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

Barbara L. Schwemle, Analyst in American National Government

January 14, 2009

Abstract. 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 - 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 2008, federal officials received a 2.5% salary increase. The pay adjustment is projected to be 2.8% in January 2009. 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. P.L. 110-329, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (H.R. 2638), enacted on September 30, 2008, which provides funds for government operations from October 1, 2008, through March 6, 2009, does not include the authorization.

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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 2009, legislative and executive officials received a 2.8% salary increase. Justices and judges have not received the pay adjustment because Congress has not authorized the salary increase as required by law. 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. P.L. 110-329, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (H.R. 2638), enacted on September 30, 2008, which provides funds for government operations from October 1, 2008, through March 6, 2009, does not include the authorization.

The 110th Congress considered, but did not enact, legislation that would have adjusted the pay of federal justices and judges. The Federal Judicial Salary Restoration Act of 2008, S. 1638, as reported, amended, and H.R. 3753, as ordered to be reported, amended, would have authorized pay increases of 28.7%-28.8% over January 2008 salaries to district court judges, courts of appeals judges, Court of International Trade judges, Associate Justices of the Supreme Court, and the Chief Justice of the United States. The bills also would have repealed the provision of law that requires Congress to specifically authorize any salary increases for justices and judges and amended current law to provide that justices and judges would receive the same percentage pay adjustment as is authorized each year for base pay under the General Schedule. S. 2353, the Fair Judicial Compensation Act of 2007, would have authorized a 16.5% pay increase over January 2008 salaries to district court judges, courts of appeals judges, Court of International Trade judges, Associate Justices, and the Chief Justice. The House Committee on the Judiciary ordered H.R. 3753 to be reported, as amended, on a 28 to 5 vote on December 12, 2007. During a December 13, 2007, markup, the Senate Committee on the Judiciary, by voice vote, agreed to an amendment that was offered by Senator Dianne Feinstein to amend S. 1638 to provide the same compensation provisions as H.R. 3753. The committee resumed consideration of S. 1638 on January 31, 2008, and ordered the bill to be reported, as amended, on a 10 to 7 vote the same day. The committee reported S. 1638 (S.Rept. 110-277) on April 1, 2008. S.Con.Res. 70, the Concurrent Resolution on the Budget for FY2009, as agreed to by the House and Senate, included a provision at Section 229 on a deficit-neutral reserve fund for judicial pay.

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 (GS) positions. This report will be updated as events dictate.

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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 RL30014, *Salaries of Members of Congress: Current Procedures and Recent Adjustments*, by Paul Dwyer (available from CRS). See also CRS Report RS20388, *Salary Linkage: Members of Congress and Certain Federal Executive and Judicial Officials*, by Barbara L. Schwemle.

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. For FY2009, S. 3260, the Financial Services and General Government Appropriations Act, as reported (S.Rept. 110-417) by the Senate Committee on Appropriations on July 14, 2008, included the authorization at Section 310. P.L. 110-329, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (122 Stat. 3574, H.R. 2638), enacted on September 30, 2008, which provides funds for government operations from October 1, 2008, through March 6, 2009, does not include the authorization.

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 individuals 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 Justices and judges have not received the pay adjustment because Congress has not authorized the salary increase as required by law.

Table 1, below, shows the salaries for federal officials from January 2004 to January 2009.

**Table 1. Legislative, Executive, and Judicial Salaries,
January 2004 to January 2009**

Position	January 2004	January 2005	January 2006	January 2007	January 2008	January 2009
Legislative Branch						
Vice President of the United States (President of the Senate)	\$203,000	\$208,100	\$212,100	\$215,700	\$221,100	\$227,300
Speaker of the House of Representatives	203,000	208,100	212,100	212,100	217,400	223,500
President Pro Tempore of the Senate	175,700	180,100	183,500	183,500	188,100	193,400
Majority and Minority Leaders—House and Senate	175,700	180,100	183,500	183,500	188,100	193,400
Senators, Representatives,	158,100	162,100	165,200	165,200	169,300	174,000

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%.

