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# GUIDELINES FOR APPLICATION OF THE WAGE STABILIZATION REGULATIONS

JOSEPH E. CASSON*

The cost of Living Council and the Pay Board have issued a number of new regulations that have significantly affected the application of Economic Stabilization Controls to wages and salaries. Included in the changes is a broad new exemption for small businesses and the first set of computation regulations for applying the wage standard to wage and salary adjustments. Additionally, the reconstitution of the Board, which has obviously moved it into a much more public role, has altered somewhat the total philosophical position of the Board. With these significant developments as background. I would like to get into specific coverage of the Pay Board regulations.

## SCOPE OF THE REGULATIONS

The economic stabilization regulations are an attempt to cover all forms of compensation whether direct or indirect, fixed or variable.[1] This includes salaries, wages, bonuses, other forms of incentive pay and job perquisites, stock options, commissions on sales and all forms of imaginable fringe benefits, even the Thanksgiving turkey. If it is given to an employee as a substitute for an expenditure he would absorb or as a part of his compensation; it is included in the coverage of the regulations — whether or not it is included in their computation is something else.

Despite this sweeping scope, some categories of wage adjustments are exempted from coverage of the regulations. The first of these are wage adjustments necessary to comply with laws governing work in federal government contracts[2]— the *Davis-Bacon* type situation. An adjustment to meet a *Davis-Bacon* requirement or some other minimum wage requirement in a federal contract is an excepted increase, which does not go toward the computation of the over-all standing. The second area is an exemption for any increases calculated to raise wages to $1.90 per hour. This overshadows the statutory exemption that previously existed in the 1971 amendments to the Economic Stabilization Act that exempted raises to the minimum wage. Cost of Living Council now allows any exemption up to $1.90 per hour.[3]

The third exemption is employee incentive programs that directly reflect increases in employer productivity.[4] This is a carefully defined category, and I would not urge you to put forward just any productivity program as being in this category. However, a common example would be the situation of routemen who are paid a base rate and who are paid over and above that

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1. 6 C.F.R. §201.3 (1972).
2. *Id.* §101.103.
3. *Id.* §101.104. This exemption was amended on July 27, 1972, to raise the "low wage employee" compensation level to $2.75 per hour. 37 Fed. Reg. 14998 (1972).
4. 6 C.F.R. §201.80 (1972).



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rate based on the increased sales or increased customers they bring in. Some common guidelines in this area are:

(i) that the productivity does not incur any additional costs on the part of the employer,

(ii) that there is a base rate of compensation in addition to the productivity factor, and

(iii) that there are normally adjustments for dead time; that is, when the mover's truck breaks down, he still gets paid a certain rate. The dead time here must usually be for factors beyond his control.

These are some of the factors the Board will consider to determine whether you have an acceptable plan. If you have an acceptable plan it will be permitted to continue in effect. If it is a new plan it must be submitted for approval, but existing plans of this sort are permitted to continue according to their terms.

Fourth, is the exemption for small employee firms.[5] Wage increases by small firms having an average of sixty or fewer employees for the four quarters immediately preceding March 31, 1972, are exempted (this does not include firms in construction and health services). The Government is going to check on your compliance by looking at your 941 Social Security withholding forms. Obviously, the first quarter filing is the one that lists all your employees. Anybody who is payrolled by the company for which federal insurance contributions (FICA) are deducted goes on that list. The Government is going to check that list to see whether you comply with that exemption. If you must average, due to fluctuations in employee composition, average on the basis of quarters — if someone has worked for ten days in a quarter, he has worked for the quarter.

