UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

CPM 2026-10
August 27, 2026

Memorandum for Chief Human Capital Officers

From: Scott Kupor
Director

Subject: Final Regulations for Critical Position Pay Authority

This memorandum announces the publication of a final rule amending the Office of Personnel Management's (OPM's) regulations governing the critical position pay (CPP) authority under 5 U.S.C. 5377 and 5 CFR 535. These changes take effect August 26, 2026, and are intended to streamline agency use of CPP, remove non-statutory barriers, and strengthen the Federal government's ability to address mission-critical staffing needs. Implementation guidance, an updated fact sheet, a CPP request template, and a model service agreement are provided as attachments. OPM encourages agencies to make full use of the CPP authority, including by identifying key positions at the agency that would be appropriate for the use of CPP.

Background

The CPP authority permits OPM, in consultation with the Office of Management and Budget (OMB), to grant an agency head the authority to set a rate of basic pay above the rate otherwise payable for positions requiring an extremely high level of expertise in a scientific, technical, professional, or administrative field that are critical to an agency's successful accomplishment of an important mission. While the authority provides important flexibility, agencies have used it sparingly. OPM's experience administering the authority indicates that certain regulatory requirements and approval processes created unnecessary barriers for agency use of CPP. The final rule removes non-statutory requirements and aligns the regulations with existing statutory and delegated authorities. Building on this authority, the President issued a memorandum on May 29, 2026, approving the use of critical position pay for up to 400 positions supporting national security investment programs at rates of basic pay of up to $400,000.

Summary of Key Changes

1. Streamlined Pay Rate Structure. The revised regulations simplify the critical pay rate structure by establishing level I of the Executive Schedule (EX-I) as the default maximum critical pay rate. The prior regulatory tiers (EX-II as the standard maximum and EX-I only upon a showing of "exceptional circumstances") have been eliminated. Agencies may now request critical pay rates up to EX-I ($253,100 in 2026) without additional regulatory approval thresholds beyond the statutory standard.

2. Rates Above EX-I No Longer Require Presidential Approval. Consistent with E.O. 13415, the final rule implements OPM's delegated authority to approve critical pay rates above EX-I. Written approval above this level now rests with the Director of OPM, in consultation with OMB, replacing the prior case-by-case Presidential written approval requirement. OPM, in consultation with OMB, may establish a maximum rate limitation when approving requests above EX-I.

3. Removal of "Rare" and "Exceptional" Circumstances Criteria. The revised regulations remove the undefined regulatory criteria of "rare circumstances" (for rates above EX-I) and "exceptional circumstances" (for rates between EX-II and EX-I). Requests must still be supported by objective, evidence-based justification consistent with 5 CFR 535.104(c) and (d).

4. Service Agreements. The revised regulations authorize agencies to require employees to sign written service agreements governing future payments of CPP. OPM may also require a service agreement as a condition of approving a critical pay request and will communicate any such requirement in its determination letter. Service agreements are a discretionary tool and are not required in all cases. Service agreements specify the critical position, job duties, performance requirements, terminating conditions, and other provisions associated with the critical pay approval. An employee whose critical pay rate is terminated because he or she does not complete a service period or satisfy other terms of the agreement will not receive future payments but would not be required to repay critical pay already received.

Agencies may begin operating under the revised regulations immediately. Agency headquarters-level human resources offices may contact OPM with questions at paypolicy@opm.gov. Component-level human resources offices must contact their agency headquarters for assistance.

Attachments:

- Attachment 1: Critical Position Pay Authority Implementation Guidance Frequently Asked Questions
- Attachment 2: Fact Sheet: Critical Position Pay
- Attachment 3: Template for Requesting use of the Critical Position Pay Authority
- Attachment 4: Model Critical Position Pay Service Agreement

cc: Deputy Chief Human Capital Officers and Human Resources Directors

Attachment 1

Critical Position Pay Authority Implementation Guidance Frequently Asked Questions

These FAQs provide background on the regulatory changes and guidance on applying the revised regulations at 5 CFR parts 535 and 752 governing the critical position pay (CPP) authority under 5 U.S.C. 5377. Agencies may begin operating under the revised regulations immediately.

