12/27/2010
CPM 2010-23

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: **JOHN BERRY**
Director

Subject: **Retained Rate Adjustments in Nonforeign Areas**

This memorandum provides special rules for adjusting retained rates for certain employees in nonforeign areas (including Alaska and Hawaii) as part of implementation of the Non-Foreign Area Retirement Equity Assurance Act of 2009 (Public Law 111-84, October 28, 2009) (hereafter referred to as "the Act"). I previously provided rules and guidance on implementing that Act via a memorandum to you dated December 30, 2009 (CPM 2009-27).

In implementing the Act, U.S. Office of Personnel Management (OPM) staff became aware of an unintended consequence for employees receiving a retained rate in a nonforeign area during the January 2010-January 2012 transition period. This unintended consequence is the result of nonforeign area cost-of-living allowances (COLAs) being reduced in conjunction with the phase-in of locality pay and the fact that, by operation of law, retained rates do not receive the full benefit of phased-in locality pay. This means that the increase in pay resulting from a retained rate adjustment may be less than the loss in pay resulting from the COLA reduction.

I have determined that I have authority under section 1918(a)(2) of the Act to address the above-described problem by establishing special rules on adjusting retained rates for nonforeign area employees during the January 2010-January 2012 transition period. The attachment sets forth those rules for employees receiving a retained rate under 5 U.S.C. 5363.

Under section 1918(b) of the Act, administrators of pay systems not administered by OPM must carry out the provisions of the Act consistent with OPM rules, subject to the concurrence of OPM. Thus, if there are nonforeign area employees in such a pay system who are covered by section 1914 of the Act and who are receiving a retained rate similar to a retained rate under 5 U.S.C. 5363 (e.g., no locality pay paid on top of the retained rate, 50 percent adjustment tied to applicable range maximum), then the pay system administrator should prescribe rules consistent with OPM's special rules described in the attachment.

Additional Information

For additional information, agency Chief Human Capital Officers and/or Human Resources Directors should contact Robbins Byrne in OPM's Pay and Leave office at (202) 606-2858 or email to pay-performance-policy@opm.gov. Employees should contact their agency human resources offices for assistance.

Attachment

cc: Chief Human Capital Officers
       Human Resources Directors

Attachment

Special Rules on Adjusting Retained Rates
for Employees in Nonforeign Areas
During the January 2010-January 2012 Transition Period

Authority: Section 1918(a)(2) of the Non-Foreign Area Retirement Equity Assurance Act of 2009 (Public Law 111-84, October 28, 2009).

Covered Employees: Employees who are receiving a cost-of-living allowance (COLA) under 5 U.S.C. 5941 (based on having an official worksite located in a nonforeign area, as defined in 5 CFR 591.205) and who are receiving a retained rate under 5 U.S.C. 5363. (Note: Covered employees are primarily in the General Schedule (GS), and these rules are designed for GS employees. If there are covered employees in certain demonstration project pay systems, agencies must follow parallel rules.)

Covered Time Period: The transition period beginning on the first day of the first pay period beginning on or after January 1, 2010, and ending on the first day of the first pay period beginning on or after January 1, 2012.

Background:

Employees who receive a retained rate under 5 U.S.C. 5363 do not receive locality pay; instead, the retained rate is established and managed in relation to the applicable adjusted basic rate range (including locality pay). The retained rate is increased at the time of January general pay increases by 50 percent of the dollar increase in the maximum adjusted rate (including locality pay) for the employee's grade.

During the transition period, employees in nonforeign areas are receiving large increases in locality pay as locality pay phases in (one-third of applicable locality rate in January 2010, two-thirds in January 2011, and 100 percent in January 2012). Most covered employees in nonforeign areas receive the full benefit of these large increases in locality pay. Locality pay increases are accompanied by corresponding COLA reductions, and the COLA reduction formula is based on the presumption that employees are receiving the full benefit of the large increases in locality pay. However, retained rate employees do not receive a pay increase commensurate with the increase in the locality pay percentage. As explained above, they receive 50 percent of the dollar increase in the maximum adjusted rate (including locality pay) for the employee's grade. This means that retained rate employees may experience a reduction in gross pay during the transition period.

Application of Section 1918(a)(2) Authority:

Under section 1918(a)(2), the Director of the U.S. Office of Personnel Management (OPM) may prescribe "rules for adjusting rates of basic pay for employees in pay systems administered by the Office of Personnel Management when such employees are not entitled to locality-based comparability payments under section 5304 of title 5, United States Code, without regard to otherwise applicable statutory pay limitations during the transition period described in section 1914 ending on the first day of the first pay period beginning on or after January 1, 2012."

We have determined OPM may apply the section 1918(a)(2) authority to retained rate employees. The employees who are receiving a retained rate under 5 U.S.C. 5363 in a nonforeign area are in the General Schedule, a pay system administered by OPM. Retained rate employees are not entitled to locality pay. Thus, OPM has authority to adopt special rules for adjusting retained rates (which are rates of basic pay) that go beyond what is allowed under 5 U.S.C. 5363—but only during the transition period ending in January 2012. Since this authority may be applied "during the transition period," we have determined that we can adopt these special rules retroactive to January 2010.

Special Rules on Adjusting Retained Rates:

Accordingly, under the authority of section 1918(a)(2) of the Act, OPM is adopting the following special rules for adjusting retained rates during the January 2010-January 2012 transition period:

1. For General Schedule (GS) employees receiving a cost-of-living allowance under 5 U.S.C. 5941 and a retained rate under 5 U.S.C. 5363 of that title, agencies must—

   (a) calculate the adjustment under 5 U.S.C. 5363(b)(2)(B) based on the applicable maximum rate of basic pay, excluding any locality payment or special rate supplement; and

   (b) provide an additional adjustment in the retained rate reflecting the full increase in the locality payment (as effected under section 1914 of the Act) that would apply to the employee but for receipt of a retained rate.

