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Federal White-Collar Pay: FY2004 Salary Adjustments

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Federal White-Collar Pay: FY2004 Salary Adjustments

Summary

Federal white-collar employees are to receive an annual pay adjustment and a locality-based comparability payment, effective in January of each year, under Section 529 of P.L. 101-509, the Federal Employees Pay Comparability Act (FEPCA) of 1990. In January 2004, they received a 1.5% annual pay adjustment and a 0.5% locality-based comparability payment under Executive Order 13322, issued by President George W. Bush on December 30, 2003. P.L. 108-199, enacted on January 23, 2004, provides a 4.1% pay adjustment for 2004. Under the law, an additional 2.1% pay adjustment, allocated as an average 1.2% annual and 0.9% locality, was provided to federal civilian employees under Executive Order 13332, issued by the President on March 3, 2004. OPM published revised salary tables for 2004 on its website the next day. Although the federal pay adjustments are sometimes referred to as cost-of-living adjustments, neither the annual adjustment nor the locality payment is based on measures of the cost of living.

The annual pay adjustment is based on the Employment Cost Index (ECI), which measures change in private-sector wages and salaries. The index showed that the annual across-the-board increase would be 2.7% in January 2004. The size of the locality payment is determined by the President, and is based on a comparison of non-federal and General Schedule (GS) salaries in 32 pay areas nationwide. By law, the disparity between non-federal and federal salaries was to be gradually reduced to 5% over the years 1994 through 2002; FEPCA requires that amounts payable may not be less than the full amount necessary to reduce the pay disparity to 5% in January 2004. The Federal Salary Council and the Pay Agent recommended that the 2004 locality payments range from 19.45% in the "Rest of the United States" (RUS) pay area to 47.64% in the San Francisco pay area. The payment recommended for the Washington, DC, pay area was 28.78%. Because the new locality rate replaces the existing locality rate, the change in locality rates is derived by comparing 2003 locality payments with those recommended for 2004. This comparison resulted in recommended increases in locality rates from 2003 to 2004 of 11.90% in the RUS pay area to 25.23% in the San Francisco pay area, and 17.31% in the Washington, DC, pay area. The nationwide average net pay increase, if the ECI and locality-based comparability payments were granted as stipulated in FEPCA, would have been 15.15%. President Bush proposed a 2.0% federal civilian pay adjustment in his FY2004 budget. On August 27, 2003, he issued an alternative plan to provide the 2.0% adjustment in January 2004. H.R. 2989, the Departments of Transportation and Treasury and Independent Agencies Appropriations Bill, 2004, as passed by the House of Representatives and the Senate, and as incorporated in H.R. 2673, the Consolidated Appropriations Act for FY2004, provides a 4.1% pay adjustment for federal civilian employees. H.R. 2673 was enacted as P.L. 108-199.

FEPCA has never been implemented as originally enacted. Since 1995, locality payments have been much lower than FEPCA requires. Additionally, the Bureau of Labor Statistics surveys documenting non-federal rates of pay were not approved for use in determining the 2000, 2001, 2002, and 2003 locality payments. A phase-in of BLS survey data was approved for 2004.

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Introduction

In January 2004, federal white-collar employees received a 1.5% annual pay adjustment and a 0.5% locality-based comparability payment under Executive Order 13322, issued by President George Bush on December 30, 2003.[1] A larger pay adjustment of 4.1% for 2004 was included in the conference agreement for the Consolidated Appropriations Act for FY2004 (H.R. 2673).[2] H.R. 2989, the Departments of Transportation and Treasury and Independent Agencies Appropriations Bill, 2004, as passed by the House of Representatives and the Senate in the first session of the 108th Congress, provided a 4.1% pay adjustment to federal civilian employees. As the first session was drawing to a close, H.R. 2989 was incorporated in H.R. 2673. The House of Representatives agreed to the conference report accompanying H.R. 2673 on December 8, 2003, and the Senate agreed to the conference report on a 65-28 (No. 3) vote on January 22, 2004. President Bush signed H.R. 2673 into law on January 23, 2004, and it became P.L. 108-199. The law provides an additional 2.1% pay adjustment to federal civilian employees. The President issued Executive Order 13332 on March 3, 2004, to provide the additional pay adjustment, which was allocated as an average 1.2% annual and 0.9% locality.[3] OPM published revised salary tables for 2004 on its website on March 4, 2004; these are available on the Internet at [http://www.opm.gov]. **Table 1** shows the recommended locality payments, the authorized locality payments, and the net annual and locality pay increases.

Federal white-collar employees are to receive an annual pay adjustment and a locality-based comparability payment, effective in January of each year, under Section 529 of P.L. 101-509, the Federal Employees Pay Comparability Act (FEPCA) of 1990.[4] Although the federal pay adjustments are sometimes referred to as cost-of-living adjustments, neither the annual adjustment nor the locality payment is based on measures of the cost of living. FEPCA has never been implemented as

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[1] U.S. President (Bush), "Adjustments of Certain Rates of Pay," Executive Order 13322, *Federal Register*, vol. 69, Jan. 2, 2004, pp. 231-232.

[2] U.S. Congress, Conference Committees, 2003, *Making Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies For the Fiscal Year Ending September 30, 2004, and For Other Purposes*, conference report to accompany H.R. 2673, 108th Cong., 1st sess., H.Rept. 108-401 (Washington: GPO, 2003), pp. 359, 1032. (Hereafter referred to as H.Rept. 108-401.)

[3] U.S. President (Bush), "Further Adjustment of Certain Rates of Pay," Executive Order 13332, *Federal Register*, vol. 69, Mar. 8, 2004, pp. 10889-10900.

[4] 104 Stat. 1427.

originally enacted. The annual pay adjustment was not made in 1994, and in 1995, 1996, and 1998, reduced amounts of the annual adjustment were provided. For 1995 through 2004, reduced amounts of the locality payments were provided. Federal white-collar employees received a combined annual and locality pay adjustment of 4.1% in January 2003.[5] The nationwide average net pay increase in January 2003, if the Employment Cost Index (ECI) and locality-based comparability payments had been granted as specified by FEPCA, would have been 18.56%. In 2004, federal white-collar employees also received a 4.1% combined annual and locality pay adjustment. The nationwide average net pay increase in January 2004, if the ECI and locality-based comparability payments had been granted as specified by FEPCA, would have been 15.15%.

This report discusses the January 2004 annual adjustment and locality payments. It does not cover salary adjustments for federal officials, federal judges, or Members of Congress.[6]

2004 Pay Adjustments

Annual Pay Adjustment

Federal employees under the General Schedule (GS), Foreign Service Schedule, and Veterans Health Administration Schedule receive an annual pay adjustment. The President may annually adjust salaries of administrative law judges. Individuals in senior-level (SL) and scientific and professional (ST) positions may receive the annual adjustment at the discretion of agency heads.[7] Annual adjustments for contract appeals board members depend on whether Executive Schedule pay is adjusted.

The annual pay adjustment is based on the Employment Cost Index (ECI), which measures change in private sector wages and salaries. Basic pay rates are to be increased by an amount that is 0.5 percentage points less than the percentage by which the ECI, for the quarter ending September 30 of the year before the preceding calendar year, exceeds the ECI for that same quarter of the second year (if at all).

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[5] For the 2003 salary adjustments, see CRS Report RL31291, *Federal Pay: FY 2003 Salary Adjustments*, by (name redacted).

[6] See CRS Report 98-53, *Salaries of Federal Officials: A Fact Sheet*; CRS Report RS20114, *Salary of the President Compared with That of Other Federal Officials*; CRS Report RS20115, *Salary of the President: Process for Change*; and CRS Report RS20278, *Judicial Salary-Setting Policy*, all by (name redacted). Also see CRS Report 97-615, *Salaries of Members of Congress: Congressional Votes, 1990-2004*; CRS Report 97-1011, *Salaries of Members of Congress: A List of Payable Rates and Effective Dates, 1789-2004*; CRS Report RL30014, *Salaries of Members of Congress: Current Procedures and Recent Adjustments*; and CRS Report RL30064, *Congressional Salaries and Allowances*, all by (name redacted).

[7] 5 U.S.C. 5376: The minimum rate of basic pay for SLs and STs is equal to 120% of the minimum rate of basic pay for GS-15, and the maximum rate of basic pay for SLs and STs is equal to level IV of the Executive Schedule.

The ECI shows that the annual across-the-board pay adjustment would be 2.7% in January 2004, reflecting the September 2001 to September 2002 change in private sector wages and salaries of 3.2%, minus 0.5%.[8] The pay adjustment is effective as of the first day of the first applicable pay period beginning on or after January 1 of each calendar year.

