UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

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The Director

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: **JOHN BERRY**
DIRECTOR

Subject: **Nonforeign Area Retirement Equity Assurance Act**

The Nonforeign Area Retirement Equity Assurance Act (the Act) as contained in subtitle B (sections 1911-1919) of title XIX of the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Public Law 111-84, October 28, 2009) transitions the nonforeign area cost-of-living allowance (COLA) authorized under 5 U.S.C. 5941(a)(1) to locality pay authorized under 5 U.S.C. 5304 in the nonforeign areas as listed in 5 CFR 591.205. The Act also extends locality pay to American Samoa and other nonforeign territories and possessions of the United States where no COLA rate applies.

Under section 1914 of Public Law 111-84, locality pay will be phased in over a 3-year period beginning in January 2010. Effective as of the first day of the first pay period beginning on or after January 1, 2010, the locality rate for all allowance areas will be one-third of the locality rate applicable in the Rest of the United States (RUS) locality pay area. In January 2011 and 2012, the applicable locality pay rate for each allowance area will be determined by the President after giving consideration to the recommendations of the President's Pay Agent and the Federal Salary Council. In January 2011, the locality rate for each nonforeign area will be set at two-thirds of the applicable locality rate. In January 2012, the full applicable locality rate will be used.

Under the law, COLA rates issued under 5 CFR part 591 are frozen as of the date of enactment, which was October 28, 2009. The frozen COLA rates will continue to be applicable to United States Postal Service employees in the nonforeign areas who received a COLA.

As locality pay increases under the Act, payable COLA rates must be reduced as specified in section 1912(b). As a consequence, covered employees may receive both locality pay and a reduced COLA for a number of years.

Below we provide information on employee coverage, locality pay rates for the covered areas, and adjusted COLA rates effective on the first day of the first pay period beginning on or after January 1, 2010.

Employee Coverage

A covered employee is any Federal civilian employee who is covered by the COLA provision in 5 U.S.C. 5941 or an equivalent provision under another authority, subject to the terms of Public Law 111-84.

The majority of affected employees are paid under the General Schedule. However, additional employees are covered if they received an allowance equivalent to a COLA under 5 U.S.C. 5941. Some examples of such additional employee groups include Transportation Security Administration employees, Federal Aviation Administration employees, postal inspectors paid under 39 U.S.C. 1003, and Defense Intelligence Agency employees.

In addition to extending locality pay to General Schedule employees in nonforeign areas, Public Law 111-84 allows for locality pay (or similar payments) to employees in agencies with independent pay authority who were (1) eligible to be paid the COLA under 5 U.S.C. 5941 or an equivalent authority and (2) not eligible to be paid locality pay under 5 U.S.C. 5304 at the time of enactment of the Act. Agencies that have independent pay authority and that employ or plan to employ employees in the nonforeign areas must pay employees in accordance with regulations prescribed by the head of the agency that are consistent with the regulations issued by OPM regarding the payment of locality pay in nonforeign areas.

Agencies with independent pay authority that have employees in the nonforeign areas should consult with OPM staff if necessary to determine appropriate employee coverage.

Locality Pay Rates in the Nonforeign Areas

Locality pay will be phased in over a 3-year period. Effective as of the first day of the first pay period beginning on or after January 1, 2010, the locality rate for all allowance areas will be one-third of the locality rate applicable in the Rest of the United States (RUS) locality pay area as specified by law. In January 2011 and 2012, the applicable locality pay rate for each allowance area will be determined by the President after giving consideration to the recommendations of the President's Pay Agent and the Federal Salary Council. In January 2011, the locality rate for each nonforeign area will be set at two-thirds of the applicable locality rate. In January 2012, the full applicable locality rate will be used. OPM will issue locality pay tables applicable to all nonforeign areas at the same time we issue locality pay tables for the continental United States. See Attachment 1 for additional information

Calculating Adjusted COLA Rates

COLA rates will be adjusted each year using a methodology prescribed in law. (See 5 U.S.C. 5941(c)(2), as amended by section 1912(b)(3).) For example, using one-third of the 2010 RUS locality rate in the calculation (14.16 / 3 = 4.72 percent), the 23 percent COLA rate applicable in Anchorage is reduced to 19.03 percent in January 2010. To calculate the adjusted COLA rate, first subtract 65 percent of the applicable locality rate (4.72 × 0.65 = 3.07 percent) from the frozen COLA rate (23 percent): 23 – 3.07 = 19.93 percent. Then divide the result (19.93 percent) by 1 plus the applicable locality pay rate (1.0472) and round the result to 4 decimal places: 19.93 / (1 + .0472) = 19.03 percent. In this example, the adjusted COLA rate is 19.03 percent. Please see Attachment 1 for a detailed example.

