

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206-AJ26 and 3206-AJ15

Cost-of-Living Allowances (Nonforeign Areas); Allowance Rate Adjustments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting as final two interim regulations regarding nonforeign area cost-of-living allowances (COLAs). OPM is also addressing comments received in response to the publication of the 1998 COLA survey report. The two interim rules implemented increases in the COLA rates paid to certain Federal employees in several of the COLA areas. One interim regulation increased COLA rates paid in Hawaii, Guam and the Commonwealth of the Northern Mariana Islands (CNMI), Puerto Rico, and the U.S. Virgin Islands. These increases were the result of a settlement of litigation regarding nonforeign area COLAs. The second interim regulation increased the local retail COLA rate paid to certain Federal employees in Guam/CNMI. This increase was the result of cost-of-living surveys OPM conducted in the COLA areas in 1998.

DATES: Effective December 10, 2001.

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SUPPLEMENTARY INFORMATION: Section 5941 of title 5, United States Code, authorizes the payment of cost-of-living allowances (COLAs) to employees of the Federal Government stationed in certain nonforeign areas outside the contiguous 48 States whose rates of basic pay are fixed by statute. Executive Order 10000, as amended, delegates to OPM the authority to administer nonforeign area COLAs and prescribes certain operational features of the program.

The Government pays nonforeign area COLAs to General Schedule, U.S. Postal Service, and certain other Federal employees in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands (CNMI), Puerto Rico, and the U.S. Virgin Islands. The Office of Personnel Management (OPM) conducts living-cost surveys in each allowance area to determine whether, and to what degree, local living costs are higher than those in the Washington, DC, area. OPM sets the COLA rate for each area based on the results of these

surveys. The current COLA rates were set pursuant to the settlement of *Caraballo, et al. v. United States*, No. 1997-0027 (D.V.I.), August 17, 2000, and became effective in October 2000.

Interim Increases

On October 3, 2000, OPM published an interim rule in the **Federal Register** (65 FR 58901) to increase the COLA rates paid to certain Federal employees in Hawaii, Guam/CNMI, Puerto Rico, and the U.S. Virgin Islands. These rates became effective on the first day of the first pay period beginning on or after October 1, 2000, and are still in effect. The table below shows the increased allowance rates and the places where they apply.

Allowance area	COLA rate (percent)
Hawaii County	16.50
Kauai County	23.25
Maui County	23.75
Puerto Rico	11.50
U.S. Virgin Islands	22.50

The interim rule also increased the commissary/exchange COLA rate for Guam/CNMI. However, OPM is eliminating the commissary/exchange category in a separate document published in this issue of the **Federal Register**. With this change, employees with commissary and exchange purchasing privileges will begin receiving the same COLA rate as other employees in Guam/CNMI.

OPM made these changes pursuant to section 9 and Exhibit C of the stipulation for settlement of *Caraballo et al. v. United States*, Civil No. 1997/27 (D.V.I.). The court approved the settlement on August 17, 2000. The settlement prescribed the new COLA rates and required that they be made effective on the first day of the first applicable pay period beginning on or after October 1, 2000. We issued the interim rule with a 30-day comment period, and we received one comment. This comment was from a Federal employee union that endorsed the interim rule.

Guam/CNMI Rate Increase

On July 17, 2000, OPM published an interim regulation for comment in the **Federal Register** (65 FR 44100) to implement a rate increase for the Guam/CNMI COLA area. This increase was the result of cost-of-living surveys OPM conducted in the nonforeign allowance areas in 1998. The interim regulation increased the local retail COLA rate for Guam/CNMI from 22.5 percent to 25 percent. We received no comments on

this change, and we are adopting it as final.

Comments on the 1998 Survey Report

OPM also published for comment on July 17, 2000 (65 FR 44103), the complete "Report on 1998 Surveys Used to Determine Cost-of-Living Allowances in Nonforeign Areas," which described the survey process and how OPM derived the new Guam/CNMI rate. We received one written and two verbal responses to our request for comments. One respondent commented on a number of issues as they relate to Anchorage, Alaska. The other respondents commented on the Guam commissary/exchange COLA rate. We discuss these comments below.