Position	January 2004	January 2005	January 2006	January 2007	January 2008	January 2009
Resident Commissioner of Puerto Rico, and Delegates						
Comptroller General of the United States	158,100	162,100	165,200	168,000	172,200	177,000
Deputy Comptroller General	145,600	149,200	152,000	154,600	158,500	162,900
Librarian of Congress	158,100	162,100	165,200	168,000	172,200	177,000
Deputy Librarian	145,600	149,200	152,000	154,600	158,500	162,900
Register of Copyrights	145,600	149,200	152,000	154,600	158,500	162,900
Director, Congressional Research Service	145,600	149,200	152,000	154,600	158,500	162,900
Public Printer	158,100	162,100	165,200	168,000	172,200	177,000
Deputy Public Printer	145,600	149,200	152,000	154,600	158,500	162,900
Director, Congressional Budget Office	156,600	160,600	Deputy Director serving as Acting Director on Deputy Salary	163,700	167,800	Deputy Director serving as Acting Director on Deputy Salary
Deputy Director, Congressional Budget Office	155,600	159,600	162,700	162,700	166,800	166,800
Architect of the Capitol	156,600	160,600	163,700	163,700	167,800	167,800
Executive Branch						
President of the United States	\$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
Executive Schedule (EX) Level I: Cabinet-level officials	175,700	180,100	183,500	186,600	191,300	196,700
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
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
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
EX Level V: Administrators, commissioners, directors,	128,200	131,400	133,900	136,200	139,600	143,500

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Position	January 2004	January 2005	January 2006	January 2007	January 2008	January 2009
and members of boards, commissions, or units of agencies						
Judicial Branch						
Chief Justice of the United States	\$203,000	\$208,100	\$212,100	\$212,100	\$217,400	\$217,400
Associate Justices of the Supreme Court	194,300	199,200	203,000	203,000	208,100	208,100
Judges, U.S. Courts of Appeal	167,600	171,800	175,100	175,100	179,500	179,500
Judges, U.S. Court of Appeals for the Armed Services	167,600	171,800	175,100	175,100	179,500	179,500
Judges, U.S. District Courts	158,100	162,100	165,200	165,200	169,300	169,300
Judges, United States Court of Federal Claims	158,100	162,100	165,200	165,200	169,300	169,300
Judges, United States Court of International Trade	158,100	162,100	165,200	165,200	169,300	169,300
Judges, Tax Court of the United States	158,100	162,100	165,200	165,200	169,300	169,300
Judges, U.S. Court of Appeals for Veterans Claims	158,100	162,100	165,200	165,200	169,300	169,300
Bankruptcy Judges	145,500	149,132	151,984	151,984	155,756	155,756
Magistrate Judges	145,500	149,132	151,984	151,984	155,756	155,756
Director, Administrative Office of U.S. Courts	158,100	162,100	165,200	165,200	169,300	169,300
Deputy Director, Administrative Office of U.S. Courts	145,500	149,132	151,984	151,984	155,756	155,756
Director, Federal Judicial Center	158,100	162,100	165,200	165,200	169,300	169,300
Deputy Director, Federal Judicial Center	145,500	149,132	151,984	151,984	155,756	155,756
Administrative Assistant 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 169,300
Circuit Executives	145,600	up to 162,100	up to 165,200	up to 165,200	up to 169,300	up to 169,300

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, Feb. 15, 2007, 121 Stat. 8, at 12; 2 U.S.C. §31 note.)

The salaries for the Director and Deputy Director of the Congressional Budget Office (CBO) also were not adjusted in January 2007, 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. As of this writing, neither the Senate nor House pay orders for 2009 have been issued, therefore, the 2008 salary remains in effect. (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 January 12, 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 will be the new Director of CBO, but his tenure has not yet begun.