In addition to the areas exempted from coverage there is another special category of compensation that may be paid unless, according to the 1971 Amendments to the Stabilization Act, it is deemed to be "unreasonably inconsistent" with the wage standard. This category basically includes retroactive and deferred payment increases scheduled to take effect after November 1971, pursuant to an agreement executed before August 14, 1971,[6] (before the freeze) and increases scheduled to take effect during the freeze, pursuant to a contract executed before the freeze.[7] So you have two pre-freeze contracts that would be permitted to take effect unless unreasonably inconsistent. One, signed before the freeze to take effect during the freeze, which obviously did not because of the freeze and therefore catch-up payments would have to be made. A second executed before the freeze to take place after the freeze. A third category is increases provided for in an agreement executed prior to August 15 when some action has already been taken.[8] In other words,

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5. *Id.* §101.51.
6. *Id.* §201.14.
7. *Id.* §201.13.
8. *Id.* §201.15.

the company has already raised prices, or taxes by a municipality have already been levied, or school district situations where there may have been a bond issued, but teachers have not received the raise.

There was a fourth section in the statute, section 203 (g), that referred to excludable fringes, a special category of fringe benefits that were supposed to be given special treatment — that is, permitted to take effect unless deemed unreasonably inconsistent. With respect to that category the Pay Board has issued regulations as to what they deem to be indicative of "unreasonably inconsistent." The excludable, and this is a term of art that means they are not excluded at all, fringes include group insurance plans, health and disability plans, and IRS qualified profit-sharing, pensions, and savings plans that are approved under the Internal Revenue Code. These are treated as normally permitting an extra .7 per cent. There are other regulations that further affect this calculation, for instance, increased contributions do not count as wage increases if the scope of the coverage is not increased in any way. If the scope of the coverage has increased by the reason of your reaching a new plateau in terms of employee units, where you are participating in a bigger plan but your actual costs have not increased, that is not an increase in compensation even though the employee is enjoying greater benefits. Except for those two caveats the .7 per cent applies.

## Categories of Treatment

The next area that generates confusion is the categories of treatment. For convenience of treatment Pay Board regulations divide compensation into two broad categories: (1) wages and salaries and (2) executive and variable compensation. Wages and salaries are governed by the provisions of subpart B, executive and variable compensation are governed by the provision of subpart D. Wages and salaries cover the general area of regular straight time compensation on an hourly or fixed weekly basis. It is presumed to cover all forms of ordinary compensation not specifically covered under subpart D dealing with executive and variable compensation.

Executive and variable compensation covers such forms of compensation as executive salaries, stock options, incentive compensation, job perquisites, and other similar forms of variable compensation reflecting factors other than hours of work. Compensation pursuant to an executive bargaining agreement is never executive or variable compensation.[9] Even a piecework basis under a union contract must be converted to an hourly rate. Nothing pursuant to collective bargaining and agreement comes under subpart D no matter how variable it may appear at first glance. Obviously there are numerous close questions as to whether an item of compensation is ordinary wages and salaries or constitutes some form of executive compensation. There are really no fixed guidelines on this in the regulations. However, there are certain considerations that may be helpful:

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9. *Id.* §201.71 (c).

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(i) non-exempt employees under FLSA are generally on wages and salaries,

(ii) the base portion of any executive salary exempt under FLSA is also treated as wages and salaries, and

(iii) the base salary of any employee who is also on commission is treated as wages and salaries.

Many people are paid wages and salaries plus executive and variable compensation. Each form of compensation must be computed under a separate set of rules.

Where a form of compensation is deemed to be wages and salaries under the regulation, increases are determined pursuant to the general compensation formula in subpart C. This first set of computation regulations could be the most confusing four pages of the *Federal Register* I have ever read. It does, however, provide you for the first time with a set of written guidelines. All forms of compensation are governed by specific rules in subpart D on executive and variable compensation.

RULES GOVERNING INCREASES IN EXECUTIVE AND VARIABLE COMPENSATION

Because there is no set definition that describes all the types of variable compensation there can be no single computation formula. The regulations do establish several broad categories.