1. What is the critical position pay authority?

The CPP authority under 5 U.S.C. 5377 and 5 CFR part 535 allows OPM, in consultation with the Office of Management and Budget (OMB), to grant an agency head the authority to set a rate of basic pay above the rate otherwise payable for a position. The authority may be used only for positions requiring an extremely high level of expertise in a scientific, technical, professional, or administrative field that are critical to an agency's successful accomplishment of an important mission, and only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position. By law, no more than 800 positions may be covered Governmentwide at any one time, and no more than 30 active authorizations may be for positions otherwise paid under the Executive Schedule.

2. Why did OPM revise the CPP regulations?

Although the CPP authority has existed for decades, agencies have used it sparingly. OPM's experience administering the authority indicates that certain non-statutory regulatory requirements and approval processes created unnecessary barriers to agency use. The final rule removes those non-statutory requirements, aligns the regulations with existing statutory and delegated authorities, and is intended to make the authority more accessible for mission-critical staffing needs.

3. What are the key changes made by the final rule?

The final rule modernizes the regulations governing the critical position pay (CPP) authority and removes several non-statutory requirements that agencies identified as barriers to use. Key changes include:

- Establishing the rate for Executive Schedule level I (EX-I) as the default maximum critical pay rate, replacing the prior default maximum of Executive Schedule level II (EX-II);
- Eliminating the regulatory requirement to demonstrate "exceptional circumstances" to establish a critical pay rate above EX-II and up to EX-I;

- Implementing OPM's delegated authority under Executive Order 13415 by replacing case-by-case Presidential approval of critical pay rates above EX-I with written approval by the Director of OPM, in consultation with OMB;
- Removing the undefined regulatory concepts of "rare circumstances" and "exceptional circumstances" and instead relying on the statutory standards in 5 U.S.C. 5377 and objective, evidence-based justification submitted by agencies;
- Authorizing agencies to use written service agreements governing future payments of critical pay and clarifying OPM's authority to require such agreements as a condition of approval;
- Clarifying that a critical pay rate is not treated as a rate of basic pay for purposes of General Schedule (GS) pay administration rules under 5 CFR part 531, subpart B, while continuing to be treated as a rate of basic pay for purposes of the maximum payable rate rule and highest previous rate determinations; and
- Clarifying that reductions or terminations of critical pay are not adverse actions under 5 U.S.C. chapter 75 and are not subject to grievance or appeal procedures when the employee has been informed in advance that the critical pay rate is time-limited, subject to annual review, and may be reduced or terminated if no longer needed.

4. Why were the "rare" and "exceptional" circumstances criteria removed?

These criteria were created by regulation, not by statute, and were not defined in the regulations themselves. As a result, they created uncertainty in agency decision-making and acted as an artificial barrier to appropriate use of the authority. Removing them does not change the statutory eligibility framework under 5 U.S.C. 5377(b), which continues to limit use of the authority to positions critical to an agency's mission and only to the extent necessary to recruit or retain an exceptionally well-qualified individual. Agencies must continue to support requests with objective, evidence-based justification.

5. Does the final rule expand the statutory scope of the authority?

No. The statutory criteria in 5 U.S.C. 5377(b), the 800-position Governmentwide cap, and the 30-position Executive Schedule sub-cap in 5 U.S.C. 5377(f) remain unchanged. The final rule modernizes regulatory procedures and removes non-statutory barriers but does not modify any statutory eligibility requirement.

OPM acknowledges that removing regulatory barriers may result in increased use of the authority, but the statutory criteria, caps, and approval requirements that govern when critical pay may be granted are unchanged.

Because each CPP authorization counts against a finite Governmentwide limit (800 positions at any one time, of which not more than 30 may be otherwise paid under the Executive Schedule), OPM will monitor whether authorizations remain necessary so capacity is available for agencies with current mission-critical needs.

OPM monitors use annually through the agency reports required under 5 CFR 535.107. OPM uses this information to meet the statutory reporting requirement and to identify authorizations that may be candidates for termination. If OPM determines, in consultation with OMB, that an authority is no longer needed, including where an agency holds an authorization it is not using, OPM will notify the agency and terminate the authority for that position (5 CFR 535.103(d)).

