

**OFFICE OF PERSONNEL
MANAGEMENT****5 CFR Part 591**

RIN 3206-AJ40

Cost-of-Living Allowances (Nonforeign Areas); Commissary/Exchange Rates; Survey Frequency; Gradual Reductions**AGENCY:** Office of Personnel Management.**ACTION:** Interim rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement recent amendments to Executive Order 10000 regarding nonforeign area cost-of-living allowances (COLAs). These regulations eliminate the separate COLA rate paid to Federal employees with commissary and exchange privileges; allow OPM to conduct COLA surveys less frequently; and permit OPM to reduce COLA rates gradually regardless of the cause of the reduction. These changes will accomplish several of the provisions agreed upon under a recent settlement of litigation concerning nonforeign area COLAs.

DATES: *Effective date:* November 9, 2001. *Implementation date:* First day of the first pay period beginning on or after November 9, 2001. *Comment date:* Submit comments on or before January 8, 2002.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415-8200; fax: (202) 606-4264; or e-mail: COLA@opm.gov.

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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. 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.

Executive Order 10000 delegates to OPM the authority to administer the nonforeign area COLA program and prescribes certain operational features of the program. On April 5, 2001, the President signed E.O. 13207 (published April 9, 2001, at 66 FR 18399) to amend E.O. 10000 to conform to agreements made in the *Caraballo* settlement. *Caraballo* was a class-action lawsuit in which the plaintiffs contested the methodology OPM used to determine COLA rates. The amendments to E.O. 10000 (1) remove the requirement that OPM establish separate COLA rates for employees who have commissary and exchange privileges; (2) allow OPM to conduct COLA surveys less frequently (e.g., once every 3 years in each of the allowance areas instead of annually); and (3) allow OPM to reduce COLA rates gradually regardless of the cause of the reduction.

We are issuing interim regulations to implement the amendments to E.O. 10000. Pursuant to the *Caraballo* settlement, we plan to adopt several other regulatory changes. We have set out these regulatory changes in proposed regulations published separately in this issue of the **Federal Register**.

Commissary/Exchange COLA Rate

Prior to the recent amendments, E.O. 10000 required that OPM offset COLAs when quarters or purchasing privileges are furnished at a cost substantially lower than local prevailing costs. The rent for quarters is set at local prevailing rates in accordance with Office of Management and Budget Circular A-47. For over a decade, OPM has not established a lower COLA rate for employees in Government quarters. However, OPM established a separate rate category for employees who received commissary and exchange privileges as a result of their Federal civilian employment.

As permitted by the Department of Defense, some agencies offer commissary and exchange privileges as a recruitment incentive to encourage employees to accept positions in the Guam/CNMI allowance area. The requirement to take into consideration such privileges and set a separate and lower COLA rate for these employees

effectively undermined the recruitment incentive. The removal of this requirement in E.O. 10000 improves the effectiveness of the commissary and exchange privileges recruitment incentive.

Therefore, we are eliminating from OPM's regulations the separate rate category applied to employees who receive commissary and exchange privileges. This change will currently affect only civilian employees in the Guam/CNMI allowance area who receive the 22.5 percent Commissary/Exchange COLA rate. Effective with these regulations, all Federal civilian employees in Guam will receive the 25 percent COLA rate currently set for employees without commissary and exchange privileges.

Survey Frequency

The amendments to E.O. 10000 removed the requirement for annual surveys; therefore, we are making a corresponding change in the COLA regulations. This change will permit the Government to survey allowance areas once every 3 years on a rotational basis.

Gradual Reductions

Prior to the recent amendments, E.O. 10000 prohibited OPM from implementing a COLA rate reduction on a gradual basis unless the reduction was because of program or methodology revisions. The amendment to E.O. 10000 removed this condition, allowing OPM to reduce COLA rates on a gradual basis whether the reduction is due to a change in the methodology or a relative change in living costs. This amendment conforms to one of the terms of the *Caraballo* settlement, and we are making a corresponding change in the COLA regulations.

Administrative Procedure Act

As provided under 5 U.S.C. 553(b)(3)(B) and (d)(3), OPM finds that good cause exists to waive the publication of proposed rulemaking and the 30-day delay in the effective date of this regulation. These changes conform OPM regulations to recent amendments to E.O. 10000 without imposing additional requirements. Moreover, the Government and employee representatives cooperated fully in developing and recommending the changes, which were incorporated into the stipulation for settlement in *Caraballo, et al. v. United States*. Therefore, we believe these changes will benefit both the Government and the affected employees and that it is in the public interest to implement the changes immediately.

Executive Order 12866, Regulatory Review

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

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.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.
Office of Personnel Management.
Kay Coles James,
Director.

Accordingly, the Office of Personnel Management amends 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. In § 591.205, paragraph (a) introductory text and paragraph (b)(1)(i) are revised to read as follows:

§ 591.205 Comparative cost index.

(a) OPM calculates allowance rates for each area by comparing costs of four categories of expenses in the area to those in the Washington, DC, area. The four categories of expenses are:

* * * * *

(b) * * *

(1) * * *

(i) *Goods and services surveyed.* The types and amounts of consumption goods and services to be surveyed at each income level will be derived from appropriate consumer expenditure surveys. Whenever possible, exact brands and models are priced in each location. Price data are obtained from appropriate retail outlets in each area. Individual items are grouped into categories according to common functions or uses.

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§ 591.207 [Removed and Reserved]

3. Section 591.207 is removed and reserved.

4. Section 591.211 is revised to read as follows:

§ 591.211 Periodic review.

In accordance with Executive Order 10000, OPM reviews from time to time the places designated, the rates fixed, and the regulations in this subpart that are prescribed for payment of allowances and differentials. This review is to make warranted changes to ensure that payments under this subpart will continue only during the continuation of conditions justifying payment of allowances and differentials and will not in any instance exceed the amount justified. However, the rate of such additional compensation may be reduced gradually.

5. Appendix A of subpart B is revised to read as follows:

Appendix A of Subpart B—Places and Rates at Which Allowances Shall Be Paid

This appendix lists the places approved for a cost-of-living allowance and shows the authorized allowance rate for each. The allowance percentage rate shown is paid as a percentage of an employee's rate of basic pay. The rates are subject to change based on the results of future surveys.

Geographic coverage	Allowance Rate (percent)
State of Alaska:	
City of Anchorage and 80-kilometer (50-mile) radius by road	25.00
City of Fairbanks and 80-kilometer (50-mile) radius by road	25.00
City of Juneau and 80-kilometer (50-mile) radius by road	25.00
Rest of the State	25.00
State of Hawaii:	
City and County of Honolulu	25.00
County of Hawaii	16.50
County of Kauai	23.25
County of Maui and County of Kalawao	23.75
Territory of Guam and Commonwealth of the Northern Mariana Islands	25.00
Commonwealth of Puerto Rico	11.50
U.S. Virgin Islands	22.50