The first is in section 201.73, which covers executive salaries and job perquisites. The key with respect to executive salaries and job perquisites is not how to compute it but how to value it. Once the salary of perquisites is valued it is treated as wages and salaries and computed under the general computation formula. Valuation is easy if the employee is receiving 20,000 dollars a year, but a problem arises if he is receiving 20,000 dollars a year plus the use of a car, plus a driver, a Thanksgiving turkey, or an Easter ham. If he is also enjoying deferred compensation, you have to value that. To value perquisites one must apply either the employer's current expenditures or the reasonable value of providing the item. For example, General Motors provides its executive employees with the use of a car. In this case, because the question of current expenditures (the cost of the car) may be difficult to determine, a reasonable value formula must be utilized. With respect to items of deferred compensation, they are deemed to be paid when they are earned; therefore, past items of deferred compensation received this year do not represent increases. Items of deferred compensation earned this year to be paid in future years must be computed under this year's wage guidelines.

The second broad category is actually two of the rules — section 201.74, which covers incentive compensation plans, and section 201.75, which covers incentive compensation practices. For an established plan or practice, which is in writing or well established based on prior agreements, and under which payment has been made in one of the three years preceding November 14, 1971, the permissible amount of increase is 5.5 per cent of the highest amount paid in any one of those preceding years. If an employee gets 20,000 dollars in salaries and 20,000 dollars in bonuses he is entitled to 21,100 dollars in

bonuses regardless of what your final computations show he is entitled to in salaries. All new incentive plans must have the prior approval of the Pay Board. This means a new plan for just one employee will need approval from the Pay Board. Any plan that has not had a payment in the last three years is considered a new plan. Any item of incentive compensation that is deferred to a later year shall be deemed paid the year it is earned, the same as executive salaries earned. Any amount of incentive compensation that exceeds the permitted guides shall be treated as wages and salaries and, therefore, counted against the increases that can be made on a salary side. If an amount of incentive compensation is less than the permitted guide the difference in amount, not in percentage, may be allocated to increased wages and salaries. This is a crediting provision. If I take only 2.5 as a bonus and 5.5 as a salary, my total compensation increase is less than 5.5; therefore, I can take the amount between 2.5 and 5.5 on the bonus side and add that amount to the salary side, and vice versa. Items of incentive compensation that are paid in other than cash are valued according to the fair market value of such items except stock options, which have their own valuation formula.

Stock options is the next broad category and is covered in section 201.78. Stock options granted in writing before the close of business on December 15, 1971, pursuant to a plan in effect before December 14, 1971, may be exercised without restriction. New stock options granted under an existing plan must meet the following requirements:

(1). be approved by stockholders pursuant to section 422 (b) (1) of the Internal Revenue Code,

(2). be approved pursuant to a plan having a maximum limit to the number of stock options granted,

(3). the option price must be at least 100 per cent of fair market value at the date of the granting, and

(4). the aggregate number of shares granted must not exceed the average aggregate number of shares granted in the preceding three years.

With respect to new stock option plans, in addition to the above requirements, a separate formula of valuation applies. First, of course, like any other form of incentive compensation they require the prior approval of the Pay Board if it is a new plan or a revised plan.[10] With respect to the granting of the option, the value is an amount equal to 125 per cent of the fair market value of the stock under option at the time of the grant, minus the price of the stock under option. With respect to the exercise, the value is an amount equal to 125 per cent of the fair market value of the stock at the time of grant subtracted from the fair market value of the stock at the time of exercise. Translated this means there is something called "a stock option premium" that, regardless of the restrictions placed on the stock with respect to continuing employment, is worth 25 per cent.

10. *Id.* §201.76 (e). Most Pay Board approvals designate a permitted amount of options as not constituting an increase in wages and salaries. As to this amount, no valuation need be made.

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COMPUTATION OF WAGE AND SALARY INCREASES

Now we come to the fun part. How do you compute a standard wage and salary increase? This is the new computation regulation issued April 18, 1972. It is euphemistically called "the double snapshot method"—take a snapshot of your payroll for the last payroll period before the control year and another snapshot of the last payroll period in the control year and compare the two. For an increase pursuant to a pay contract, the base compensation period against which increases are measured is the prior contract year. For an increase in which there is no prior pay contract, the base compensation period against which increases are measured is the payroll period immediately preceding the control year in which the increase is to be paid.

