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## **History of the Critical Position Pay Authority and Options to Support Its Use**

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Michael C. Mineiro

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## Executive Summary

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Congress passed the Critical Position Pay Authority (CPPA), codified as 5 U.S.C. § 5377, in 1990 to facilitate the recruitment and retention of Federal employees. At the time, there was general discontent regarding the pay disparities between Federal Government positions and their counterparts in the private sector.

The CPPA provides agencies the flexibility to fix the pay of select positions at a rate higher than would be otherwise payable, as necessary to recruit or retain an exceptionally well-qualified individual for an identified critical position. These positions, which require expertise of an extremely high level in a scientific, technical, professional, or administrative field, are critical to an agency being able to successfully accomplish its mission. The CPPA is one of many pay-related authorities available across the Federal Government to maintain the quality of scientific and technical professionals in the Federal workforce. The CPPA and other pay-related authorities are discussed in this report.

Although the Office of Personnel Management (OPM) is authorized to approve as many as 800 positions under the CPPA, only 3 positions were filled as of 2011 and only 34 positions have been approved since the CPPA's enactment in 1990. To explore potential challenges faced by the agencies in utilizing the CPPA, the Office of Science and Technology Policy asked the IDA Science and Technology Policy Institute (STPI) to study the history of use of the CPPA, the characteristics of critical positions approved under the CPPA, and the perceived benefits and challenges of the CPPA, as well as provide recommendations that will support agencies' use of the CPPA.

### Approach

The study team used three sources of information for this work:

- *Semi-structured interviews.* We held interviews with 40 human resource representatives across 19 Federal agencies and offices, including agencies with a history of using the CPPA and those that might be expected to use the CPPA by virtue of their scientific and technical workforce.
- *Literature review.* We reviewed relevant Federal legislation and regulations, agency policy guidance and instructions, congressional committee hearings, and reports from studies conducted by research organizations such as the Government Accountability Office and the Congressional Research Service.

- *OPM annual reports.* We analyzed OPM reports from fiscal years 2008 to 2011, including data on the number and salaries of approved positions by agency, as well as information describing the approved CPPA positions. STPI asked OPM for the annual reports since the CPPA was enacted in 1990 but did not receive them by the time of writing.

## **Legislative, Regulatory, and Procedural Overview**

Congress enacted the CPPA as part of the Federal Employees Pay Comparability Act (FEPCA) of 1990. FEPCA was enacted to reform the Federal Government pay structure, with a focus on achieving pay comparability between Federal executive branch positions and non-Federal jobs with similar qualifications. As part of this policy reform, the CPPA gives agencies the flexibility to set pay above the basic rate of pay for critical positions.

OPM has developed and promulgated a regulatory framework for the CPPA, 5 CFR § 535, that governs the rates of pay, the granting of an agency's request, the exercise of the agency CPPA, and other administrative matters. The regulations specify that requests must be made in writing and signed by the head of an agency. OPM is required to consult with the Office of Management and Budget (OMB) on the decision to grant or deny the request. Regulations also specify that the request include several justifications, including why the agency could not use other authorities to successfully fill the position. Once approved, the agency may exercise the authority to the extent necessary to recruit or retain an individual exceptionally well-qualified for the position, and it may set the pay at any amount up to Executive Schedule (EX)-I without further approval from OPM. Employees receiving pay under the CPPA are not entitled to locality-based comparability payments, special rate supplements, or other similar payments or supplements. Agencies or OPM, in consultation with OMB, may terminate the authority if no longer needed.

The CPPA provisions are ambiguous with regard to the approval process. It is unclear whether an agency must first attempt to recruit or retain a candidate before justifying the regulatory requirement to demonstrate the inability of the agency to successfully recruit or retain the candidate using all other authorities. This ambiguity has led to varied agency practices and interpretations of the approval process.

## **History of Use**

Since 1990, 34 CPPA positions have been approved by OPM across 8 agencies. Of these positions, 24 (71 percent) were approved for the Federal Bureau of Investigation (FBI) before 2008. In 2011, three CPPA positions were approved and filled: the Director of the National Institutes of Health (NIH), the Senior Actuary for Health Programs at OPM, and the Administrator of the Transportation Security Administration (TSA).

Interviews with agency representatives augmented the annual report data by describing two situations in which agencies requested the use of the CPPA but did not exercise it to fill the position. OPM approved a request for a position in the Department of Energy (DOE), but DOE was able to successfully hire a qualified candidate without exercising the CPPA. As of 2012, DOE's authority to exercise the CPPA for the requested position was still available and not filled. The National Security Agency (NSA) began a request for CPPA, which was approved by the Department of Defense Under Secretary of Defense for Intelligence, but it was not sent to OPM because NSA used an alternative pay authority. In both cases, DOE and NSA developed the request as a contingency, but ultimately the circumstances did not necessitate exercising the CPPA.

### **Comparison of CPPA with Other Pay Authorities**

Discussions with agency representatives revealed wide use of pay-related authorities, including government-wide authorities that are authorized to all agencies and agency-specific authorities that are designated by Congress for use by a single agency (see table on the next page). A comparison of the CPPA with other select pay-related authorities available across the Federal Government indicates that the CPPA would appear to offer an advantage in pay relative to all other identified government-wide and some agency-specific authorities. As indicated in the table, some agency-specific authorities exceed the CPPA basic pay ceiling. However, no government-wide authority provides a higher rate of basic pay. In addition to basic pay, the CPPA allows for bonuses but does not allow for locality pay. The disadvantages of CPPA include the additional authorization and oversight required from OPM and OMB; the specifications for use, particularly the type of position and individual; and limitations on the number of positions (the CPPA has a limit of 800 positions, of which 30 positions can be paid under the Executive Schedule; certain other authorities do not have a limit).

### **Barriers to Using CPPA**

Interviewees provided various reasons why the CPPA was not being requested, approved, and exercised more frequently, including regulatory requirements and processes for authorizing CPPA, availability of alternative pay or hiring authorities, the lack of knowledge and training on the use of CPPA, cultural barriers, the lack of communications paths across and within agencies, and insufficient salary flexibility.

### Select Pay-Related Authorities and Basic Pay Cap (as of March 2014)

Name/Type	Basic Pay Cap
<b>Government-Wide Authorities</b>	
Critical Position Pay Authority (CPPA)	\$201,700 (EX-I)
Senior Executive Service (SES)	\$181,500 (EX-II)
Scientific or Professional Positions (ST)	\$181,500 (EX-II)
Pay for certain senior-level (SL) positions	\$167,000 (EX-III)
Superior Qualifications and Special Needs Pay-Setting Authority	Higher than minimum of appropriate grade
Recruitment Incentives (component of "3R")	May not exceed 25 percent of the annual basic pay
Relocation Incentives (component of "3R")	May not exceed 25 percent of the annual basic pay
Retention Incentives (plus Group) (component of "3R")	May not exceed 25 percent of the annual basic pay; 10 percent for a group or category of employees
<b>Agency-Specific Authorities</b>	
DHHS and VA: Title 38, Health Care Positions	\$400,000 (aggregate pay, basic pay not specified), Secretary prescribes minimum and maximum aggregate pay at least every 2 years
DHHS and EPA: Title 42, Special Consultants	No statutory cap, DHHS prescribed at \$250,000 (2011), \$350,000 for the National Institutes of health (NIH), the Food and Drug Administration (FDA), and the Centers for Disease Control and Prevention (CDC)
DHHS: Title 42, Fellows	No statutory cap, DHHS prescribed at \$155,500
DHHS: Title 42, Professional, Scientific and Executive R&D	\$157,100 (EX-IV), and two positions at \$181,500 (EX-II)
DHHS: Title 42, Senior Biomedical Research Service	\$201,700 (EX-I)
DHS-HSARPA: DARPA Section 1101 "piggyback"	\$167,000 (EX-III)
DOD: Highly Qualified Experts (HQEs)	\$167,000 (EX-III)
DOD-AFRL: Science and Technology Reinvention Laboratory	\$157,100 (EX-IV equiv.) (pay banding system)
DOD-ARL: Science and Technology Reinvention Laboratory	\$157,100 (EX-IV equiv.) (pay banding system)
DOD-DARPA: Section 1101	\$167,000 (EX-III)
DOE: Excepted Service (EJ and EK Authority)	\$167,000 (EX-III) (pay banding system)
DOE-ARPA-E: DARPA Section 1101 "piggyback"	\$167,000 (EX-III)
NASA: Critical Position Pay Authority	\$233,000 (Vice President's salary)
NSF-National Science Board: Term Appointment	\$167,000 (EX-III)
ODNI and Intelligence Community: HQEs	\$181,500 (EX-II) to \$201,700 (EX-I), (approval by the Director of National Intelligence); greater than \$201,700 (EX-I) (approval by the President)
USDA: Agriculture Senior Scientific Research Service	\$201,700 (EX-I)

AFRL = Air Force Research Laboratory; ARL = Army Research Laboratory; ARPA-E = Advanced Research Projects Agency - Energy; DARPA = Defense Advanced Research Projects Agency; DHHS = Department of Health and Human Services; DHS = Department of Homeland Security; DOD = Department of Defense; DOE = Department of Energy; EPA = Environmental Protection Agency; EX = Executive Schedule; HSARPA = Homeland Security Advanced Research Projects Agency; NASA = National Aeronautics and Space Administration; NSF = National Science Foundation; ODNI = Office of the Director for National Intelligence; USDA = Department of Agriculture; VA = Department of Veterans Affairs.

## **Utility of CPPA**

A number of interviewees, despite not having used the CPPA, mentioned several aspects of possible utility of the CPPA within their own agencies. Interviewees emphasized that the CPPA could:

- Be used to raise the pay offer for Federal Government positions and increase the ability to compete with, and attract talent from, other sectors.
- Provide a mechanism to target specialized agency needs, such as in niche fields where there is significant demand in the labor market, or to keep pace with workforce needs in rapidly advancing fields.
- Fill gaps not met by other pay-related authorities, particularly those inappropriate for the position or the individual an agency wishes to hire.
- Offer incentives for career advancement for current Federal employees and address pay compression.

## **Conclusions and Recommendations**

The most likely reasons why CPPA is not being used more often by agencies are restrictions of the current regulatory framework, the availability of alternative pay authorities, lack of knowledge and training among human capital officials and hiring managers regarding the CPPA, and agency cultures that impede its use.

Recommendations to improve the effectiveness of the CPPA focused on four areas: training and guidance, communication, regulatory, and legislative. The following recommendations were developed in part from suggestions provided by agency representatives and STPI's own analysis of the legislative and regulatory framework.

### **Training and Guidance**

- Raise awareness of the CPPA and improve training on how it is implemented.
- Develop departmental and agency policies for requesting and exercising CPPA.

### **Communication**

- Establish timelines for OPM response to CPPA requests.
- Provide explanation of denied CPPA requests.
- Improve communication between OPM and agencies.
- Improve human capital management of the CPPA through annual reporting and OPM feedback.

## **Regulatory**

- Remove or consider easing (for at least some specified positions) the regulatory requirement that CPPA can only be authorized after all other available human resources pay authorities have been exhausted.
- Clarify and streamline regulations governing CPPA approval, including justifications relevant to agencies' use of other authorities and the inability to fill a position.
- Develop standardized forms.
- Clarify the consultative process involving OMB.

## **Legislative**

- Transfer authority to approve CPPA from OPM/OMB to agency heads.
- Increase CPPA pay ceiling.

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# 1. Introduction

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The Federal scientific and technical workforce is integral to advancing research and technologies to successfully meet agencies' missions across various national initiatives (e.g., ensuring national and homeland security, addressing the deterioration of the environment, and maintaining a resilient transportation infrastructure). But the Federal Government faces growing competition from other sectors in the United States and globally in attracting high-quality scientific and technical talent into the Federal workforce. Obstacles to Federal recruitment and retention include bureaucratic processes, citizenship requirements, compensation, budget pressures, lack of resources committed to recruitment activities, and a lack of flexibility to respond to changing career needs, among other factors that may not be present in other sectors or industries (National Research Council 1990, 2010, 2012a, 2012b; Butz et al. 2004).

In 1990, Congress passed the Critical Position Pay Authority (CPPA) Act, codified at 5 U.S.C. § 5377, to facilitate the recruitment and retention of Federal employees. The CPPA gives agencies the flexibility to fix the pay of identified "critical" positions at a rate higher than would be otherwise payable, as necessary to recruit or retain an exceptionally well-qualified individual in such a position. The CPPA is one of many pay-related authorities (some of which are also discussed in this report) available to agencies to maintain the quality of scientific and technical professionals in the Federal workforce.

Although the Office of Personnel Management (OPM) is authorized to approve as many as 800 positions requested by federal agencies under CPPA, only 3 active positions administered through the CPPA in fiscal year 2011.<sup>1</sup> The Office of Science and Technology Policy asked the IDA Science and Technology Policy Institute (STPI) to study the history of use of the CPPA, the characteristics of critical positions approved under the CPPA, and the perceived benefits and challenges of the CPPA, as well as provide recommendations that will support agencies' use of the CPPA.

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<sup>1</sup> Data provided by OPM.

## A. Approach

The study team used three sources of information for this work: semi-structured interviews, a literature review, and OPM annual reports on the CPPA.<sup>2</sup>

- *Semi-structured interviews.* We held semi-structured interviews with 40 human-resource representatives across 19 Federal agencies and offices, including agencies with a history of using the CPPA and those that might be expected to use the CPPA because of their scientific and technical workforce. The discussions covered five main areas:
  - Rationales for using the CPPA.
  - Benefits of using the CPPA.
  - Approaches that facilitated obtaining OPM approval and exercising the authority.
  - Challenges experienced when requesting OPM approval or exercising the CPPA.
  - Suggested changes to law or policy to facilitate use of the CPPA.