6. How does the final rule interact with the May 29, 2026, Presidential memorandum on critical position pay for the national security investment workforce?

The Presidential memorandum and the final rule operate as complementary exercises of authority under 5 U.S.C. 5377. The memorandum directly approves the use of critical position pay for up to 400 positions supporting investment programs related to national security, at rates of basic pay of up to $400,000, and authorizes OPM, in consultation with OMB, to allocate the positions and approve agency requests.

The final rule modernizes the broader regulatory framework that governs all critical position pay requests, including those covered by the memorandum. Once approved by OPM, the 400 positions will count against the 800-position Governmentwide statutory cap under 5 U.S.C. 5377(f), and the statutory eligibility criteria in 5 U.S.C. 5377(b) apply to all requests. Agency requests for positions covered by the memorandum should follow the standard request process described in this guidance and in 5 CFR 535.104.

7. What types of positions are eligible for CPP?

CPP is not limited to any specific occupational family or emerging technology area. Eligible positions require expertise of an extremely high level in a scientific, technical, professional, or administrative field that is critical to the agency's successful accomplishment of an important mission. CPP may be used for positions under the Executive Schedule, Senior Executive Service, senior level and scientific or professional, General Schedule, and other Governmentwide and single-agency pay systems.

Examples of positions that may be suitable include senior IT and cyber executives, chief data officers, senior economists, advanced research leaders, and other senior experts leading complex, high-impact programs. The specific positions appropriate for critical pay will vary based on each agency's mission and workforce needs.

Critical pay increases may be prohibited for Executive Schedule, noncareer Senior Executive Service, and other similar employees covered by the pay freeze that applies to certain senior political officials. Please see [OPM memorandum CPM 2026-04] for guidance on the pay freeze statute in 2026.

8. What information must a request include?

Requests must include the information required by 5 CFR 535.104(c) and (d). The final rule removed a few requirements for standard submission requests. Requests to set pay above EX-I must also include the proposed rate of basic pay and supporting justification, including market-based compensation data, recruitment and retention considerations, the qualifications required for a position, and information regarding the availability and qualifications of a candidate or candidates to fill a mission critical position. An updated request template is provided at Attachment 3.

9. How are requests for rates above EX-I approved?

Requests to establish a critical pay rate above EX-I must be submitted to OPM and include the information required by 5 CFR 535.104(c) and (d), including the elements applicable to all critical pay requests and the additional elements required for above-EX-I requests under § 535.104(d)(12). Specifically, an above-EX-I request must include:

- The desired rate of basic pay for the position;
- Market-based justification supporting the requested rate, such as compensation data for comparable positions in the public and private sectors;
- Evidence of recruitment and retention needs, including agency experience attempting to recruit or retain exceptionally well-qualified individuals at the rates otherwise available; and
- The qualifications of the individual proposed for the position, demonstrating that the individual is exceptionally well qualified.

If OPM, in consultation with OMB, concurs with the request, the Director of OPM provides written approval pursuant to delegated authority under Executive Order 13415. The Director may establish a maximum rate limitation when approving the request for a critical pay rate above EX-I based on the market and other data provided. See 5 CFR 535.103(a)(2) and 535.104(c).

10. How should agencies prepare to make use of the authority?

OPM encourages agencies to make full use of this authority. Agencies should:

- Identify key positions at the agency that would be appropriate for use of CPP;
- Compile workforce data and market justification before submitting requests;

- Confirm with their budget office that funding is available to support the requested critical pay rate before submitting a request to OPM; and
- Identify any service agreement, performance, or notice provisions the agency intends to include if the request is approved.
- Establish internal CPP policies and processes;

11. Are service agreements required?

No. Service agreements are a discretionary tool and are not required in all cases. An agency may require an employee to sign a written service agreement governing future payments of CPP. OPM may also require a service agreement as a condition of approving a critical pay request and will communicate any such requirement when an approval determination is made. A model service agreement is provided at Attachment 4.

