

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

ROBERTO CARABALLO, et al.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA, et al.,

Defendants.

Civil No. 1997/27

**STIPULATION FOR
SETTLEMENT**

This Stipulation, along with the accompanying Exhibits A through E, (hereinafter collectively referred to as the "Stipulation") is entered into by the parties, through their undersigned attorneys, for the purpose of settling this case and the related cases listed in Subsection 17.1.

1. Amendment of Complaint. Pursuant to Fed. R. Civ. P. 15, the complaint in this case has been amended as of right in order to add named plaintiffs from other COLA areas, to change the name of the defendant Director of the Office of Personnel Management, and to enlarge the class description as stated in Section 2.

2. Class Description. Pursuant to Fed. R. Civ. P. 23(b)(1), this settlement applies to all members of the class of plaintiffs described as follows:

All persons employed by the United States or an agency, establishment, or instrumentality thereof, or by a corporation owned by the United States, including the United States Postal Service, the Administrative Office of the United States Courts, the General Accounting Office, and Non-Appropriated Fund agencies, who are or were entitled to receive, or did receive, a non-foreign (territorial) cost-of-living allowance, or a like payment as part of or in addition to basic pay, pursuant to 5 U.S.C. § 5941, 5 C.F.R. §§ 591.201-213, and/or Executive Orders 10,000 and 11,137, or pursuant to other statute, regulation, administrative practice, or contract, at any time on or after October 1, 1990. (Such allowance or like payment is hereinafter called "COLA," and the agency, establishment, instrumentality, or corporation paying COLA is called the "COLA Payor.")

3. Overview of Settlement. Class members' claims for back pay based on underpayment of COLA were compromised and settled for all pay periods beginning prior to October 1, 1990, pursuant to previous litigation. This Stipulation sets forth the terms and conditions on which the back pay claims of class members arising from underpayment of COLA will be compromised and settled for pay periods beginning after October 1, 1990. Pursuant to this settlement, the government will pay certain amounts of compensation and issue new regulations governing the COLA program. If the government's actions in the future are consistent with this Stipulation, and with the Conforming Methodology as defined in Subsubsection 10.2.1, the government will be protected against further liability as set forth and to the extent provided in Section 10.

4. Procedure for Issuing New COLA Regulations and Rates Thereunder.
The parties have agreed that the United States, acting primarily through its Office of Personnel Management ("OPM"), will undertake substantial revisions of the current regulations set forth at 5 C.F.R. Part 591, subpart B, in order to conform them to the Safe Harbor Principles set forth in Exhibit A. The following steps will be taken by OPM in promulgating final new COLA regulations ("New Regulations") and rates thereunder.

1 4.1 Publication of New Regulations. The proposed New Regulations will be published
2 in the Federal Register for comment pursuant to the Administrative Procedure Act.

3 4.2 Publication of COLA Rates Under New Regulations. Prior to adopting the initial
4 COLA rates for an area pursuant to the New Regulations, OPM will publish the proposed rates in the Federal
5 Register for public comment pursuant to the Administrative Procedure Act. Prior to adopting all subsequent
6 COLA rates for an area pursuant to the New Regulations, OPM will publish the proposed rates in the Federal
7 Register for public comment pursuant to the Administrative Procedure Act.

8 5. Report to Congress. By statute, OPM has been directed to render a report to Congress
9 concerning the COLA program. OPM's report was due on March 1, 2000, but has been deferred pending
10 this settlement. OPM will endeavor to afford the plaintiffs and their attorneys an opportunity to review and
11 comment upon a draft of the report before it is submitted.

12 6. Employee Involvement Structure. The development, implementation, and revision of the
13 New Regulations, and the implementation of this settlement in all other respects, shall be undertaken and
14 conducted by OPM in good faith in accordance with the principles contained in Exhibit A and in cooperation
15 and consultation with the Survey Implementation Committee ("SIC") and with any other committees
16 established under Safe Harbor Principle 24 of Exhibit A. The initial members of the SIC are listed in Exhibit
17 B. If a vacancy occurs on the SIC, the party (or parties) that selected the member to be replaced will
18 nominate a replacement member. Employees may request from their employing agency excused absence or
19 equivalent status (i.e., absence from duty without loss of pay or leave) to attend SIC meetings and activities.
20 The employing agency may, within its discretion, grant that request. Such absences are of benefit to the
21 government, and OPM will encourage agencies to grant such requests.

22 7. Technical Advisory Committee. OPM and/or committees established under the Employee
23 Involvement Structure ("EIS") may refer questions or disagreements concerning economic principles,
24 theories, and practices relating to the interpretation or application of the Safe Harbor Principles to a
25 Technical Advisory Committee ("TAC") for review, consultation, and/or advice. Any comment,
26 recommendation, or decision by the TAC will be advisory only. The initial members of the TAC are listed in
27 Exhibit B. If a vacancy occurs on the TAC, the party that selected the member to be replaced will nominate
28 a replacement member. If the TAC member was selected mutually by both parties, the parties will make a
29 good faith effort to work together to nominate a replacement member.