Appendix A provides the text of 5 U.S.C. § 5377 and related regulations in 5 CFR § 535. Appendix B has the discussion guide for these interviews, and Appendix C lists the agency representatives interviewed.

- *Literature review.* We reviewed Federal legislation and regulations, agency policy guidance and instructions, congressional hearings, and reports from studies conducted by government organizations, such as the Government Accountability Office and the Congressional Research Service. These materials provided a better understanding of pay mechanisms available throughout the Federal Government and informed our discussions with human capital and hiring managers. The literature review also provided critical information about the Federal pay authorities available for recruiting and retaining science and technical positions listed in Appendix D.
- *OPM annual reports.* OPM develops congressionally mandated annual reports, which provide information on use of the CPPA. These reports include the number and salaries of approved positions by agency and descriptions of those

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<sup>2</sup> 5 U.S.C. § 5377(h) requires OPM to report annually to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate on the operation of the critical position pay program. The law requires OPM to report on the number of authorized positions, in the aggregate and by agency. See OPM (2012).

positions. STPI had access to reports for fiscal years 2008 to 2011.<sup>3</sup> We analyzed these reports to identify trends and to compare the use of the CPPA across agencies. The reports also provided aggregated statistics on the number of positions that were requested and approved using the CPPA from fiscal years 1990 to 2012; however, the reports did not provide descriptions or the time frame for CPPA positions filled before each report's fiscal year. The reports allowed STPI to identify and describe the range of scientific and technical positions for which agencies exercised the CPPA over the past several years.

## **B. Report Structure**

The rest of the report is structured as follows:

- Chapter 2 provides a legislative, regulatory, and procedural overview of requesting and exercising the CPPA.
- Chapter 3 shows the history of using the CPPA across the Federal Government.
- Chapter 4 provides a comparison of the CPPA with other pay-related mechanisms available either to the Federal Government as a whole or to specific individual agencies.
- Chapter 5 describes the perceived benefits and agencies' rationales for requesting or exercising the CPPA.
- Chapter 6 explains barriers to using the CPPA.
- Chapter 7 identifies policy suggestions to increase use of the CPPA.

Supplemental information is provided in four appendixes:

- Appendix A provides the text of 5 U.S.C. § 5377 and related regulations in 5 CFR § 535.
- Appendix B provides the discussion guide that was used for the semi-structured interviews.
- Appendix C lists agency participants in interviews.
- Appendix D identifies several attributes of select government-wide (including the CPPA) and agency-specific pay-related authorities that were mentioned in interviews.

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<sup>3</sup> STPI asked OPM for the earlier annual reports since the CPPA was enacted in 1990 but did not receive those reports by the time of writing.



## 2. CPPA: Legislative, Regulatory, and Procedural Overview

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### A. Legislation

The CPPA was originally enacted by Congress as part of the Federal Employees Pay Comparability Act (FEPCA) of 1990 and codified in 5 U.S.C. § 5377 (see Appendix A). At the time, there was general discontent regarding the pay disparities between Federal Government positions and their counterparts in the private sector (Government Printing Office (GPO) 1990). The purpose of FEPCA was to reform the Federal Government pay structure, with a focus on achieving pay comparability between Federal executive branch positions and non-Federal jobs that had similar qualifications (OPM 2014). The CPPA was proposed as one mechanism for the Federal Government to achieve pay comparability (GPO 1990).

The CPPA authorizes OPM, upon a Federal agency's request, and in consultation with the Office of Management and Budget (OMB), to fix the rate of pay of certain critical positions at a rate higher than the basic rate of pay for those positions.<sup>4</sup> Critical positions are defined by the CPPA as those positions that an agency identifies as essential to the "accomplishment of an important agency mission." The definition of a position in the CPPA includes all Federal civilian positions and employees under an agency,<sup>5</sup> including the Senior Executive Service (SES); executive-level positions with pay administered under the Executive Schedule's five pay levels (from EX-V to EX-I);<sup>6</sup> administrative law judges; contract appeals board members; specially qualified scientific and professional personnel (ST); categories of positions designated as critical at the request of the agency and approved by the President;<sup>7</sup> and intelligence-related positions at the Federal Bureau of Investigation (FBI).

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<sup>4</sup> According to 5 CFR 575.302, the basic rate of pay is the rate of pay fixed by law or administrative action for a position before any deductions (e.g., taxes) or supplements (e.g., locality pay or bonuses). See 5 CFR 575.302 – DEFINITIONS.

<sup>5</sup> Positions are further specified in 5 U.S.C. Chapter 51 – CLASSIFICATION.

<sup>6</sup> These are positions are specified in 5 U.S.C. §§ 5312–5317. The Executive Schedule is the pay schedule for the highest ranked positions of the executive branch of the U.S. Government (under 5 U.S.C. §§ 5311–5318). Further information is available in 5 U.S.C. Chapter 53, Subchapter II – Executive Schedule Pay Rates.

<sup>7</sup> Further specified in 5 U.S.C. § 5377(i).

The CPPA is intended to be used to recruit individuals for or retain individuals in positions that require an extremely high level of expertise in a scientific, technical, professional, or administrative field. CPPA authority may only be granted or exercised to the extent necessary to recruit or retain an exceptionally well-qualified person for a position (5 U.S.C. § 5377(b)(2)).

In 2004, Congress passed the Federal Workforce Flexibility Act (FWFA). FWFA amended the 1990 CPPA language to “facilitate increased application of this underused flexibility as a means of attracting talented individuals to critical positions in the Federal Government who would not otherwise accept or stay in Government jobs at lower rates of pay” (OPM 2004). The amendment shifted the primary responsibility for the CPPA from OMB to OPM. Before this amendment, OMB had the authority to approve use of the CPPA, in consultation with OPM.

Figure 1 provides a summary of the approvals, pay rates, eligibility for positions, and number of employees specified in the CPPA statute.

<b>Approvals</b>	<ul style="list-style-type: none"> <li>• Agency may request use of authority</li> <li>• Approval from Office of Personnel Management (OPM), in consultation with the Office of Management and Budget (OMB)</li> </ul>
<b>Pay Rate</b>	<ul style="list-style-type: none"> <li>• Basic pay may not exceed Executive Schedule (EX)-I</li> <li>• Approval of President for pay above EX-I</li> </ul>
<b>Eligibility</b>	<ul style="list-style-type: none"> <li>• Extremely high level of expertise in a scientific, technical, professional, or administrative field</li> <li>• Critical to the successful accomplishment of an important agency mission</li> <li>• Covers positions paid under Senior Executive Service, Senior-Level and Scientific or Technical Positions, General Schedule, and Executive Schedule, intelligence-related positions at the Federal Bureau of Investigation (FBI), and positions designated by agencies as critical and approved by the President</li> </ul>
<b>Limits on Number of Employees</b>	<ul style="list-style-type: none"> <li>• 800 total positions</li> <li>• 30 for positions paid under the Executive Schedule</li> </ul>

**Figure 1. Summary of the Critical Position Pay Authority (5 U.S.C. § 5377)**

## **B. Regulations**

OPM developed and promulgated a regulatory framework implementing the CPPA in 5 CFR § 535 (see Appendix A). These regulations govern the rates of pay, granting of an agency's request, and exercise of the CPPA by an agency, among other administrative matters.

### **1. Requesting Use of the CPPA**

Federal agencies must submit to OPM a request to exercise the CPPA to recruit or retain an individual for a specified position. Requests must be made in writing and signed by the head of the agency or by an individual designated with the responsibility of administering the CPPA at the agency. OPM does not have a standard form or template for CPPA requests, but in 5 CFR § 535.104(d) it outlined the minimum information that all requests must include.

Once an agency submits the request to OPM, OPM is required to consult with OMB on the decision to grant or deny the request. However, there are no legal or detailed regulatory guidelines related to the OPM and OMB consultation, approval, notification, and appeal procedures, including no specified time frame upon which the agencies could expect a decision.

### **2. Exercising the CPPA**

Once OPM approves an agency's request, the head of the agency can exercise its authority on the condition that its use is necessary to successfully recruit or retain an individual who is exceptionally well-qualified for the position (5 CFR § 535.103). This condition is significant because an OPM-approved request provides an agency the ability to exercise the authority for a given position *only* after determining that the exercise is necessary to recruit or retain an identified individual. Once an agency decides that it has a justified need to exercise the CPPA (e.g., after initiating the recruitment process for the critical position), the agency head can set the pay at any amount up to Executive Schedule (EX)-I or EX-II (depending on the ceiling amount the agency requested for the specified position), without further approval from OPM (5 CFR § 535.105). Employees receiving pay under the CPPA are not entitled to locality-based comparability payments, special rate supplements, or other similar payments or supplements.

An agency can make adjustments in the rate of basic pay for a CPPA position each year in January, the same time that pay adjustments are authorized for employees under the Executive Schedule.

### 3. Termination of Authority

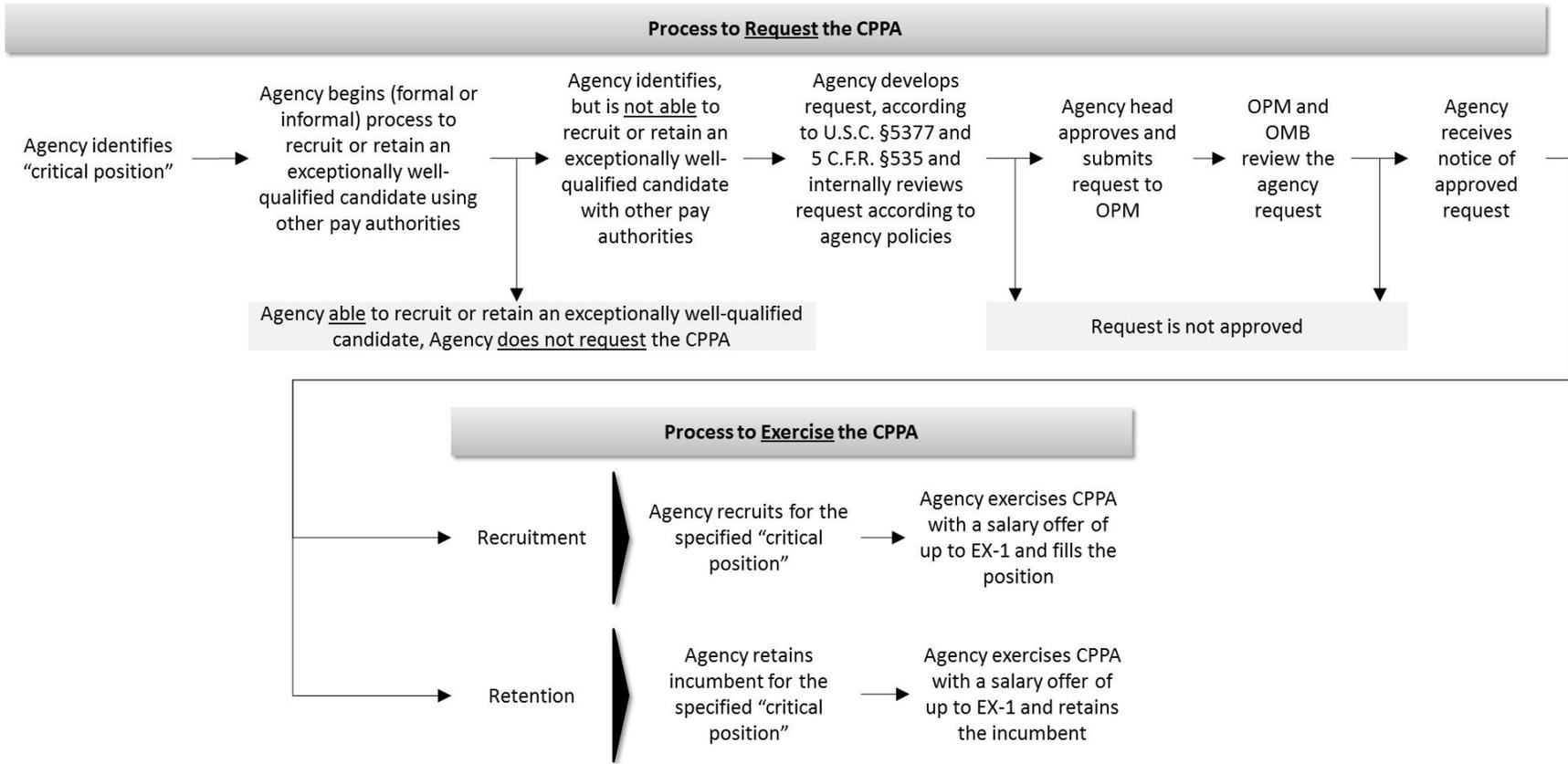
An agency granted the CPPA authority can continue to use it for the authorized position as long as needed. OPM monitors the use of the CPPA annually. It can terminate the authority associated with a given position after notifying the agency if, in OPM's judgment in consultation with OMB, the authority is no longer needed. Agencies can also terminate the CPPA applicability for a given position. If the CPPA authority is terminated, the employee's rate of basic pay is set to the rate to which the employee would be entitled if he or she had not received pay administered under the CPPA; this pay can include any locality-based comparability payments, special rate supplements, or other similar payments or supplements.