FEPCA authorizes the President to issue an alternative plan, calling for a different percentage than the ECI requires, in the event of a national emergency or of serious economic conditions affecting the general welfare. The alternative plan must be submitted to Congress before the September 1 preceding the scheduled effective date.[9] On August 27, 2003, President Bush issued an alternative plan to provide a 1.5% annual pay adjustment in January 2004.[10] Executive Order 13322, issued by the President on December 30, 2003, implemented the alternative plan.[11]

Locality-Based Comparability Payments

GS employees receive the locality-based comparability payments; the Pay Agent[12] may also extend those payments to employees in the Foreign Service and in senior-level, scientific and professional, administrative law judge, administrative appeals judge, and contract appeals board member positions.[13] These employees will receive a locality pay adjustment in 2004.[14] The Pay Agent determines the applicable pay cap level for certain non-General Schedule employees to whom locality pay is extended.[15] OPM published final regulations in December 2001 to clarify and

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[8] U.S. Department of Labor, Bureau of Labor Statistics, *Employment Cost Index-September 2001* (Washington: Oct. 31, 2002), pp. 2, 12.

[9] 104 Stat. 1429-1431; 5 U.S.C. 5301-5303.

[10] U.S. President (Bush), "Text of a Letter from the President to the Speaker of the House of Representatives and the President of the Senate," Aug. 27, 2003.

[11] E.O. 13322, Jan. 2, 2004.

[12] The Pay Agent comprises the Secretary of Labor (Elaine L. Chao), the Director of the Office of Management and Budget (Joshua B. Bolten), and the Director of the Office of Personnel Management (Kay Coles James).

[13] The President, by Executive Order, delegated to the Pay Agent the authority to extend locality-based comparability payments to certain categories of positions not otherwise covered. U.S. President (Clinton), "Delegating a Federal Pay Administration Authority," Executive Order 12883, *Federal Register*, vol. 58, no. 229, Dec. 1, 1993, p. 63281.

[14] The President's Pay Agent, Memorandum for Heads of Executive Departments and Agencies, *Extension of Locality Payments to Non-General Schedule Employees*, Dec. 17, 2003. Section 1125 of P.L. 108-136, the National Defense Authorization Act for FY2004, enacted on November 24, 2003, established a new pay-for-performance system for the Senior Executive Service (SES). As a result, locality payments will not be extended to members of the SES, the Federal Bureau of Investigation and Drug Enforcement Administration SES, the Senior Foreign Service, and certain other equivalent pay systems.

[15] The President, by Executive Order, delegated to the Pay Agent the authority to determine the applicable pay cap level for certain non-General Schedule employees to whom locality pay is extended. U.S. President (Clinton), "Adjustments of Certain Rates of Pay and

(continued...)

redefine the limitations.[16] Blue-collar workers under the Federal Wage System (FWS) receive a prevailing rate adjustment that is generally capped at the average percentage pay adjustment received by federal white-collar employees.[17] Notwithstanding the cap, for 2004 the blue-collar pay adjustment in a particular location will be no less than the increase received by GS employees in that location. Blue-collar workers in Alaska, Hawaii, and other non-foreign areas will receive a pay adjustment that is no less than the increase received by GS employees in the RUS pay area.[18] Special rate employees receive either the special rate or the locality payment, whichever is higher. Law enforcement officers receiving special rates under Section 403 of FEPCA get both special rates and locality pay.[19] Federal employees in Alaska and Hawaii, and outside the continental United States, receive a cost-of-living (COLA) allowance rather than locality pay.

The locality-based comparability payments procedure was established by FEPCA. It provides that payments are to be made within each locality determined

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[15] (...continued)
Delegation of a Federal Pay Administration Authority," Executive Order 13106, *Federal Register*, vol. 63, no. 236, Dec. 9, 1998, p. 68152.

[16] The proposed regulations stated: "To provide consistent treatment between General Schedule (GS) and non-GS employees receiving locality payments, OPM proposes to provide that (1) non-GS positions whose maximum scheduled annual rate of pay is less than or equal to the maximum payable scheduled annual rate of pay for GS-15 will be subject to a locality pay cap equal to the rate for level IV of the Executive Schedule, and (2) non-GS positions whose maximum scheduled annual rate of pay exceeds the maximum payable scheduled annual rate of pay for GS-15, but is not more than the rate for level IV of the Executive Schedule, will be subject to a locality pay cap equal to the rate for level III of the Executive Schedule." U.S. Office of Personnel Management, "Locality-Based Comparability Payments," *Federal Register*, vol. 65, March 24, 2000, pp. 15875-15877. U.S. Office of Personnel Management, "Locality-Based Comparability Payments," *Federal Register*, vol. 66, Dec. 28, 2001, pp. 67069-67070.

[17] P.L. 108-199; Jan. 23, 2004; 118 Stat. 352-353. (H.R. 2989, Section 713; S. 1589, Section 613; H.R. 2989, as amended by the Senate, Section 613; H.R. 2673, Section 613.)

[18] P.L. 108-199; Jan. 23, 2004; 118 Stat. 359. (H.R. 2989, Section 740(b) (House) and Section 636(b) (Senate); H.R. 2673, Section 640(b).) OPM concerns about this provision included that it breaks the principle of paying blue-collar employees according to local prevailing rates (determined by comparing federal and private sector blue-collar wage rates) and would cause the rates of pay for federal blue-collar workers to exceed those for private sector blue-collar workers in most of the federal wage areas.

[19] Three bills that would, among other provisions, amend the current law provisions on special pay adjustments for federal law enforcement officers in selected cities are currently pending in the 108th Congress. H.R. 466 was introduced by Representative Peter King on January 29, 2003, and H.R. 1676, the Federal Law Enforcement Officers Pay Equity and Reform Act, was introduced by Representative Mike Rogers on April 8, 2003. Both bills were referred to the House Committee on Government Reform. Senator Christopher Dodd introduced S. 985 on May 1, 2003, and it was referred to the Senate Committee on Governmental Affairs. The Federal Law Enforcement Pay Reform Act (FLEPRA) of 1990, Title IV of Sec. 529 of P.L. 101-509, authorized special pay adjustments of 16% in Boston, Los Angeles, New York, and San Francisco; 8% in San Diego; and 4% in Chicago, Philadelphia, and Washington, DC.

to have a non-federal/federal pay disparity greater than 5%. When uniformly applied to GS employees within a locality, the adjustment is intended to make their pay rates substantially equal, in the aggregate, to those of non-federal workers for the same levels of work in the same locality.

FEPCA provides the President with the authority to fix an alternative level of locality-based comparability payments if, because of national emergency or serious economic conditions affecting the general welfare, he considers the level that would otherwise be payable to be inappropriate. At least one month before those comparability payments would be payable (by November 30, 2003), he would have to prepare and transmit to Congress a report describing the alternative level of payments he intended to provide, including the reasons why that alternative level would be necessary.[20] President Bush issued an alternative plan on August 27, 2003, to provide a 0.5% locality pay adjustment in January 2004.[21] Executive Order 13322, issued by the President on December 30, 2003, implemented the alternative plan.[22]

Bureau of Labor Statistics (BLS) Surveys. Under the law, the BLS conducts surveys that document non-federal rates of pay in each pay area. Currently, there are 32 pay areas nationwide. Until October 1996, the surveys were conducted under the Occupational Compensation Survey Program (OCSP), which had been approved by the Federal Salary Council and the Pay Agent. Since then, the surveys had been conducted under the National Compensation Survey (NCS) program, which was not approved for use with the January 2000, January 2001, January 2002, and January 2003 locality payments. For the January 2004 locality payments, a phase-in of NCS survey data was approved. The survey results are submitted to OPM, which serves as the staff to the Federal Salary Council and the Pay Agent. OPM documents federal rates of pay in each of the pay areas and compares non-federal and GS salaries, by grade, for each pay area. The average salaries at each grade, both federal and non-federal, are then aggregated and compared to determine an overall average percentage pay gap for each area. By law, the disparity between non-federal and federal salaries is to be reduced to 5%. Therefore, the overall average percentage pay gap for each pay area is adjusted to this level each year by OPM. This adjusted gap is called the target gap.

FEPCA also stipulates that a certain percentage of the target gap between GS average salaries and non-federal average salaries in each pay area is to be closed each year. Twenty percent of the gap was closed in 1994, the first year of locality pay, as authorized by FEPCA. An additional 10% of the gap was to be closed each year thereafter, meaning that 30% of the gap was to be closed in 1995, 40% in 1996, 50% in 1997, 60% in 1998, 70% in 1999, 80% in 2000, and 90% in 2001. In each of these years, the locality pay increase has been implemented at a much lower percentage, reducing the gap slowly; 23.5% of the gap was closed in 1995, 25.9% in 1996, 28.3%

[20] 104 Stat. 1429-1436, as amended by 106 Stat. 1355-1356 and 1360; 5 U.S.C. 5301-5302 and 5304-5304a.