If you pay on a weekly basis, the last week before the control period is the payroll period. The control year for contracted pay increases is the new contract year — whenever that runs — from January to January, from April to April, whatever.[11] The control year for no contract increases is either: (a) the 12-month period from November 14, 1971, to November 14, 1972,[12] the magic new year created under the Pay Board regulations or (b) where the employee's unit has previously been governed by an established pay practice that determines wages and salaries for a fixed period, the employer, at his option, may elect a period less than 12 months from November 14 through the day before the annual anniversary date of that fixed period.[13] In other words, if I am a company owner, my practice could be that every year in April I review my entire salary plan and then based on the review I determine increases in ranges, and so on. As employees come up on the anniversary date with which they came to the company they are reviewed with respect to the policy that I established in April. Then the next April I will do the same thing. If that is a well established policy I have the option of treating my first year as November 14, 1971, to the April date. This has a tremendous advantage in terms of practical impact for anyone trying to push through a wage increase. It is possible to take 5.5 per cent from November 1971 to April 1972 and another 5.5 per cent from April 1972 to April 1973 so as to get two increases over an 18-month period instead of over a 24-month period.

In addition to determining the appropriate control year and the base compensation period, the employer must also determine the appropriate employee unit for purposes of measuring the increase. The rules indicate that such a determination largely involves a judgmental evaluation on the part of the employer. Section 201.3 states that such a unit may exist in a department, plant, company, or even an entire industry and should be determined so as to preserve, as nearly as possible, contractual or historical wage and salary relationships. Where there is a collective bargaining unit, however, the bargaining is the appropriate employee unit. Recently the

11. *Id.* §201.53 (c).
12. *Id.* §201.53 (b) (i).
13. *Id.* §201.53 (b) (ii).

head of the Economic Policy and Case Analysis Section of the Pay Board indicated that in view of the advertised enormous salary increases in certain industries the Board was contemplating treating executives or officers of the company as individual employees. In other words, each officer's salary increase may have to be determined individually. So far, that is not the case. I have dealt with a number of companies where the president of the company is in the same merit program as the janitor. He may be at the other end of it, but he is under the same salary range controls as everybody else. Obviously, for those purposes you have a good argument that the whole company is a single employee unit because all are covered by the same range controls and the same pay plan. An employer must look at past pay practices, and the wage relationships are between various employees, and then determine the appropriate unit. Some companies are going to have one set of wage relationships for one reason and another set for another reason. It may give you flexibility or it may destroy what you are attempting to create, but you must determine the appropriate employee unit. Obviously, professionals and secretaries cannot be mixed unless there is a comprehensive plan that in the past has mixed them on a wage relationship basis. Once you have completed these determinations, you can take a stab at computing the wage increases.

Let me try to capsulize this procedure. There are two things of concern in computing permissible wage and salary increases: the straight time hourly rate and the fringe benefit rate. For the hourly rate take all straight time salary expenditures for the base payroll period immediately prior to the control year (be sure to include all paid annual leave as well as the straight time portion of any overtime). Divide total expenditures by total hours worked in that period (include annual leave hours and straight time hours of overtime hours worked). The result is the *average straight time hourly rate.*

For fringe benefits (which include all things that qualify as fringes — shift inferentials, vacations, the overtime part of overtime pay, sick pay, weekend or holiday pay, severance pay, supplemental unemployment benefits, life insurance, sickness and accident benefits, health and welfare benefits, funded pensions, and savings and thrift plans) take the costs of all benefits as of the last day preceding the control year and annualize this figure for the base year. Then divide the annualized figure by the hours actually worked for the total year (this could be less than 12 months if you are using the optional short control year). The result is the *average hourly benefit rate.* This gives you the benefit of any increases that may have occurred in the cost of fringes. For example, if health premiums have gone up during the year, rather than to force you to average them out over the year they will give you the benefit of the rate you are paying in the last pay period and let you annualize that for the whole year. It pays to do all these things because it raises the base compensation rate against which the 5.5 per cent is applied.