12. What happens if an employee does not complete a service period?

Service agreements will specify the critical position, job duties, performance requirements, terminating conditions, and other provisions associated with the critical pay approval. An employee whose critical pay rate is terminated because he or she does not complete a service period or satisfy other terms of the agreement will not receive future payments of salary that would be provided under the critical pay authority. Employees would not be required to repay money that has already been received.

13. May CPP be combined with other pay flexibilities?

Yes. The CPP authority may be used in conjunction with other pay flexibilities, including recruitment, relocation, and retention (3Rs) incentives under 5 U.S.C. 5753 and 5754, special salary rates under 5 U.S.C. 5305, student loan repayments under 5 U.S.C. 5379, and General Schedule (GS) pay-setting flexibilities. Agencies should be aware, however, that a critical pay rate counts as basic pay for purposes of the aggregate pay cap under 5 U.S.C. 5307 and 5 CFR part 530, subpart B. Agencies should consider aggregate pay limitations when combining CPP with incentives or awards, as additional non-salary compensation may be deferred under 5 U.S.C. 5307.

Note that employees receiving CPP are not eligible for locality-based comparability payments or other similar geographic adjustments; the critical pay rate is the rate of basic pay for the position for the purposes specified in 5 CFR 535.106.

14. May CPP be used to recruit an employee from another agency or to retain an employee who is leaving for another Federal agency?

Yes. CPP may be used when recruiting employees from other agencies and for the retention of employees who may otherwise leave for positions in other Federal agencies.

15. How is a critical pay rate treated for purposes of GS pay administration?

The revised regulations clarify when critical pay is treated as a rate of basic pay. A critical pay rate is not considered a rate of basic pay for purposes of GS pay administration rules under 5 CFR part 531, subpart B. However, a critical pay rate continues to be treated as a rate of basic pay for purposes of the GS maximum payable rate rule under 5 CFR 531.221(a)(4) and may be considered an employee's highest previous rate when setting pay in a subsequent GS position, subject to applicable step 10 limitations. For other purposes — including premium pay, retirement, life insurance, and the aggregate pay cap under 5 U.S.C. 5307 — a critical pay rate is generally treated as a rate of basic pay. See 5 CFR 535.106.

16. Can an employee grieve or appeal a reduction or termination of CPP?

No. The revised regulations clarify that reductions or terminations of CPP are not adverse actions under 5 U.S.C. chapter 75 and are not subject to grievance or appeal procedures. This does not represent a change in existing rights. This exclusion from adverse action coverage applies when the employee has been informed in advance that the critical pay rate is approved on a time-limited basis, subject to annual review under 5 CFR 535.103(d), and may be reduced or terminated if no longer needed. Agencies should ensure that employees receiving critical pay are given this notice either through a service agreement or other written communication.

17. How do CPP determinations interact with collective bargaining obligations?

Agencies should consult with their labor relations offices regarding any questions concerning the interaction between CPP determinations and applicable collective bargaining obligations. Note that revised 5 CFR 535.103(a) provides that the head of an agency may exercise critical pay authority "in his or her sole and exclusive discretion", subject to OPM and OMB approval and the requirements of part 535.

Agency headquarters-level human resources offices may contact OPM with questions at paypolicy@opm.gov. Component-level human resources offices must contact their agency headquarters for assistance.

Attachment 2

Fact Sheet: Critical Position Pay

Under 5 U.S.C. 5377 and 5 CFR part 535, the U.S. Office of Personnel Management (OPM), in consultation with the Office of Management and Budget (OMB), may authorize an agency head to fix the rate of basic pay for one or more critical positions at a rate higher than the rate otherwise payable for the position.

Critical position pay (CPP) may be used for positions requiring expertise of an extremely high level in a scientific, technical, professional, or administrative field that is critical to the successful accomplishment of an important agency mission. The authority may be approved only to the extent necessary to recruit or retain an individual who is exceptionally well qualified for the position.

Final regulations published in 2026 streamlined the approval framework for CPP, removed non-statutory approval criteria, and aligned OPM's regulations with existing statutory and delegated authorities.