Earthquake insurance. One commenter believes OPM should survey the cost of earthquake insurance. The commenter stated that even though we were unable to assign a cost to earthquake insurance and that some employees do not buy it, these circumstances should have no bearing on including such insurance as a necessary cost of living in Anchorage. While our survey notice mentioned some complexities related to determining flood insurance requirements, we did not note these complexities with regard to earthquake insurance. We wrote in the survey notice commentary, however, that less than 10 percent of the population in each allowance area purchases earthquake insurance. We believe this number was insufficient to warrant surveying earthquake insurance, as it did not represent a cost for a large number of Federal employees in the allowance areas.

In future surveys, OPM will use a new methodology we are adopting as a result of the *Caraballo* settlement. *Caraballo* was a class-action lawsuit in which the plaintiffs contested the methodology OPM used to determine COLA rates. The class included all Federal employees who received a COLA from October 1, 1990, through September 30, 2000. Under the new methodology, OPM will use rents and/or a rental equivalence approach to determine shelter costs. The rental equivalence approach compares the rental values of homes. Home insurance is implicit in these values. Therefore, OPM will no longer directly survey any type of homeowner insurance. We will continue to survey renter's insurance, which typically covers loss due to earthquakes.

Medical services. The commenter also believes OPM's survey methodology underestimates the cost and restricted availability of medical services in

Anchorage. In particular, the commenter noted that there are no health maintenance organizations (HMOs) among the Federal providers in Anchorage and that other plans cost more. OPM's averaging of premium costs (see section 6.3.1 of the report) took into consideration the absence of lower-cost HMOs in Anchorage and other areas. The average in Anchorage was higher because it did not include lower-cost HMOs. The average in the Washington, DC, area was lower because it included HMOs and other lower-cost plans. We derived area indexes by comparing the allowance area against the Washington, DC, area; therefore, the index for Anchorage reflects the higher premium costs in that area.

The *Caraballo* settlement provides for special adjustment points to cover factors such as local differences in quantity or quality of goods and services. In future surveys, OPM will add these adjustment points to the COLA index in consideration of factors such as higher out-of-pocket costs associated with obtaining health services.

The commenter also noted that dental care is more expensive in Anchorage. We surveyed costs associated with common dental care services and included these costs in our area comparisons.

Utility costs. The commenter remarked that utility costs are high in Anchorage and that trash removal and recycling are not covered by taxes. We surveyed utility costs (see section 4.2.4.1 of the report) and included these costs in our price comparisons. We did not survey trash removal or recycling, as we have found that the extent to which consumers pay these fees in lieu of higher taxes or utility fees differs significantly by area.

Vehicle operation costs. The commenter believes Anchorage has a high accident rate and that automobile glass loss is common. We surveyed the cost of automobile insurance in the allowance areas (see section 5.2.9 of the report). If accident rates are higher in Alaska than in the Washington, DC, area, and this is reflected in the relative

insurance rates, OPM captured this in the living-cost index. Also, the insurance we priced included comprehensive coverage that covers windshield and other automobile glass loss or damage. In the Alaska areas, we also added the cost of the deductible to the annual private transportation costs on the assumption that windshields are replaced frequently.

The commenter also noted that studded tires are a necessity in Anchorage and that most car owners have engine block heaters. We surveyed the prices of studded snow tires in Alaska (see section 5.2.5 of the report) and included the cost of engine block heaters in our survey of new vehicle prices in Alaska (see section 5.2.1 of the report). The commenter also believes that a 98-percent fuel performance factor is not sufficient for estimating auto fuel consumption in Anchorage's cold climate. We applied a 98-percent factor in Anchorage only for the effect of gradient on gas mileage (see section 5.2.3.3 of the report). As table 5-1 of the report shows, the total fuel-performance adjustment for Anchorage was 83 percent.

The commenter also believes the resale value of a vehicle in Anchorage is lower than the *Kelly Blue Book* value. Research conducted for OPM in the past did not indicate that used cars in Anchorage were worth more or less than used cars in the Washington, DC, area. (See section 5.2.7 of the report.) However, the report shows higher depreciation rates in most allowance areas because new car prices were usually higher in the COLA areas than in the Washington, DC, area.