### C. Ambiguity in Regulatory Implementation

While the regulations speak generally to the regulatory process of requesting authorization and exercising the CPPA, their provisions for implementing the policy are ambiguous. Perceptions are mixed on how and when an agency should request the CPPA and how the request aligns with the agency's recruitment activities. For example, it is unclear whether an agency must attempt to recruit or retain a candidate for a critical position before it can fulfill the regulatory requirements to justify "why the agency could not, through diligent and comprehensive recruitment efforts and without using the critical position pay authority, fill the position within a reasonable period with an individual" (5 CFR § 535.104). This ambiguity is demonstrated in two different processes that agency representatives proposed to initiate and exercise a CPPA request:

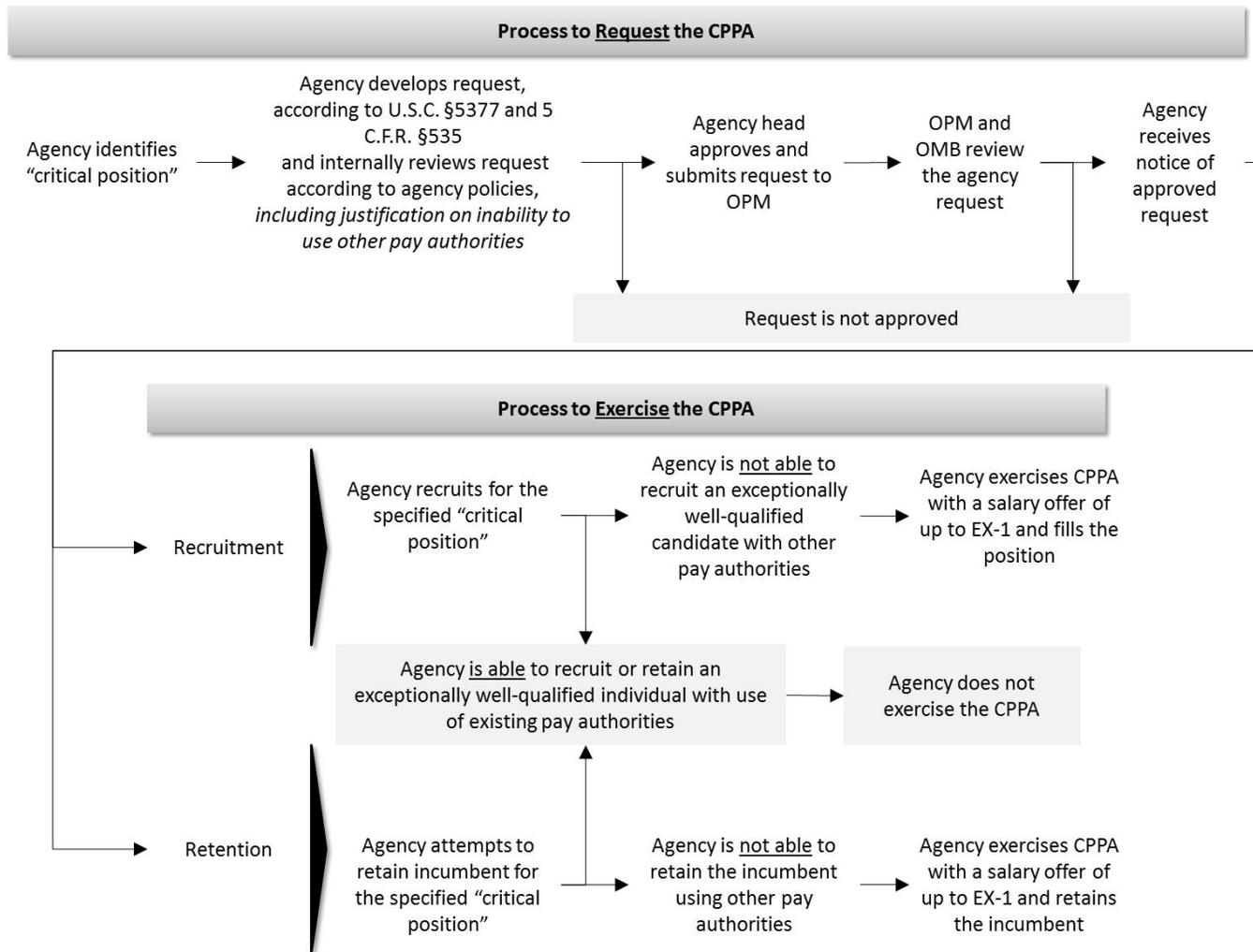
- *Process 1.* An agency identifies a critical position and begins the recruitment process. Once an agency identifies an exceptionally well-qualified candidate for the position, the agency attempts to recruit or retain the individual using other pay-related authorities. If the agency is unable to hire the candidate, it has demonstrated compliance with the requirements under 5 CFR § 535.104 and develops a request to use the CPPA. If OPM and OMB approve the request, the agency exercises the CPPA for the position (Figure 2).
- *Process 2.* An agency identifies a critical position that *may* require the use of a CPPA to recruit or retain an exceptionally well-qualified individual. An agency develops the request for approval, including justifications that show why other existing pay-related authorities *are unlikely* to be sufficient to recruit or retain an individual in the position. If OPM and OMB approve the request, the agency exercises the CPPA after: (1) identifying an exceptionally well-qualified candidate and (2) determining that no other authorities *are* sufficient (Figure 3).

In Process 2, a potential candidate for a critical position is not subject to a delay because the time burden of requesting and approving the agency's use of the CPPA for the position has been borne ahead of time.



Source: STPI's interpretation of CPPA process as described by interviewees and regulations.

**Figure 2. Summary of Process 1 to Request and Exercise the CPPA**



Source: STPI's interpretation of CPPA process as described by interviewees and regulations.

**Figure 3. Summary of Process 2 to Request and Exercise the CPPA**



### 3. History of CPPA Use

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Since the CPPA was enacted in 1990, 34 CPPA positions have been approved by OPM across 8 agencies (Table 1). Of these positions, 24 (71 percent) were approved for the FBI before 2008.<sup>8</sup>

**Table 1. Authorized Critical Pay Authority Positions**

<b>Agency</b>	<b>Positions Approved Since 1990</b>	<b>Positions Filled in Fiscal Years 2008–2011*</b>
Department of Education	3	0
Department of Energy	1	0
Department of Health and Human Services	1	2
Federal Bureau of Investigations	24	0
National Aeronautics and Space Administration	1	0
National Transportation Safety Board	2	0
Office of Personnel Management	1	1
Transportation Security Administration	1	1

\* The annual reports provided to STPI on the use of the CPPA in aggregate and by agency from fiscal years 2008 to 2011 did not specify when the approved positions before 2008 were filled or terminated.

The reports that OPM provided from fiscal years 2008 to 2011 reported four positions approved and filled during this period: the Director of the National Institutes of Health (NIH), the Commissioner of the Food and Drug Administration (FDA), the Senior Actuary for Health Programs at OPM, and the Administrator of the Transportation Security Administration (TSA).

As of 2011, three of these positions remained filled.<sup>9</sup>

#### A. Characteristics of Critical Positions Filled in 2011

In 2011, the CPPA was used for two executive-level administrative positions and one scientific position (see Table 2).<sup>10</sup>

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<sup>8</sup> Human capital officers at the FBI said they had no record of these positions, possibly due to reorganizations that occurred across human resources offices.

<sup>9</sup> OPM's annual report for CPPA positions in 2012 was not available as of this writing.

**Table 2. CPPA Positions and Pay Approved in 2011**

<b>Agency/Position</b>	<b>Yearly Salary without Critical Position Pay</b>	<b>Yearly Salary with Critical Position Pay</b>
HHS/Director, NIH	\$155,500 (EX-IV)	\$199,700 (EX-I)
OPM/Senior Actuary for Health Programs	\$165,300 (EX-III)	\$179,700 (EX-II)
TSA/Administrator	\$155,500 (EX-IV)	\$199,700 (EX-I)

Source: OPM 2012.

The NIH Director and TSA Administrator are administrative executive positions with pay capped at EX-IV (\$155, 500 in 2011). The CPPA allows the agencies to raise the pay of these positions to EX-I (\$199,700 in 2011, including supplements other than locality-based or similar pay comparability). Both positions are Presidential appointments that require Senate confirmation, which can further hinder agencies’ ability to successfully fill positions in a timely manner. These agencies did not have any other available authorities to raise the pay for these appointed executive positions.

Before OPM’s use of the CPPA for its Senior Actuary for Health Programs, the position was a senior-level (SL) position with pay administered under 5 U.S.C. § 3104, a pay authority applicable across Federal agencies.<sup>11</sup> The SL position authority allows agencies with a certified performance appraisal system to set pay up to EX-II (\$179,700 in 2011) and agencies without a certified system, such as OPM, to set pay up to EX-III (\$165,300 in 2011).<sup>12</sup>

## **B. Characteristics of Critical Positions Approved by Agencies and Not Filled**

Representatives from the Department of Energy (DOE) and the National Security Agency (NSA) said that they had started the process of seeking approval to use the CPPA within their agencies; however, the CPPA was not used to fill the identified positions.

DOE requested CPPA authority to retain a program manager in a region where the agency faced difficulty recruiting and finding qualified candidates. The position was identified as critical, and the request for the CPPA was approved by the DOE Secretary and OPM. However, the position was not filled because the incumbent announced

<sup>10</sup> The one scientific position is the Senior Actuary for Health Programs. Actuarial Science Series (1510) is classified by OPM as a position in the Mathematical Sciences Group (1500). See OPM’s handbook of occupational groups and families for more information, <http://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/occupationalhandbook.pdf>.

<sup>11</sup> For a summary of the senior-level position authority, see Appendix B.

<sup>12</sup> See OPM’s webpage listing certified appraisal systems, accessed January 21, 2014, <http://www.opm.gov/policy-data-oversight/senior-executive-service/certification/>.

retirement soon after OPM approved the authority. DOE human capital officers also felt that they ultimately could not justify exercising the authority since there were various other program manager positions with similar qualifications across other regions, and the pay disparities the CPPA could become divisive.

The NSA identified three critical positions for which it anticipated using the CPPA to hire or retain an exceptionally well-qualified individual: the Chief Technology Officer, Director for Research, and Director for Information Technology/Chief Information Officer. For these positions, the CPPA request was developed before recruiting for the vacant positions and was approved by the Under Secretary of Defense for Intelligence, acting, as permitted by the CPPA statute, as “an official who has been delegated the authority to act for the agency head in the matter concerned” (5 CFR § 535.102). The request was developed and approved as a contingency, given that NSA anticipated that no more than two dozen individuals nationwide might be suitable candidates for the positions. The request was not provided to OPM and OMB for approval since NSA was able to identify internal candidates that were qualified for the positions and willing to accept the positions’ “normal” salary levels.



## **4. Comparison of the CPPA with Other Pay Authorities**

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The CPPA is one of many mechanisms available to Federal human capital managers to sustain a qualified scientific and technical workforce. Discussions with agency representatives revealed wide use of the pay-related government-wide and agency-specific authorities available to recruit or retain the scientific and technical workforce.

To better understand the broader context of pay-related authorities available across the Federal Government, we compiled a list of select authorities that were mentioned in interviews (Table 3 and Appendix D). Compared with other pay-related authorities, the CPPA offers advantages and disadvantages with respect to authorization and oversight, salary base cap, type of positions and individuals, and limitations on the number of positions.

### **A. Authorization and Oversight**

OPM, in consultation with OMB, authorizes, terminates, and conducts oversight of agencies' use of the CPPA. While OPM's role in authorizing, terminating, and overseeing Federal-wide pay authorities is not unique to the CPPA, the requirement to consult with OMB is not typical—only the SES also requires approvals from OMB.

Other examples of OPM roles in Federal-wide pay authorities include the following:

- The authority for SL and ST positions allows agencies to fill their allocations without OPM approval; however, the total number of positions requested by an agency must be approved by OPM before the agency fills the positions.
- The Superior Qualifications authority (5 U.S.C. § 5333), which provides a higher pay within the appropriate General Schedule (GS) grade for a position, requires OPM approval for each position requested by an agency.
- The recruitment, relocation, and retention authorities (known as “3R”) provide bonuses to augment the base salary of a position for a certain number of years. These bonuses can be approved by the agency, subject to OPM review and oversight.