2. The adjustment described in paragraph 1(a) is computed by multiplying 50 percent times the dollar increase in the applicable GS step 10 base rate (excluding any locality payment or special rate supplement) for the employee's grade.

   50% x (new GS step 10 base rate - old GS step 10 base rate) = Adjustment A

3. The adjustment described in paragraph 1(b) is computed by—

   (a) Subtracting the previous payable locality pay percentage from the new payable locality pay percentage to derive the difference in percentage points;

   (new locality pay % - old locality pay %) = locality pay difference

(b) Multiplying the result from paragraph 3(a) by the old GS step 10 base rate (excluding any locality payment or special rate supplement) for the employee's grade;

(locality pay difference) x (old GS step 10 base rate)

(c) Multiplying the new locality pay percentage times the difference between the new GS step 10 base rate and the old GS step 10 base rate;

(new locality pay %) x (new GS step 10 base rate - old GS step 10 base rate)

(d) Adding the results of paragraphs 3(b) and 3(c).

[(new locality pay % - old locality pay %) x (old GS step 10 base rate)]
+ [(new locality pay %) x (new GS step 10 base rate - old GS step 10 base rate)]
= Adjustment B

4. Add the results of paragraphs 2 and 3 to derive the total adjustment (increase) in the retained rate.

Adjustment A + Adjustment B = total increase in retained rate

Notes:

- Follow normally applicable rounding rules at each stage. Round pay rates and rate adjustments to the nearest whole dollar.
- The Executive Schedule level IV cap on retained rates under 5 CFR 536.306(a) does not apply to a retained rate adjusted under this special authority.
- If the locality rate for a GS step 10 employee at the same grade as the retained rate employee is capped at EX-IV (or EX-IV plus 5 percent for certain former NSPS employees), contact OPM for special instructions on computing the retained rate adjustment.

Example:

GS-11 employee with retained rate. Stationed in Fairbanks, Alaska.
Position not in a special rate category.

Immediately before the January 2010 pay increase (i.e., 2009 rates):

Retained rate = $70,843
GS-11, step 10 base rate = $64,403
Locality pay = 0%
COLA = 23%
COLA-adjusted retained rate = $87,137 ($70,843 x 1.23)

January 2010 changes:

Locality pay = 4.72%
COLA = 19.03%
General increase = 1.5%
GS-11, step 10 base rate = $65,371
GS-11, step 10 locality rate = $68,457 ($65,371 x 1.0472)

January 2010 retained rate adjustment (under retroactively applied rules in this attachment):

Adjustment A = 50% x (new GS step 10 base rate - old GS step 10 base rate)

Adjustment A = 50% x ($65,371 - $64,403)
= 50% x $968
= $484

Adjustment B = [(new locality pay % - old locality pay %) x (old GS step 10 base rate)]
+ [(new locality pay %) x (new GS step 10 base rate - old GS step 10 base rate)]

Adjustment B = [(4.72% - 0%) x $64,403] + [4.72% x ($65,371 - $64,403)]
= $3,040 + $46
= $3,086

Adjustment A + Adjustment B = total increase in retained rate

$484 + $3,086 = $3,570 = total increase in retained rate

Note: The normal increase in a retained rate would be $2,027, which is ($68,457 - $64,403) x 50%.

New retained rate = $70,843 + $3,570 = $74,413
(which still exceeds the GS-11/10 locality rate of $68,457)

COLA-adjusted retained rate = $74,413 x 1.1903 = $88,574

January 2011 changes:

Locality pay = 16.46%
COLA = 10.56%
General increase = 0%
GS-11, step 10 base rate = $65,371
GS-11, step 10 locality rate = $76,131 ($65,371 x 1.1646)

January 2011 retained rate adjustment (under rules in this attachment):

Adjustment A = 50% x (new GS step 10 base rate - old GS step 10 base rate)

Adjustment A = 50% x ($65,371 - $65,371)
= 50% x $0
= $0

Adjustment B = [(new locality pay % - old locality pay %) x (old GS step 10 base rate)]
+ [(new locality pay %) x (new GS step 10 base rate - old GS step 10 base rate)]

Adjustment B = [(16.46% - 4.72%) x $65,371] + [16.46% x ($65,371 - $65,371)]
= $7,675 + $0
= $7,675

Adjustment A + Adjustment B = total increase in retained rate

$0 + $7,675 = $7,675 = total increase in retained rate

Note: The normal increase in a retained rate would be $3,837, which is ($76,131 - $68,457) x 50%.

New retained rate = $74,413 + $7,675 = $82,088
(which still exceeds the GS-11/10 locality rate of $76,131)

COLA-adjusted retained rate = $82,088 x 1.1056 = $90,756

Summary:

Employee stationed in Fairbanks, Alaska.

	2009	**2010**	**2011**
Locality pay	0%	4.72%	16.46%
COLA	23%	19.03%	10.56%
GS-11/10 base rate	$64,403	$65,371	$65,371
GS-11/10 locality rate	na	$68,457	$76,131
Retained rate	$70,843	$74,413	$82,088
COLA-adj retained rate	$87,137	$88,574	$90,756

Note: See CPM 2010-20 for table showing 2011 locality rates and COLA rates for all COLA areas.