MEMORANDUM December 6, 2013

To: Office of Senator Benjamin Cardin
Attention: Gray Maxwell

Subject: **Recent Changes to Federal Employee Pay and Retirement Benefits in Support of Deficit Reduction**

This memorandum responds to your request for a summary of changes to the pay and retirement benefits of federal employees in support of deficit reduction. In particular, you requested information on three recent changes in these policy areas:

1. the three-year freeze in federal salaries;
2. the federal pay consequences of furloughs due to the sequester under the Budget Control Act of 2011 (BCA; P.L. 112-25, as amended); and
3. the changes to federal retirement contributions and benefits enacted under the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96).

This memorandum summarizes these changes and, where available, provides existing, nonpartisan cost estimates of their budgetary effects from the Congressional Budget Office (CBO).

Some of the information in this memorandum is drawn from publicly available sources and is of general interest to Congress. As such, all or part of this information may be provided in memoranda or reports for general distribution to Congress. Your confidentiality as a requester will be preserved in any case.

Federal Pay Freeze[1]

Federal pay is currently frozen at the rates established in January 2010.

P.L. 111-322 prohibited statutory pay adjustments[2] that would otherwise become effective for federal civilian employees[3] in executive agencies[4] from January 1, 2011, through December 31, 2012. P.L. 111-

[1] This content was provided by Barbara Schwemle, Analyst in American National Government, bschwemle@crs.loc.gov.

[2] See Section 147 of Title I, Section 1(a)(2) of P.L. 111-322, the Continuing Appropriations and Surface Transportation Extensions Act, 2011, enacted on December 22. Statutory pay adjustment means adjustments to base pay under 5 U.S.C. §5303, to locality-based comparability payments under 5 U.S.C. §5304 and 5 U.S.C. §5304(a), to Executive Schedule pay under 5 (continued...)

322 also provided that senior executive[5] or senior-level employees may not receive an increase in basic pay during this time period, absent a change of position that results in a substantial increase in responsibility, or a promotion. The law further provided that the provisions of the Non-Foreign Area Retirement Equity Assurance Act of 2009[6] related to allowance rates in the non-foreign areas (Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, Guam, Commonwealth of the Northern Mariana Islands), shall be applied using the appropriate locality-based comparability payments established by the President as the applicable comparability payments. The law authorizes the President to issue guidance to executive agencies to implement the provision.[7]

On March 26, 2013, President Obama signed H.R. 933, Consolidated and Further Continuing Appropriations, 2013, which became P.L. 113-6 (127 Stat. 198). Section 1112 of the law extends the pay freeze through December 31, 2013. On April 5, 2013, the President issued Executive Order 13641 and a Presidential Memorandum to implement P.L. 113-6.[8]

Federal white-collar employees paid under the General Schedule (GS), Foreign Service Schedule, and certain Veterans Health Administration Schedules are intended by law 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.[9]

FEPCA requires the annual pay adjustment for General Schedule employees to be based on the Employment Cost Index (ECI), which measures change in private-sector wages and salaries. Basic pay rates are to be increased, beginning the first full pay period of a calendar year, 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 the comparable quarter of the next preceding year (if at all).

The locality-based comparability payments procedure established by FEPCA provides that payments are to be made within each locality determined to have a non-federal/federal pay disparity greater than 5%.

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U.S.C. §5318, to Federal Wage System (blue-collar) pay under 5 U.S.C. §5343(a), and any similar adjustment required by statute.

[3] Employee has the meaning stated at 5 U.S.C. §2105—an officer and an individual who is (1) appointed in the civil service by one of the following acting in an official capacity: the President; a Member or Members of Congress, or the Congress; a member of a uniformed service; an individual who is an employee under this section; the head of a Government controlled corporation; or an adjutant general designated by the Secretary concerned under 32 U.S.C. §709(c); (2) engaged in the performance of a Federal function under authority of law or an Executive act; and 3) subject to the supervision of an individual named under (1) while engaged in the performance of the duties of his position. See 5 U.S.C. §2105 for application of the definition to other types of employees.

[4] Executive agency has the meaning stated at 5 U.S.C. §105—an executive department, a government corporation, and an independent establishment.

[5] Senior executive is defined to include a member of the Senior Executive Service (SES), the FBI-DEA SES, the Senior Foreign Service, and any other similar senior executive service positions in executive agencies.

[6] P.L. 111-84, October 28, 2009, 123 Stat. 2190, at 2619.

[7] The White House, Office of the Press Secretary, Memorandum-Adjustment of Certain Rates of Pay, December 22, 2010, available at http://www.opm.gov/oca/compmemo/2010/2011freeze_attach2.pdf and Executive Order 13561, "Adjustments of Certain Rates of Pay," December 22, 2010, available at http://edocket.access.gpo.gov/2010/pdf/2010-32960.pdf.