After determining straight time hourly rate and the fringe benefit rate there is one more worry. Some fringe benefits increase simply by raising the straight time rate. So you must figure out what the *secondary effect factor*

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is for those kinds of fringes. This is done by determining that portion, in dollars, of the average hourly benefit rate, which varies with adjustments in base salary, and dividing that amount by the average hourly straight time salary rate. Next, add the average hourly straight time rate and the average hourly benefit rate to get the *base compensation rate.* Then project the total salary expenditures for the last payroll period of the control year (exclude all expenditures due to promotions, longevity increases, or other excluded adjustments). Divide this by the projected hours of work during that payroll period. Subtract from this figure the average hourly straight time rate. The result is the *average hourly wage increase.* Multiply the average hourly wage increase by the secondary effect factor of adjustments to benefits. Add the result of this to the average hourly wage increase. Then add to this the average hourly wage increase (obtained using the same formula as used in computing the average hourly benefit rate, but applied to the control year). The result is the *total wage, salary, and benefit adjustment.* This figure may not be more than 5.5 per cent of the base compensation rate (or 7 per cent under a permitted exception).

One additional point in computing increases concerns excludable fringes, which I have explained already. If the increased benefit package includes increases in employer contributions for group insurance, health or disability plans, qualified profitsharing, annuity or savings plans, then an additional 0.7 per cent increase of the base compensation rate is permitted, provided that the increase in these fringes amounts to at least 0.7 per cent of the base compensation rate.[14]

## EXCEPTIONS TO THE GENERAL WAGE STANDARD

Having described to you how comprehensive these rules are, let me explain the exceptions that exist. There is a group of exceptions that immediately follow the general wage rules of subpart B. These generally have two characteristics: (1) they all have a cap of 7 per cent, which means they all permit a 1.5 per cent maximum addition on to the 5.5 per cent rate and (2) certain exceptions are self-executing for category II and III firms, so Pay Board approval is not required.

The first exception is the "tandem relationship."[15] A "tandem" is defined as "a well established and consistently maintained practice whereby the precise timing, amount, and nature of general increases in wages and salaries of a given appropriate employee unit have so followed those of another such unit of employees of the same employer or of other employers within a commonly recognized industry . . . that a general increase, in the normal operation of the practice, would have been put into effect . . . but for the operation of the freeze."[16] For example, the United Auto Workers do not strike the automobile industry. They picket and strike a certain company and then negotiate with that company. The other companies then negotiate

14. *Id.* §201.58.
15. *Id.* §201.11 (a) (1).
16. *Id.* §201.3.

on the basis of the contract negotiated with the first company. That is a matter of past practice. Having shown that the tandem exists and the tandem increase exceeds the standard, and that the tandem increase occurred not more than six months prior, then an increase requested may be as high as 7 per cent. Having said that let me explain one situation that occurred in New York. There was a major telephone strike about a week before the freeze and almost everyone settled. New York workers held out arguing that because of the unique situation in New York they should get more. The basic contract was for a flat 14 per cent. New York telephone workers stayed out on strike 7 months after that contract was signed and got an additional .43 per cent increase. The Pay Board approved that on the basis of the tandem.

The second exception, for which Pay Board approval is also not required, is for essential employees.[17] This is an exception intended to provide the employer with additional latitude for pay increases where he is faced with recruiting problems or where he has had difficulty retaining key employees. The rules require the employer to demonstrate that:

> (a). increases in excess of the standard are necessary to attract or retain employees essential to the efficient operation of the employer,
> (b). he has had a significant proportion of vacancies despite intensive recruiting for at least three months,
> (c). other working conditions have not caused the vacancies (for example, he has not moved from an air conditioned plant to a non-air conditioned plant), and
> (d). wage increases will solve the problem.

Once again the maximum permitted raise is 7 per cent.