Consumer goods. The commenter noted that many consumer goods must be shipped to Anchorage at high cost or are unavailable in Anchorage. In regard to shipping, we surveyed catalog prices for a number of items and included any additional costs of shipping and excise taxes in the price where applicable. The extent to which fewer goods or services leads to higher costs was reflected in the item prices we collected. Pursuant to the *Caraballo* settlement, OPM will add in future surveys an adjustment factor to the price index in consideration of

living-costs associated with the unavailability of goods and services in an allowance area.

The commenter noted high prices for parkas, boots, and a dry suit needed for river recreation. In Alaska and the DC area, we surveyed the price of a man's parka, a woman's coat, and men's and women's boots for our price comparisons. We did not survey dry suits because we believe they are less commonly purchased, particularly in the DC area.

Communication costs. The commenter noted that long distance telephone rates were much higher in Anchorage. We surveyed long distance charges in the allowance areas. (See section 4.2.4.1 of the report.) The commenter also asked whether the survey looked at costs associated with changing email addresses. We did not survey this cost because we believe it is not practical to cover these kinds of less common expenses.

Guam commissary/exchange rate. We received two verbal comments on the Guam commissary/exchange COLA rate. The commenters believe that since OPM was increasing the local retail rate by 2.5 percentage points, OPM also should increase the commissary/exchange rate by 2.5 percentage points. OPM did not increase the commissary/exchange COLA rate because the results of the 1998 survey indicated that no increase was warranted. However, as noted above, OPM subsequently increased the Guam commissary/exchange COLA rate pursuant to the *Caraballo* settlement.

Corrections to the 1998 Survey Report

We discovered two errors in the 1998 survey report, which we discuss below. These errors did not affect the COLA rate for any allowance area.

In section 6 of the report, we erroneously republished Table 6-2 from the 1997 survey report. The correct Table 6-2 follows. We used the correct values in deriving the index, except that we erroneously assigned the St. Croix value in the first column to St. Thomas. Correcting this error resulted in a change in the final index (Appendix 22) for the Virgin Islands from 116.30 to 116.33.

TABLE 6-2.—SUMMARY OF PRIVATE EDUCATION USE FACTORS AND INDEXES

Location	Employees w/children in private schools		Use factor	Price index	Price index w/use factor
	Local area	DC area			
Anchorage	10.34	13.23	0.7816	45.23	35.35
Fairbanks	8.56	13.23	0.6470	31.54	20.41
Juneau	12.43	13.23	0.9395	41.70	39.18
Nome	8.08	13.23	0.6107	28.55	17.44

TABLE 6-2.—SUMMARY OF PRIVATE EDUCATION USE FACTORS AND INDEXES—Continued

Location	Employees w/children in private schools		Use factor	Price index	Price index w/use factor
	Local area	DC area			
Honolulu	26.86	13.23	2.0302	87.25	177.14
Hilo*	18.94	13.23	1.4316	121.25	173.58
Kona*	18.94	13.23	1.4316	94.45	135.21
Kauai	22.46	13.23	1.6977	77.92	132.28
Maui	20.39	13.23	1.5412	47.62	73.39
Guam	42.26	13.23	3.1943	75.80	242.12
Puerto Rico	54.33	13.23	4.1066	51.46	211.32
St. Croix	57.27	13.23	4.3288	56.78	245.79
St. Thomas	51.90	13.23	3.9229	63.30	248.32

* Use data available only for Hawaii County.

In appendix 14, we erroneously listed “0” as the value for Chevrolet Blazer tires in Honolulu. The correct value is 129. This correction changed the final index for Honolulu in Appendix 22 from 124.51 to 124.61.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

PART 591—ALLOWANCES AND DIFFERENTIALS

Accordingly, under the authority of 5 U.S.C. 5941, E.O. 10000 (3 CFR, 1943–1948 Comp., p. 792), and E.O. 12510 (3 CFR, 1985 Comp., p. 338), OPM is adopting the interim rules for 5 CFR part 591 published on July 17, 2000, at 65 FR 44100, and on October 3, 2000, at 65 FR 58901, as final without change.

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