The salary for the Architect of the Capitol also was not adjusted in January 2007, 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. As of this writing, neither the Senate nor House pay orders for 2009 have been issued, therefore, the 2008 salary remains in effect.

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, Sept. 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.

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, Nov. 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. This provision is under study by the Judicial Conference Committee on Judicial Resources.

Justices and judges did not receive a pay adjustment in 2007 because it was not authorized by Congress. 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. Justices and judges have not received the 2.8% pay adjustment authorized for January 2009, because Congress has not authorized the salary increase as required by law.

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.

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Judicial Pay Bills in the 110th Congress¹⁰

The Federal Judicial Salary Restoration Act of 2008, S. 1638, as reported, amended, by the Senate Committee on the Judiciary, and H.R. 3753, as ordered to be reported, amended, by the House Committee on the Judiciary, would have authorized a 28.7%-28.8% pay increase over January 2008 salaries to federal justices and judges.¹¹ S. 2353, the Fair Judicial Compensation Act of 2007, introduced by Senator Richard Durbin on November 14, 2007, would have authorized a 16.5% pay increase over January 2008 salaries.

Both S. 1638 and H.R. 3753 would have repealed 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 and amended 28 U.S.C. §461(a) to provide that justices and judges would have received the same percentage pay adjustment as is authorized each year for base pay under the General Schedule. The Congressional Budget Office (CBO) prepared cost estimates for H.R. 3753, as ordered to be reported, on February 1, 2008, and for S. 1638, as reported, on March 28, 2008. According to the estimates, the salary increases and annual cost of living adjustments for judges appointed under Article III of the Constitution and bankruptcy judges would have

increase[d] direct spending by \$556 million over the 2009-2013 period and by \$1.4 billion over the 2009-2018 period.¹²

All the bills would have authorized to be appropriated such sums as necessary to carry out the act. S. 1638 and H.R. 3753 would have become effective upon enactment. S. 2353 would have become effective as of the first applicable pay period beginning on or after the act's enactment.

The legislation would have authorized the following salaries:

- Chief Justice of the United States—\$279,900 (S. 1638 and H.R. 3753), and \$253,300 (S. 2353);
- Associate Justices of the Supreme Court—\$267,900 (S. 1638 and H.R. 3753), and \$242,400 (S. 2353);
- Courts of Appeals Judges—\$231,100 (S. 1638 and H.R. 3753), and \$209,100 (S. 2353);

¹⁰ For an analysis of other provisions in the legislation, see CRS Report RL34281, *Judicial Salary: Current Issues and Options for Congress*, by Denis Steven Rutkus.

¹¹ Senator Patrick Leahy introduced S. 1638 on June 15, 2007. His statement upon introduction of the bill expressed his views that “[t]he independence of the judiciary is compromised ... if judges leave the bench for financial reasons” and “[t]he quality of the judiciary is threatened if judges’ salaries are inadequate to attract and retain our best legal minds.” See, Statement of Senator Patrick Leahy, *Congressional Record*, daily edition, vol. 153, June 15, 2007, p. S7793. During a December 13, 2007, markup of S. 1638, the Senate Committee on the Judiciary, by voice vote, agreed to an amendment offered by Senator Dianne Feinstein to amend the bill to provide the same compensation provisions as H.R. 3753. The committee resumed consideration of S. 1638 on January 31, 2008. Senator Richard Durbin offered an amendment to provide a 16.5% pay adjustment, but the committee rejected it on a 4 to 13 vote. The committee ordered S. 1638 to be reported, as amended, on a 10 to 7 vote on January 31, 2008. The committee reported the bill on April 1, 2008 (S.Rept. 110-277). Representative John Conyers introduced H.R. 3753 on October 4, 2007. The House Committee on the Judiciary marked up the bill and ordered it to be reported, as amended, on a 28 to 5 vote on December 12, 2007.