Eligibility

Categories of positions eligible for critical position pay include:

- General Schedule (GS)
- Senior-level (SL)
- Senior Executive Service (SES) and the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) SES
- Executive Schedule (EX)
- Scientific and professional (ST)
- FBI intelligence positions as determined by the Director of the FBI
- Other positions designated by the Director of OPM at the request of an agency head

Not more than 800 positions may be covered Governmentwide at any one time, and not more than 30 active authorizations may be for positions otherwise paid rates of pay under the Executive Schedule.

Examples of positions that may be appropriate for CPP include senior cyber and information technology leaders, chief data officers, advanced research leaders, senior economists, and other highly specialized positions supporting mission-critical programs.

Approval Criteria

OPM's regulations in 5 CFR part 535 require agencies to submit written requests that include:

- A description of the position, including the kinds of work required and the context in which it operates;
- Documentation of the level of expertise required and an explanation of how any incumbent or candidate is exceptionally well qualified for the position;
- Information on the agency's recruitment and retention experience for the position or similar positions;
- An assessment of why other human resources flexibilities have not enabled or would not enable the agency to successfully fill the position with a desired candidate;
- An explanation of why the position is critical to an important agency mission and the potential impact if the agency is unable to fill it with an exceptional candidate;
- Market-based justification and other objective, evidence-based information supporting the requested pay rate; and
- Other information required by 5 CFR 535.104(c) and (d).

Please see the Template for Requesting Use of the Critical Position Pay Authority.

Setting and Adjusting Critical Position Pay Rates

Subject to the limit approved by the Director of OPM in consultation with the Director of OMB, the head of an agency may initially set a critical pay rate not less than the rate of basic pay that would otherwise be payable for the position, but not greater than the rate for level I of the Executive Schedule (EX-I).

Rates above EX-I may be approved by the Director of OPM, in consultation with OMB, based on information and data justifying the higher rate, including market-based compensation information and recruitment or retention needs. OPM may establish a maximum rate limitation when approving requests above-EX-I.

Agencies may make subsequent adjustments to CPP rates each January, concurrent with Executive Schedule pay adjustments, subject to the requirements in 5 CFR 535.105(c).

Employees receiving critical pay are not eligible for locality pay or other similar basic pay supplements.

Relationship to Other Pay Flexibilities

Critical position pay may be used in conjunction with other pay flexibilities, including recruitment, relocation, and retention (3Rs) incentives under 5 U.S.C. 5753 and 5754, special salary rates under 5 U.S.C. 5305, student loan repayments under 5 U.S.C. 5379, and other GS pay-setting flexibilities. Critical position pay may also be used to recruit employees from other agencies and to retain employees who may otherwise leave for positions in other Federal agencies.

Agencies should be aware that because a critical pay rate counts as basic pay for purposes of the aggregate pay cap under 5 U.S.C. 5307, combining CPP with incentives or awards may cause total annual compensation to exceed the cap, resulting in deferral of those additional payments to a later year.

Service Agreements

Agencies may require employees to sign a written service agreement governing future payments of critical position pay. OPM may also require a service agreement as a condition of approving a critical pay request and will communicate any such requirement in its determination letter.

Service agreements govern only future payments of critical position pay. Employees who do not complete a service period are not required to repay critical pay already received.

See the Model Critical Position Pay Service Agreement.

Rate of Basic Pay

A critical position pay rate is considered a rate of basic pay for most purposes, including retirement, life insurance, application of premium pay provisions, and the aggregate limitation on pay under 5 U.S.C. 5307, except for:

- Application of any pay retention provisions under 5 U.S.C. 5363;
- Application of any adverse action provisions under 5 U.S.C. 7512; and
- Application of the General Schedule pay administration rules in 5 CFR part 531, subpart B (such as the two-step promotion rule).

GS maximum payable rate rule**:** When an employee leaves a critical position pay position, the former critical pay rate may be used as the employee's highest previous rate under the General Schedule maximum payable rate rule (5 CFR 531.221(a)(4)). This may allow pay to be set at a higher step rate in a subsequent GS position, up to but not exceeding step 10 of the grade.

Discontinuing and Terminating Critical Position Pay

Once critical position pay is granted, an agency may continue to use the authority for authorized positions as long as needed. An agency may discontinue critical position pay for a given position on its own initiative.