The following chart shows the COLA rates as frozen on October 28, 2009, and the adjusted COLA rates for January 2010. The adjusted COLA rates are applied to the employee's rate of basic pay, including locality pay. Thus, with a January 2010 locality rate of 4.72 percent, the

adjusted COLA rate is 19.03 percent. The amount of the COLA is derived by multiplying the 19.03 COLA percentage by the employee's locality-adjusted rate of basic pay (including the 4.72 percent locality pay). COLA will continue to be paid until the applicable COLA rate is reduced to zero because of phase-in of the applicable locality pay rate.

COLA Rates		
Nonforeign Area	COLA Rates Frozen on October 28, 2009	Adjusted COLA Rates Effective January 2010
Alaska:		
Anchorage	23%	19.03%
Fairbanks	23%	19.03%
Juneau	23%	19.03%
Rest of Alaska	25%	20.94%
Hawaii:		
Hawaii County	18%	14.26%
City and County of Honolulu	25%	20.94%
Kauai County	25%	20.94%
Maui County	25%	20.94%
Guam & Commonwealth of the Northern Mariana Islands	25%	20.94%
Commonwealth of Puerto Rico	14%	10.44%
United States Virgin Islands	25%	20.94%

Special Rates

Section 1913 of Public Law 111-84 requires special rates established under 5 U.S.C. 5305 and payable in a nonforeign area to be adjusted in accordance with regulations prescribed by the Director of the Office of Personnel Management. Regulations are forthcoming. Until regulations are published, agencies must follow the guidance in this memorandum. Agencies that have statutory authority similar to authority exercised by OPM under 5 U.S.C. 5305 are to adjust their special rates in accordance with section 1913(b) and this guidance.

Under section 1915(b), when locality pay for a nonforeign area is increased during the 3-year phase-in period, the increase in the minimum rate (step 1) of any grade of a special rate schedule must be increased by no less than the dollar increase in the locality payment for a non-special rate employee at the same minimum grade and step and in the same location as provided under section 1915(b). Corresponding increases must be provided for all special rates at higher steps in the pay range for the given grade.

OPM has determined a methodology for increasing special rates in a nonforeign area in conjunction with locality pay increases during the phase-in period. This methodology complies with the minimum requirements in section 1915(b). OPM will calculate the dollar value of any locality pay increase for a non-special rate employee at each step rate and will add that dollar amount to the special rate that would apply but for this additional adjustment. For example, if a special rate schedule would otherwise be adjusted by 1.5 percent in January 2010, the new special rate (reflecting the 1.5 percent general increase) for an employee's grade and step would

be additionally adjusted to account for the locality pay increase received by a non-special rate employee at the same grade and step. An example is shown in Attachment 2.

The same methodology applies to employees receiving a fixed-percentage special rate supplement and employees receiving a fixed-dollar special rate supplement. For employees with a fixed-percentage supplement, the additional adjustment will provide the same percentage increase at each step. For employees with a fixed-dollar supplement, the additional adjustment will have a higher percentage value at higher steps.

Currently, special rates cannot exceed the rate for level IV of the Executive Schedule (EX). (See 5 CFR 530.322(a).) However, section 1913(c) provides that "limitations on the amount of such special rates may be temporarily raised to a higher level during the transition described in section 1914 ending on the first day of the first pay period beginning on or after January 1, 2012." At that time, any special rate in excess of the applicable limitation must be converted to a retained rate under 5 U.S.C. 5363. Certain special rate tables will have payable rates above the EX-IV cap. An example is shown in Attachment 2.

SES and SL/ST Employees

Senior Executive Service (SES) positions (under 5 U.S.C. 3132 or 3151) and Senior Level (SL) and Scientific and Professional (ST) positions (compensated under 5 U.S.C. 5376) are not authorized to receive locality pay in the continental United States. The legislation authorizes extending locality pay to employees in these positions whose official worksite is in one of the nonforeign areas on the day before the first day of the first pay period beginning on or after January 1, 2010. (OPM is issuing a separate memorandum to describe SES, SL, and ST employee eligibility for locality pay in nonforeign areas.) These employees will receive the locality pay rate for that area, subject to the applicable locality rate cap established by 5 U.S.C. 5304(g)—i.e., EX-II if the employee is covered by an appraisal system certified under 5 U.S.C. 5307(d), or EX-III if not so covered. Employees who are assigned to SES or SL/ST positions in the nonforeign areas on or after the effective date are not eligible for locality payments. They will be eligible for the adjusted COLA rate (if any) in effect for their official worksite.

