



OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

APR 10 2009

PERSONNEL AND
READINESS

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
THE COMMANDERS OF THE COMBATANT COMMANDS
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES
DEPUTY UNDER SECRETARY OF THE ARMY

SUBJECT: Senior Professional Performance Act of 2008

The purpose of this memorandum is to provide information on the Senior Professional Performance Act of 2008, Pub.L. No 110-372, 122 Stat. 4 of 3 (2008), which established a new pay system for senior level and scientific or professional (SL/ST) employees. The new pay system for SL/ST employees provides pay ranges comparable to those available under the Senior Executive Service (SES) pay system. Under section 2(d) of this Act, this new pay system will go into effect on the first day of the first pay period beginning on or after the 180th day of enactment (i.e., April 12, 2009).

The minimum rate of basic pay under the new SL/ST pay system will continue to be 120 percent of the minimum rate of basic pay payable for GS-15, step 1 (\$98,156 x 1.20 or \$117,787 in 2009). The maximum rate of basic pay under the new SL/ST pay system will be the rate payable for EX-II (\$177,000 for 2009) for SL/ST employees covered by a performance appraisal system certified under 5 U.S.C. 5307 by the U.S. Office of Personnel Management (OPM) with the concurrence of the Office of Management and Budget. Currently, the Department of Defense (DOD) has the only certified SL/ST performance appraisal system.

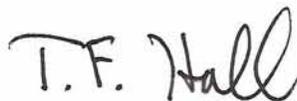
Under the new pay system, locality pay will no longer be paid on top of SL/ST basic rates. For purposes of setting initial pay for SL/ST employees under the new pay system, upon the effective date of the new system, an SL/ST employee's rate of basic pay plus any applicable locality payment the employee

received on the day before this effective date will be combined to establish the employee's new rate of basic pay. No SL/ST employee's rate of basic pay will be reduced as a result of converting to the new pay system. After the conversion, there will be no increases to pay based upon implementation of the Act. All future pay increases will continue to be based upon performance and made within the annual appraisal system in accordance with the provisions of Subchapter 920, Executive and Senior Professional Pay and Performance System (SC920).

The Department is revising the written procedures established under 5 CFR 534.503 and SC920 to reflect the new SL/ST pay structure. Until the new rules are issued, new hires for SL/ST positions will be paid at a rate of pay not to exceed Level III of the Executive Schedule, unless a higher rate of pay up to Level II of the Executive Schedule is approved by the Authorizing Official. Such determinations will continue to consider the nature and quality of the individual's experience, qualifications, and accomplishments as they relate to the requirements of the position, as well as the individual's current responsibilities and performance requirements.

Guidance on converting SL/ST employees to the new SL/ST pay system, processing the conversion action, and notifying employees on post-employment restrictions is provided in Attachment 1. A sample notification of post-employment restrictions to SL/ST employees is provided in Attachment 2. The conversion of Defense Intelligence Senior Level (DISL) employees will be done in accordance with guidance issued by the Under Secretary of Defense for Intelligence dated March 27, 2009, a copy of which is at Attachment 3. Final DoD guidance will be issued following issuance of OPM's final implementing regulations which are expected within the next few months.

I appreciate your assistance in helping us to transition smoothly to this new pay system for Senior Professionals. If you have any questions, please contact Ms. Cheryl Medlin, Civilian Personnel Management Service, at 703-696-1720 or by email cheryl.medlin@cpms.osd.mil.



T. F. Hall
Performing the Duties of
the Under Secretary of Defense
(Personnel and Readiness)

Attachment
As stated

GUIDANCE ON CONVERSION TO THE NEW SL/ST PAY SYSTEM

Setting Pay for ST/ST Employees upon Conversion

Under section 2(d) of the Senior Professional Performance Act of 2008, Pub. L. No. 110-372, 122 Stat. 4043 (2008). Components must convert SL/ST employees to the new SL/ST pay system on April 12, 2009. An SL or ST employee's converted rate of basic pay is his or her rate of basic pay plus any applicable locality pay paid to the employee on the day prior to conversion. Under the new pay system, locality pay will no longer be paid on top of SL or ST basic rates. In processing the conversion, an agency must take into account the EX-III limitation on locality rates for ST/ST positions that applies on April 11, 2009. An increase in an SL or ST employee's rate of basic pay upon conversion to the new SL/ST pay system as a result of the addition of locality pay is considered a pay adjustment for the purpose of 5 CFR 534.503(c), which prohibits more than one pay adjustment for an SL or ST employee in any 12-month period (with certain exceptions). In other words, an agency may not further increase an SL or ST employee's rate of basic pay after the conversion until April 12, 2010, unless the subsequent pay adjustment is excluded from the 12-month restriction under 5 CFR 534.503(c)(2) or (c)(3). Because the conversion is required by law, an agency must convert an SL or ST employee to the new SL/ST pay system even if he or she has received a pay adjustment in the 12 months prior to April 12, 2009.

