Honolulu-Pacific Federal Executive Board's
24 March 2010
Facilitated Conference Call with OPM and Senator Akaka's Staff

Before the scheduled conference call, the HPFEB queried Agency Heads and HR Associates to forward questions in writing to allow written responses from the Office of Personnel Management and Senator Akaka's Staff. Below are the responses to those questions. Those present during the actual conference call received the benefit of live interaction.

***The HPFEB Policy Board extends our appreciation to Lisa Powell,** Staff Director, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia Homeland Security and Governmental Affairs Committee; **Charles Grimes**, Deputy Associate Director Performance and Pay Systems for their participation and earnest concerns regarding the COLA to Locality Pay transition.*

1. BENEFITS ADMINISTRATION: As of 5 April 2010, the Benefits Administration Letter (BAL) that will address the retirement election option is still in clearance but should be finalized and sent out to agency Benefits Advisors and retirement counselors soon.

2. PAY TABLES: Have you figured out the pay tables yet? They posted one with the Locality Pay (4%) but there is nothing on how much the COLA amount is. Do you have any insight into this?

Below is the link to the compensation policy memoranda on OPM's web site. CPM 2009-27, at the top of the list, is our agency guidance. Open the CPM and page down. There is a table with the adjusted COLA rates for all areas.

http://www.opm.gov/oca/compmemo/index.asp

Because COLA is calculated from an employee's hourly rate of pay, OPM has never published a pay table including COLA.

3. RETIREMENT ESTIMATE: If someone is planning to retire after almost 43 years of federal service, how can they get an estimate of what the locality pay differential will make in their monthly retirement if they are planning to retire sometime perhaps soon, maybe in 2010 and/or 2011 or perhaps 2012?

Within a week or two they should be able to contact their agency's benefits/ retirement counselor and get an estimate. However, the locality rates for 2011 will probably not be available until December. Any estimates made now for time worked in 2011 will be estimates and not guarantees.

4. BUDGET FORUMULA: We know there is an increased cost to agencies but without better guidance on the rates (locality and COLA) to be applied, we are not confident of our estimates at this point. Who can provide authoritative information on how to structure our budget estimates? How can our representatives obtain funding information for these additional costs?

Annual pay adjustment amounts are difficult to predict and definitive information on pay adjustments has historically been known only late in December for application in January. The President's budget for 2011 calls for a 1.4 percent overall average pay adjustment. Beyond that, the Administration has made no projections for Federal employee pay adjustments.

The split between locality and base GS increase amounts will not be determined until late this year. Locality pay in the nonforeign areas for January 2011 will be set following the same process and schedule as locality pay in the 48 states.

In 2011, our estimate of locality pay in Alaska is approximately 16-17% and approximately 12% for Hawaii. However, these rates are subject to change based on several factors including legislation the Congress may pass regarding the January 2011 pay adjustment, Federal Salary Council recommendations on locality pay rates, and Pay Agent action on such recommendations.

COLA rates as of December 31, 2009, are used as the base for all COLA rate reductions as increased locality rates are phased in.

5. WHO IS OPM'S POC? We tried through several chains to reach someone at OPM for assistance, is there a website or email address?

- ***Stan Austin, OPM's Team Leader for the Nonforeign COLA program, is OPM's point of contact for the implementation of the Nonforeign AREA Act. Stan can be reached at 202-606-2838 or stan.austin@opm.gov***

- **Alternatively, if you cannot reach Stan, you may contact Mark Allen, Pay Systems Manager at OPM at 202-606-2838 or *mark.allen@opm.gov***

6. BUY-BACK:

a. What is the current process for employees retiring after Jan 2010 in regards to the "buy-back process". Is OPM notifying employees of their option to the buy back process? Employees need to actually see figures and written details, when will OPM be providing written guidance regarding the buy back process?

OPM sent out a notice on Thursday, March 18, to subscribers to the Benefits Administration Information listserv. A Benefits Administration Letter (BAL) is being finalized that will provide guidance to agency benefits officers and retirement counselors to calculate the costs and benefits of the election for employees.

- ***The point of contact at OPM for the buy-back program is Sharon Appel. She is listed as the point of contact in the listserv message and can be reached at 724-794-2005 ext 3127, or by email at* Sharon.Appel@opm.gov.**

- ***Once a BAL is finalized, employees should contact their agency benefits officers for further assistance.***

b. Will the buy-back provision ever have a provision for buy-advance? In other words, as an example, if a person retires 6 months before December 31, 2012, will s/he be able to pay the employee contribution's for 6 months not worked and get the additional 6 months for retirement pay calculation?

No, the election is only for time actually worked between January 3, 2010 and your retirement date. There is no buy ahead, they is no buy back for time prior to January 3, 2010 and you must retire not later than December 31, 2012.

7. PAY RETENTION: It was stipulated that there would be no loss in take home pay. As employees transition back from the NSPS to GS pay system and those on pay retention will experience an adverse impact on take home pay. What action is being taken to eliminate the loss in take home pay?

The Nonforeign AREA Act contained a Sense of Congress provision that take home pay for employees should not be reduced as a result of the transition from COLA to locality pay. We are aware that it is possible for employees who are covered by the pay retention law, because they are entitled to only 50 percent of the increase in the maximum pay rate for their current grade level each January, to experience a reduction in take home pay as a result of the interaction between the Nonforeign AREA Act and the pay retention law.

There is no administrative, or current statutory, mechanism to prevent all reductions in take home pay as a myriad of compensation laws interact with the Nonforeign AREA Act provisions. Senator Akaka has introduced a bill (S.3066) that would provide OPM with authority to address the retained rate issue. (See Bill under separate cover)

8. DISABILITY RETIREMENT: If someone retires with a disability who has more than 5 years of federal FERS service but less than 10 years of FERS service, then:

a. how is their locality pay calculated and

b. where can estimates be obtained as to what they will draw monthly at age 62 if they have to retire in 2010 and/or 2011?