If a covered SES or SL/ST employee reaches the applicable locality rate cap (EX-II or III), the law provides that the employee will continue to receive the frozen COLA rate, subject to an offset, until (1) the employee leaves the COLA area, (2) the employee leaves the pay system, or (3) the employee becomes entitled to receive a rate of basic pay (including locality pay) that exceeds the employee's existing COLA-adjusted rate. The offset is computed using the formula in 5 U.S.C. 5941(c)(2)—and described in the earlier section in this memorandum titled "Calculating Adjusted COLA Rates"—so that any amount of locality pay actually received by the employee will reduce the COLA percentage. Please see Attachment 3 for examples.

Employees on Retained Rates

Due to the establishment of new locality pay schedules in the nonforeign areas, employees receiving retained rates may receive an increase in pay. As provided in 5 U.S.C. 5363(b)(2)(B) and 5 CFR 536.305, when the maximum rate of the highest applicable rate range for an employee's position of record is increased while the employee is receiving a retained rate, the employee is entitled to an increase equal to 50 percent of the dollar amount of any increase in that maximum rate, subject to the limitation of EX-IV. The maximum rate of the highest applicable rate range includes any applicable locality payment or special rate supplement, whichever is higher. If the employee's retained rate after any adjustment would be less than or equal to the maximum rate of the highest applicable rate range for the employee's position of record (locality rate or special rate, as applicable), the employee is entitled to the maximum rate of the highest applicable rate range, and pay retention ceases to apply.

Effect on Post Differential Calculations

Post differentials under 5 U.S.C. 5941(a)(2) are based on conditions of environment which differ substantially from conditions of environment in the continental United States. Currently, a post differential of 20 percent is authorized for Guam and the Commonwealth of the Northern Mariana Islands and a post differential of 25 percent is authorized for American Samoa, Midway Atoll, Johnston Atoll, and Wake Atoll. The Act does not directly affect post differentials; however, OPM retains the authority to adjust post differentials as it determines to be appropriate. Post differentials will continue to be paid as authorized by 5 CFR part 591 and cannot exceed 25 percent of basic pay. Starting with the first pay period beginning in January 2010, the post differential must be calculated on basic pay including any applicable locality pay. As under current law, the total of the COLA payable and the post differential in any area cannot exceed 25 percent of basic pay. OPM will revise its regulations in 5 CFR part 591, subpart B, as necessary.

Additional Information

For additional information, agency Chief Human Capital Officers and/or Human Resources Directors should contact their assigned OPM Human Capital Officer. Employees should contact their agency human resources offices for assistance.

cc: Chief Human Capital Officers
Human Resources Directors

Attachment 1
Example of an Adjusted COLA Rate

General Schedule (GS) Base Rate in 2010[1]	**$62,500**
Locality Payment[2]	4.72%
Locality Pay Amount	$2,950 ($62,500 × .0472)
Locality Pay Rate	$65,450 ($62,500 + $2,950)
"Frozen" COLA Rate	23%
Adjusted COLA Pct[3]	19.03%
COLA Amount (19.03% of Locality Pay Rate)	$12,455 (0.1903 × $64,450)
Total Pay	$77,905 ($65,450 + $12,455)

Notes:

1. 1.5% base GS across-the-board base pay increase effective January 3, 2010

2. By law, one-third of the Rest of US locality payment (2010 RUS locality payment of 14.16%)

3. Calculated as:

"Frozen COLA Rate"	23.00%
less 65% of Locality Payment	– 3.07% (4.72% × 0.65)
=Reduced COLA Rate	19.93% (23.00% – 3.07%)
Divide Reduced COLA Rate by (1 + Locality Payment)	1.0472
Round result to 4 decimal places =	19.03% (19.93% / 1.0472)

Attachment 2
Special Rates Adjustment

Example A - using a GS-07, step 1 special rate

Step 1: 2010 GS base rate
(Including a 1.5% across-the-board increase effective January 3, 2010) $33,979