[21] U.S. President (Bush), "Text of a Letter from the President to the Speaker of the House of Representatives and the President of the Senate," Aug. 27, 2003.

[22] E.O. 13322, Jan. 2, 2004.

in 1997, 29.2% in 1998, 31% in 1999, 33.5% in 2000, 38.1% in 2001, 42.3% in 2002, and 44% in 2003. These percentages represent the gap as recalculated after each adjustment. By January 2002, and continuing each year thereafter, FEPCA specified that amounts payable could not be less than the full amount necessary to reduce the pay disparity of the target gap to 5%. This percentage is applied to the target gap in each pay area to determine the locality rates recommended by the Pay Agent to the President, after receiving advice from the Federal Salary Council.[23]

The pay gaps on which the locality payments are based are 22 months old by the effective date of the adjustment; thus, March 2002 gaps determine the January 2004 locality payments. Due to the fact that the NCS surveys were not approved for use in determining the January 2000, January 2001, January 2002, and January 2003 locality payments, and that the NCS surveys are being phased in for the January 2004 locality payments, the gaps were determined as follows. The March 2002 gaps were determined by using the most recent OCSP survey data and NCS survey data, which ranged from December 2000 through October 2001 for each pay area. Since the BLS had discontinued the OCSP program in October 1996, the OCSP pay survey data for some of the largest pay areas were at least seven years old. Specifically, the New York data were as of July 1995; the Washington, DC, data were as of October 1995; and the Los Angeles data were as of November 1995. Survey data for each of the other 28 pay areas varied from January 1996 to November 1996. The data for the "Rest of the United States" pay area were as of November 1995 and aged to November 1996. In its report to the Pay Agent on the 2004 locality payments, the Federal Salary Council explained how the pay gaps were determined, stating that "To ensure that local pay disparities are measured as of one common date, it is necessary to 'age' the BLS survey data [using the ECI] to a common reference date [March 2002] before comparing it to GS pay data of the same date."[24]

Report of the Federal Salary Council. The council reported the following results from the application of this methodology. As of March 2002, the overall gap between GS average salaries (excluding existing locality payments, special rates, and certain other payments) and non-federal average salaries was 32.02%. The amount needed to reduce this disparity to 5%, as mandated by FEPCA, averaged 25.73% for 2004.

In order to meet the target for closing the pay gap, the council recommended locality pay raises ranging from 19.45% in the "Rest of the United States" (RUS) pay

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[23] The council comprises nine members. Members generally recognized for their impartiality, knowledge, and experience in labor relations and pay policy are Terri Lacy, chair; Mary McNally Rose, vice-chair; and Rudy Joseph Maestas. The other members represent the American Federation of Government Employees (vacant pending appointment; expected to be newly elected president John Gage); the National Treasury Employees Union (Colleen M. Kelley); the National Federation of Federal Employees (Richard N. Brown); the American Federation of Government Employees, AFL-CIO (vacant pending appointment); the Association of Civilian Technicians (Thomas G. Bastas); and the Fraternal Order of Police (James Pasco).

[24] *Report on Locality-Based Comparability Payments for the General Schedule, Annual Report of the President's Pay Agent* (Washington: 2002), p. 10.

area to 47.64% in the San Francisco pay area. The payment recommended for the Washington, DC, pay area was 28.78%.[25] Because the new locality rate replaces the existing locality rate, the change in locality rates is derived by comparing 2003 locality payments with those recommended for 2004. This comparison resulted in recommended increases in locality rates from 2003 to 2004 of 11.90% in the RUS pay area to 25.23% in the San Francisco pay area, and 17.31% in the Washington, DC, pay area. The nationwide average net pay increase, if the ECI and locality-based comparability payments were granted as required by law, would have been 15.15% in 2004.

As in previous years, the council recommended that areas with pay gaps below the pay gap in RUS receive the same adjustment as RUS. Under the methodology which has been used since locality pay was first implemented in 1994, areas with low publishability (did not meet BLS standards for publishing data) and pay gaps that were two-tenths of a percentage point (0.2%) or more below RUS for three surveys were to be dropped as surveyed discrete pay areas, and the resources used to conduct these surveys were to be redirected to new survey locations. The council, as it has done the last four years, recommended that these pay areas again be included with RUS in 2004.

> Since not all of the improvements have been completed in NCS and because the list of cities below RUS varies depending on whether we use OCSP or NCS data, we recommend that none of these locations [Indianapolis, Kansas City, Orlando, St. Louis] be dropped as separate pay areas at this time. The Council plans to consider whether some of these areas should be dropped and the resources used to increase the sample in other locations or used to add a few new locality pay surveys.[26]

Basic criteria used to determine whether a county or installation would be included as part of a pay area for purposes of applying locality pay were established by the council in 1993 and remain unchanged. In its report, the council notes that "In 2000 and 2001, the Council concluded that it would recommend no changes in locality pay area definitions until it had an opportunity to review new commuting pattern and population data from the 2000 census and the new metropolitan area definitions to be produced by the Census Bureau and OMB in 2003."[27] Other criteria which would remain unchanged are that a county be contiguous to a pay area, contain at least 2,000 GS employees, and demonstrate some economic linkage with the pay area. The council recommended an exception, however, in the case of Barnstable County, MA, which was seeking to become an area of application to the Boston pay area. According to the council, Barnstable County

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[25] Memorandum for the President's Pay Agent from the Federal Salary Council, *Level of Comparability Payments for January 2004 and Other Matters Pertaining to the Locality Pay Program* (Washington: Oct. 17, 2002), p. 3. (Hereafter referred to as 2004 Federal Salary Council Report.)

[26] 2004 Federal Salary Council Report, p. 3.

[27] Ibid., p. 5.

> is the only county on the eastern seaboard from southern Maine to Delaware that is not in a separate locality pay area. It is also cut off from the remainder of the country by the Boston locality pay area and passes all our criteria except that it does not have 2,000 GS employees. While we do not believe this is the time to make wholesale changes in locality area boundaries, the Council concluded that something should be done for Barnstable County. Therefore, the Council as a whole voted at its October 1 meeting to recommend that the Pay Agent make an exception and include Barnstable County, MA, in the Boston locality pay area in 2004 in order to remedy what we consider to be an egregious situation. The Vice Chair of the Council dissented from this recommendation.[28]

Since 1994, St. Mary's County, MD, has been included in the Washington, DC-Baltimore, MD, pay area. It continues to meet the county criteria, and the council recommended that it be included with this pay area for 2004. Santa Barbara County, CA, has been included in the Los Angeles pay area since 1994, and New London, CT, has been included in the Hartford, CT, pay area since 1998. Employment in New London, CT, and Santa Barbara County, CA, again has fallen below the threshold of 2,000 employees that one criterion requires. The council recommended in 1997, however, "that once an area of application has been approved, it should not be removed for the duration of FEPCA's nine-year phase-in for the locality pay program (1994 through 2002)."[29] Therefore, the council recommended that New London and Santa Barbara continue to be areas of application for their respective pay areas for 2004. The council noted that "new census data will soon be available that will affect locality pay area definitions in the future" and "the Office of Management and Budget (OMB) and the Census Bureau are revamping how metropolitan areas are defined." According to the council, it "plan[s] to conduct a major review of all aspects of the locality pay program [in 2003] when this new information is available.[30] (See the discussion under "Definition of Metropolitan Areas" below.) Monterey County, CA, which became an area of application to the San Francisco pay area in 2001, meets the criteria and is recommended to be included with this pay area in 2004.

The State of Rhode Island was designated as an area of application to the Boston pay area beginning in 2001. Because counties in Rhode Island are small in comparison to counties in other states, Rhode Island cannot meet the requirement that a county contain at least 2,000 GS employees. Therefore, the council recommended that "Full State" criteria be adopted in this case. Under the recommended criteria, "States smaller than 115 percent of the average county size in square miles in the lower 48 states and Washington, DC, are treated as a single county for applying the county criteria." Thus, Rhode Island is "considered as a single county."[31] The state

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[28] Ibid.

[29] Ibid., p. 4.

[30] Ibid.

[31] Memorandum for the President's Pay Agent from the Federal Salary Council, *Level of Comparability Payments for January 2001 and Other Matters Pertaining to the Locality Pay Program* (Washington: Oct. 22, 1999), p. 4. (Hereafter referred to as 2001 Federal Salary Council Report.) Bureau of the Census data on county size and land area are used in (continued...)

meets the criteria and is recommended for continued inclusion with the Boston pay area in 2004.