The third is the famous catch-up provision.[18] This is self-executing and no Pay Board approval is needed, however, there is a 7 per cent cap here. This exception is intended to deal with inequities that may result where past pay practices have been below the norm, thereby creating an extremely low base wage against which to measure current increases. In situations such as this the rules allow you to back up over the past three years preceding the freeze and to see if the average increase over those three years averaged 7 per cent. If the aggregate percentage of increase is less than 7 per cent for the prior three years, the difference up to 7 per cent for those three years can be brought forward in one amount to this year, with the limit that this year's raise cannot go above 7 per cent.

The next exception is the cost-of-living allowance.[19] This applies only when the wage agreement has a built-in cost of living increase formula. It is calculated by multiplying the contract formula by a fraction, the numerator of which is the number of months the adjustment is in effect, and the de-

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17. *Id.* §201.11 (a) (2).
18. *Id.* §201.11 (a) (3). This exception was terminated November 13, 1972, 37 Fed. Reg. 23913 (Nov. 10, 1972).
19. *Id.* §201.11 (a) (4).

nominator of which is the number of months in the rental year. The cost of living adjustment increase itself shall not exceed the general wage standard, but it is not otherwise governed by a maximum. You can go well above 7 per cent annually if your cost of living formula allows it. The exception is self-executing.

The most recent and last exception is the merit increase.[20] This has had a rather trying existence — one set of federal rules was published, which lasted eleven days. It was then republished with one phrase cut out, but that one phrase eliminated approximately 70 per cent of the participating cases. The deleted phrase permitted the exception to apply even though the plan was not in writing. In general the exception provides that a preexisting, written merit plan must:

(a). apply to particular jobs or job classifications,
(b). specify pay rate ranges,
(c). clearly define policy as to determining merit pay, and
(d). have an established administrative review procedure.

A change in the minimum or maximum rate range will not constitute an increase in the plan as long as the ratio between the terminal points remains the same. Obviously, where employees in a merit plan are promoted or regularly advanced, some people will run against the ceiling. As long as you are simply moving the ceiling range on the plan and dragging the bottom up with it at the same ratio, that will not constitute a salary increase. This exception is self-executing and also has a 7 per cent cap. Where there are merit plans provided for in employment contracts, that is where a union has negotiated a merit plan, the plan may operate according to its terms and may be excluded entirely from the computation of wage increase; however, any increase in the rate range is treated as a general wage increase, but individual increases within such a rate range are excluded. This means that when the merit plan is part of an employment contract it can operate as it did before but increases in the rate range of the plan cannot exceed 5.5 per cent — the wage standard.

In addition to all these previously cited exceptions the Pay Board will always entertain requests for exceptions where there are such factors as economic growth, gross inequities, hardships, serious market disruptions, domestic shortages of raw materials, localized shortages of labor, and windfall profits. The second of these, gross inequities, will probably result in publication of something called "intraplant inequities."[21] For instance, where you have two or three unions participating in a different contract with the same employer and two unions have negotiated increases before the freeze and a third union is controlled by the freeze, obviously, it creates an intra-

20. *Id.* §201.11 (a) (5). This exception was terminated November 13, 1972, 37 Fed. Reg. 23913 (Nov. 10, 1972).

21. "Intraunit inequities." *Id.* Section 201.11 (a) (8) added by 37 Fed. Reg. 24964 (Nov. 23, 1972). Also added were exceptions for governmental wage determinations (37 Fed. Reg. 24964, Nov. 23, 1972); tandem qualified benefit plans (37 Fed. Reg. 24962, Nov. 23, 1972); and low wage employees (37 Fed. Reg. 24965, Nov. 23, 1972).

plant inequity. A strong argument can be made to permit the contract of the third to be equal to the other two. That is not out yet, but it will probably be out as a sixth exception.

