Agencies with a certified performance appraisal system

(...continued)

¹⁹ The term total compensation as used in this report refers to the aggregate of allowances, differentials, bonuses, awards, or other similar cash payments, and basic pay. It does not include advance payments, payments to missing employees, or back pay. The term also does not include travel and transportation allowances, except for recruitment, relocation, and retention bonuses, supervisory differentials, and expenses to obtain professional credentials, or allowances, generally, except for foreign area post differentials and danger pay, nonforeign area post differentials, and physicians comparability allowances. (5 U.S.C. §5307(a)).

²⁰ Homeland Security Act of 2002, P.L. 107-296, Title XIII, §1322, November 25, 2002; 116 Stat. 2135, at 2297-2298; 5 U.S.C. §5307(d) provided for OPM certification of agency performance appraisal systems with the concurrence of the Office of Management and Budget (OMB). See footnote 188 for the regulations implementing the provision. An agency’s certification is for a period of two calendar years, but may be terminated at any time upon a finding that the agency has not conformed with applicable requirements.

²¹ 5 U.S.C. §5307(a)(1).

The minimum rate of basic pay for certain senior-level positions—positions classified above GS-15 (SL pay schedule) and scientific or professional positions (ST pay schedule)—is 120% of the minimum rate of basic pay for GS-15 (\$119,554, as of January 2010).²² SL and ST employees in agencies whose performance appraisal systems have been certified by OPM as making meaningful distinctions in performance, may receive basic pay up to Level II of the Executive Schedule (\$179,700, as of January 2010). In agencies whose performance appraisal systems have not been so certified by OPM, SL and ST employees may receive basic pay up to Level III of the Executive Schedule (\$165,300, as of January 2010). SL and ST employees no longer receive locality pay.²³ Total compensation for SL and ST employees in agencies whose performance appraisal systems “as designed and applied” have been certified by OPM may be up to the Vice President’s salary (\$230,700, as of January 2010)²⁴ and up to EX Level I (\$199,700, as of January 2010) in agencies whose performance appraisal systems have not been so certified.²⁵

Table 3, below, shows January 2004 through January 2009 salaries for SL and ST employees in the Washington, DC, and “Rest of the United States” locality pay areas²⁶ and nationwide for January 2010.

Table 3. Pay for Senior-Level (SL) and Scientific and Professional (ST) Employees

Washington, DC Pay Area		“Rest of the United States” Pay Area	
Minimum	Maximum	Minimum	Maximum
Effective January 2004			
Basic Pay		Basic Pay	
\$104,927	\$136,900	\$104,927	\$136,900
With Locality Pay Adjustment		With Locality Pay Adjustment	
\$120,278	\$145,600	\$116,364	\$145,600
Effective January 2005			
Basic Pay		Basic Pay	
\$107,550	\$140,300	\$107,550	\$140,300
With Locality Pay Adjustment		With Locality Pay Adjustment	
\$124,736	\$149,200	\$120,155	\$149,200
Effective January 2006			

²² Treasury, Postal Service and General Government Appropriations Act, 1991, P.L. 101-509, Title V, §529 [Title I, §102(a)(1)], November 5, 1990; 104 Stat. 1389, at 1427, 1443; 5 U.S.C. §5376.

²³ P.L. 110-372, October 8, 2008, 122 Stat. 4043-4046; 5 U.S.C. §5376.

²⁴ Homeland Security Act of 2002, P.L. 107-296, Title XIII, §1322, November 25, 2002; 116 Stat. 2135, at 2297-2298; 5 U.S.C. §5307(d) provided for OPM certification of agency performance appraisal systems with the concurrence of the Office of Management and Budget (OMB). See footnote 188 for the regulations implementing the provision. An agency’s certification is for a period of two calendar years, but may be terminated at any time upon a finding that the agency has not conformed with applicable requirements.

²⁵ 5 U.S.C. §5307(a)(1).