As for the criteria for an installation, the portion of a federal facility that crosses pay area boundaries, and that is not in the pay area, must have at least 1,000 GS employees; the duty station(s) of the majority of GS employees must be within 10 miles of the prime-critical survey boundary area; and a significant number of the facility's employees must be commuting from the pay area. Since 1994, a portion of Edwards Air Force Base has been included in the Los Angeles pay area. The base no longer meets the employment criteria, but the council recommended that it continue to be included with the Los Angeles pay area in 2004 for the same reasons that New London and Santa Barbara were recommended to continue as areas of application.

Methodology.[32] The council, in its report to the Pay Agent on the 2001 locality payments, recommended that five improvements be made in the BLS National Compensation Survey program. The council's memorandum to the Pay Agent on the 2004 locality payments provided a progress report. Listed according to their levels of priority, the improvements and progress to date are as follow.

- Use three-factors, rather than nine, to assign the correct federal grade level to the non-federal jobs surveyed, and provide grade level guides for occupational families. "OPM has completed development of a four-factor evaluation system for use in the surveys, and BLS has successfully used the new approach in field tests. BLS will begin to phase the new approach into BLS surveys in December 2003."

- Develop a model to estimate missing data. "BLS has designed and implemented an econometric model to estimate salaries for jobs not randomly selected in the surveys."

- Improve the matching of federal survey jobs with non-federal survey jobs, and provide subcategories for occupations which are "not elsewhere classified." "OPM formed an interagency working group that developed a crosswalk between Federal job classifications and the new Standard Occupational Classification System. BLS used the new crosswalk and March 2001 GS employment weights for data delivered this year .... We anticipate that additional improvements could be made in the crosswalk and that OPM will provide updated GS employment information to BLS each year."

[31] (...continued)
determining whether the "Full State" criteria are met.

[32] For a discussion of the methodology concerns expressed by the Federal Salary Council, the Pay Agent, and the Office of Personnel Management over the last several years, see CRS Report 98-956, *Federal Pay: FY2000 Salary Adjustments* and CRS Report 97-1008, *Federal Pay: FY1999 Salary Adjustments*, both by (name redacted).

- For supervisory occupations, grade the highest level of work supervised. Adjust the grade level based on the level of supervision, instead of grading the supervisory job itself. "BLS and Pay Agent staffs have designed a new approach based on grading the highest level of work supervised and adding one, two, or three grades based on the level of supervision. Final tests of the new approach are to be conducted this fall, and BLS hopes to be ready to implement the methods in surveys conducted in December 2003."

- Develop criteria to identify and exclude jobs that would be classified above GS-15 in government. "BLS has developed methods for identifying and excluding non-Federal jobs that would be classified above GS-15. These data were excluded from the data delivered to the Pay Agent this year."[33]

The council's report on the 2004 locality payments stated that while it "recommended the phase-in of NCS data beginning with locality payments in 2004, [it] continue[s] to have concerns about the reliability of data produced by the NCS." The council recommended that

> [A]ny further implementation of (or additional weight given to) the NCS data must be expressly conditioned on action by BLS to implement the remaining two improvements identified by the Council.
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> [A]dditional resources should be committed by BLS to increase the sample size of its surveys, particularly in those localities where the NCS data indicate a pay gap that is more than 5 percentage points below the gap measured using OCSP data, or, at a minimum, conducting "augmentation surveys" for areas under-represented in BLS samples.[34]

Definition of Metropolitan Areas. The component parts of the 32 locality pay areas are determined by using the OMB definitions of metropolitan areas. Whenever OMB revised the definitions, the locality pay areas changed automatically. On April 22, 2003, OPM published final regulations which provide that locality pay areas no longer change automatically when the definitions of metropolitan areas change.[35] On June 6, 2003, OMB published revised definitions for Metropolitan Statistical Areas (MSAs) based on new criteria and 2000 census data.[36] At the time, OPM advised that the new definitions would

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[33] The recommendations are from 2001 Federal Salary Council Report, p. 8. The progress reports are from 2004 Federal Salary Council Report, pp. 6-7.

[34] 2004 Federal Salary Council Report, p. 8.

[35] U.S. Office of Personnel Management, "Locality Pay Areas," *Federal Register*, vol. 68, no. 77, April 22, 2003, pp. 19707-19708. The proposed regulations were published at U.S. Office of Personnel Management, "Locality Pay Areas," *Federal Register*, vol. 67, no. 176, Sept. 11, 2002, p. 57536.

[36] U.S. Office of Management and Budget, *Revised Definitions of Metropolitan Statistical Areas, New Definitions of Micropolitan Statistical Areas and Combined Statistical Areas, and Guidance on Uses of the Statistical Definitions of These Areas*, OMB Bulletin No. 03-04, June 6, 2003.

> have no immediate or automatic impact on the General Schedule (GS) locality pay program. As a result of previous recommendations made by the Federal Salary Council, ... OPM recently modified the GS locality pay regulations to maintain the metropolitan area portion of each locality pay area consistent with the former OMB statistical area definitions. This will provide the Federal Salary Council and the President's Pay Agent ... an opportunity to review the new statistical area definitions before making recommendations and decisions later [in 2003].[37]

Some of the major changes that the council and the Pay Agent considered in autumn 2003 were these:

> The new statistical area definitions are different than the ones that have been used in [the] locality pay program since it was created in the early 1990s. The concept of 'Consolidated Metropolitan Statistical Areas' which is used to define 18 locality pay areas, is no longer used. New concepts — 'Micropolitan Statistical Areas' and 'Combined Statistical Areas [CSAs] — have been introduced. Population density is no longer a criterion for evaluating outlying counties and the threshold levels of commuting in or out of a core area have been changed.[38]

A Federal Salary Council working group reviewed the new OMB definitions, commuting patterns, and other changes, and reports of the working group were discussed at two council meetings that were open to the public. At the first meeting conducted on September 3, 2003, the working group presented its initial findings. According to the group's report, it "recommends that the Council seriously consider using the new MSA definitions in some fashion for the locality pay program" and "asks that no decisions be made until the next public meeting because additional study is needed."[39] The report stated that, "If the Federal Salary Council were to recommend that the new CSAs and MSAs be used for locality pay areas without any modifications, excluding the locality pay areas in New England (Boston, Hartford, and part of New York), a total of 83 additional counties would be added to existing metropolitan locality pay areas, and 10 counties currently in separate metropolitan locality pay areas would be excluded (13 counties including pay areas in New England)."[40]

At a second council meeting conducted on October 7, 2003, the working group recommended "that the Council adopt the new MSA definitions as the basic definitions for locality pay areas, acknowledging that changes in MSAs are the result of both changes in demographics and changes in the criteria for establishing

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[37] "Impact of New OMB Statistical Area Definitions on the General Schedule Locality Pay Program," Sent to CRS by OPM by facsimile on July 31, 2003.

[38] Ibid.

[39] *Report of the FSC [Federal Salary Council] Methodology Working Group,* Sept. 3, 2003, p. 6.

[40] Ibid., p. 5.

MSAs."[41] With regard to the January 2005 pay adjustments, the working group recommended that the largest defined areas, called Combined Statistical Areas (CSAs), be used; that the pay area definitions be revised (which in some pay areas expands the number of communities covered); and that three current discrete pay areas (Kansas City, Orlando, and St. Louis) with pay gaps below RUS be folded into RUS, and the resulting savings in resources be used to survey other areas.[42] The council adopted the working group recommendations in its report to the Pay Agent, which in turn tentatively approved the council's recommendations in its report to the President, on the January 2005 pay adjustments.[43] In 2004, OPM will publish the proposed changes on locality pay in the *Federal Register* and solicit public comments on those changes.

An amendment to H.R. 2989, Departments of Transportation and Treasury and Independent Agencies Appropriations Bill, 2004, offered by Representative Sam Farr was agreed to by voice vote by the House of Representatives on September 4, 2003. The amendment at Section 742 states the sense of the Congress that none of the funds made available in the Transportation/Treasury bill could be used to disestablish any pay locality. Earlier, during markup of the bill by the House Committee on Appropriations, a similar amendment proposed by Representative Sam Farr was withdrawn after the Committee chairman, Representative Ernest Istook, agreed to work with Representative Farr on the issue.[44] Representative Farr testified before the Federal Salary Council at its September 3, 2003, meeting about the reduction in pay that would result for federal employees in Monterey County, California, if the county was not continued as an area of application to the San Francisco locality pay area.