[8] *Federal Register*, vol. 78, April 11, 2013, p. 2150, available at http://www.gpo.gov/fdsys/pkg/FR-2013-04-11/pdf/2013-08626.pdf. *Federal Register*, vol. 78, April 10, 2013, p. 21213, available at http://www.gpo.gov/fdsys/pkg/FR-2013-04-10/pdf/2013-08523.pdf.

[9] 104 Stat. 1389, at 1427; 5 U.S.C. §§5301-5303.

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.

The net (annual and locality) pay adjustments that would have been effective in each year, had the pay freeze not been enacted, would have been as follows:

Table 1. Federal Pay Adjustments That Would Have Been Effective, If Not For the Pay Freeze

Year	Base Pay Adjustment (ECI minus 0.5%)	Locality Pay Adjustment (National Averages)	Net (Base + Locality) Adjustment (National Averages)
January 2011	0.9%	15.71%	16.76%
January 2012	1.1%	2.10%	3.22%
January 2013	1.2%	1.67%	2.89%

Source: U.S. Office of Personnel Management, data provided to CRS by electronic mail on December 4, 2013.

Notes: The calculations assume that the pay adjustments would be made in accordance with the Federal Employees Pay Comparability Act formulas and **not** by President's alternative plan authority or by other action by Congress.

ECI refers to the Employment Cost Index calculated by the Department of Labor, Bureau of Labor Statistics.

Federal Pay Consequences of BCA Sequester Furloughs[10]

According to the Office of Personnel Management (OPM), "an administrative furlough is a planned event by an agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any budget situation other than a lapse in appropriations. Furloughs that would potentially result from sequestration would generally be considered administrative furloughs"[11] and result in an employee being placed "in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons."[12] OPM published guidance on administrative furloughs on June 10, 2013.[13] Policies related to federal pay are discussed under Section D of the report.

The Senate and the House of Representatives conducted hearings on sequestration and the executive branch. For example, on February 14, 2013, the Senate Committee on Appropriations conducted a hearing entitled "The Impacts of Sequestration." The Office of Management and Budget and the Departments of Defense, Education, Homeland Security, and Housing and Urban Development provided testimony to the committee. The other Cabinet departments submitted letters to the committee.[14] In addition**,** on March 19,

[10] This content was provided by Barbara Schwemle, Analyst in American National Government, 7-8655, bschwemle@crs.loc.gov.

[11] U.S. Office of Personnel Management, "Pay and Leave Furlough Guidance," available at http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/.

[12] Discussion of "Federal pay" in "Budget "Sequestration" and Selected Program Exemptions and Special Rules," CRS Report R42050, coordinated by Karen Spar, pp.17-18.

[13] U.S. Office of Personnel Management, *Guidance for Administrative Furloughs*, June 10, 2013, available at http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/guidance-for-administrative-furloughs.pdf?nocache=1.

[14] The video of the hearing is available at http://www.appropriations.senate.gov/ht-full.cfm?method=hearings.view&id=17d3dc99-c065-4bec-a7c8-cfd374bf41a3. The *Congressional Quarterly* transcript of the (continued...)

2013, the Subcommittees on Economic Growth, Job Creation and Regulatory Affairs and Federal Workforce, U.S. Postal Service and the Census of the House Committee on Oversight and Government Reform conducted a hearing entitled "Sequestration Oversight: Understanding the Administration's Decisions on Spending Cuts and Furloughs." Representatives of the Departments of Agriculture and Commerce and the Federal Trade Commission provided testimony to the committee.[15]

The implementation of the furloughs that resulted from sequestration was tracked by several news organizations, including Federalnewsradio.com. That tracking data reportedly show that the Department of Defense (6 furlough days), the Environmental Protection Agency (almost 6 furlough days), the Department of Housing and Urban Development (5 furlough days), the Internal Revenue Service (3 furlough days), and the Office of Management and Budget (8 furlough days) were among the departments and agencies most impacted by sequestration.[16] *Government Executive* magazine also tracked plans for furloughs in the executive branch,[17] and in August 2013, reported that "most major departments have reduced furlough days, or eliminated them altogether."[18]

Federal Retirement Changes under P.L. 112-96[19]

The Federal Employees' Retirement System (FERS) is the retirement plan that covers most civilian federal employees first hired in 1984 or later.[20] Title V, Sections 5001-5003 of P.L. 112-96, the Middle Class Tax Relief and Job Creation Act of 2012, enacted two types of changes to FERS: (1) increased employee contributions for new hires and (2) reduced benefit accrual rates for new Members of Congress and new congressional staff. P.L. 112-96 was passed in the House of Representatives and the Senate on February 17, 2012, and signed into law on February 22, 2012.

Increased FERS Employee Contributions for New Hires

P.L. 112-96 increased the FERS employee contributions by an additional 2.3 percentage points for employees hired (or rehired with less than five years of FERS service) after December 31, 2012.[21] For example, under P.L. 112-96, the FERS employee contribution rate for most newly hired/rehired FERS employees is 3.1% (rather than 0.8% for FERS employees first hired before 2013). The new employee

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hearing is available at http://www.cq.com/doc/congressionaltranscripts-4220882.