(Pending response from OPM's Retirement Advisor)

9. TSP FUNDS: Will the buy-back provision allow for payment of the employee's contribution using TSP funds?

The legislation did not address this.

10. REST OF U.S. (RUS) The current RUS rate is 14.16% and this is used in the buy-back provision. Will that rate be used for anyone retiring from 1 January 2010 to 31 December 2012 or will it be increased each year as the RUS rate changes each year in January?

14.16% is the rate for 2010. For 2011 and 2012., the new RUS, Hawaii or Alaka rates will be used.

11. SENIOR EXECUTIVE SERVICE. My understanding is that when/if as COLA transitions to Locality pay, SESs will effectively lose pay as the COLA draws down because SESs are not eligible for locality pay. Is that correct?

S. 507, as amended, extends locality pay under 5 U.S.C. 5304 to SES incumbents in the nonforeign areas as COLA is phased out. The bill (Section 2(a)(1)(B)) amends 5 U.S.C. 5304 to assure that current SES incumbents in the nonforeign areas receive locality pay like GS employees. Similar coverage is also extended to SL/ST positions.

12. EXCEEDING MAXIMUM GS PAY LIMITATION: GS-15 step 10 non-special rate employees will exceed the maximum GS pay limitation when the locality pay exceeds 20%. There's a provision in the Act that allows special rate employees to exceed the cap; is there a comparable provision for regular rate employees?

No. The special rate provision was necessary to prevent their pay from decreasing. Special rate employees in the 48 states get the greater of their special rate or locality pay, but not both.

13. RETAINED PAY: Our main concern relates to the locality/COLA issue on retained pay. We understand that retained pay folks will receive only 50 percent of the increase in the maximum pay rate for their current grade level each January; however, would like more clarification on how locality pay will be calculated for those on retained pay (e.g. will the 4.72% locality pay be multiplied against the step 10 base rate of the grade vice the retained base pay?).

Retained pay employees can receive 50% of the increase in the Step 10 rate for their grade. The Step 10 rates have been increased by 6.29% overall (across the board increase of 1.5% and 4.72% locality pay. Retained pay employees get ½ the dollar value of that increase at the Step 10 rate.

NSPS CONVERSIONS are being run by DOD. DOD has posted NSPS transition guidance on its web site at **http://www.cpms.osd.mil/nsps/**

According to Chapter 3 of the guidance, the employee's adjusted rate is defined under 5 CFR 9901.304 - which means an NSPS base salary plus any local market supplement.

Refer to Chapter 3 for guidance on retained pay. Once the employee is brought back under the GS system, the GS pay setting rules will apply. Employees on retained pay in the GS system do not have a locality payment added to their retained rate of pay.

- ***We also suggest you contact NSPS Transition Office for any further help with the termination of NSPS. OPM has assisted DOD with the transition process but it is ultimately under DOD's responsibility.***

- ***Ms. Paula Shipe Transition Office contact* Paula.Shipe@cpms.osd.mil.**

Senator Akaka is reviewing options to attach to the COLA/Locality Bill which addresses the pay retention (pay loss) issues being raised. Presently, there are no plans to include the potential pay loss that may occur as employees transition from GS to NSPS, only employees that were on pay retention when bill was enacted. Senator Akaka introduced a bill to make a technical correction on how retained pay is calculated in Hawaii, Alaska, and the territories. For now, employees are getting half of the new locality pay (as well as half of the base GS increase), while all of the reduction in COLA was taken out of their pay. The bill would separate locality pay out of the retained pay calculation, so that employees would get the full locality pay increase*. *Lisa Powell, Staff Director, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of ColumbiaHomeland Security and Governmental Affairs Committee

111th CONGRESS
2d Session
S. 3066

To correct the application of the Non-Foreign Area Retirement Equity Assurance Act of 2009 (5 U.S.C. 5304 note) to employees paid saved or retained rates.

IN THE SENATE OF THE UNITED STATES

March 3, 2010

Mr. AKAKA introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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A BILL

To correct the application of the Non-Foreign Area Retirement Equity Assurance Act of 2009 (5 U.S.C. 5304 note) to employees paid saved or retained rates.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TREATMENT FOR CERTAIN EMPLOYEES PAID SAVED OR RETAINED RATES.

(a) In General- Section 1918(a)(3) of the Non-Foreign Area Retirement Equity Assurance Act of 2009 (5 U.S.C. 5304 note) is amended by striking `January 1, 2012' and inserting `January 1, 2010'.

(b) Interim Pay Adjustments-

(1) ADJUSTMENTS-

(A) IN GENERAL- Until the Director of the Office of Personnel Management prescribes regulations in accordance with the amendment made by subsection (a), for employees receiving a cost-of-living allowance under section 5941 of title 5, United States Code, and a retained rate under section 5363 of that title, agencies shall--

(i) calculate the adjustment under section 5363(b)(2)(B) of that title based on a maximum rate of basic pay, excluding any locality-based comparability payment; and

(ii) provide an additional adjustment reflecting the full increase in the locality-based comparability payment that would apply to the employee but for receipt of a retained rate.

(B) GUIDANCE- Not later than 30 days after the date of enactment of this Act, the Director of the Office of Personnel Management shall issue guidance for carrying out paragraph (1).

(C) OTHER PAY SYSTEMS- For employees in another pay system that receive a retained rate equivalent to a retained rate under section 5363 of title 5, United States Code, equivalent treatment shall be provided, consistent with section 1918(b) of the Non-Foreign Area Retirement Equity Assurance Act of 2009.