¹² U.S. Congressional Budget Office, *Cost Estimate, H.R. 3753 Federal Judicial Salary Restoration Act of 2007*, February 1, 2008, p. 3. U.S. Congressional Budget Office, *Cost Estimate, S. 1638 Federal Judicial Salary Restoration Act of 2007*, March 28, 2008, p. 3.

- District Court Judges—\$218,000 (S. 1638 and H.R. 3753), and \$197,200 (S. 2353); and
- Court of International Trade Judges—\$218,000 (S. 1638 and H.R. 3753), and \$197,200 (S. 2353).

The Senate Committee on the Judiciary report that accompanied S. 1638 stated that the bill

would increase the salaries of Federal judges to ensure that the design of life tenure is not eroded but ... is also balanced with provisions to ensure that our federal judges maintain the highest ethical standards to promote confidence in their impartiality.¹³

Concurrent Resolution on the Budget for FY2009 (110th Congress)

S.Con.Res. 70, the Concurrent Resolution on the Budget for FY2009, as agreed to or passed by the House and Senate included a provision at Section 229 on a deficit-neutral reserve fund for judicial pay:

The Chairman of the Senate Committee on the Budget may revise the allocations of a committee or committees, aggregates, and other levels in this resolution for one or more bills, joint resolutions, amendments, motions, or conference reports that would authorize salary adjustments for justices and judges of the United States ... by the amounts provided in such legislation for those purposes, provided that such legislation would not increase the deficit over either the period of the total of fiscal years 2008 through 2013 or the period of the total of fiscal years 2008 through 2018.¹⁴

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.¹⁵ 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

¹³ U.S. Congress, Senate Committee on the Judiciary, *Federal Judicial Salary Restoration Act of 2008*, report to accompany S. 1638, 110th Cong., 2nd sess., S.Rept. 110-277 (Washington: GPO, 2008), p. 3. A Star Print of the report was ordered on April 7, 2008.

¹⁴ S.Con.Res. 70, Enrolled, June 5, 2008, as agreed to by the House and Senate, p. 28. As passed by the Senate on March 14, 2008, on a 51-44 (Record No. 85) vote, S.Con.Res. 70 included the provision at Section 308. See also, U.S. Congress, Conference Committees, 2008, *Concurrent Resolution on the Budget for Fiscal Year 2009*, conference report to accompany S.Con.Res. 70, 110th Cong., 2nd sess., H.Rept. 110-659 (Washington: GPO, 2008), pp. 29, 116, 124. The Senate agreed to the conference report on a 48-45 (Record No. 142) vote on June 4, 2008. The House agreed to the conference report on a 214-210 (Roll No. 382) vote on June 5, 2008.

¹⁵ 5 U.S.C. §3132(a)(2).

rate for GS-15; \$117,787, as of January 2009) to either EX Level III (\$162,900, as of January 2009), 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 (\$177,000, as of January 2009), in agencies whose performance appraisal systems have been so certified.¹⁶ Total compensation¹⁷ for members of the SES in agencies whose performance appraisal systems “as designed and applied” have been certified by OPM may be up to the Vice President’s salary (\$227,300, as of January 2009)¹⁸ and up to EX Level I (\$196,700, as of January 2009) in agencies whose performance appraisal systems have not been so certified.¹⁹ **Table 2**, below, shows January 2004 through January 2009 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

¹⁶ 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.

¹⁷ 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)).

¹⁸ 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 16 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.