OPM will monitor the use of critical position pay authorities annually through agency reports required under 5 CFR 535.107 and will terminate the authority associated with a given position, after notifying the agency, if OPM determines in consultation with OMB that the authority is no longer needed.

If an employee's critical position pay is reduced or terminated, the employee's rate of basic pay will be set at the rate to which the employee would be entitled absent the critical pay authorization, unless the employee is eligible for a higher payable rate under the GS maximum payable rate rule and the agency elects to apply that rule.

Reporting

OPM must submit an annual report to Congress on the use of the critical position pay authority. Agencies must submit the following information to OPM by **January 31** of each year covering their use of critical position pay authority for the previous calendar year:

- The name, title, pay plan, and grade/level of each employee receiving a higher rate of basic pay under this authority;
- The annual rate or rates of basic pay paid in the preceding calendar year to each such employee;
- The beginning and ending dates of such rate(s) of basic pay, as applicable;
- The rate or rates of basic pay that would have been paid but for the grant of critical position pay; and
- Whether the authority is still needed for the critical position(s).

EHRI Reporting, Oversight, and Management of Authorizations

Because each CPP authorization counts against a finite Governmentwide limit (800 positions at any one time, of which not more than 30 may be otherwise paid under the Executive Schedule), OPM monitors whether authorizations remain necessary so capacity is available for agencies with current mission-critical needs.

OPM monitors use annually through the agency reports required under 5 CFR 535.107. OPM uses this information to meet the statutory reporting requirement and to identify authorizations that may be candidates for termination. If OPM determines, in consultation with OMB, that an authority is no longer needed, including where an agency holds an authorization it is not using, OPM will notify the agency and terminate the authority for that position (5 CFR 535.103(d)).

In addition to the annual submission under 5 CFR 535.107, agencies must accurately and timely record employees in critical positions in the Enterprise Human Resources Integration (EHRI) system. Critical position pay is captured in EHRI through Pay Rate Determinant (PRD) Code "C – Critical Position Pay," as specified in OPM's Data Standards. Accurate coding allows OPM to track active authorizations against the statutory ceilings, reconcile agency annual submissions, and identify authorizations no longer in use. Discrepancies between EHRI data and an agency's 5 CFR 535.107 submission may prompt OPM follow-up and, where an authorization appears unused, consideration for termination.

References

- 5 U.S.C. 5377
- 5 CFR part 535
- 5 CFR part 752
- Executive Order 13415, December 5, 2006 (71 FR 70641)
- OPM Final Rule, Critical Position Pay Authority (91 FR 54937)

Related Resources

- Updated Template for Requesting Use of the Critical Position Pay Authority
- Model Critical Position Pay Service Agreement
- CHCO Memo: Final Regulations for Critical Position Pay Authority

Template for Requesting use of the Critical Position Pay Authority

Agencies requesting approval to use the critical position pay (CPP) authority under 5 U.S.C. 5377 and 5 CFR part 535 should complete this template and submit all supporting documentation to OPM's Pay Systems team at paypolicy@opm.gov. Agencies should provide sufficient information to demonstrate that the statutory requirements in 5 U.S.C. 5377 are met, as required by 5 CFR 535.104(c) and (d). The level of documentation should be commensurate with the complexity of the request and the proposed critical pay rate. OPM may request additional information as needed to evaluate a submission.

A single request may include more than one position, including a group of similar or identical positions, where appropriate. Complete Part I for each distinct position or group of identical positions included in the request. Part II should be completed separately for each position unless the work, occupational field, qualification requirements, and relevant labor market are substantially identical, in which case a single justification may be submitted. Complete Part III only for those positions for which the agency is requesting a critical pay rate above the rate for level I of the Executive Schedule (EX-I).

Submission requests must be signed by the head of the agency or authorized agency official delegated the authority to make such requests by the agency head (e.g., Chief Human Capital Officer).