Senator Jack Reed offered an amendment (S.Amdt. 1944) similar to Representative Farr's that was agreed to by the Senate by voice vote during its consideration of the Transportation and Treasury appropriations bill on October 23, 2003. Under the amendment, Section 646 of the bill would provide that none of the funds appropriated or otherwise made available by the Transportation/Treasury bill could be used to remove any area within a locality pay area from coverage under that locality pay area. The amendment would not be applicable to RUS.

As the first session of the 108th Congress was drawing to a close, H.R. 2989 was incorporated in H.R. 2673, the Consolidated Appropriations Act for FY2004. The conference agreement for H.R. 2673, as agreed to by the House of Representatives and the Senate, at Section 644, provides that none of the funds in the

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[41] Report of the FSC [Federal Salary Council] Methodology Working Group, Oct. 7, 2003, p. 6.

[42] Ibid., pp. 11-12.

[43] Memorandum for the President's Pay Agent from the Federal Salary Council, *Level of Comparability Payments for January 2005 and Other Matters Pertaining to the Locality Pay Program* (Washington: Oct. 28, 2003) and *Report on Locality-Based Comparability Payments for the General Schedule, Annual Report of the President's Pay Agent 2003* (Washington: Dec. 4, 2003).

[44] Lori Sharn, "House Panel Approves Military-Civilian Pay Parity For 2004," July 24, 2003. Available on the Internet at [http://www.govexec.com].

Transportation/Treasury bill could be used to implement or enforce regulations for locality pay areas in FY2004 that are inconsistent with the Federal Salary Council's October 7, 2003, recommendations.[45] This provision was enacted as Section 644 of P.L. 108-199 on January 23, 2004.[46]

Pay Agent Report. After considering the council's recommendations, the Pay Agent submitted its annual report to the President on the 2004 locality payments on December 5, 2002.[47] According to the Pay Agent: the "report shows the adjustments we would recommend for January 2004 *if the methodology and rates required by current law were to be implemented*.[48] Given the current national emergency situation and the consequent slowdown in the American economy, however, we believe it would be unwise to allow the locality pay increases shown in this report to take effect in January 2004." Stating that "it is time to consider alternative approaches to the compensation of Federal employees," the Pay Agent noted that it "continues to have serious concerns about the utility of a process that requires a single percentage adjustment in the pay of all white-collar civilian Federal employees in each locality without regard to the differing labor markets for major occupational groups or the performance of individual employees."[49] The Pay Agent's report does not include any further discussion of these concerns.

The cost of the January 2004 locality-based comparability payments would be $8.830 billion if the full amount necessary to reduce the pay disparity of the target gap to 5% were provided in January 2004 as required by FEPCA, according to the Pay Agent.[50] **Table 1** includes the council's and the Pay Agent's recommended locality payments for January 2004.

The Pay Agent did not adopt the council's recommendation to include Barnstable County, Massachusetts, as part of the Boston locality pay area because it "continue[s] to believe any changes in locality pay area boundaries should be made after the Federal Salary Council and the Pay Agent have had an opportunity to review new commuting patterns data and new metropolitan area definitions [released in 2003 and] based on the 2000 census."[51]

As for the recommended improvements in the BLS National Compensation Survey Program, the Pay Agent stated that those focused on problems associated with random selection of survey jobs, matching federal and non-federal jobs, and excluding randomly selected jobs that would be classified above GS-15 have been

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[45] H.Rept. 108-401, pp. 360, 1032.

[46] 118 Stat. 360.

[47] *Report on Locality-Based Comparability Payments for the General Schedule, Annual Report of the President's Pay Agent* (Washington: 2002). Hereafter referred to as 2002 Pay Agent's Report.

[48] Italics as in 2002 Pay Agent's Report.

[49] 2002 Pay Agent's Report, cover letter.

[50] Ibid., p. 24.

[51] Ibid., cover letter.

implemented and that those focused on assigning GS grades to randomly selected survey jobs and to randomly selected survey jobs with supervisory duties were to be introduced in December 2003. According to the Pay Agent, it looks "forward to reviewing the results of NCS data delivered next year, when we will have 2 years of modeled data to consider" and "[t]he last two improvements in NCS surveys will begin to affect data delivered in 2005." The Pay Agent encouraged BLS and Pay Agent staff to expedite completion of the remaining two improvements.[52]

Once both the annual and locality pay percentage amounts are determined, the actual pay rates are calculated as follows. First, the basic General Schedule (GS) is increased by the annual adjustment percentage, resulting in a new GS schedule. These new basic GS rates are then increased by the locality payment. The resulting pay rates (annual + locality) are compared with the 2003 pay rates (annual + locality) to derive the net increase in pay for 2004.

The President's Recommendation

President George W. Bush issued his administration's FY2004 budget on February 3, 2003. The budget proposed a 2.0% federal civilian pay adjustment, but did not state how the increase would be allocated between the annual and locality adjustments required by FEPCA in January 2004.[53] The statutory annual pay adjustment required in January 2004 is 2.7%. If the President wants to change the required rate of the annual adjustment, he has to submit an alternative plan for the annual adjustment to Congress by September 1, 2003. If he wants to change the amount of locality-based comparability payments, he has to submit an alternative plan for the locality payments to Congress by November 30, 2003. He may include his locality pay authorization in the alternative plan for the annual adjustment.

The President issued an alternative plan to change the amount of the annual adjustment and locality-based comparability payments on August 27, 2003. The plan called for a 2.0% pay adjustment in January 2004 allocated as 1.5% annual and 0.5% locality pay. The cost of the 2.0% adjustment would be about $2 billion dollars, according to OMB and OPM. The alternative plan states that implementation of the annual and locality pay adjustments as required by FEPCA would have cost about $13 billion. Executive Order 13322, issued by the President on December 30, 2003, implemented the alternative plan.[54]

In the plan, the President states that the pay adjustment should be complemented by a $500 million dollar Human Capital Performance Fund which would reward the highest-performing and most valuable employees in an agency. The fund is

[52] Ibid, p. 28.

[53] Footnote 5 in Table 2-1 in U.S. Executive Office of the President, Office of Management and Budget, *Budget of the United States Government Fiscal Year 2004* (Washington: GPO, 2003), p. 26.

[54] U.S. President (Bush), "Adjustments of Certain Rates of Pay," Executive Order 13322, *Federal Register*, vol. 69, Jan. 2, 2004, pp. 231-232.

authorized by Section 1129 of P.L. 108-136, the National Defense Authorization Act for FY2004 (H.R. 1588), enacted on November 24, 2003.[55] (The authorization was Section 1111 of H.R. 1588, as passed by the House of Representatives, amended, on May 22, 2003.)[56]

The House Committee on Appropriations recommended an appropriation of $2.5 million ($497,500,000 less than the President's request) for the Human Capital Performance Fund in H.R. 2989, the Departments of Transportation and Treasury and Independent Agencies Appropriations Bill, 2004, as reported to the House on July 30, 2003, and passed by the House on September 9, 2003. Obligation of the funding was contingent upon enactment of the legislation authorizing the creation of the fund within OPM. No funds would be available until the OPM Director notifies the relevant subcommittees of jurisdiction of the Committees on Appropriations of the approval of a performance pay plan for an agency and the prior approval of the subcommittees has been attained. The committee directs OPM "to report annually to the Committees on Appropriations on the performance pay plans that have been approved, and the amounts that have been obligated or transferred."[57] The Senate Committee on Appropriations, in reporting its version of the Transportation and Treasury appropriations bill (S. 1589) on September 8, 2003, did not recommend an appropriation for the fund. "The Committee believes that an initiative of this type should be budgeted and administered within each individual agency," according to the report accompanying the bill.[58] Funding was not provided in H.R. 2989 as passed by the Senate, amended, on October 23, 2003.

As the first session of the 108th Congress was drawing to a close, H.R. 2989 was incorporated in H.R. 2673, the Consolidated Appropriations Act for FY2004. The conference agreement for H.R. 2673, as agreed to by the House of Representatives and the Senate, provides an appropriation of $1 million for the Human Capital Performance Fund. Obligation or transfer of the funding was contingent upon the enactment of the legislation to establish the fund within OPM. Funds shall not be obligated or transferred to any federal agency until the OPM director notifies and receives prior approval from the relevant subcommittees of jurisdiction of the Committees on Appropriations of OPM approval of an agency's performance pay plan. Such amounts as determined by the OPM Director may be transferred to

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[55] 117 Stat. 1641-1645.

[56] See CRS Report RL31954, *Civil Service Reform: Analysis of the National Defense Authorization Act for FY2004*.

[57] U.S. Congress, House Committee on Appropriations, *Departments of Transportation and Treasury and Independent Agencies Appropriations Bill, 2004*, report to accompany H.R. 2989, 108th Cong., 1st sess., H.Rept. 108-243 (Washington: GPO, 2003), p. 200. (Hereafter referred to as H.Rept. 108-243.)