²⁶ There are 32 locality pay areas for the purposes of the locality-based comparability payments—31 discrete pay areas and a “Rest of the United States” pay area covering all employees not in one of the 31 areas. Salary information for SL and ST employees in all 32 locality pay areas for January 2004 through January 2009 is available on the Internet at <http://www.opm.gov>.

Basic Pay \$109,808	\$143,000	Basic Pay \$109,808	\$143,000
With Locality Pay Adjustment \$129,024	\$152,000	With Locality Pay Adjustment \$123,556	\$152,000
Effective January 2007			
Basic Pay \$111,676	\$145,400	Basic Pay \$111,676	\$145,400
With Locality Pay Adjustment \$132,437	\$154,600	With Locality Pay Adjustment \$125,792	\$154,600
Effective January 2008			
Basic Pay \$114,468	\$149,000	Basic Pay \$114,468	\$149,000
With Locality Pay Adjustment \$138,380	\$158,500	With Locality Pay Adjustment \$129,555	\$158,500
Effective January 2009			
Basic Pay \$117,787	\$153,200	Basic Pay \$117,787	\$153,200
With Locality Pay Adjustments \$144,996	\$162,900	With Locality Pay Adjustment \$134,112	\$162,900
Nationwide			
Effective January 2010			
Basic Pay Minimum	Maximum	Performance Appraisal Status	
\$119,554	\$165,300	Agencies without a certified performance appraisal system	
\$119,554	\$179,700	Agencies with a certified performance appraisal system	

Note: The Washington, DC, locality pay area is officially named the Washington-Baltimore-Northern Virginia, DC-MD-VA-WV, Combined Statistical Area (CSA), plus the Hagerstown-Martinsburg, MD-WV, Metropolitan Statistical Area, the York-Hanover-Gettysburg, PA, CSA, and King George County, VA.

General Schedule GS-15 Positions

The GS is the basic pay schedule for federal white-collar employees. It is divided into grades of difficulty and responsibility of work. There are 15 grades and 10 steps within each grade. The duties attached to positions at each grade are stated in statute at 5 U.S.C. §5104. Those for a GS-15, the top level of the schedule, are these:

- (A) to perform, under general administrative direction, with very wide latitude for the exercise of independent judgment, work of outstanding difficulty and responsibility along special technical, supervisory, or administrative lines which has demonstrated leadership and exceptional attainments;

(B) to serve as head of a major organization within a bureau involving work of comparable level;

(C) to plan and direct or to plan and execute specialized programs of marked difficulty, responsibility, and national significance, along professional, scientific, technical, administrative, fiscal, or other lines, requiring extended training and experience which has demonstrated leadership and unusual attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(D) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.²⁷

GS employees receive an annual adjustment to basic pay and a locality-based comparability payment. EX pay rates provide limitations on GS pay. Basic pay cannot exceed EX Level V (\$145,700, as of January 2010); basic pay and locality pay combined cannot exceed EX Level IV (\$155,500, as of January 2010); and total compensation cannot exceed EX Level I (\$199,700, as of January 2010).²⁸ GS-15 employees at the upper end of that pay grade in 18 locality pay areas are currently affected by the EX Level IV cap on basic pay and locality pay combined as follows:

- Employees at step 10 in the Dallas-Fort Worth, TX; Denver-Aurora-Boulder, CO; Miami-Fort Lauderdale-Pompano Beach, FL; Minneapolis-St. Paul-St. Cloud, MN-WI; Philadelphia-Camden-Vineland, PA-NJ-DE-MD; Portland-Vancouver-Beaverton, OR-WA; Sacramento-Arden-Arcade-Yuba City, CA-NV; and Seattle-Tacoma-Olympia, WA, locality pay areas.
- Employees at steps 9 and 10 in the Boston-Worcester-Manchester, MA-NH-RI-ME; Chicago-Naperville-Michigan City, IL-IN-WI; Detroit-Warren-Flint, MI; Hartford-West Hartford-Willimantic, CT-MA; San Diego-Carlsbad-San Marcos, CA; and Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA, locality pay areas.
- Employees at steps 8, 9, and 10 in the Houston-Baytown-Huntsville, TX; Los Angeles-Long Beach-Riverside, CA; and New York-Newark-Bridgeport, NY-NJ-CT-PA, locality pay areas.
- Employees at steps 6, 7, 8, 9, and 10 in the San Jose-San Francisco-Oakland, CA, locality pay area.²⁹