For example, on April 11, 2009, an SL employee who is at the maximum of the SL/ST rate range and has an official worksite in a locality pay area receives a rate of basic pay of \$153,200 (i.e., EX-IV) and a locality payment of \$9,700 for a total rate of \$162,900. (The difference between the rate for EX-III and EX-IV is \$9,700.) The SL employee's converted rate of basic pay will be \$162,900. Except as provided in current regulations at 5 CFR 534.503(c)(2) and (c)(3), the SL employee may not receive another pay adjustment until April 12, 2010. OPM is developing new rules and is considering authorizing an exception for FY 2009.

Components must apply the pay conversion before processing any other pay action that takes effect on April 12, 2009. For example, an SL or ST employee with an official worksite in a locality pay area on April 11, 2009, who moves effective April 12, 2009, to an SL or ST position in a different locality pay area will be converted to a rate of basic pay that includes the locality pay the employee received on April 11, 2009. The SL/ST pay conversion must be processed before processing the move to the new official worksite.

The newly converted SL/ST rate will become the SL or ST employee's rate of basic pay for all pay computation purposes. Consistent with section 2(d) of the Act, Components may not reduce an SL or ST employee's rate of basic pay, including any applicable locality payment in effect on April 11, 2009, as a result of conversion to the new SL/ST pay system. (This does not limit a Component's authority to reduce an SL or ST employee's rate of basic pay under 5 CFR 534.503(d) after conversion.)

Processing Personnel Actions to Convert to the New Pay System

For the purpose of processing a personnel action (SF-50) to effect conversion to the new pay system, a "pay adjustment" is any increase or reduction in an employee's rate of basic pay where there is no change in the duties or responsibilities of the employee's position, or where there is a change in the pay system under which the employee is paid.

To document the conversions, Components will use the following codes and authorities:

- Nature of Action Code 890/Misc Pay Adjustment
- Legal Authority Code ZLM/P.L. 110-372
- For Senior Professionals subject to post-employment restrictions, use Remark Code M97 on the SF-50 which reads as follows: "Employee subject post-employment restrictions under 18 U.S.C. 207(c)."

Notification of Post-Employment Restrictions

Components are required to notify SL/ST employees who are paid at a rate of basic pay equal to or greater than 86.5 percent of the rate for EX-II (\$153,105 in 2009) that they are subject to certain post-employment restrictions in 18 U.S.C. 207(c). (See 18 U.S.C. 207(c)(2)(A)(ii).) OPM's regulations requiring notification of post-employment restrictions are available at 5 CFR part 730. Components may use the sample notice in Attachment 2 to notify an SL/ST employee that he or she is subject to the post-employment restrictions in 18 U.S.C. 207(c) and document the coverage using remark code "M97" on the SF-50, as noted under "Processing Personnel Actions to Convert to the New Pay System."

Pay Adjustments for ST/ST Employees after Conversion

SC920 provisions will continue to apply when effecting pay adjustments after conversion for SL/ST employees, except that the statutory limits are changed by the Act to reflect the new pay range limit as Level II of the Executive Schedule rather than Level IV of the Executive Schedule. There will be no additional pay adjustments made outside of the performance appraisal process in accordance with SC920.

Setting Pay for New ST/ST Employees

Since the Department of Defense has a provisionally certified performance appraisal system covering SL/ST employees under 5 U.S.C. 5307(d), basic pay may be set at any rate within the SL/ST rate range upon initial appointment to the SL or ST position on or after April 12, 2009, subject to the EX-II limitation on the maximum rate of basic pay and the Department's written procedures as set forth in SC920.