[58] U.S. Congress, Senate Committee on Appropriations, *Transportation, Treasury and General Government Appropriations Bill, 2004*, report to accompany S. 1589, 108th Cong., 1st sess., S.Rept. 108-146 (Washington: GPO, 2003), p. 165. (Hereafter referred to as S.Rept. 108-146.)

federal agencies to carry out the purposes of the fund.[59] This provision was enacted in P.L. 108-199 on January 23, 2004.[60]

In his alternative plan, the President also said that, "since any pay raise above the 2 percent I have proposed would likely by unfunded, agencies would have to absorb the additional cost and could have to freeze hiring in order to pay the higher rates." He noted that the quit rates for General Schedule employees are at an all-time low of 1.7% per year.[61]

Federal employee union representatives expressed discouragement about the 2.0% pay adjustment.[62]

Alternatives to the General Schedule

The National Commission on the Public Service, in its January 2003 report, "recommend[ed] that the General Schedule classification system be abolished." The commission mentioned the substantial "resources and effort needed to maintain the General Schedule system" and the "constant tinkering [needed] to define equal work so that it can ensure equal pay" as reasons behind the proposal. "As a default system," the commission suggested

> a broad-band system under which the 15 pay grades and salary ranges would be consolidated into six to eight broad bands with relatively wide salary ranges. Managers would be able to determine individual pay based on competence and performance.

The commission also acknowledged the possibility that "other agencies might adopt systems with an entirely different form."[63]

Currently, pay banding systems are being implemented at several agencies, including the Federal Aviation Administration, the Transportation Security Administration, and the Internal Revenue Service. Pay parity provisions that "allow the SEC [Securities and Exchange Commission] to raise salaries for certain employees to levels comparable to the salaries of federal bank examiners" are included in P.L. 107-123, enacted on January 16, 2002.[64] New human resources management (HRM) systems for civilian employees of the Departments of Homeland

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[59] H.Rept. 108-401, p. 339, 1026.

[60] 118 Stat. 339.

[61] U.S. President (Bush), "Text of a Letter from the President to the Speaker of the House of Representatives and the President of the Senate," Aug. 27, 2003.

[62] Tanya N. Ballard, "Unions, House Leader Blast Bush's Proposed 2 Percent Federal Pay Raise," Aug. 28, 2003. Available on the Internet at [http://www.govexec.com].

[63] National Commission on the Public Service, *Urgent Business for America; Revitalizing the Federal Government for the 21st Century* (Washington: The Commission, 2003), p. 27.

[64] CRS Report RS20204, *Securities Fees and SEC Pay Parity*, by (name redacted).

Security and Defense are authorized in P.L. 107-296, the Homeland Security Act of 2002, enacted on November 25, 2002, and P.L. 108-136, the National Defense Authorization Act for FY2004, enacted on November 24, 2003.[65] Changes to the pay setting systems at both agencies are expected to include broad pay bands.

Congressional Recommendations and Considerations

The size of the federal white-collar pay adjustment is considered annually by Congress, which may legislate a pay adjustment that is different from the adjustment recommended by the President in the budget or that might be authorized by the President in an alternative plan. The January 1999 (3.6%), January 2000 (4.8%), January 2002 (4.6%), and January 2003 (4.1%) overall pay adjustment amounts were set by Congress.[66]

Concurrent resolutions introduced in the Senate by Senator Paul Sarbanes (S.Con.Res. 1) on January 9, 2003 and in the House of Representatives by Representative Steny Hoyer (H.Con.Res. 19) on January 28, 2003, expressed the sense of the Congress that there should be parity between the pay adjustments for the uniformed military and federal civilian employees. The resolutions noted the longstanding policy of parity between both the military and civilian pay increases. Such resolutions are effective only in the chamber in which they are proposed, express nonbinding opinions on policies, and do not require the President's signature.

A number of Members of Congress from the Washington, DC, metropolitan area reportedly wrote letters to President Bush and Representatives Jim Nussle and John Spratt, Jr., Chairman and Ranking Member, respectively, of the House Committee on the Budget, on February 27, 2003, urging them to support equal pay raises for federal civilian employees and the uniformed military.[67] The FY2004 budget proposes an average 4.1% pay increase for the military and 2.0% for civilian employees.[68]

Concurrent Budget Resolutions

The Concurrent Resolution on the Budget for FY2004 (H.Con.Res. 95) was agreed to by the House of Representatives by a 215 to 212 vote (Roll No. 82) on

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[65] 116 Stat. 2229-2235 and 117 Stat. 1621-1633.

[66] P.L. 105-277, P.L. 106-58, P.L. 107- 67, and P.L. 108-7, respectively, provided the 3.6%, 4.8%, 4.6%, and 4.1% pay adjustments, respectively, but reserved for the President the decision as to how the increases would be allocated between the annual and locality pay adjustments.

[67] Stephen Barr, "Washington Area Lawmakers Back a New Appeal for Pay Parity," *The Washington Post*, Feb. 28, 2003, p. B2.

[68] U.S. Executive Office of the President, Office of Management and Budget, *Budget of the United States Government Fiscal Year 2004* (Washington: GPO, 2003), p. 87. For the uniformed military pay adjustments, see CRS Issue Brief IB10089, *Military Pay and Benefits: Key Questions and Answers*, by (name redacted).

March 21, 2003. The House Committee on the Budget report that accompanied the bill included language stating that "[t]he committee believes that rates of compensation for civilian employees of the United States should be adjusted at the same time, and in the same proportion, as are rates of compensation for members of the uniformed services."[69]

The Senate version of the Concurrent Resolution on the Budget (S.Con.Res. 23), as reported (without written report) from the Senate Committee on the Budget on March 14, 2003, included the exact same language as the House at Section 301 as a Sense of the Senate provision.

The Concurrent Budget Resolution does not become law, but provides the framework within which Congress subsequently considers spending legislation. Any congressional recommendation on the civilian federal pay adjustment has usually been included in the Treasury, Postal Service, and General Government Appropriations bill, which as of the 108th Congress has been combined with the Department of Transportation Appropriations bill to be the Transportation, Treasury, Postal Service, and General Government Appropriations bill.

Departments of Transportation and Treasury and Independent Agencies Appropriations Bill, 2004

The Departments of Transportation and Treasury and Independent Agencies Appropriations Bill, 2004, as reported to the House of Representatives (H.R. 2989) would provide a 4.1% pay adjustment for federal civilian employees, including those in the Departments of Defense and Homeland Security. The bill did not recommend how the increase should be divided between the annual and locality pay adjustments. The House Subcommittee on Transportation, Treasury, and Independent Agencies marked up H.R. 2989 on July 11, 2003, and by voice vote approved the bill, as amended, for consideration by the full committee. On July 24, 2003, the House Committee on Appropriations marked up H.R. 2989 and by voice vote ordered it to be reported favorably to the House of Representatives. During the markup, the committee agreed to an amendment offered by Representative Steny Hoyer, joined by Representatives James Moran and Frank Wolf, to provide the 4.1% pay adjustment. H.R. 2989 was reported (H.Rept. 108-243) to the House by the House Appropriations Committee on July 30, 2003.[70] Section 740(a) includes the pay adjustment language. Section 602 would provide that the pay increase would be absorbed within the levels appropriated in the act or in previous appropriations acts. The bill passed the House on September 9, 2003, on a 381-39 (Roll No. 489) vote.

The Bush Administration opposes the 4.1% pay adjustment for federal civilian employees. The Administration explained its views in comments submitted to the

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[69] U.S. Congress, House Committee on the Budget, *Concurrent Resolution on the Budget, FY2004*, report to accompany H.Con.Res. 95, 108th Cong., 1st sess., H.Rept. 108-37 (Washington: GPO, 2003), p. 183.

[70] H.Rept. 108-243, p. 206.