**Table 3. Select Pay-Related Authorities and Basic Pay Cap (as of March 2014)**

<b>Name/Type</b>	<b>Basic Pay Cap</b>
<b>Government-Wide Authorities</b>	
Critical Position Pay Authority (CPPA)	\$201,700 (EX-I)
Senior Executive Service (SES)	\$181,500 (EX-II)
Scientific or Professional Positions (ST)	\$181,500 (EX-II)
Pay for certain senior-level (SL) positions	\$167,000 (EX-III)
Superior Qualifications and Special Needs Pay-Setting Authority	Higher than minimum of appropriate grade
Recruitment Incentives (component of "3R")	May not exceed 25 percent of the annual basic pay
Relocation Incentives (component of "3R")	May not exceed 25 percent of the annual basic pay
Retention Incentives (plus Group) (component of "3R")	May not exceed 25 percent of the annual basic pay; 10 percent for a group or category of employees
<b>Agency-Specific Authorities</b>	
DHHS and VA: Title 38, Health Care Positions	\$400,000 (aggregate pay, basic pay not specified), Secretary prescribes minimum and maximum aggregate pay at least every 2 years
DHHS and EPA: Title 42, Special Consultants	No statutory cap, DHHS prescribed at \$250,000 (2011), \$350,000 for the National Institutes of health (NIH), the Food and Drug Administration (FDA), and the Centers for Disease Control and Prevention (CDC)
DHHS: Title 42, Fellows	No statutory cap, DHHS prescribed at \$155,500
DHHS: Title 42, Professional, Scientific and Executive R&D	\$157,100 (EX-IV), and two positions at \$181,500 (EX-II)
DHHS: Title 42, Senior Biomedical Research Service	\$201,700 (EX-I)
DHS-HSARPA: DARPA Section 1101 "piggyback"	\$167,000 (EX-III)
DOD: Highly Qualified Experts (HQEs)	\$167,000 (EX-III)
DOD-AFRL: Science and Technology Reinvention Laboratory	\$157,100 (EX-IV equiv.) (pay banding system)
DOD-ARL: Science and Technology Reinvention Laboratory	\$157,100 (EX-IV equiv.) (pay banding system)
DOD-DARPA: Section 1101	\$167,000 (EX-III)
DOE: Excepted Service (EJ and EK Authority)	\$167,000 (EX-III) (pay banding system)
DOE- ARPA-E: DARPA Section 1101 "piggyback"	\$167,000 (EX-III)
NASA: Critical Position Pay Authority	\$233,000 (Vice President's salary)
NSF-National Science Board: Term Appointment	\$167,000 (EX-III)
<b>Agency-Specific Authorities (cont.)</b>	
ODNI and Intelligence Community: HQEs	\$181,500 (EX-II) to \$201,700 (EX-I), (approval by the Director of National Intelligence); greater than \$201,700 (EX-I) (approval by the President)
USDA: Agriculture Senior Scientific Research Service	\$201,700 (EX-I)

AFRL = Air Force Research Laboratory; ARL = Army Research Laboratory; ARPA-E = Advanced Research Projects Agency - Energy; DARPA = Defense Advanced Research Projects Agency; DHHS = Department of Health and Human Services; DHS = Department of Homeland Security; DOD = Department of Defense; DOE = Department of Energy; EPA = Environmental Protection Agency; HSARPA = Homeland Security Advanced Research Projects Agency; EX = Executive Schedule; NASA = National Aeronautics and Space Administration; NSF = National Science Foundation; ODNI = Office of the Director for National Intelligence; USDA = Department of Agriculture; VA = Department of Veterans Affairs.

Authorities applicable to a single agency only require approval by the agency head (e.g., administrator or director) and do not require OPM approval. Compared with CPPA's reviews and approvals through OPM and OMB, single agency authorities are less of a burden (simpler approval process, less time required to receive approval) because agencies only have to seek approval from their internal leadership.

## **B. Salary Base Cap**

The CPPA authorizes agencies to set the basic pay for a position as high as EX-I and above with written Presidential approval. CPPA pay rates exceed all the other identified government-wide and several agency-specific authorities (Table 3). (Note that CPPA does not allow locality-based comparability payments or other similar payments that are allowed with other pay-related authorities.) On the other hand, the basic pay cap for several agency-specific authorities exceeds that of the CPPA (Table 3). Agencies that can use these authorities to set basic pay for a position above the CPPA's level may have no reason to use the CPPA. Also, some agency-specific authorities do not have a statutory cap, such as the Special Consultants authority under Title 42 that is used by the DHHS and the EPA. DHHS policy does set the pay cap for special consultants at \$350,000 for NIH, FDA, and CDC. In addition, NASA has an authority similar to the CPPA that authorizes the agency to set pay up to the Vice President's salary, while requiring only agency-level approvals. Discussions with representatives at many of the interviewed agencies that have agency-specific authorities affirm that these flexibilities are sufficient to maintain competitiveness with other sectors when recruiting or retaining scientific and technical professionals.

## **C. Type of Position and Individual**

The types of positions and individuals targeted by government-wide and agency-specific authorities can vary, which plays a role in an agency's decision about whether to use a particular authority. The CPPA is a tool used for a targeted *type of position* ("scientific, technical, professional, or administrative fields") that is "critical" and a *certain type of individual* ("exceptionally well-qualified") that is hired into the position. While many identified authorities also cover a large range of positions within an agency, they do not specify other significant conditions, such as criticality of the position, as the CPPA does. These conditions are additional considerations required for the use of the CPPA as opposed to other identified authorities.

Unlike the CPPA, most authorities require explicit *individual* qualifications, such as a certain number of years of specialized experience, "outstanding" achievements in the field, and the like. These requirements are similar to those necessary for a retention bonus, which is authorized for positions in which the *individual* has "unusually high or unique" qualifications and is likely to leave for a different Federal position. Other pay

supplements, such as the recruitment and relocation bonuses, do not specify additional requirements for the individual hired (other than meeting the position qualifications) and are used in the specific situation for the *position* itself (e.g., “likely difficult to fill”).

#### **D. Number of Positions**

The CPPA can be authorized for up to 800 positions throughout the Federal Government, of which 30 are limited to positions that would otherwise be determined as receiving basic pay under the Executive Schedule. The number of positions that an agency can request under the CPPA is unlimited. Other authorities have limits on the number of employees for whom the authority can be applied. For instance,

- The DOD Highly Qualified Experts authority is limited to 2,500 positions.
- Each agency has a specified number of SES, SL, and ST positions approved by OPM, and the use of these positions can range across agencies. For example, the National Science Foundation (NSF) mainly relies on the SES, whereas NASA has as many as 150 positions allocated through the SL and ST authorities.
- The Department of Agriculture Senior Scientific Research Service authority allows up to 100 positions.
- The advanced research projects agencies in DOD and DOE have limits of 60 and 120 positions, respectively, on the Section 1101 authority for “eminent experts in science or engineering.”
- NASA’s agency-specific critical position authority is limited to 10 positions.

In general, interviewees reported they manage the number of hires under their authorities carefully and maintain a buffer on their positions to better respond to changing workforce needs. Certain agency representatives said that they depend significantly on one or two of these pay authorities, particularly SES, SL, and ST, and use them extensively for new scientific and technical hires within their agencies.

## 5. Barriers to Using the CPPA

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Interviewees provided various reasons why the CPPA is not being authorized and used more frequently, including:

- Regulatory requirements and processes for authorizing CPPA.
- Availability of other pay or hiring authorities.
- Lack of knowledge and training on use of CPPA.
- Cultural barriers.
- Lack of communication paths across and within agencies.
- Insufficient salary flexibility.

### A. Regulatory Requirements and Processes for Authorizing the CPPA

Interviewees identified several issues related to the CPPA's regulatory requirements, time required for approvals, and lack of transparency regarding OPM and OMB's decision-making process. Several agency representatives did not readily understand the regulatory process to request use of the CPPA.

#### 1. 5 CFR § 535.104(d)(11) Assessment

Title 5 CFR § 535.104 (d)(11) states that agencies must provide:

...an assessment of why they could not, through diligent and comprehensive recruitment efforts and without using the critical pay authority, fill the position in a reasonable period of time with an individual who could perform the responsibilities in a manner sufficient to fulfill the agency's mission. This assessment must include justification as to why an agency could not, as an effective alternative, use other human resources flexibilities and pay authorities, such as recruitment, relocation, and retention incentives under 5 CFR Part 575.

Agency representatives identified a number of difficulties in satisfying this assessment:

- Before receiving approval for the CPPA, an agency must justify why it could not, as an effective alternative, use other human resources options and pay authorities to successfully fill a critical position. Many interviewees were uncertain about how to interpret this requirement. For instance, they thought that the only way to justify the inability to successfully hire an exceptional candidate

using alternative pay authorities for a critical position would be by failing to recruit an exceptional candidate. Such a failure would clearly justify the use of the CPPA.

- Interviewees thought they could develop a request to exercise the CPPA for the identified position and individual only after identifying an exceptional individual through the recruitment process and attempting to use all other mechanisms to recruit or retain the individual. Interviewees felt that this process would add significant time to the recruitment process and would likely result in an exceptionally well-qualified candidate accepting an employment offer elsewhere.
- Some interviewees reported a lack of clarity about whether OPM would accept any methods to justify the inability to use other pay authorities other than through the agency's recruitment process, and, if so, what methods would be acceptable. Interviewees were unaware of the options already used from successful requests to satisfy this requirement.
  - *Lack of clarity on what constitutes “a reasonable period of time” to recruit for a position.* Interviewees have varied notions of the reasonable time to recruit for a position since each agency has different processes and the hiring timeline is largely dependent upon the type and availability of applicants for a position, among other factors. For the CPPA, the time to recruit for a position may be particularly influenced by time-sensitive and critical positions that are necessary to fulfill an agency's mission. One interviewee found that the regulations were unclear as to what a “reasonable period of time” is in practice.
  - *Agencies pointed out an apparent conflict between the standard found in CPPA's legislation and in the OPM regulations.* Legislation mandates that the CPPA may be granted or exercised only “to the extent necessary to recruit or retain an individual exceptionally well-qualified for the position.” However, 5 CFR § 535.104(d)(11) mandates an agency can use the CPPA only after demonstrating that the position could *not* be filled “with an individual who could perform the duties and responsibilities in a *manner sufficient* to fulfill the agency's mission” [emphasis added]. Agency representatives raised the concern that 5 CFR § 535.104(d)(11)'s provision may conflict with the CPPA's intent to enable recruiting or retaining an exceptionally well-qualified candidate, potentially preventing agencies from receiving CPPA authorization on the basis that an individual “sufficient” to perform the duties and the responsibilities of a position could be recruited or retained. This conflict also exists within the regulations themselves. For instance, 5 CFR § 535.104(a) sets the standard of an “exceptionally well-qualified individual,” while 5 CFR § 535.104(d)(11) sets the standard of “an

individual who could perform the duties in a manner sufficient to fulfill the agency's mission.”

## **2. Time Required to Process Requests and Approvals**

Agency representatives expressed concern that processing a CPPA request and receiving authorization would take more time than their typical hiring processes because both OPM approval and OMB consultation are required. Agency representatives were also concerned that neither the CPPA legislation nor regulations mandate response or processing times—and OPM has not provided policy guidance on the matter. These concerns are valid since the top-performing organizations in recruitment activities will generally fill a position in less time than the average- and bottom-performing organizations. A study by the American Productivity and Quality Center suggests that the average time to hire in top-performing organizations is 43 days compared with 74 and 105 days for the average and bottom performers, respectively (American Productivity and Quality Center 2013). For comparison, in 2012, the average time to hire for Federal agencies was 87 days (Performance.gov 2013). Agencies felt that the uncertainty in timelines for approving agency requests deterred them from using the CPPA as an effective recruitment or retention tool.

## **3. Misinterpretation of Regulations for Approval by an Agency Head**

Many agency representatives reported that agency heads have not delegated the authority to request or exercise CPPA to other officials in their agency, which is one reason for the limited use of CPPA within their agencies. Their interpretation of the CPPA regulations is that the head of an agency must sign all requests and that agency heads cannot delegate the authority to other officials. But this is a misinterpretation of the law and regulations. CPPA regulations state that the “head of agency” can be “the agency head or an official who has been delegated the authority to act for the agency head in the matter concerned” (5 CFR § 535.102).

## **4. Lack of Transparency in the OPM and OMB Decision-Making Process**

Agency representatives reported that they did not have any information or guidance from OPM on its internal administrative adjudication process for CPPA requests. Interviewees were particularly concerned about the apparent lack of transparency for the consultative process between OPM and OMB and about the seeming lack of a designated OPM point of contact to provide clear and timely communication to agencies regarding their requests.

## **B. Availability of Other Pay or Hiring Authorities**

Agencies have at their disposal a number of other pay or hiring authorities to facilitate recruitment. Some of these authorities are specific to scientific and technical positions (Appendix D). Agency representatives reported that these authorities—instead of the CPPA—are used to recruit scientific and technical talent. In interviews, agency representatives cited several reasons why they use alternative agency pay and related hiring authorities rather than the CPPA, including:

- OPM or other executive-level approval is not required; instead, authority for use of the pay authority resides with the agency. This situation poses several advantages, such as reducing regulatory and bureaucratic burden throughout the recruitment process and decreasing the agency's time to hire.
- Agencies are authorized to set pay for certain positions or individuals equal to or higher than the pay cap available through the CPPA; thus, they have no incentive to use the CPPA and bear the associated burden of obtaining OPM approval.
- Agencies have sufficient, or unlimited, positions that are eligible under alternative authorities and have not found it necessary to use the CPPA.
- With respect to defining critical positions, one interviewee thought that defining criticality for agency positions is difficult because these positions can span various programs and may be for positions at different career levels. The CPPA's requirement to identify and justify a position as critical may pose additional burdens and hinder the use of the CPPA for this and other agencies with similar concerns.

In addition, OPM regulations mandate that CPPA will only be granted to agencies if they demonstrate that the position could not have been filled by an exceptionally well-qualified individual through the use of other available human resources options and pay authorities. This requirement is not codified in statute. Instead, OPM has interpreted and implemented 5 U.S.C. § 5377(b)(2) as requiring the exhaustion of all other human resources options and pay authorities. In practice, agencies will not request the CPPA if an alternative pay authority could potentially be used to fill the position with an exceptionally well-qualified individual.