Sample Notice of Post-Employment Restrictions

Notice for senior-level (SL) and scientific and professional (ST) employees who will become subject to the post-employment restrictions because the employee's rate of basic pay (excluding locality pay) is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (\$153,105 in 2009):

Effective on April 12, 2009, you are subject to the post-employment conflict of interest restrictions as set forth in 18 U.S.C. 207(c) because you serve in what the Office of Government Ethics refers to as a "senior" position. A senior position for these purposes is one for which the rate of basic pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (\$177,000 x .865 or \$153,105 in 2009). Your rate of basic pay upon conversion to the new SL/ST pay system in accordance with the Senior Professional Performance Act of 2008, Pub. L. No. 110-372, 122 stat. 4043 (2008), will exceed \$153,105.

The post-employment restrictions require that for 1 year after service in a senior position ends, no former senior employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he or she served in any capacity during the 1-year period prior to ending service in that senior position, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he or she seeks official action by that employee. These post-employment restrictions will apply to you for 1 year after your service in a senior position as defined above ends. You will be notified of any future changes in coverage under the post-employment restrictions.

In addition, you may wish to contact your local Ethics Office for further guidance. (insert office contact information here: _____).



INTELLIGENCE

UNDER SECRETARY OF DEFENSE
5000 DEFENSE PENTAGON
WASHINGTON, DC 20301-5000

MAR 27 2009

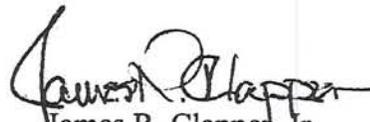
MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
DIRECTOR, DEFENSE INTELLIGENCE AGENCY
DIRECTOR, DEFENSE SECURITY SERVICE
DIRECTOR, NATIONAL GEOSPATIAL-INTELLIGENCE
AGENCY
DIRECTOR, NATIONAL RECONNAISSANCE OFFICE
DIRECTOR, NATIONAL SECURITY AGENCY

SUBJECT: Defense Intelligence Senior Level (DISL) Pay Policy to Address Pay
Disparity for Employees Stationed Outside the Continental United States
(OCONUS) and the Senior Professional Performance Act of 2008

The Defense Civilian Intelligence Personnel System (DCIPS) pay bands and OCONUS Targeted Local Market Supplement (TLMS) are creating pay disparities for DISL employees in OCONUS locations. Salaries of some OCONUS Pay Band 5 employees significantly exceed the salary limit for OCONUS DISLs, who do not receive the DCIPS TLMS, locality pay, or any equivalent salary supplement. To resolve this inequity, the DCIPS TLMS is hereby extended to OCONUS DISLs, with salaries not to exceed Executive Level III. Additional background and guidance are attached.

The recently enacted Senior Professional Performance Act of 2008 (P.L. 110-372) will allow senior professional salaries under certified performance systems to increase up to Executive Level II (\$177,000) and end their entitlement to locality pay. The Act does not apply to DISLs, but may be extended to cover DISL pay under 10 U.S.C. Chapter 83. Therefore, the Components are hereby authorized and directed to take actions for their DISL employees to implement comparable effects and timing as P.L. 110-372, as described in the attachment.

This memo is issued in conjunction with the Under Secretary of Defense for Personnel & Readiness. The Human Capital Management Office will provide additional guidance as needed. My point of contact for this matter is Mr. Tim Stenmark at 703-604-1210.


James R. Clapper, Jr.

Attachment(s):
As stated



cc:

Assistant Deputy Chief of Staff, G-2, Department of the Army

Director of Naval Intelligence, Chief of Naval Operations (N2)

Director of Intelligence for Support, Headquarters, U.S. Marine Corps

Director of Intelligence, Surveillance and Reconnaissance Plans and Resources,

Headquarters, U.S. Air Force

General Counsel of the Department of Defense

Deputy Under Secretary of Defense for Civilian Personnel Policy

Defense Intelligence Human Resources Board Members

Defense Intelligence Senior Level (DISL) Pay Policy:
OCONUS Salary Disparity Versus DCIPS Pay Band 5
and the Senior Professional Performance Act of 2008 (P.L. 110-372)

References:

1. 10 U.S.C. 1601-1614
2. DoD Instruction 1400.25, Volume 2006, DCIPS Compensation Administration, Enclosure 3
3. DepSecDef memo, January 9, 2009, subject: 2009 Defense Intelligence Civilian Personnel System (DCIPS) Pay Band Rate Ranges and Local Market Supplements (LMS)
4. Senior Professional Performance Act of 2008 (P.L. 110-372)
5. DoD 1400.25-M, Interim Subchapter 1003, Defense Intelligence Senior Level (DISL) Program, May 2005
6. USD(I) memo, May 18, 2005, subject: Administrative Coverage of Defense Intelligence Senior Executive Services (DISES) and Defense Intelligence Senior Level (DISL) Under Subchapter 920 (SC 920) "Executive and Senior Professional Pay and Performance System" and Delegations of Authority
7. DoDD 5143.01, Under Secretary of Defense for Intelligence (USD(I)), November 23, 2005, paragraphs 4.3.2. and E3.1.
8. DoDD 1400.35., Defense Intelligence Civilian Personnel System, 24 September 2007, paragraph 5.1.1.