House of Representatives. According to a Statement of Administration Policy on H.R. 1588, the National Defense Authorization Act for FY2004:

> Civilian and military pay linkage is not necessary. The Administration proposed a 2.0% pay raise for all civilian employees, which is very generous at this time when many in the private sector are unemployed or facing shrinking paychecks. The Administration has proposed a Human Capital Performance Fund to finance higher pay raises for high-performing federal employees. DOD [Department of Defense] has different recruiting and retention needs for each group, and recent civilian pay raises have exceeded the rate of inflation. The Administration is particularly concerned that these additional civilian pay increases are unfunded (costing DOD about $660 million, and Government-wide about $2.1 billion if so applied).[71]

The Statement of Administration Policy on H.R. 2989, Departments of Transportation and Treasury and Independent Agencies Appropriations Bill, FY2004, expresses extreme disappointment that the bill does not fund the President's request for a $500 million Human Capital Performance Fund. It also states that the 4.1% pay adjustment included in the bill

> provides a percentage increase that exceeds inflation, the statutory base pay increase, and even exceeds the average increase in private-sector pay, measured by the Employment Cost Index. The higher pay raise ... does not address any particular issue related to Federal employee turnover. According to a recent survey of Federal employees, a majority are satisfied with their pay rate and the 'quit rate' (the rate at which Federal employees leave the government voluntarily) among Federal employees is at an all-time low of 1.7 percent per year, well below the overall average quit rate in private enterprise.[72]

The statement says that providing a 4.1% pay adjustment for civilian employees in the Departments of Defense and Homeland Security would limit the flexibility of those agencies as they design new personnel and pay systems.

S. 1589, the Senate version of the Transportation/Treasury appropriations bill, as forwarded to the Senate Committee on Appropriations by its Subcommittee on Transportation, Treasury and General Government on September 3, 2003, by voice vote, would provide a 4.1% pay adjustment. The full committee approved the bill on a 29-0 roll call vote on September 4, 2003, and reported the measure to the Senate

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[71] U.S. Executive Office of the President, Office of Management and Budget, *Statement of Administration Policy, H.R. 1588 — National Defense Authorization Act for Fiscal Year 2004 (House)*, May 22, 2003, pp. 3-4.

[72] U.S. Executive Office of the President, Office of Management and Budget, *Statement of Administration Policy, H.R. 2989 — Departments of Transportation and Treasury and Independent Agencies Appropriations Bill, FY2004 (House)*, Sept. 4, 2003, pp. 1-2. It should be noted that neither the annual adjustment nor the locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990, P.L. 101-509, are based on the inflation rate, the federal government's quit rate, or employee satisfaction with their pay rate.

(S.Rept. 108-146) on September 8, 2003.[73] Section 636 would provide the 4.1% adjustment. Section 502 would provide that the pay increase would be absorbed within the levels appropriated in the act or in previous appropriations acts. When the Senate considered the Transportation and Treasury appropriations bill on October 23, 2003, Senator Richard Shelby, for himself and Senator Patty Murray, offered an amendment (S.Amdt. 1899) to the House version of the appropriations bill, H.R. 2989, which was agreed to by voice vote. Under the amendment, Section 636 would provide a 4.1% pay adjustment for federal civilian employees, including those in the Departments of Defense and Homeland Security. Section 502 would provide that the pay increase would be absorbed within the levels appropriated in the act or in previous appropriations acts. The Senate passed H.R. 2989, amended, on a 91 to 3 vote (No. 410) on October 23, 2003.

At the Federal Salary Council's October 7, 2003, meeting, the council's methodology working group recommended that if the January 2004 pay adjustment were to be 4.1%, it be allocated as a 2.7% annual pay adjustment and a 1.4% locality pay adjustment. According to OPM, the net (annual plus locality) pay adjustment in the Washington, DC, pay area under this allocation would be 4.42%.[74] (The net pay adjustment was initially projected at 4.41%.)

As the first session of the 108th Congress was drawing to a close, H.R. 2989 was incorporated in H.R. 2673, the Consolidated Appropriations Act for FY2004. The House of Representatives agreed to the conference report accompanying H.R. 2673 on December 8, 2003, and the Senate agreed to the conference report on a 65-28 (No. 3) vote on January 22, 2004. The conference agreement, at Section 640(a), provides a 4.1% pay adjustment for federal civilian employees, including those in the Departments of Defense and Homeland Security. The adjustment is effective as of the first day of the first applicable pay period beginning on or after January 1, 2004. Section 502 of the conference agreement requires the pay raises to be funded within appropriated levels.[75] The conferees also direct OPM to consider implementing the Federal Salary Council's recommendation to include Franklin, Hampshire, and Hampden Counties in Massachusetts in the Hartford, CT pay area.[76] President Bush signed H.R. 2673 on January 23, 2004, and it became P.L. 108-199. The pay provisions are at Section 640(a) and Section 502 of the law.[77]

The Consolidated Appropriations Act provides an additional 2.1% pay adjustment to federal civilian employees. On March 3, 2004, President Bush issued Executive Order 13332, which allocated the additional amount as 1.2% annual and 0.9% locality.[78] According to OPM, the cost of the 4.1% (2.7% annual and 1.4%

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[73] S.Rept. 108-146, p. 174.

[74] Telephone conversation with Office of Personnel Management staff, February 4, 2004.

[75] H.Rept. 108-401, pp. 340, 359, 1027, and 1032.

[76] H.Rept. 108-401, p. 1026.

[77] 118 Stat. 359 and 118 Stat. 341.

[78] U.S. President (Bush), "Further Adjustment of Certain Rates of Pay," Executive Order (continued...)

locality) pay adjustment is about $4.1 billion dollars. OPM issued revised salary tables for 2004 on its website the next day; these are available on the Internet at [http://www.opm.gov]. **Table 1** shows the recommended locality payments, the authorized locality payments, and the net annual and locality pay increases.

The Federal Salary Council and Pay Agent recommendations for the January 2005 pay adjustments are discussed in CRS Report RL32355, *Federal White-Collar Pay: FY2005 Salary Adjustments*.

With regard to the federal white-collar pay-setting system, in addition to considering the recommendations of the National Commission on the Public Service, Congress could examine ways to amend FEPCA, which has never been implemented as enacted. As discussed above (under locality-based comparability payments), FEPCA provides that the disparity between non-federal and federal salaries is to be reduced to 5%. The overall average percentage pay gaps for each of the 32 discrete pay areas are adjusted to this level to derive a target pay gap for each pay area. The law provided that, beginning in 1994, an increasing percentage of the target pay gaps was to be closed each year. By January 2002, 100% of a pay area's target pay gap was to be closed. A much smaller percentage of the target pay gaps has been closed each year, and as a result, the Federal Salary Council and the Pay Agent report that the pay disparity between non-federal and federal salaries, rather than being 5%, averages 25.73% for 2004.

The methodology for setting federal pay adjustments has been questioned since FEPCA's enactment. In 1993, a draft memorandum from the Pay Agent to the Federal Salary Council concluded that "the current methodology is flawed because the completeness of the data varies greatly among survey areas, because the gaps are not credible in light of other labor market indicators, and because the single percentage adjustment for all jobs in a locality is a poor reflection of market realities."[79] Despite these concerns, no proposals were made to change FEPCA. The methodology has remained a concern because the Bureau of Labor Statistics surveys documenting non-federal rates of pay were not approved for use in determining the 2000, 2001, 2002, and 2003 locality payments. Previous survey data from 1995 and 1996 have had to be aged to make them usable for purposes of the locality payments in these years. In P.L. 106-554, the Consolidated Appropriations Act, 2001, Congress noted this situation and directed the President's Pay Agent to prepare a report for the Senate and House Committees on Appropriations, the Senate Committee on Governmental Affairs, and the House Committee on Government Reform on the methodological concerns.[80] The Pay Agent reported to Congress on May 15, 2001 and reiterated the methodological concerns which are stated above

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[78] (...continued)
13332, *Federal Register*, vol. 69, Mar. 8, 2004, pp. 10889-10900.

[79] Draft memorandum from the President's Pay Agent to Anthony F. Ingrassia, Acting Chairman, Federal Salary Council [March 1993].

[80] For a discussion of this provision, see CRS Report RL30359, *Federal Pay: FY 2001 Salary Adjustments*, by (name redacted), pp. 12-14.

under the methodology section.[81] Improvements to the survey methodology are underway as discussed above.

The Office of Personnel Management issued a white paper on compensation in April 2002, which reviewed current policies and the need for more flexibility in setting General Schedule pay, but did not include any recommendations.[82] In a November 2002 study, the Congressional Budget Office (CBO) "compared the salaries of federal General Schedule employees with the pay[83] of nonfederal employees in similar jobs."[84] The comparison yielded the following results:

> [F]ederal employees in selected professional and administrative occupations tended to hold jobs that paid less than comparable jobs in private firms. For about 85 percent of those federal employees their pay lagged behind private salaries by more than 20 percent. By contrast, about 30 percent of federal employees in selected technical and clerical occupations held jobs with salaries above those paid by private firms. In general, jobs in technical and clerical occupations showed much smaller differences in pay between federal and private workers. About three-quarters of federal employees in this analysis held jobs in those occupations with salaries that were within 10 percent, plus or minus, of private levels.[85]

Acknowledging the limitations presented by comparing only selected jobs and localities, CBO concluded that the results nevertheless "reinforce a long-standing concern about the federal pay system: it allows no variation in pay raises by occupation." According to CBO, this presents

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[81] [U.S. President's Pay Agent], *Report on Improving General Schedule Locality Pay Surveys* (Washington: May 2001).