## **C. Lack of Knowledge and Training on the Use of the CPPA**

A recurring theme in many of the discussions was that human capital officers lacked knowledge of the CPPA as an available mechanism, despite its enactment more than two decades ago. STPI researchers interviewed representatives from five of the eight agencies that, according to OPM annual reports, had requests for the CPPA approved in the past but currently do not have active positions. Representatives from two of those agencies lacked either knowledge or documentation of their agency's prior requests and use of the

authority, signifying a lack of institutional memory or record of the CPPA's use in these agencies. In one agency, interviewees mentioned that reorganization of the agency's human resources offices may have contributed to a gap regarding the CPPA and knowledge transfer over the years. Another agency representative mentioned that his agency's lack of knowledge of the CPPA could have also been due to human resource staff leaving and not maintaining a record of practice for new staff. These findings raise questions about whether the CPPA is being managed effectively across the Federal Government and whether a lack of rigorous agency policies, procedures, and documentation contributes to an agency's lack of awareness of the CPPA.

Interviewees also said that the decision on which authority to use, or whether to use a combination of authorities, depends on various factors, including the position, recruitment situation (i.e., the availability and qualifications of applicants and the agency's competitiveness in the labor market), the authority's requirements, and the agency's needs and available resources. One interviewee mentioned that this decision-making process relies on the knowledge of the human capital officer who initiates the recruitment process for a given position. Effective agency workforce strategies may also depend on the human capital officer's experience in recruiting or retaining individuals in various positions across an agency. These findings suggest that training is a critical element of successfully requesting and exercising available authorities in the recruitment process.

#### **D. Cultural Barriers**

An agency's culture can be a significant deterrent to using the CPPA. One interviewee said that his agency's "culture of conservatism" related to hiring and pay mechanisms has influenced human capital officers' decisions not to use authorities such as the CPPA. According to the interviewee, the agency does not encourage the use of pay authorities such as the CPPA, in part due to the fear that its use will be publicly scrutinized:

[We] assumed the Critical Position Pay Authority may not be encouraged ... [our agency] is reticent to use the authority since we are generally very risk averse to using authorities that could later put [the agency] in a bad light. Incidents in the past have hindered our ability to use certain authorities, for instance, hiring bonuses were published and that became negatively viewed by the agency.

Some agencies were also concerned about how potential pay disparities would be viewed by agency leadership and staff if the CPPA were exercised. For instance, certain human capital officers did not feel that using the CPPA was appropriate because it could potentially authorize a position's pay above that of the agency's leadership or supervisory positions. But other agencies, specifically NASA and NIH, did not view the potential pay

inequalities as being a significant barrier to exercising the CPPA for any position deemed as critical throughout their agencies.

## **E. Lack of Communication Paths Across and Within Agencies**

Interviewees mentioned concerns over miscommunication:

- A lack or routinely exercised communication channels between agencies and OPM and OMB regarding the CPPA make it for agencies difficult to obtain clarification and other feedback after submitting CPPA requests.
- Communication across an agency is deficient with respect to the roles and responsibilities of the agency, OPM, OMB, and other stakeholders important to the CPPA approval process.
- In certain agencies, decentralized management of recruitment and hiring across an agency's centers, institutes, and laboratories makes it difficult to coordinate recruitment activities and the effective communication of available recruitment flexibilities, such as the CPPA.

## **F. Insufficient Salary Flexibility**

Several interviewees felt that the CPPA did not provide sufficient pay flexibility to attract exceptionally well-qualified candidates. For instance, representatives from several agencies commented that the pay cap of EX-I is too limiting given that other sectors offer top candidates salaries above \$250,000 for comparable positions (e.g., agency executive leadership and laboratory or program director positions).<sup>13</sup>

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<sup>13</sup> For salaries of comparable agency leadership positions in the private sector, see Chapter 6.

## 6. Utility of the CPPA

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A number of interviewees, despite not having used the CPPA, mentioned several aspects of possible utility of the CPPA within their agencies, including:

- Increasing the agency's ability to compete with and bring in talent from other sectors.
- Providing the ability to target specialized agency needs.
- Filling gaps in flexibilities provided through other pay-related authorities.
- Giving incentives to career advancement for current Federal employees.
- Addressing pay compression.

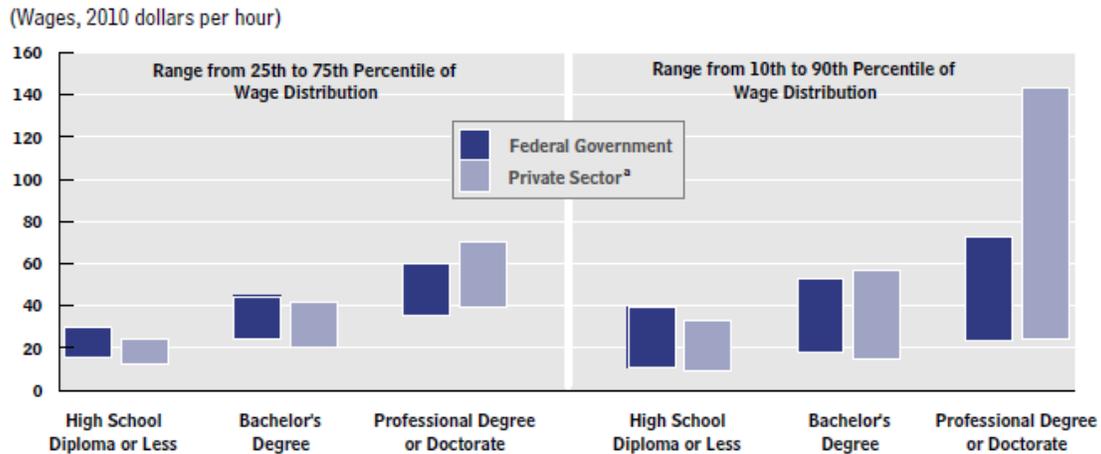
### **A. Increasing the Agency's Ability to Compete with and Bring in Talent from the Private Sector**

Several interviewees thought that the CPPA could be an effective tool to help agencies compete with the private sector on salaries for exceptionally well-qualified scientific and technical professionals. For example, on average, the private sector outcompetes the Federal Government on wages and benefits for the highest educated candidates, such as candidates with professional degrees or doctorates (Figure 4) (Congressional Budget Office (CBO) 2012). The highest educated candidates also have a relatively large wage distribution in which the top earners could receive up to two times the wage in the private sector that they would receive in the Federal Government (CBO 2012).

Certain agency representatives mentioned that individuals are attracted to work at their agencies for other reasons, such as the importance of the agency's mission, and therefore are generally willing accept prestige in lieu of other compensation. Nonetheless, interviewees noted the CPPA's flexibility could help the agencies come closer to meeting the salary needs of top candidates. For example,

- One agency reported the CPPA could be used for an incumbent in an SES position that has reached the maximum salary obtainable in the SES pay schedule. In the private sector, the position, equivalent to a vice president of research in a corporation, pays two to three times more than in the Federal Government.

- Another agency thought the CPPA could be useful in raising the pay offered for a position that requires up to 20 years of experience and certain professional certifications (such positions normally pay from \$100,000 to over \$200,000 in the private sector).



Source: Congressional Budget Office based on data for 2005–2010 from the March Current Population Survey.  
 a. Average wages for private-sector workers who resemble federal workers in their occupations, years of work experience, and certain other observable characteristics likely to affect wages.

Source: CBO (2012), 9.

**Figure 4. Comparison of Wage Distributions for the Federal Government and Private Sector by Level of Education**

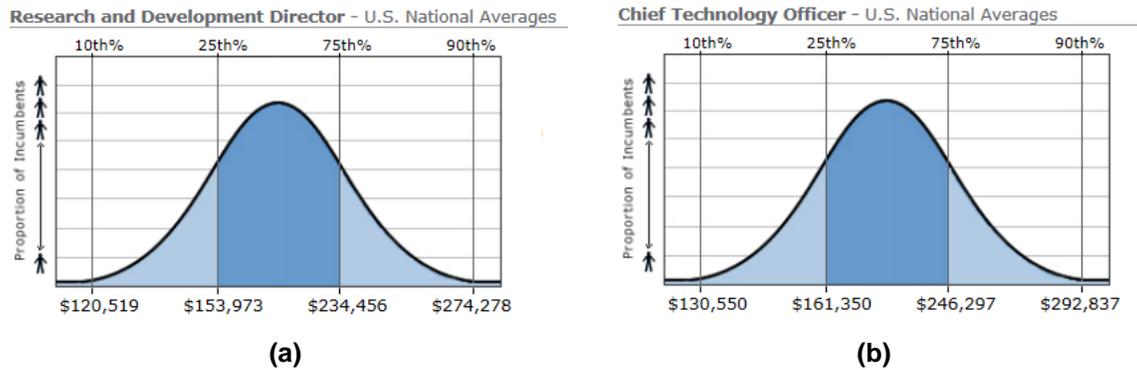
Others also felt that the CPPA could be useful for recruiting talent in fields with unfavorable labor market conditions (e.g., low supply, high demand), such as in information technology and computer science. Interviewees from agencies that do not have an agency-specific pay authority reported that the CPPA could be particularly beneficial for their agencies since it provides the highest basic pay rate (EX-I) of all available government-wide pay authorities.

**B. Providing the Ability to Target Specialized Agency Needs**

Most interviewees felt that the CPPA could increase their agency’s ability to meet current and emerging workforce needs. Many agency representatives mentioned several fields where the demand for exceptionally well-qualified scientific and technical professionals is growing rapidly and competition is high relative to other fields—cybersecurity, information technology, computer sciences, and petroleum engineering. One interviewee also noted that the CPPA could be useful to meet the agency’s needs in niche fields, such as computational toxicology, where there are few highly qualified candidates for the position. In this case, the CPPA could be used to attract the highest caliber candidates in this niche field. In addition, several interviewees thought that the CPPA could satisfy rapidly changing workforce needs arising from advances in research

and development (R&D) in certain sectors, such as health and medicine. The CPPA could allow agencies to hire exceptionally well-qualified individuals in positions necessary for the agency to stay on the cutting edge of these fields.

Some interviewees thought that the CPPA could be useful for SL scientific and technical positions, particularly executive-level and management positions (e.g., positions above a GS-15 pay grade). At the laboratory level, one interviewee felt that the CPPA could be useful in recruiting for the laboratory director position. Agencies seeking to fill positions equivalent to a director for research and development or chief technology officer feel that the CPPA could provide an edge when recruiting high-talented, top earners in these positions, who typically receive private-sector salaries above \$200,000 and up to \$300,000, respectively (Figure 5).



Source: Salary.com website (2014a, 2014b).

**Figure 5. U.S. Salary Distributions for (a) a Research and Development Director and (b) a Chief Technology Officer**

### C. Filling Gaps in Flexibilities Provided through Other Pay-Related Authorities

Agency representatives reported examples of when the CPPA is the only alternative pay authority available for a critical position. For instance, the SL authority is targeted for positions with managerial responsibilities, and not all critical scientific or technical positions within an agency may meet this criterion. In such a case, the CPPA could be used as a pay comparability tool for the position.

### D. Incentivizing Career Advancement for Current Federal Employees

Some interviewees felt that the CPPA could play an important role in attracting and retaining scientific and technical employees in supervisory or management positions. Exceptionally well-qualified Federal employees in scientific and technical positions at GS-15 or above have little incentive to advance into management or supervisory positions within the agency because of the greater burden and small pay difference

between their current position and a management-level position. These interviewees thought that the CPPA could provide an avenue to promote and encourage career advancement for these employees. The CPPA provides an additional benefit for current Federal employees because the CPPA salary is recognized in annuity calculations for retirement pensions (whereas the 3R bonuses are not).<sup>14</sup>

## **E. Addressing Pay Compression**

Some agency representatives expressed concern about pay compression.<sup>15</sup> Various interviewees observed that pay compression was closing salary gap between supervisory and subordinate positions in their agencies. These interviewees viewed the CPPA as an effective tool to retain supervisory employees. Agencies could use the CPPA to appropriately raise the pay for these supervisory positions that are also critical to an agency's mission.

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<sup>14</sup> The annuity formula is based on a Federal employee's "high-3 average salary," which is the highest average basic pay earned during any 3 consecutive years of service. This does not include bonuses. For further see OPM Website, "FERS Information: Computation, High-3 Average Salary," accessed January 21, 2014, <https://www.opm.gov/retirement-services/fers-information/computation>.

<sup>15</sup> Pay compression refers to the situation where the market rate for a given position outpaces the increases provided through the organization, in this case a specific Federal Government pay structure. For further on the causes of pay compressions, see Jim Kochanski and Yelena Stiles, "Put a Lid on Salary Compression Before It Boils Over," *Society for Human Resource Management*, July 19, 2013, accessed January 21, 2014, <http://www.shrm.org/hrdisciplines/compensation/Articles/Pages/Salary-Compression-Lid.aspx>.

## **7. Conclusion and Recommendations**

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The most likely reasons why CPPA is not being used more often by agencies are restrictions of the current regulatory framework, the availability of alternative pay authorities, lack of knowledge and training among human capital officials and hiring managers regarding the CPPA, and agency cultures that impede its use.

Agency representatives provided recommendations to improve the effectiveness of the CPPA. These recommendations generally fell into one of four categories: training and guidance, communication, regulatory, and legislative.

Given the lack of agency experience in requesting or exercising CPPA, the suggestions STPI received from agency representatives dealt primarily with observations on the regulatory, inter-agency, and intra-agency process.

The following recommendations were developed from suggestions provided by agency representatives and from STPI's own analysis of the CPPA legislative and regulatory framework.