Background: The rate range for Pay Band 5 of the Defense Civilian Intelligence Personnel System (DCIPS) extends five percent beyond step 10 of the General Schedule, consistent with pay bands of the National Security Personnel System (references 2 and 3). DCIPS also provides a Targeted Local Market Supplement (TLMS), equivalent to the Washington D.C. locality pay rate, to OCONUS DCIPS pay banded employees (same references). The extended basic salary range and TLMS allow OCONUS DCIPS Pay Band 5 salaries to reach up to \$160,860, exceeding by \$7660 the highest salary currently allowed for DISL employees outside the CONUS (\$153,200 - Executive Level IV).

The Senior Professional Performance Act (reference 4) will allow senior professional salaries under certified performance systems to increase up to Executive Level II (\$177,000). When implemented in April 2009, the Act will convert the basic pay of senior professional employees to the combination of their basic pay and locality pay, and end their eligibility for locality pay. The Act does not cover DISLs, because DISL pay is set under Title 10 USC 1601-1603 and DoD policy (references 5 and 6). CONUS assigned DISLs are also not covered by the locality pay provisions of 5 USC 5304, but receive a salary supplement amount equivalent to locality pay pursuant to reference 1. A USD(I) memo, in conjunction with the USD for Personnel and Readiness (P&R) per references 7 and 8, is required to extend benefits similar to P.L. 110-372 to DISL employees.

Implementation of a policy for DISLs that mirrors P.L. 110-372 will not by itself resolve the underlying pay gap between OCONUS DISL employees and the OCONUS DCIPS

Pay Band 5 employees. The proposed language of the Office of Personnel Management (OPM) implementing regulations for P.L. 110-372 will convert the salaries of OCONUS senior professionals to an appropriate locality pay-based rate on return to a CONUS assignment. Such language is based on the premise that OCONUS senior professionals are on assignments with limited tour lengths.

Many OCONUS DISLs, however, may never hold a CONUS-based position, since they have been hired to bring highly specialized knowledge and expertise to long-term OCONUS requirements. Absent a policy to provide them pay equity, many OCONUS DISLs will face a continuing pay disadvantage compared to DCIPS Pay Band 5 employees and their CONUS-based DISL peers.

DISL Pay Policy: As authorized by references 7 and 8, the USD(I), in conjunction with USD(P&R), is extending the existing DCIPS OCONUS TLMS rate (equivalent to the locality pay rate for the Washington D.C. area) to employees in OCONUS DISL positions up to a maximum of Executive Level III. Extension of the DCIPS TLMS to OCONUS DISLs is to take effect as soon as practicable after the date of the authorizing USD(I) memo, but is not to result in salaries that exceed the current rate for Executive Level III (\$162,900). Components may not implement independent solutions, such as special relocation bonuses or disproportionate performance pay increases for OCONUS DISLs. Extending the TLMS coverage also sets the stage for equitable conversion of all DISL salaries with effects similar to the provisions of P.L. 110-372.

The USD(I), in conjunction with USD (P&R), also authorizes and directs Components to take actions for their DISL employees to implement effects comparable to P.L. 110-372, to include combining their basic pay and locality pay equivalent rate (including TLMS for OCONUS DISLs) into a converted basic salary rate on April 12, 2009. From that date, all current and future DISL employees will become ineligible for any locality pay equivalent rates, to include the OCONUS DCIPS TLMS. On that date, DISLs will also become eligible for performance-based salary increases above Executive Level III, when DoD's performance management system for SL/ST is certified as meeting the requirements to pay up to Executive Level II, and the system, if different from the current system, is adopted by DCIPS.

The point of contact for this action is Mr. Tim Stenmark in the Human Capital Management Office, 703-604-1210, timothy.stenmark@osd.mil or timothy.stenmark@osdj.ic.gov