[82] U.S. Office of Personnel Management, *A White Paper; A Fresh Start for Federal Pay: The Case for Modernization* (Washington: OPM, April 2002).

[83] For an analysis of the pay of executives in the federal and nonprofit sectors, see U.S. Congressional Budget Office, *Comparing the Pay of Federal and Nonprofit Executives: An Update* (Washington: CBO, 2003). R. Mark Musell is the author of the report.

[84] U.S. Congressional Budget Office, *Measuring Differences Between Federal and Private Pay* (Washington: CBO, 2002). R. Mark Musell is the author of the report. The report on pp. 5-6 includes the following explanation of the methodology for the pay comparison: "From the list of occupations that BLS [Bureau of Labor Statistics] surveyed, CBO selected specific jobs with a large number of federal employees, conducting 253 separate comparisons involving 18 jobs and 17 localities .... The federal salary for each job and geographic area came from the Office of Personnel Management. In total about 50,000 federal employees work in the jobs and areas covered by CBO's analysis. The Hay Group, a personnel management consultant, provided the private-sector salaries; data were drawn from about 500 establishments, mostly in transportation, chemical, metal, and other goods-producing industries .... Little information from state and local governments was included. The Hay Group provided private salaries for jobs that matched corresponding federal employment on the basis of evaluations of the actual work that employees performed. By contrast, the government's pay comparisons use nonfederal salary data for jobs that match descriptions of federal work .... CBO's approach consider[s] the actual work that is performed."

[85] Ibid., pp. 7-8.

> the potential result that employees in professional and administrative occupations may receive smaller pay raises than those needed to match private salaries for similar jobs, and employees in technical and clerical occupations may receive pay raises that are higher than those needed to match salaries in the private sector. Thus, even if the current system was fully implemented as envisioned in FEPCA, it would fail in its aim to provide federal pay that was comparable to pay for nonfederal jobs. Granting the same percentage raise to all workers in an area will result in above-market salaries for some occupational groups and below-market salaries for others. Moreover, the jobs that show the greatest pay disadvantage for federal workers make up an increasing share of the federal workforce. From 1985 through 2000, for example, federal employment in professional and administrative occupations rose from 41 percent to 56 percent of total federal civilian employment.[86]

The cost of fully implementing FEPCA is another concern. The Pay Agent estimated that the January 2004 locality-based comparability payments would cost $8.830 billion if the full amount necessary to reduce the pay disparity of the target gap to 5%, as required by FEPCA, were provided in January 2004.

Employee Views

The American Federation of Government Employees (AFGE) and the National Treasury Employees Union (NTEU) endorse pay parity between federal civilian employees and the uniformed military. The unions criticized the President's proposal on federal pay as inadequate and disregarding of FEPCA.[87] According to AFGE,

> Bush's budget issues his standard rationale for failing to uphold the Federal Employees Pay Comparability Act (FEPCA) ... problems with the Department of Labor's methodology in determining the comparability of federal pay with the private sector. Yet nowhere does he ever describe his methodological problems. I have asked repeatedly — what changes in methodology would you like to implement so that FEPCA can go forward? Previously, the methodological problems appeared to be related to the locality component of federal pay, which Bush has tried to eliminate for the past two years. Yet this year, his methodological problems seem to have spread to the Employment Cost Index (ECI) component.[88]

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[86] Ibid., pp. 9-10.

[87] See The American Federation of Government Employees, AFL-CIO, "Bush's Budget Proposals Brazenly Ignore the Law," Feb. 4, 2003. Available on the Internet at [http://www.afge.org], choose Press Releases, visited Feb. 28, 2003. Hereafter referred to as AFGE Views. National Treasury Employees Union, "Bush Budget Proposal for 2004 A Disappointment ...," Feb. 3, 2003. Available on the Internet at [http://www.nteu.org], choose Press Releases, visited Feb. 28, 2003.

[88] AFGE Views.

Table 1. January 2004 Recommended Locality Payments, Authorized Locality Payments, and Net Annual and Locality Pay Increases

Pay Areas	2004 Recommended Locality Payments	2004 Authorized Locality Payments	Net Increase, Annual and Locality Pay
Atlanta MSA	26.79%	12.61%	4.33%
Boston-Worcester-Lawrence CMSA, all of Bristol County, MA, and the State of Rhode Island	30.25%	16.99%	4.48%
Chicago-Gary-Kenosha CMSA	32.05%	18.26%	4.57%
Cincinnati-Hamilton CMSA	24.87%	15.07%	4.18%
Cleveland-Akron CMSA	24.90%	13.14%	4.21%
Columbus, OH MSA	20.70%	13.14%	3.95%
Dallas-Fort Worth CMSA	26.62%	13.85%	4.30%
Dayton-Springfield MSA	20.67%	12.03%	3.96%
Denver-Boulder-Greeley CMSA	28.71%	16.66%	4.39%
Detroit-Ann Arbor-Flint CMSA	31.26%	18.32%	4.51%
Hartford MSA and New London County	35.09%	17.87%	4.75%
Houston-Galveston-Brazoria CMSA	39.70%	23.14%	4.92%
Huntsville MSA	21.70%	11.49%	4.03%
Indianapolis MSA	19.45%	11.11%	3.90%
Kansas City MSA	19.45%	11.54%	3.89%
Los Angeles-Riverside-Orange County CMSA and Santa Barbara County and Edwards Air Force Base	35.58%	20.05%	4.74%
Miami-Fort Lauderdale CMSA	26.36%	15.54%	4.26%
Milwaukee-Racine CMSA	21.98%	12.64%	4.03%
Minneapolis-St. Paul MSA	29.06%	14.75%	4.44%
New York-Northern New Jersey-Long Island CMSA	37.40%	19.29%	4.86%
Orlando MSA	19.45%	10.93%	3.90%
Philadelphia-Wilmington-Atlantic City CMSA	28.76%	15.32%	4.41%
Pittsburgh MSA	21.37%	11.92%	4.00%
Portland, OR-Salem, WA CMSA	26.23%	14.69%	4.26%
Richmond-Petersburg MSA	20.93%	12.13%	3.98%
Sacramento-Yolo CMSA	28.68%	15.18%	4.41%
St. Louis MSA	19.45%	11.27%	3.90%
San Diego MSA	31.79%	16.16%	4.58%
San Francisco-Oakland-San Jose CMSA and Monterey County	47.64%	24.21%	5.35%
Seattle-Tacoma-Bremerton CMSA	30.55%	15.12%	4.53%
Washington, DC-Baltimore, MD CMSA and St. Mary's County	28.78%	14.63%	4.42%
Rest of the U.S.	19.45%	10.90%	3.90%
Average	25.73%	13.81%	4.10%

Source: Memorandum for the President's Pay Agent from the Federal Salary Council, *Level of Comparability Payments for January 2004 and Other Matters Pertaining to the Locality Pay Program* (Washington: Oct. 17, 2002), Attachment 1; and *Report on Locality-Based Comparability Payments for the General Schedule, Annual Report* *of the President's Pay Agent* (Washington: 2002), p. 21. The Pay Agent stated: "This report shows the adjustments we would recommend for January 2004 if the methodology and rates required by current law were to be implemented. Given the current national emergency situation and the consequent slowdown in the American economy, however, we believe it would be unwise to allow the locality pay increases ... to take effect in January 2004." U.S. President (Bush), "Adjustments of Certain Rates of Pay," Executive Order 13322, *Federal Register*, vol. 69, Jan. 2, 2004, pp. 231-232. The Executive Order provides a 1.5% annual pay adjustment and a 0.5% locality-based comparability payment. U.S. President (Bush), "Further Adjustment of Certain Rates of Pay," Executive Order 13332, *Federal Register*, vol. 69, Mar. 8, 2004, pp. 10889-10900. The Executive Order provides an additional 2.1% pay adjustment, allocated as an average 1.2% annual adjustment and 0.9% locality-based comparability payment.

Notes: The actual pay rates are calculated as follows. First, the basic General Schedule (GS) is increased by the annual adjustment percentage, resulting in a new GS schedule. These new basic GS rates are then increased by the locality payment. The resulting pay rates (annual + locality) are compared with the 2003 pay rates (annual + locality) to derive the net increase in pay for 2004. Salary tables for 2004 are available on the Internet at [http://www.opm.gov]. MSA refers to a Metropolitan Statistical Area. CMSA refers to a Consolidated Metropolitan Statistical Area. The component parts of each pay area are described at 5 CFR 531.603(b).