### **A. Training and Guidance**

A recurring theme in interviews conducted with agency representatives is that human capital officers lacked knowledge of the CPPA as an available mechanism for recruitment and retention pay comparability; several human capital officers did not know that the CPPA existed. There is a clear need to raise awareness and improve training about the CPPA among human capital officers and hiring managers.

#### **1. Raise Awareness and Improve Training of the CPPA**

Raising awareness of the CPPA among human capital officers and hiring managers could be initiated through:

- OPM-sponsored CPPA training for agency human capital officials and hiring managers.
- OPM-hosted workshops on the CPPA.
- OPM-issued CPPA manual for agencies, with clarifications and options for requesting and exercising the CPPA.

- Chief Human Capital Officers Council efforts to promulgate agency policy and training guidance on the CPPA.<sup>16</sup>

## **2. Develop Departmental and Agency Policies on Requesting and Exercising the CPPA**

A number of agency representatives said that identifying authoritative policies related to requesting and exercising the CPPA was difficult. Several agency representatives recommended that departments and agencies develop internal policies on requesting and exercising the CPPA, including clarifying the roles of departments, agencies, and sub-agencies in communicating requests to OPM. In support of CPPA requests, it may also be helpful for agencies to document challenges in recruitment and hiring due to pay comparability differences between the public sector and private sector.

## **B. Communication**

### **1. Establish Timelines for OPM Response to CPPA Requests**

Agency representatives said that it would be useful for OPM to clarify the time frame for processing requests by establishing clear (and preferably short) timelines for the approval process. One agency representative recommended aligning CPPA approvals to be consistent with the 80-day hiring model.<sup>17</sup> This would entail agencies integrating the process to request and exercise the CPPA within the Federal hiring model and suggested time frames. Another representative recommended that OPM establish mandatory time frames to adjudicate an agency CPPA request on the order of days (e.g. 48 hours), allowing agencies to be more competitive with the private sector in the time in which job offers are made.

### **2. Provide Explanations for Denied CPPA Requests**

Agency representatives requested that denied CPPA requests be accompanied by an explanation of, and remedies for, any deficiencies in the request.

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<sup>16</sup> The Chief Human Capital Officers Council was established through the Chief Human Capital Officers Act of 2002, which required the heads of 24 executive departments to designate chief human capital officers that advise and coordinate agencies' human resources management activities. The 25-member council is composed of the Director of OPM, who serves as chairman; the Deputy Director for Management of OMB, who acts as vice chairman; the chief human capital officers of the 15 executive departments; and the chief human capital officers of 8 additional agencies designated by the OPM Director.

<sup>17</sup> OPM developed the 80-day hiring model as part of the hiring reforms established in 2009, at which time the average time to hire across the Federal Government was approximately 122 days. See Performance.gov (2013).

### **3. Improve Communication between OPM and Agencies**

Several representatives suggested that OPM establish a designated point of contact for the CPPA to facilitate feedback as agencies develop and submit their requests to OPM and to provide a continuous resource for agencies.

### **4. Improve Human Capital Management of the CPPA through Annual Reporting and OPM Feedback**

Agencies are required under 5 CFR § 250.203 to submit an annual human capital management report to OPM.<sup>18</sup> These reports are intended to assist OPM and agencies in managing their human capital strategies and evaluating recruitment performance. One interviewee thought that these existing reports could be used by OPM to more effectively identify critical areas for improvement and provide feedback and suggestions to agencies. One such area of formal feedback through these reports could be for pay administration, including documenting the management and effectiveness of the CPPA.

## **C. Regulatory**

### **1. Improve Regulations Governing CPPA Authorization, Including Justifications Relevant to Agencies' Use of Other Authorities and the Inability to Fill a Position**

Several agency representatives noted that OPM regulations governing CPPA authorization requests can be improved and suggested the following:

- Remove or consider easing (for at least some specified positions) regulatory requirement that the CPPA can only be authorized if all other available human resources options and pay authorities (these options and authorities can be numerous) have been exhausted. Removing this regulatory requirement would immediately give agencies greater flexibility in determining whether to use CPPA.
- Clarify and streamline regulations governing CPPA approval (5 CFR § 535.104). A number of agency representatives expressed concerns about 5 CFR § 535.104 (d)(10) and (11). Recommendations included removing the regulatory requirement altogether, modifying the assessment requirement so that agencies were given wider discretion in exercising the CPPA, and clarifying the provision of the regulatory requirement to hire a candidate “in a manner sufficient.”

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<sup>18</sup> See 5 CFR 250.203 – Agency Responsibilities.

## **2. Develop Standardized Forms**

Agency representatives recommended that CPPA requests be standardized by developing an OMB-approved template that includes clarification of acceptable methods by which agencies could meet regulatory requirements, particularly 5 CFR § 535.104(d)(11).

## **3. Clarify the Consultative Process involving OMB**

Agency representatives said that it would be useful for the consultation process between OPM and OMB to be defined in regulation or policy, so that it was readily available and transparent to agencies submitting CPPA requests.

## **D. Legislative**

### **1. Transfer Authority to Approve CPPA from OPM/OMB to Agency Heads**

Several agency representatives thought that transferring approval authority from OPM and OMB to the agency heads—with the option to delegate the approval of the authority to other hiring officials within the agency—could help facilitate the CPPA’s use. In certain agencies that manage several sub-agencies and departments (e.g., DHHS and DOD), interviewees felt that the CPPA should be delegated to the heads of those sub-agencies (e.g., NIH, Air Force, etc.), with the option to delegate approval authority to respective laboratory directors (e.g., Air Force Research Laboratory).

### **2. Increase the CPPA Basic Pay Cap**

Several agency representatives reported that raising the CPPA basic pay cap above EX-I would be helpful. Some said that even EX-I was not competitive pay for exceptionally qualified individuals in certain types of positions. Reference was made to NASA’s Critical Position Pay Authority (with a basic pay cap equivalent to the Vice President’s salary) and DHHS’s Title 42 Special Consultants authority, which does not stipulate a base salary cap and is widely used throughout the agency. Interviewees thought that revising the CPPA with a similar basic pay cap as these agency-specific authorities would make the CPPA more useful for other agencies.

## **Appendix A.**

### **5 U.S.C. § 5377 and 5 CFR § 535**

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#### **5 U.S.C. § 5377<sup>1</sup>**

**(a)** For the purpose of this section—

**(1)** the term “agency” has the meaning given it by section [5102](#); and

**(2)** the term “position” means—

**(A)** a position to which chapter 51 applies, including a position in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;

**(B)** a position under the Executive Schedule under sections 5312–5317;

**(C)** a position to which section [5372](#) applies (or would apply, but for this section);

**(D)** a position to which section [5372a](#) applies (or would apply, but for this section);

**(E)** a position established under section [3104](#);

**(F)** a position in a category as to which a designation is in effect under subsection (i); and

**(G)** a position at the Federal Bureau of Investigation, the primary duties and responsibilities of which relate to intelligence functions (as determined by the Director of the Federal Bureau of Investigation).

**(b)** Authority under this section—

**(1)** may be granted or exercised only with respect to a position—

**(A)** which requires expertise of an extremely high level in a scientific, technical, professional, or administrative field; and

**(B)** which is critical to the agency’s successful accomplishment of an important mission; and

**(2)** may be granted or exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position.

**(c)** The Office of Personnel Management, in consultation with the Office of Management and Budget, may, upon the request of the head of an agency, grant authority to fix the rate of basic pay for 1 or more positions in such agency in accordance with this section.

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<sup>1</sup> See Cornell University Website, “5 U.S. Code § 5377 – Pay Authority for Critical Positions.”

**(d)**

**(1)** The rate of basic pay fixed under this section by an agency head may not be less than the rate of basic pay (including any comparability payments) which would then otherwise be payable for the position involved if this section had never been enacted.

**(2)** Basic pay may not be fixed under this section at a rate greater than the rate payable for level I of the Executive Schedule, except upon written approval of the President.

**(e)** The authority to fix the rate of basic pay under this section for a position shall terminate—

**(1)** whenever the Office of Personnel Management determines (in accordance with such procedures and subject to such terms or conditions as such Office by regulation prescribes) that 1 or more of the requirements of subsection (b) are no longer met; or

**(2)** as of such date as such Office may otherwise specify, except that termination under this paragraph may not take effect before the authority has been available for such position for at least 1 calendar year.

**(f)** The Office of Personnel Management may not authorize the exercise of authority under this section with respect to more than 800 positions at any time, of which not more than 30 may, at any such time, be positions the rate of basic pay for which would otherwise be determined under subchapter II.

**(g)** The Office of Personnel Management shall consult with the Office of Management and Budget before making any decision to grant or terminate any authority under this section.

**(h)** The Office of Personnel Management shall report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate each year, in writing, on the operation of this section. Each report under this subsection shall include—

**(1)** the number of positions, in the aggregate and by agency, for which higher rates of pay were authorized or paid under this section during any part of the period covered by such report; and

**(2)** the name of each employee to whom a higher rate of pay was paid under this section during any portion of the period covered by such report, the rate or rates paid under this section during such period, the dates between which each such higher rate was paid, and the rate or rates that would have been paid but for this section.

**(i)**

**(1)** For the purpose of this subsection, the term “position” means the work, consisting of the duties and responsibilities, assignable to an employee, except that such term does not include any position under subsection (a)(2)(A)–(E).

**(2)** At the request of an agency head, the President may designate 1 or more categories of positions within such agency to be treated, for purposes of this section, as positions within the meaning of subsection (a)(2).

## 5 CFR § 535<sup>2</sup>

### § 535.101 – PURPOSE.

The purpose of this part is to provide a regulatory framework for the critical position pay authority authorized by 5 U.S.C. 5377. The Office of Personnel Management (OPM), in consultation with the Office of Management and Budget (OMB), may grant authority to the head of an agency to fix the rate of basic pay for one or more positions under this part.

### § 535.102 – DEFINITIONS.

*Agency* has the meaning given that term in 5 U.S.C. 5102.

*Critical position* means a position for which OPM has granted authority to the head of an agency to exercise the pay-setting authority provided in 5 U.S.C. 5377.

*Critical position pay authority* means the authority that may be granted to the head of an agency by OPM under 5 U.S.C. 5377 to set the rate of basic pay for a given critical position under the provisions of that section.

*Critical position pay rate* means the specific rate of pay established by the head of an agency for an employee in a critical position based upon the exercise of the critical position pay authority. A critical position pay rate is a rate of basic pay to the extent provided in § 535.106.

*Employee* means an employee (as defined in 5 U.S.C. 2105) in or under an agency.

*Head of an agency* means the agency head or an official who has been delegated the authority to act for the agency head in the matter concerned.

### § 535.103 – AUTHORITY.

(a) Subject to a grant of authority from OPM in consultation with OMB and all other requirements in this part, the head of an agency may fix the rate of basic pay for a critical position at a rate not less than the rate of basic pay that would otherwise be payable for the position, but not greater than—

- (1) The rate payable for level II of the Executive Schedule (unless paragraph (a)(2) or (a)(3) of this section applies);
- (2) The rate payable for level I of the Executive Schedule in exceptional circumstances based on information and data that justify a rate higher than the rate payable for level II of the Executive Schedule; or
- (3) A rate in excess of the rate for level I of the Executive Schedule that is established in rare circumstances with the written approval of the President.

(b) The head of an agency may exercise his or her critical position pay authority only—

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<sup>2</sup> See Cornell University Website, “5 CFR Part 535 – Critical Position Pay Authority.”

**(1)** When such a position requires expertise of an extremely high level in a scientific, technical, professional, or administrative field and is critical to the agency's successful accomplishment of an important mission; and

**(2)** To the extent necessary to recruit or retain an individual exceptionally well-qualified for the critical position.

**(c)** If critical position pay authority is granted for a position, the head of an agency may determine whether it is appropriate to exercise the authority with respect to any proposed appointee or incumbent of the position.

**(d)** An agency granted critical position pay authority may continue to use the authority for an authorized position as long as needed. OPM will monitor the use of critical position pay authorities annually, through the agency's required reports under § [535.107](#), and will terminate the authority associated with a given position after notifying the agency if, in OPM's judgment in consultation with OMB, the authority is no longer needed.

#### § 535.104 – REQUESTS FOR AND GRANTING CRITICAL POSITION PAY AUTHORITY.

**(a)** An agency may request critical position pay authority only after determining that the position in question cannot be filled with an exceptionally well-qualified individual through the use of other available human resources flexibilities and pay authorities. Agency requests must include the information in paragraph (d) of this section. OPM, in consultation with OMB, will review agency requests. OPM will advise the requesting agency as to whether the request is approved and when the agency's critical position pay authority becomes effective.

**(b)** A request for critical position pay authority (or authorities) must be signed by the head of an agency and submitted to OPM. Requests covering multiple positions must include a list of the positions in priority order. The head of an agency may request coverage of positions of a type not listed in [5 U.S.C. 5377\(a\)\(2\)](#), as authorized by [5 U.S.C. 5377\(i\)\(2\)](#) and Executive Order 13415.

**(c)** Requests for critical position pay authority to set pay above the rate for level II of the Executive Schedule and up to the rate for level I of the Executive Schedule because of exceptional circumstances require information and data that justify the higher pay. Requests for critical position pay authority to set pay above the rate for level I of the Executive Schedule due to rare circumstances require approval by the President. The head of an agency must submit such requests to OPM with the information required in paragraph (d) of this section. If OPM, in consultation with OMB, concurs with a request to set pay above the rate for level I of the Executive Schedule, OPM will seek the President's approval. The President may establish a maximum limitation on the critical pay rate.