¹⁹ 5 U.S.C. §5307(a)(1).

http://wikileaks.org/wiki/CRS-RL33245

Minimum	Maximum	Performance appraisal system status
\$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

Currently, basic pay for certain senior-level positions—positions classified above GS-15 (SL pay schedule) and scientific or professional positions (ST pay schedule)—ranges from 120% of the minimum rate of basic pay for GS-15 (\$117,787, as of January 2009) to EX Level IV (\$153,200, as of January 2009).²⁰ The upper level limitation will increase as of April 12, 2009, as discussed in the section on “Basic Pay Limitation for SL and ST Positions” below. Currently, SL and ST employees (unlike individuals in positions on the EX schedule or members of the SES) receive locality-based comparability payments. The total of base pay and locality pay cannot exceed EX Level III (\$162,900, as of January 2009).²¹ As of April 12, 2009, SL and ST employees will not receive locality pay. 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 (\$227,300, as of January 2009)²² and up to EX Level I (\$196,700, as of January 2009) in agencies whose performance appraisal systems have not been so certified.²³

Basic Pay Limitation for SL and ST Positions

Senator George Voinovich introduced S. 1046, the Senior Professional Performance Act of 2008, on March 29, 2007. (In the 109th Congress, similar provisions were included in S. 3492 at Section 6.) In his statement upon introducing the bills, Senator Voinovich stated that “employees should receive annually a rigorous evaluation” with pay determined “by the productivity, effectiveness, and the contributions of an employee.” He stated that the amendments proposed in S. 1046 would keep SL and ST employees “on equal footing” with members of the Senior Executive Service in terms of pay and performance management.²⁴ The bill was referred to the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia of the Committee on Homeland Security and Governmental Affairs. It was marked up and ordered reported without amendment by the full committee on June 13, 2007. The committee reported S. 1046, without amendment, on April 22, 2008 (S.Rept. 110-328).²⁵ During Senate

²⁰ 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.

²¹ 5 U.S.C. §5304(g)(2).

²² 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 16 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.

²³ 5 U.S.C. §5307(a)(1).

²⁴ Statement of Senator George Voinovich, *Congressional Record*, daily edition, vol. 153, March 29, 2007, p. S4180.

²⁵ U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Senior Professional* (continued...)

consideration of the bill, a substitute amendment offered by Senator Voinovich was agreed to and the Senate passed S. 1046 by unanimous consent on July 11, 2008.²⁶ The bill, as passed by the Senate was referred to the House Committee on Oversight and Government Reform on July 14, 2008. The Congressional Budget Office estimated that implementation of S. 1046 would cost “roughly \$7 million between 2008 and 2012.”²⁷ The House of Representatives passed S. 1046 under suspension of the rules on a 419 to 0 (Roll No. 659) vote on September 26, 2008. During the House debate, Representative Christopher Shays stated that “the purpose of the bill is to align the pay system for ... [SL’s and ST’s] with that of the Senior Executive Service Members.”²⁸ President Bush signed the bill on October 8, 2008, and it became P.L. 110-372.

Among other provisions, the law amends 5 U.S.C. §5376(b)(1)(B) to provide that 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 (\$177,000, as of January 2009). 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 (\$162,900, as of January 2009). SL and ST employees will not receive locality pay. According to OPM, guidance on implementing the law will be provided to departments and agencies and the provisions will become effective on April 12, 2009.

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 areas.²⁹

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

(...continued)

Performance Act of 2007, report to accompany S. 1046, 110th Cong., 2nd sess. (Washington: GPO, 2008).

²⁶ *Congressional Record*, daily edition, vol. 154, July 11, 2008, pp. S6609-S6610.

²⁷ U.S. Congressional Budget Office, *Cost Estimate, S. 1046 Senior Professional Performance Act of 2007*, September 12, 2007.

²⁸ *Congressional Record*, daily edition, September 25, 2008, p. H9884.

²⁹ 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 is available on the Internet at <http://www.opm.gov>.