15 The video of the hearing is available at http://oversight.house.gov/hearing/sequestration-oversight-understanding-the-administrations-decisions-on-spending-cuts-and-furloughs/. The *Congressional Quarterly* transcript of the hearing is available at http://www.cq.com/doc/congressionaltranscripts-4242280.

16 "Sequestration Tracker: Guide to agency furloughs," August 22, 2013, available at http://www.federalnewsradio.com/1104/3237795/Sequestration-Tracker-Guide-to-agency-furloughs.

17 "Furlough Watch: Agency-by-Agency Impacts of Sequestration," *Government Executive*, May 30, 2013, available at http://www.govexec.com/management/2013/05/furlough-watch-potential-agency-agency-impacts-sequestration/61535/.

18 Eric Katz, "Nearly Every Major Agency Has Reduced Furloughs," *Government Executive*, August 13, 2013, available at http://www.govexec.com/pay-benefits/2013/08/nearly-every-major-agency-has-reduced-furloughs/68660/. Eric Katz, "Budget Office Joins All Other Major Agencies in Reducing Furloughs," *Government Executive*, August 19, 2013, available at http://www.govexec.com/pay-benefits/2013/08/budget-office-joins-all-other-major-agencies-reducing-furloughs/68948/.

19 This content was provided by Katelin Isaacs, Analyst in Income Security, 7-7355, kisaacs@crs.loc.gov.

20 For additional details on FERS, please see CRS Report 98-810, *Federal Employees' Retirement System: Benefits and Financing*, by Katelin P. Isaacs.

21 These increased employee contributions for new civilian employees also apply in the same way for new employees covered by the Foreign Service Retirement System and the Central Intelligence Agency Retirement and Disability System.

contribution rate for Members of Congress and congressional staff is also 3.1% (rather than 1.3% for Members first elected before 2013). For newly hired (rehired with less than five years of service) FERS employees after December 31, 2012, who are law enforcement officers, firefighters, air traffic controllers, or nuclear waste couriers, the FERS employee contribution rate is 3.6% under P.L. 112-96 (rather than 1.3% for these FERS employees hired before 2013). Under P.L. 112-96, FERS agency contributions are reduced by the amount of the increased employee contributions. **Table 2** provides the current FERS employee contribution rates, including the changes enacted under P.L. 112-96.

Table 2. Current FERS Employee Contribution Rates

FERS Employee Category	First hired prior to 2013 (not changed by P.L. 112-96)	First hired (or rehired with less than 5 years of FERS service) after December 31, 2012
Regular FERS employees	0.8% of pay	3.1% of pay
Members of Congress and congressional staff	1.3% of pay	3.1% of pay
Law enforcement officers, firefighters, air traffic controllers, and nuclear waste couriers	1.3% of pay	3.6% of pay

Source: Compiled by Congressional Research Service.

Notes: For additional details on the changes to FERS enacted under P.L. 112-96, including employee and agency contribution rates for all categories of FERS employees, see Office of Management and Personnel, Benefits Administration Letter 12-103, Federal Employees Retirement System-Revised Annuity Employees (RAE)-Additional Guidance, June 4, 2013, available at http://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-102.pdf.

Decreased FERS Benefit Accrual Rates for New Members and New Congressional Staff

P.L. 112-96 also made changes in the FERS benefit accrual rates for Members of Congress and congressional staff hired (or rehired with less than five years of service) after December 31, 2012. This law set the benefit accrual rate (used in the FERS pension amount calculation) for new Members of Congress and new congressional staff at the same level as for most FERS employees.

Prior to enactment of P.L. 112-96, all Members of Congress and all congressional staff covered by FERS had a benefit accrual rate of 1.7% per year for the first 20 years of service and 1.0% for any years of service after 20 years. Under P.L. 112-96, Members and congressional staff first elected or hired in 2013 or later are treated like regular FERS employees for the purposes of the FERS benefit accrual rate: 1.0% per year of service, or, if an employee has at least 20 years of service and works until at least the age of 62, the benefit accrual rate is 1.1% per year of service.

CBO Cost Estimates of the Federal Retirement Provisions in P.L. 112-96

The Congressional Budget Office (CBO) provided a cost estimate of the conference agreement for H.R. 3630, the Middle Class Tax Cut Relief and Job Creation Act of 2012 (later enacted as P.L. 112-96) on February 16, 2012.[22] In this document, CBO estimated that the increased federal retirement contributions

[22] Available at http://cbo.gov/sites/default/files/cbofiles/attachments/hr3630_2.pdf.

would increase federal revenue by $15.5 billion over the 2012-2022 period. Additionally, CBO estimated that the federal retirement provisions would decrease federal outlays by $2.9 billion over this same period.