**(d)** At a minimum, all requests for critical position pay authority must include:

**(1)** Position title;

**(2)** Position appointment authority (for Senior Executive Service positions, appointment authority for any incumbent);

- (3) Pay plan and grade/level;
- (4) Occupational series of the position;
- (5) Geographic location of the position;
- (6) Current salary of the position or incumbent;
- (7) Name of incumbent (or “Vacant”);
- (8) Length of time the incumbent has been in the position or length of time the position has been vacant;
- (9) A written evaluation of the need to designate the position as critical. Such an evaluation must include—
  - (i) The kinds of work required by the position and the context within which it operates;
  - (ii) The range of positions and qualification requirements that characterize the occupational field, including those that require extremely high levels of expertise;
  - (iii) The rates of pay reasonably and generally required in the public and private sectors for similar positions; and
  - (iv) The availability of individuals who possess the qualifications to do the work required by the position;
- (10) Documentation, with appropriate supporting data, of the agency’s experience and, as appropriate, the experience of other organizations, in efforts to recruit or retain exceptionally well-qualified individuals for the position or for a position sufficiently similar with respect to the occupational field, required qualifications, and other pertinent factors, to provide a reliable comparison;
- (11) Assessment of why the agency could not, through diligent and comprehensive recruitment efforts and without using the critical position pay authority, fill the position within a reasonable period with an individual who could perform the duties and responsibilities in a manner sufficient to fulfill the agency’s mission. This assessment must include a justification as to why the agency could not, as an effective alternative, use other human resources flexibilities and pay authorities, such as recruitment, relocation, and retention incentives under 5 CFR part 575;
- (12) An explanation regarding why the position should be designated a critical position and made eligible for a higher rate of pay under this part within its organizational context (*i.e.*, relative to other positions in the organization) and, when applicable, how it compares with other critical positions in the agency. The agency must include an explanation of how it will deal with perceived inequities among agency employees (e.g., situations in which employees in positions designated as critical would receive higher rates of pay than their peers, supervisors, or other employees in positions with higher-level duties and responsibilities);
- (13) Documentation of the effect on the successful accomplishment of important agency missions if the position is not designated as a critical position, including an

explanation and justification for OPM and OMB to expedite processing in cases where the agency believes that urgency warrants expedited processing;

**(14)** Any additional information the agency may deem appropriate to demonstrate that higher pay is needed to recruit or retain an employee for a critical position;

**(15)** Unless the position is an Executive Schedule position, a copy of the position description and qualification standard for the critical position; and

**(16)** The desired rate of basic pay for requests to set pay above the rate for level II of the Executive Schedule and justification to show that such a rate is necessary to recruit and retain an individual exceptionally well-qualified for the critical position.

#### § 535.105 – SETTING AND ADJUSTING RATES OF BASIC PAY.

**(a)** The rate of basic pay for a critical position may not be less than the rate of basic pay, including any locality-based comparability payments established under 5 U.S.C. 5304 or special rate supplement under 5 U.S.C. 5305 (or other similar payment or supplement under other legal authority) that would otherwise be payable for the position.

**(b)** If critical position pay authority is granted for a position, the head of an agency may set pay initially at any amount up to the rate of pay for level II or level I of the Executive Schedule, as applicable, without further approval unless a higher maximum rate is approved by the President under § 535.104(c).

**(c)** The head of an agency may make subsequent adjustments in the rate of basic pay for a critical position each January at the same time general pay adjustments are authorized for Executive Schedule employees under section 5318 of title 5, United States Code. Such adjusted rates may not exceed the new rate for Executive Schedule level II or other applicable maximum established for the critical position. However, the employee must have at least a rating of Fully Successful or equivalent, and subsequent adjustments must be based on labor market factors, recruitment and retention needs, and individual accomplishments and contributions to an agency's mission.

**(d)** Employees receiving critical position pay are not entitled to locality-based comparability payments established under 5 U.S.C. 5304, special rate supplements under 5 U.S.C. 5305, or other similar payments or supplements under other legal authority.

**(e)** If an agency discontinues critical position pay for a given position (on its own initiative or because OPM, in consultation with OMB, terminates the authority under § 535.103(d)), the employee's rate of basic pay will be set at the rate to which the employee would be entitled had he or she not received critical pay, as determined by the head of the agency, unless the employee is eligible for a higher payable rate under the General Schedule maximum payable rate rule in § 531.221 and the agency chooses to apply that rule.

#### § 535.106 – Treatment As Rate Of Basic Pay.

A critical position pay rate is considered a rate of basic pay for all purposes, including any applicable premium pay, except—

**(a)** Application of any saved pay or pay retention provisions (e.g., 5 U.S.C. 5363); or

**(b)** Application of any adverse action provisions (e.g., 5 U.S.C. 7512).

§ 535.107 – ANNUAL REPORTING REQUIREMENTS.

(a) 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 on their use of critical position pay authority for the previous calendar year:

- (1) The name, title, pay plan, and grade/level of each employee receiving a higher rate of basic pay under this subpart;
- (2) The annual rate or rates of basic pay paid in the preceding calendar year to each employee in a critical position;
- (3) The beginning and ending dates of such rate(s) of basic pay, as applicable;
- (4) The rate or rates of basic pay that would have been paid but for the grant of critical position pay. This includes what the rate or rates of basic pay were, or would have been, without critical position pay at the time critical position pay is initially exercised and any subsequent adjustments to basic pay that would have been made if critical position pay authority had not been exercised; and
- (5) Whether the authority is still needed for the critical position(s).



## **Appendix B. Discussion Guide**

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### **Introduction**

To facilitate recruitment and retention of Federal employees, Congress passed the Critical Position Pay Authority (CPPA), 5 U.S.C. § 5377, which authorizes the Office of Personnel Management (OPM), in consultation with the Office of Management and Budget (OMB), upon the request of an agency, to grant authority to fix the basic rate of pay for one or more positions at a rate higher than the rate would otherwise be payable. It is estimated that of the statutory limit of 800 positions, a minimal share of positions have been authorized and less filled. We are tasked with evaluating the basis for more effective utilization of the CPPA for the recruitment and retention of science and technology positions.

Our first set of questions deals with understanding the history of agency use of the CPPA, characteristics of successful authorization and filling of positions, impediments, and suggestions on improving the authority, regulation, or processes.

Our second set of questions deals with understanding how other pay authorities, such as agency-level critical pay authorities, compare with the CPPA.

Finally, we will ask your opinions on the benefits of the pay authorities and policy suggestions that could improve the implementation of the CPPA for the recruitment and retention of science and technology positions.

### **Use of the CPPA (5 U.S.C. § 5377)**

Information on 5 USC § 5377 – Pay authority for critical positions – provides the authority to fix the rate of basic pay for one or more positions at a rate higher than the rate that would otherwise be payable for the position(s), which “require expertise of an extremely high level in a scientific, technical, professional, or administrative field; and which is critical to the agency’s successful accomplishment of an important mission.” It can be “granted or exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position.”

1. Why did you choose to use the Critical Position Pay Authority (5 U.S.C. § 5377) (e.g., vs. another pay authority) to recruit or retain science and technology positions?
  - a. [If not yet answered] What factors are important to consider when deciding whether to use the Critical Position Pay Authority (5 U.S.C. § 5377) vs. another pay authority to recruit or retain science and technology positions?
2. Can you describe the approval, submission, and review processes, including any required documentation, for an agency to use this authority?

- a. What are any challenges you have experienced throughout this process?
- 3. How many times has your agency successfully hired under this authority (within the last 5 years)?
  - a. What factors facilitated the success of hiring under this authority? Leadership? Business case?
  - b. Were you unsuccessful in any submissions (within the last 5 years)? Why do you think the submission was unsuccessful?
- 4. Can you describe any barriers to using the authority not already mentioned? Legal? Regulatory? Cultural?
- 5. Has your agency developed any strategies to help overcome these barriers? If so, please describe.

**IF AGENCY HAS NOT USED THE AUTHORITY**

- 6. Why has your agency not used the Critical Position Pay Authority (5 U.S.C. § 5377)?
- 7. Can you describe any barriers to using the authority? Legal? Regulatory? Cultural?

*[Proceed to “Use of Other Pay Authorities,” if others available to the agency]*

**Use of Other Pay Authorities, Including Agency-Specific Authorities to Recruit or Retain Science and Technology Positions**

For Each Other Pay Authority Used (within the last 5 years):

- 8. Why did you choose to use this authority (e.g., versus the Critical Position Pay Authority)?
- 9. Can you describe the approval, submission, and review process, including any required documentation, for an agency to use this authority?
  - a. What are any challenges you have experienced throughout this process?
- 10. How many times has your agency successfully hired under this authority (within the last 5 years)?
  - a. What factors facilitated the success of hiring under this authority? Leadership? Business case?
  - b. Were you unsuccessful in any submissions (within the last 5 years)? Why do you think the submission was unsuccessful?
- 11. Can you describe any barriers to using the authority not already mentioned? Legal? Regulatory? Cultural?
- 12. Has your agency developed any strategies to help overcome these barriers? If so, please describe.

## **IF AGENCY HAS NOT USED OTHER PAY AUTHORITIES**

**[If other pay authorities exist to recruit or retain science and technology positions available to the agency]**

13. Why has your agency not used other pay authorities?
14. Can you describe any barriers to using the authority? Legal? Regulatory? Cultural?

### **Benefits**

15. Can you describe the benefits of using (or potentially using) the Critical Position Pay Authority (5 U.S.C. § 5377) to recruit or retain science and technology positions?
  - a. Are you getting high quality applicants by using this authority relative to the use of other pay authorities or traditional hiring mechanisms?
16. Do you find your recruitment and retention needs for science and technology positions are being met through the Critical Position Pay Authority? Were your needs being met through other existing pay authorities? Why or why not?

### **Policy Suggestions**

17. Do you have any policy suggestions, including legislative, regulatory, or processes, to facilitate the use and effectiveness of the Critical Position Pay Authority (5 U.S.C. § 5377)?
18. Do you have any suggestions for revisions, exclusion, or better coordination of existing authorities with the Critical Position Pay Authority (5 U.S.C. § 5377)?
  - a. Do you have any suggestions for new authorities?

### **Final Words**

19. Do you have any final words to share?
20. Do you have recommendations for other people to contact?



## Appendix C. List of Discussants

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The IDA Science and Technology Policy Institute (STPI) study team conducted semi-structured interviews with 40 human resource representatives from 19 offices and sub-agencies across 14 Federal agencies (see Table C-1). All agency representatives interviewed, except the Department of Commerce’s (DOC) National Institute of Standards and Technology and the Department of the Interior, have agency-specific authorities related to the pay administration for scientific and technical positions.

**Table C-1. Discussants**

Agency	Affiliation	Name	Date of Interview	Type
DHS	Department of Homeland Security	Lisa Douglas-Naughton	September 10, 2013	Phone
	Homeland Security Advanced Research Projects Agency	Adam Cox		
DHHS	Department of Health and Human Services	Heidi Sheaffer Raymona Ramsey Charles McEnerney	September 20, 2013	Phone
	National Institutes of Health	Marvin Lee	September 18, 2013	Phone
DOC	National Institute of Standards and Technology	Susanne Porch	September 17, 2013	Phone
DOD	Army Research Laboratory	Dianne Hawkins Susan Hickman	December 10, 2013	Phone
	Defense Advanced Research Projects Agency	Mary VanderLinden	October 2, 2013	In-Person
	Naval Research Laboratory	Cathy Downing Ginger Kisamore	December 9, 2013	Phone
DOE	Advanced Research Projects Agency – Energy	Shane Kosinski	December 17, 2013	Phone
	Department of Energy	Tony Nguyen Bruce Murray Kimberly Chappell George Waldmann Cyndi Mays	December 20, 2013	Phone
DOI	Department of the Interior	Kermit Howard	November 5, 2013	Phone
EPA	Environmental Protection Agency	William Ocampo Ken Henderson Jen Margolies Christine Routt	December 20, 2013	Phone

**Table C-1. Discussants (Continued)**

<b>Agency</b>	<b>Affiliation</b>	<b>Name</b>	<b>Date of Interview</b>	<b>Type</b>
FBI	Federal Bureau of Investigation	Jeffrey Good Timothy Groh Gwendolyn Hubbard Kimberly Mabry Steven Reiner Jenifer Santiago	October 28, 2013	Phone
NASA	National Aeronautics and Space Administration	Lauren Leo	October 23, 2013	Phone
NSA	National Security Agency	Christopher Dobyms	December 16, 2013	Phone
NSF	National Science Foundation	Eugene Hubbard Judy Sunley	November 19, 2013	In-Person
ODNI	Office of the Director of National Intelligence	Doris Johnson	December 6, 2013	Email
USDA	Department of Agriculture	William Milton Joon Parl Mary Lepore Cassandra Butler	November 26, 2013	Phone
VA	Department of Veterans Affairs	Stephanie Boyd Carmen Montgomery	December 3, 2013	Phone

## **Appendix D.**

# **Select Federal Agency-Wide and Agency-Specific Pay-Related Authorities**

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Table D-1 provides a select list of eight Federal-wide pay administration authorities provided to all agencies as well as 16 agency-specific authorities mentioned by interviewees. Several attributes of each authority are described:

- Federal-wide or agency-specific pay authority.
- Authority (relevant U.S. Code and Federal regulations).
- Date enacted.
- Whether the authority contains language specific to scientific or technical positions.
- Description of the purpose for the authority.
- Approval and oversight.
- Salary basic pay cap (as of March 2014) and Executive Schedule (EX) equivalent, if specified.