Part I: Agency and Position Information

Requesting Department or Agency:

Requesting Agency Head or Designee Name and Title:

Agency Point of Contact (Include Title, Email Address, and Phone Number):

Organization of the Position Proposed to be Designated as Critical:

Position Title:

Position Appointment Authority:

Pay Plan and Grade/Level of the Position:

Occupational Series of the Position:

Geographic Location of the Position:

Current Rate of Basic Pay for the Incumbent or Position, Including Any Applicable Locality Pay, Special Salary Rate, or Other Basic Pay Supplements:

Name of Incumbent (or "Vacant" if vacant):

Length of Time the Incumbent, if any, has Been in the Position:

If the Position is Vacant, Length of Time the Position has been Vacant:

Proposed Annual Rate of Basic Pay Under a Critical Position Pay Authorization:

Part II: Justification

Describe the work performed by the position, the level of expertise required, and the organizational and mission context in which the position operates. Explain why the position is critical to the successful accomplishment of an important agency mission or function.

Describe the occupational field associated with the position, including the range of positions and qualification requirements within the field.

Provide information on compensation levels generally required for comparable positions in the Federal Government, the private sector, and other relevant labor markets.

Describe the availability of individuals who possess the qualifications, including any relevant labor market indicators, recruitment results, applicant pool data, vacancy history, turnover information, or other supporting evidence.

Describe the agency's efforts to recruit or retain exceptionally well-qualified individuals for the position and explain why the position cannot be filled or retained within a reasonable amount of time without use of the critical position pay authority. Include any compensation, hiring, or pay-setting flexibilities, such as recruitment, relocation, or retention incentives under 5 CFR part 575, special salary rates, direct-hire authority, superior qualifications and special needs pay-setting authority, or other applicable flexibilities the agency has used, considered, or determined to be insufficient, and explain why those flexibilities did not adequately address the agency's recruitment or retention need.

Explain the organizational context of the position and how it compares with other mission-critical positions in the agency.

Describe the effect on the successful accomplishment of an important agency mission if the position is not designated for use of the critical position pay authority.

Provide any additional information the agency deems appropriate to demonstrate that higher pay is needed to recruit or retain an employee for the critical position.

If the request is made in connection with a specific individual, describe the qualifications of that individual and explain why those qualifications are exceptional relative to the field.

Attached to your request, please include the following:

1. Position description (unless the position is an Executive Schedule position)

2. Does your agency plan to require an employee receiving critical pay to sign a service agreement as authorized under 5 CFR 535.103(e)? (Note: OPM may require a service agreement with any critical pay approval.)

3. Any additional supporting documentation, as applicable

Part III: Requests for Pay Above the Rate for Level I of the Executive Schedule

Complete this section only if the agency is requesting a critical pay rate above the rate for level I of the Executive Schedule (EX-I), in addition to Parts I and II. Such requests require written approval of the Director of OPM in consultation with OMB under 5 CFR 535.104(c), expanding on the justification provided in Part II. Requests for rates above EX-I should include substantial supporting evidence demonstrating that compensation at or below EX-I is insufficient to recruit or retain the individual needed for the position.

Provide market data demonstrating that a rate above EX-I is necessary to recruit or retain an exceptionally well-qualified individual for this position. Include the sources and methodology used to identify comparable compensation in the public and private sectors.

Describe the specific recruitment or retention need that cannot be addressed at or below EX-I. If applicable, identify compensation offers, competing opportunities, or other evidence demonstrating why compensation at or below EX-I is insufficient.

Attachment 4

Model Critical Position Pay Service Agreement

Authorized under 5 U.S.C. 5377 and 5 CFR part 535

Employee Information

Name (First, Middle, Last): ______________________

Position Title: ______________________

Pay Plan, Series, and Grade/Level: ______________________

Organization: ______________________

Agency/Department: ______________________

Duty Station: ______________________

Critical Position Pay Rate

Current rate of basic pay, including locality pay, special rate, or other similar supplements (without critical pay): ______________________

Approved critical position pay rate: ______________________

Effective date of critical position pay: ______________________

In consideration of the critical position pay authorization approved under 5 U.S.C. 5377, as implemented by the regulations of the U.S. Office of Personnel Management (5 CFR part 535) and the policies of [Agency], I hereby agree to the following terms and conditions:

1. **Service commitment**

   I agree to serve in [Agency/Component] in the position identified above for the following period:

   Service period begin date: ______________________

   Service period end date: ______________________

2. **Position and duties**

   During the service period, I will hold the position identified above and perform the following duties and responsibilities: [Agency to describe key duties and responsibilities, or attach position description]

3. **Performance expectations**

   Continuation of my critical position pay rate is contingent upon my maintaining at least a rating of Fully Successful or equivalent on my annual performance appraisal.