Table 4, below, shows January 2004 through January 2010 salaries for employees at GS grade 15 in the Washington, DC, and “Rest of the United States” locality pay areas.³⁰

²⁷ 5 U.S.C. §5104(15).

²⁸ 5 U.S.C. §5303(f), 5 U.S.C. §5304(g)(1), and 5 U.S.C. §5307(a)(1). See CRS Report RL34463, *Federal White-Collar Pay: FY2009 and FY2010 Salary Adjustments*, by Barbara L. Schwemle, for an analysis of the pay adjustment process for General Schedule positions.

²⁹ For an analysis of the pay cap, see CRS Report RL34380, *The Executive Schedule IV Pay Cap on General Schedule Compensation*, by Curtis W. Copeland.

³⁰ Salary tables for GS-15 employees in all 32 locality pay areas are available on the Internet at <http://www.opm.gov>.

Table 4. Pay for General Schedule Grade GS-15

Washington, DC, Pay Area		“Rest of the United States” Pay Area	
Minimum (Step 1)	Maximum (Step 10)	Minimum (Step 1)	Maximum (Step 10)
Effective January 2004			
Basic Pay		Basic Pay	
\$87,439	\$113,674	\$87,439	\$113,674
With Locality Pay Adjustment		With Locality Pay Adjustment	
\$100,231	\$130,305	\$96,970	\$126,064
Effective January 2005			
Basic Pay		Basic Pay	
\$89,625	\$116,517	\$89,625	\$116,517
With Locality Pay Adjustment		With Locality Pay Adjustment	
\$103,947	\$135,136	\$100,129	\$130,173
Effective January 2006			
Basic Pay		Basic Pay	
\$91,507	\$118,957	\$91,507	\$118,957
With Locality Pay Adjustment		With Locality Pay Adjustment	
\$107,521	\$139,774	\$102,964	\$133,850
Effective January 2007			
Basic Pay		Basic Pay	
\$93,063	\$120,981	\$93,063	\$120,981
With Locality Pay Adjustment		With Locality Pay Adjustment	
\$110,363	\$143,471	\$104,826	\$136,273
Effective January 2008			
Basic Pay		Basic Pay	
\$95,390	\$124,010	\$95,390	\$124,010
With Locality Pay Adjustment		With Locality Pay Adjustment	
\$115,317	\$149,000	\$107,962	\$140,355
Effective January 2009			
Basic Pay		Basic Pay	
\$98,156	\$127,604	\$98,156	\$127,604
With Locality Pay Adjustments		With Locality Pay Adjustment	
\$120,830	\$153,200	\$111,760	\$145,290
Effective January 2010			
Basic Pay		Basic Pay	
\$99,628	\$129,517	\$99,628	\$129,517
With Locality Pay Adjustments		With Locality Pay Adjustment	

Washington, DC, Pay Area		“Rest of the United States” Pay Area	
Minimum (Step 1)	Maximum (Step 10)	Minimum (Step 1)	Maximum (Step 10)
\$123,758	\$155,500	\$113,735	\$147,857

Note: The Washington, DC, locality pay area is officially named the Washington-Baltimore-Northern Virginia, DC-MD-VA-WV, Combined Statistical Area (CSA), plus the Hagerstown-Martinsburg, MD-WV, Metropolitan Statistical Area, the York-Hanover-Gettysburg, PA, CSA, and King George County, VA.

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