Washington, DC Pay Area		“Rest of the United States” Pay Area	
Effective January 2006			
Basic Pay		Basic Pay	
\$109,808	\$143,000	\$109,808	\$143,000
With Locality Pay Adjustment		With Locality Pay Adjustment	
\$129,024	\$152,000	\$123,556	\$152,000
Effective January 2007			
Basic Pay		Basic Pay	
\$111,676	\$145,400	\$111,676	\$145,400
With Locality Pay Adjustment		With Locality Pay Adjustment	
\$132,437	\$154,600	\$125,792	\$154,600
Effective January 2008			
Basic Pay		Basic Pay	
\$114,468	\$149,000	\$114,468	\$149,000
With Locality Pay Adjustment		With Locality Pay Adjustment	
\$138,380	\$158,500	\$129,555	\$158,500
Effective January 2009			
Basic Pay		Basic Pay	
\$117,787	\$153,200	\$117,787	\$153,200
With Locality Pay Adjustments		With Locality Pay Adjustment	
\$144,996	\$162,900	\$134,112	\$162,900

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 General Schedule (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.³⁰

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 (\$143,500, as of January 2009); basic pay and locality pay combined cannot exceed EX Level IV (\$153,200, as of January 2009); and total compensation cannot exceed EX Level I (\$196,700, as of January 2009).³¹ GS-15 employees at the upper end of that pay grade in 16 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 (1) Denver-Aurora-Boulder, CO, CSA, plus the Ft. Collins-Loveland, CO, MSA; (2) Miami-Fort Lauderdale-Pompano Beach, FL, MSA, plus Monroe County, FL; (3) Minneapolis-St. Paul-St. Cloud, MN-WI, CSA; (4) Philadelphia-Camden-Vineland, PA-NJ-DE-MD, CSA, plus Kent County, DE, Atlantic County, NJ, and Cape May County, NJ; (5) Sacramento - Arden-Arcade - Yuba City, CA-NV, CSA, plus Carson City, NV; (6) Seattle-Tacoma-Olympia, WA, CSA, plus Whatcom County, WA; and (7) Washington-Baltimore-Northern Virginia, DC-MD-VA-WV, CSA, plus the Hagerstown-Martinsburg, MD-WV, MSA, the York-Hanover-Gettysburg, PA, CSA, and King George County, VA.
- employees at steps 9 and 10 in the (1) Boston-Worcester-Manchester, MA-RI-NH, Combined Statistical Area (CSA), plus Barnstable County, MA, and Berwick, Eliot, Kittery, South Berwick, and York towns in York County, ME; (2) Chicago-Naperville-Michigan City, IL-IN-WI, CSA; (3) Detroit-Warren-Flint, MI, CSA, plus Lenawee County, MI; (4) Hartford-West Hartford-Willimantic, CT, CSA, plus the Springfield, MA, MSA and New London County, CT; (5) Los Angeles-Long Beach-Riverside, CA, CSA, plus the Santa Barbara-Santa Maria-Goleta, CA, MSA and Edwards Air Force Base, CA; and (6) San Diego-Carlsbad-San Marcos, CA, MSA.
- employees at steps 8, 9, and 10 in the (1) Houston-Baytown, Huntsville, TX, CSA; and (2) New York-Newark-Bridgeport, NY-NJ-CT-PA, CSA, plus Monroe County, PA, and Warren County, NJ.
- employees at steps 6, 7, 8, 9, and 10 in the San Jose-San Francisco-Oakland, CA, CSA, plus the Salinas, CA, MSA and San Joaquin County, CA.³²

Table 4, below, shows January 2004 through January 2009 salaries for employees at GS grade 15 in the Washington, DC, and “Rest of the United States” locality pay areas.³³

³⁰ 5 U.S.C. §5104(15).

³¹ 5 U.S.C. §5303(f), 5 U.S.C. §5304(g)(1), and 5 U.S.C. §5307(a)(1). See CRS Report RL33732, *Federal White-Collar Pay: FY2008 Salary Adjustments*, by Barbara L. Schwemle, for an analysis of the pay adjustment process for General Schedule positions.

³² 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.

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

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.

(...continued)

³³ Salary tables for GS-15 employees in all 32 locality pay areas are available on the Internet at <http://www.opm.gov>.

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