### EXCLUSIONS FROM THE COMPUTATION OF INCREASES

There are, in addition to various exceptions from the general wage standard, certain kinds of wage adjustments that are excluded from the computations. The first is promotions[22]— any increase due to promotion where the duties and responsibilities of an employee have materially changed from those previously performed is excluded from all computations of increases. Next year when figuring a base the promoted employee can be included in at the new rate, but for purposes of assessing the increase do not include promotions. The second is longevity[23] — any increase, based on an employment contract or past pay practice, where the sole criteria are length of service and satisfactory performance, is excluded from the computations. This is the rough equivalent of the government in-step promotion program. The next exclusion from the computation is just that — automatic in-grade progression.[24] This is a longevity increase with the additional factor of a step or series of steps being pre-established for a particular job. The fourth is the certain employer contributions to qualified merit plans.[25] Where an employer contributes an increase in a group insurance, health, disability, profit-sharing, savings, pension, or annuity plan, and the effect of his contribution is to (a) maintain benefits at prior levels or (b) to increase levels or scope without increasing his per employee cost, such increased benefits or increased contributions are excluded from the computation.

With respect to a final point there are some procedural considerations. There are presently two forms PB-1 and PB-2. These forms were put together before any of the computation rules or any of the exceptions were developed. Consequently, there is nothing on the forms that helps you other than to identify who you are and to list your phone number. They do contain a procedure for computing straight time increases and benefit increases. PB-3 will be a consolidated format that will replace PB-2 and will be out shortly. With respect to all of these exceptions, which I said are self-executing, they are only self-executing with respect to category 2 and 3 increases. They are not self-executing for category 1 — nothing is self-executing in category 1.

### EPILOGUE

On November 23, 1972, the entire Regulations of the Pay Board were recodified.[26] The recodification was intended to govern all pay adjustments in the second control year, that is, the pay control year commencing on November 14, 1972.

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22. 6 C.F.R. §201.57 (a) (1972).
23. *Id.* §201.57 (b).
24. *Id.* §201.57 (c).
25. *Id.* §201.57 (d).
26. 37 Fed. Reg. 24954 (1972).

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The recodification represented a major liberalization of many of the rules governing executive and variable compensation and a considerable clarification of the rules on wages and salaries.

On January 11, 1973, the President issued Executive Order Number 11695 "[f]urther [p]roviding for the [s]tabilization of the [e]conomy."[27] By this action the President effected substantial changes in the controls system in effect at that time.

The Regulations[28] with respect to wages and salaries were significantly modified: (1) reporting requirements have been modified with respect to all industries, and (2) with respect to those industries not subject to special regulation (that is, food, health and construction), wage and salary controls have been converted to a predominantly voluntary and self-administered program.

## GENERAL PROVISIONS

With respect to wage and salary increases for the majority of the economy, Phase III now requires voluntary adherence to the general wage standard on a self-administered basis.

The general wage and salary standard remains at 5.5 per cent per annum. A pay adjustment affecting 5,000 or more employees must be reported to the Pay Division of the Cost of Living Council. Records must be maintained on all adjustments affecting 1,000 or more employees.

The major relaxation in the standard is the definition of the term "pay adjustment." Under the new regulations, a pay adjustment includes both wage and salary and executive and variable compensation, but it is specifically defined not to include certain qualified benefit adjustments unless they are determined to be unreasonably inconsistent with the standards. The excluded areas are adjustments involving:

> (1). any pension, profit sharing or annuity and savings plan that meets the requirements of sections 401 (a), 404 (a) (2), or 403 (b) of the Internal Revenue Code of 1954,
> (2). any group insurance plan, or
> (3). any disability and health plan.

In addition, any adjustment that does not raise a person's straight time pay above $2.75 per hour is also completely excluded. This definition is identical to that in the old COLC Regulations, but apparently now supplements the Pay Board's dual definitions of wages and salary and executive and variable compensation.

The one area of considerable uncertainty is the exact treatment of executive and variable compensation. At the time of this writing, no indication has been given as to what controls will apply in this area and how units will be determined for record keeping and reporting requirements.

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27. 38 Fed. Reg. 1473 (1972).
28. *Id.* at 1479.