Calculate the dollar value of 1/3rd of the Rest of US locality payment of 14.16% (rounded to the nearest dollar): $1,604 ($33,979 × 4.72%)

Step 2: Apply Additional Adjustment to Special Rate:

2010 Special rate table 99AH for a GS-07 step 1
(Includes a 1.5% increase in special rates approved by OPM effective January 3, 2010) $44,173

Add the dollar value of the 4.72% locality payment for the GS-07, step 1, base rate (from step 1): $1,604

= 2010 Table 99AH GS-07 step 1 rate with additional adjustment per Public Law 111-84, sec. 1915 $45,777 ($44,173 + $1,604)

Example B - using a GS-15, step 7
Exceeding Executive Schedule Level IV Pay Cap
($155,500 in 2010)

Step 1: 2010 Base General Schedule
(including a 1.5% general
increase effective January 3, 2010:

GS-15, step 1:	$99,628
GS-15 within-grade amount:	$3,321
GS-15 special rate	$119,554 [(6 × $3,321) + $99,628]

Calculate the dollar value of 1/3rd of
the Rest of US locality pay rate of
14.16% (rounded to the nearest dollar): $5,643 ($119,554 × 4.72%)

Step 2: Apply Additional Adjustment to Special Rate:

2010 Special Rate Table 565A for a GS-15, step 7
(Includes a 1.5% increase in special
rates approved by OPM effective
January 3, 2010) $155,420 (below EX-IV 2010 cap of $155,500)

Add the dollar value of the 4.72%
locality pay increase for
the base General Schedule
(from step 1) $5,643

= 2010 Table 565A GS-15, step 7 rate
with additional adjustment per
Public Law 111-84, section 1915 $161,063 ($155,420 + 5,643)

The result exceeds the EX-IV cap as permitted by the act.

Attachment 3 – SES/SL/ST Pay

Example A - Senior Executive Service Employees (Affected by EX II Level Cap)

Year	2009	2010
Base pay[1]	$172,000	$174,580
Locality Payment[2]	0	4.72%
Locality-Adjusted Basic Pay	$172,000	$182,820 ($174,580 × 1.0472)
EX II Cap	$177,000	$179,700
Payable Amount	$172,000	$179,700
Amount of Locality Pay Increase Paid		$5,120 ($179,700 – $174,580)
Locality Pay Received as a Percent of Base Pay (rounded to 4 decimal places)		2.93% ($5,120 / $174,580)
COLA Percent	25%	
Adjusted COLA Percent[3]		22.44%
COLA Payment	$43,000	$40,325 (0.2244 × $179,700)
Total	$215,000	$220,025 ($40,325 + 179,700)
Increase in Total Pay from 2009 to 2010		2.34%

Notes:

1. 1.5% across the board pay increase effective January 3, 2010

2. By law, one-third of the Rest of US locality payment (2010 RUS locality payment of 14.16%)

3. The adjusted COLA is calculated as:

"Frozen COLA Rate"	25.00%
less 65% of Locality payment	–1.90% (2.93% × 0.65)
Reduced COLA Rate =	23.10% (25% – 1.90%)
Divide by (1 + Locality Payment) and round result to 4 decimal places =	22.44% (23.10% / 1.0293)

Attachment 3 (Continued)
SES/SL/ST Pay

Example B - Senior Executive Service Employees (Not Affected by EX II Level Cap)

Year	**2009**	**2010**
EX Level II Cap	$177,000	$179,700
Base pay[1]	$165,000	$167,475
Locality Pay rate[2]	0	4.72%
Locality-Adjusted Basic Pay	$165,000	$175,380 ($167,475 × 1.0472)
COLA Percent	25%	
Adjusted COLA Percent[3]		20.94%
COLA Amount	$41,250	$36,725 ($175,380 × 20.94%)
Total Pay	$206,250	$212,105 ($175,380 + $36,725)
Increase in Total Pay from 2009 to 2010		2.84%

Notes:

1. 1.5% across-the-board increase effective January 3, 2010

2. By law, one-third of the Rest of US locality payment (2010 RUS locality payment of 14.16%)

3. The adjusted COLA is calculated as:

"Frozen COLA Rate"	25.00%
less 65% of locality payment	–3.07% (.0472 × .65)
Reduced COLA =	21.93%
Divide by (1 + locality Pay Rate) and round result to 4 decimal places	20.94% (21.93% / 1.0472)