**Table D-1. Select Federal-Wide and Agency-Specific Pay-Related Authorities**

Agency	Name/Type	Authority	Enacted	Scientific/ Technical Specific?	Purpose/Use	Approval and Oversight	Basic Pay Cap (as of March 2014)
Federal-Wide	Pay Authority for Critical Positions	5 U.S.C. § 5377; 5 CFR 535.104	Nov. 5, 1990	Yes	Recruit and retain experts in science, technical, professional, or administrative positions	OPM, in consultation with OMB; Agency headquarter request; above EX-I rates, approval by the President	\$201,700 (EX-I)
Federal-Wide	Senior Executive Service (SES)	5 U.S.C. § 3131–3152 (Chapter 31, Subchapter II) and 5382-5385; 5 CFR part 317 and part 534, subpart D	Oct. 13, 1978	No	Recruit and retain highly competent Federal executive management	Agency, allocations by agency approved by OPM in consultation with OMB	\$181,500 (EX-II)
Federal-Wide	Scientific or Professional (ST) Positions	5 U.S.C. § 3104; see also 5 CFR part 534, subpart E	Sep. 6, 1966	Yes	Recruit or retain ST positions with specialized experience with highly creative performance or outstanding research	Agency, allocations by agency approved by OPM and agency can place ST positions within allocation without prior OPM approval	\$181,500 (EX-II)
Federal-Wide	Pay for certain senior-level (SL) positions	5 U.S.C. § 5376	Nov. 5, 1990	No	Recruit or retain senior level professionals including scientific positions	Agency, subject to regulations set by OPM	\$167,000 (EX-III)
Federal-Wide	Superior Qualifications and Special Needs Pay-Setting Authority and Special Qualifications Appointments	5 U.S.C. § 5333 and 5 CFR 531.212	Sep. 6, 1966	No	Attract superior qualified candidates or positions where agencies have special need	OPM, agency, or an official who is at least one level higher than the employee's supervisor, unless there is no official	Higher than minimum of appropriate grade

**Table D-1. Select Federal-Wide and Agency-Specific Pay-Related Authorities (Continued)**

<b>Agency</b>	<b>Name/Type</b>	<b>Authority</b>	<b>Enacted</b>	<b>Scientific/ Technical Specific?</b>	<b>Purpose/Use</b>	<b>Approval and Oversight</b>	<b>Basic Pay Cap (as of March 2014)</b>
Federal-Wide	Recruitment Incentives	5 U.S.C. 5753; 5 CFR part 575, subpart A		No	Likely difficult to fill position in absence of bonus	Agency, subject to OPM review and oversight	May not exceed 25 percent of the annual rate of basic pay (may be increased to 100 percent with OPM approval)
Federal-Wide	Relocation Incentives	5 U.S.C. 5753; 5 CFR part 575, subpart B		No	Likely difficult to fill position in absence of bonus	Agency, subject to OPM review and oversight	May not exceed 25 percent of the annual rate of basic pay (may be increased to 50 percent with OPM approval)
Federal-Wide	Retention Incentives (plus Group)	5 U.S.C. 5754; 5 CFR part 575, subpart C; 5 CFR 575.315		No	Likely to leave the Federal service or for a different Federal position	Agency, subject to OPM review and oversight	May not exceed 25 percent of the rate of basic pay for an individual employee or 10 percent for a group or category of employees (may be increased to 50 percent with OPM approval)
DHHS and VA	Title 38, Health Care Positions	38 U.S.C. § 7431-7433; 5 U.S.C. § 5371	Sep. 6, 1966	Yes	Recruit science, medical, and other important fields as needed	Agency Secretary	\$400,000 (aggregate pay), Secretary prescribes Department-wide minimum and maximum for positions at least every 2 years

**Table D-1. Select Federal-Wide and Agency-Specific Pay-Related Authorities (Continued)**

Agency	Name/Type	Authority	Enacted	Scientific/ Technical Specific?	Purpose/Use	Approval and Oversight	Basic Pay Cap (as of March 2014)
DHHS and EPA	Title 42, Special Consultants	42 U.S.C. § 209(f); 42 CFR 22.3(a)	Jul. 1, 1944	No	Recruit consultants to assist and advise in the operations of the Public Health Service	Agency Secretary	No statutory cap, DHHS set at \$250,000 (2011), \$350,000 for NIH, FDA, and CDC, \$157,100 (EX-IV) for time-limited appointments
DHHS	Title 42, Fellows	42 U.S.C. § 209(g)	Jul. 1, 1944	Yes	Recruit individual scientists	Agency Secretary	No statutory cap, DHHS prescribed at \$157,100 (EX-IV)
DHHS	Title 42, Professional, Scientific and Executive R&D	42 U.S.C. § 210(g)	Aug. 15, 1950	Yes	Recruit scientific, professional, and executive personnel in research and development positions in the Public Health Service	Agency Secretary, subject to OPM approval for two positions at \$181,500 (EX-II)	\$157,100 (EX-IV); two positions at \$181,500 (EX-II)
DHHS	Title 42, Senior Biomedical Research Service (SBRS)	42 U.S.C. § 237	Nov. 5, 1990	Yes	Recruit and retain	Agency Secretary	\$201,700 (EX-I)
DHS- HSARPA	Homeland Security Advanced Research Projects Agency, Section 1101 "piggyback"	6 U.S.C. § 187 (Section 307(b)(6) of P.L. 107-296)	Nov. 25, 2002	Yes	Facilitate recruitment of eminent experts in science or engineering for R&D projects	Director	\$167,000 (EX-III), additional aggregate pay with bonuses, e.g., 3R
DOD	Highly Qualified Experts	5 U.S.C. § 9903	Nov. 24, 2003	No	Attract highly qualified experts in needed occupations	Agency Secretary	\$167,00 (EX-III), additional aggregate pay with bonuses, e.g., 3R

**Table D-1. Select Federal-Wide and Agency-Specific Pay-Related Authorities (Continued)**

Agency	Name/Type	Authority	Enacted	Scientific/ Technical Specific?	Purpose/Use	Approval and Oversight	Basic Pay Cap (as of March 2014)
DOD-AFRL	Science and Technology Reinvention Laboratory Demonstration Project	5 USC § 4703 (also 10 USC 2358-in the notes)	Jan. 25, 1994	Yes	When the need for an employee's services are not permanent	Under Secretary of Defense (Acquisitions, Technology and Logistics), with OPM oversight	\$157,100 (GS-15 step 10 equivalent or EX-IV), pay banding system
DOD-ARL	Science and Technology Reinvention Laboratory Demonstration Project	5 USC § 4703 (also 10 U.S.C. §2358-in the notes)	Jan. 25, 1994	Yes	When the need for an employee's services are not permanent	Under Secretary of Defense (Acquisitions, Technology and Logistics), with OPM oversight	\$157,100 (GS-15 step 10 equivalent or EX-IV), pay banding system
DOD-DARPA	Section 1101	Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. § 3104; P.L. 105-261)	Oct. 17, 1998	Yes	Facilitate recruitment of eminent experts in science or engineering for R&D projects	Director	\$167,000 (EX-III), additional aggregate pay with bonuses, e.g., 3R
DOE	Excepted Service (EJ and EK Authority)	42 U.S.C. § 7231(d) and 3161(a)	Aug. 4, 1977, Oct. 5, 1994	Yes	Facilitate recruitment or retention of highly qualified scientific, engineering, and professional and administrative personnel; for EK: personnel whose duties relate to safety at DOE defense nuclear facilities	Senior Management Review Board	\$167,000 (EX-III), additional aggregate pay with bonuses, e.g., 3R, pay banding system
DOE-ARPA-E	DARPA Section 1101 "piggyback"	42 U.S.C. § 16538(g)	Nov. 25, 2002	Yes	Facilitate recruitment of eminent experts in science or engineering for research and development projects	Director	\$167,000 (EX-III), additional aggregate pay with bonuses, e.g., 3R

**Table D-1. Select Federal-Wide and Agency-Specific Pay-Related Authorities (Continued)**

Agency	Name/Type	Authority	Enacted	Scientific/ Technical Specific?	Purpose/Use	Approval and Oversight	Basic Pay Cap (as of March 2014)
NASA	Critical Position Pay Authority (CPPA)	9807 of S.610	Feb. 24, 2004	Yes	Recruit and retain experts in science, technical, professional, or administrative positions	Agency Administrator	\$233,000 (Vice President's salary)
NSF-National Science Board (NSB)	NSF Term Appointment	42 U.S.C. § 1863(g); see also, 42 U.S.C. § 1873(a)(3)	May 10, 1950	Yes	Appoint and assign technical and professional staff to support the NSB	NSB Chairman	\$167,000 (EX-III)
ODNI and Intelligence Community	Intelligence Community Highly Qualified Experts	50 U.S.C. § 403-1(s)	Oct. 7, 2010	No	Recruit and retain individuals exceptionally well-qualified for the position	Director of National Intelligence (DNI) may, in coordination with the Director OPM and the Director OMB, grant authority to the head of a department or agency	\$181,500 (EX-II) to \$201,700 (EX-I) approval by DNI, greater than \$201,700 (EX-I) approval by the President
USDA	Agriculture Senior Scientific Research Service	7 U.S.C. § 7657 (i.e., sec. 620 of P.L. 105-185, as added by sec. 7219 of P.L. 107-71, May 13, 2002)	May 13, 2002	Yes (agriculture and forestry)	Hire member of Senior Scientific Research Service without regard to General Schedule provisions—authorized to determine compensation, subject to specified minimum rate (GS-15 minimum) and cap	Agency Secretary	\$201,700 (EX-I)

AFRL = Air Force Research Laboratory; ARL = Army Research Laboratory; ARPA-E = Advanced Research Projects Agency – Energy; DARPA = Defense Advanced Research Projects Agency; DHHS = Department of Health and Human Services; DHS = Department of Homeland Security; DOD = Department of Defense; DOE = Department of Energy; EPA = Environmental Protection Agency; EX = Executive Schedule; HSARPA - Homeland Security Advanced Research Projects Agency; NASA = National Aeronautics and Space Administration; NSF = National Science Foundation; ODNI = Office of the Director of National Intelligence; OMB = Office of Management and Budget; OPM = Office of Personnel Management; USDA = U.S. Department of Agriculture; VA = Department of Veterans Affairs.

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## Abbreviations

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3R	recruitment, relocation, and retention authorities
AFRL	Air Force Research Laboratory
ARL	Army Research Laboratory
ARPA-E	Advanced Research Projects Agency – Energy
CFR	Code of Federal Regulations
CDC	Centers for Disease Control and Prevention
CPPA	Critical Position Pay Authority
DARPA	Defense Advanced Research Projects Agency
DHHS	Department of Health and Human Services
DHS	Department of Homeland Security
DNI	Director of National Intelligence
DOC	Department of Commerce
DOD	Department of Defense
DOE	Department of Energy
DOI	Department of the Interior
EPA	Environmental Protection Agency
EX	Executive Schedule
FBI	Federal Bureau of Investigation
FDA	Food and Drug Administration
FEPCA	Federal Employees Pay Comparability Act
FERS	Federal Employees Retirement System
FWFA	Federal Workforce Flexibility Act
GPO	Government Printing Office
GS	General Schedule
HSARPA	Homeland Security Advanced Research Projects Agency
IDA	Institute for Defense Analyses
NASA	National Aeronautics and Space Administration
NIH	National Institutes of Health
NSA	National Security Agency
NSB	National Science Board
NSF	National Science Foundation
ODNI	Office of the Director for National Intelligence
OMB	Office of Management and Budget
OPM	Office of Personnel Management
P.L.	Public Law
R&D	research and development
SES	Senior Executive Service
SL	senior-level
ST	scientific or professional positions
STPI	Science and Technology Policy Institute

TSA  
U.S.C.  
USDA  
VA

Transportation Security Administration  
United States Code  
Department of Agriculture  
Department of Veterans Affairs

**REPORT DOCUMENTATION PAGE**

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**12. DISTRIBUTION/AVAILABILITY STATEMENT**  
Approved for public release; distribution is unlimited (5 May 2014).

**13. SUPPLEMENTARY NOTES**

**14. ABSTRACT**  
The Critical Position Pay Authority (CPPA), enacted in 1990 and codified as 5 U.S.C. § 5377, was created to facilitate the recruitment and retention of Federal employees. Although OPM is authorized to approve as many as 800 positions, only 3 active positions with pay were administered through the CPPA in fiscal year 2011, and only 34 positions have been approved since the CPPA's enactment in 1990. To explore the potential issues with using the CPPA, the Office of Science and Technology Policy (OSTP) asked the IDA Science and Technology Policy Institute (STPI) to study the history of use of the CPPA, characteristics of critical positions approved under the CPPA, perceived benefits and challenges, and recommendations to improve the CPPA's utility. The study team used three sources of information for this work: semi-structured interviews, literature review, and OPM annual reports. The most likely reasons why CPPA is not being used more often by agencies are a lack of knowledge and training among human capital officials and hiring managers regarding the CPPA, restrictions of the current regulatory framework, the availability of alternative pay authorities, and agency cultures that impede its use.

**15. SUBJECT TERMS**  
STEM, workforce, critical position pay authority, federal employment, hiring, retention, compensation, CPPA, 5 U.S.C. 5377, Office of Personnel and Management (OPM)

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