4. **Continuation, adjustment, and termination of critical position pay**

   I understand and acknowledge that:

   a. My critical position pay rate is approved on a time-limited basis and is subject to an annual review, the results of which my agency will communicate to me in writing. The annual review may result in the continuation, increase (subject to any applicable critical pay maximum rate), reduction, or termination of my critical pay rate.

b. My agency, or OPM, may reduce, not increase, or terminate my critical position pay rate if it is determined that the rate is no longer needed to recruit or retain an exceptionally well-qualified individual for this position, if the statutory criteria under 5 U.S.C. 5377 are otherwise no longer met, or for other management reasons.

c. Factors my agency will consider in determining whether to continue, increase, reduce, or terminate my critical position pay rate include: whether the position continues to meet the statutory criteria for critical position pay under 5 U.S.C. 5377(b), labor market factors and prevailing rates of pay for comparable positions in the public and private sectors, available funding, my performance, accomplishments, and contributions to the agency's mission, and recruitment and retention conditions for the position.

d. If my critical position pay rate is terminated, my rate of basic pay will be set at the rate to which I would be entitled absent the critical pay authorization, unless I am eligible for a higher rate under the GS maximum payable rate rule and the agency elects to apply that rule.

5. **Grievance and appeal rights**

I understand that I have no right to grieve or appeal a decision to reduce, not increase, or terminate my critical position pay rate. A reduction or termination of critical position pay is not an adverse action under 5 U.S.C. chapter 75 and does not entitle me to adverse action procedures or Merit Systems Protection Board appeal rights. My existing EEO rights are not affected by this agreement.

6. **Nature of agreement**

This service agreement in no way constitutes a right, promise, or entitlement to continued employment. Acceptance of this agreement does not alter the terms or conditions of my employment, and nothing in this agreement precludes the agency from effecting personnel actions as may be appropriate.

7. **Repayment**

Critical position pay received prior to any reduction or termination of the authority is not subject to repayment. This agreement governs only future payments of critical position pay following the effective date above.

8. **Annual critical pay report to Congress**

My agency will report my name, critical pay rate, and other information listed in 5 CFR 535.107 to OPM for inclusion in an annual report to Congress required by 5 U.S.C. 5377(h).

9. **Acknowledgment**

By signing below, I acknowledge that I have read, understand, and voluntarily agree to the terms of this agreement, including that my critical position pay rate is time-limited, subject to annual review, and may be reduced or terminated if determined to be no longer needed.

Employee Signature: ______________________________ Date: ____________

Name (Print): ______________________________

Authorized Agency Official Signature: ______________________________ Date: ____________

Name and Title (Print): ______________________________

Privacy Act Notice

Authority for Collection: 5 U.S.C. 5377.

Purpose and Uses: The information collected on this form is used to establish the terms under which an individual receives critical position pay under the Critical Position Pay Authority. Information collected may be used as a basis for payroll actions and may be disclosed to the Department of the Treasury for payroll purposes, the Internal Revenue Service for tax withholding purposes, the Department of Labor for workers' compensation claims, and the Department of Justice for law enforcement and litigation purposes.

Records may also be used within ______[Agency]______ for workforce planning and reporting to OPM and Congress under 5 U.S.C. 5377(h).

Effect of Non-disclosure: Submission of this agreement is voluntary; however, failure to sign the service agreement may result in the agency being unable to provide critical position pay.

Submit executed agreements to ______[Agency HR Office/Point of Contact]______.

> Agencies may modify this template to meet agency-specific requirements, provided any such modifications remain consistent with 5 U.S.C. 5377, 5 CFR part 535, and any conditions established by OPM as part of the approval determination.