30 8. Survey Cycles. Pursuant to the Safe Harbor Principles, the New Regulations will provide
31 for a three-year cycle of price surveys, whereby each COLA area will be surveyed once every three years.
32 The parties expect the first surveys to be conducted during the year 2001. The parties have agreed as to
33 which areas are to be surveyed in the initial and subsequent years. The agreed survey cycle is set forth in
34 Exhibit C. If the issuance of the New Regulations providing for price surveys is delayed until the year 2001
35 or a subsequent year, the commencement of the new survey cycle shall be delayed by a corresponding
36 number of years (but the sequence of the COLA areas to be surveyed shall remain the same).

37 9. Interim COLA Rates. Effective for all pay periods beginning after September 30, 2000, the
38 COLA rates for all areas shall be set at the levels shown in Exhibit C (which levels represent increases from
39 current levels for certain COLA areas), and the rates shall remain at those levels until they are changed
40 pursuant to the New Regulations and in accordance with the Safe Harbor Principles, unless an earlier
41 increase is required pursuant to the formula set forth in Exhibit C.

42 10. Waiver of Claims.

43 10.1 Claims Arising Prior to October 1, 2000.

44 10.1.1 Plaintiffs waive any and all claims of a class-wide nature which concern,
45 or arise out of, the administration of the COLA program for the period October 1, 1948, to September 30,
2000, including, but not limited to, all claims concerning the determination of COLA rates and any claims
for underpayment of COLA in any given COLA area. These claims do not include individual claims, for

1 example, that an agency has calculated the wrong COLA amount for an employee, that it has placed an
2 employee in an erroneous allowance category, or that it has denied the payment of COLA to an employee.

3 10.1.2 This waiver includes any claims for sanctions or damages on account of
4 violations of the settlement agreements or court orders in *Alaniz v. OPM*, No. A81-072 Civ. (D. Alaska)
5 (“*Alaniz*”), *Karamatsu v. United States*, No. 224-85C (Fed. Cl.) (“*Karamatsu*”), and *Arana v. United States*,
6 No. 389-86C (Fed. Cl.) (“*Arana*”).

7 10.1.3 This waiver does not include any claims based upon any breach of this
8 Stipulation or the violation of any order of the Court in this case or any agreements or orders hereafter
9 entered in *Alaniz*, *Karamatsu*, or *Arana*.

10 10.2 Claims Arising On or After October 1, 2000.

11 10.2.1 Conforming Methodology. Although OPM retains its discretion to issue
12 or amend (or decline to issue or amend) any regulations as part of the New Regulations, or otherwise,
13 provided that the manner and substance of its exercise of such discretion is consistent with applicable law,
14 the parties expect that the New Regulations will make such changes to the existing regulations and published
15 methodology governing the operation of the COLA program as are anticipated by applicable Safe Harbor
16 Principles as set forth in Exhibit A. For purposes of this Stipulation, including the waiver and dispute
17 resolution provisions set forth in this Section, the totality of such existing regulations and published
18 methodology, with such changes as are anticipated by applicable Safe Harbor Principles, are referred to as
19 the Conforming Methodology. As stated above, it is expected, but not required by this settlement, that the
20 New Regulations will be consistent with the Conforming Methodology.

21 10.2.2 For all claims arising between October 1, 2000, and the effective date of
22 the first COLA rate issued for a particular COLA area pursuant to the New Regulations, plaintiffs waive any
23 and all claims of a class-wide nature, as described in Subsubsection 10.1.1, so long as the rates set for COLA
24 in each area conform to the interim rates provided for in Section 9. For all claims arising after the effective
25 date of the first COLA rates issued for a particular COLA area pursuant to the New Regulations, plaintiffs
waive any and all claims of a class-wide nature, as described in Subsubsection 10.1.1, so long as OPM’s
regulations and the rates set for COLA thereunder in each area are reasonably consistent with the
Conforming Methodology.

10.2.3 A rule or regulation is not reasonably consistent with the Conforming
Methodology if it is inconsistent with any Safe Harbor Principle in Exhibit A, if it involves the subject matter
of any proposed Safe Harbor Principle enumerated by the Safe Harbor Working Group (“SHWG”) but not
included in Exhibit A, or if it substantially changes the Conforming Methodology except in response to
circumstances changed since the date the parties entered into this Stipulation; provided, however, that an
action by OPM is nevertheless consistent with the Conforming Methodology if it is wholly administrative or
if it does not have any possible effect of reducing an index or COLA rate in any area or as applied to any
employee.

10.2.4 Nothing in this section shall be construed in any way to hinder or limit
OPM’s ability to make good faith changes to the Conforming Methodology to respond to circumstances
changed since the date the parties entered into this Stipulation, if the changes do not involve the subject
matter of Safe Harbor Principles enumerated by the SHWG but not included in Exhibit A. In such event, the
protection of the waiver described in this Section will be maintained.

10.3 Interest. The waivers of claims in the foregoing subsections include any claims for
interest thereon.

10.4 Dispute Resolution Procedures.

10.4.1 If any class member(s) at any time believes that OPM’s regulations, or
any COLA rates set thereunder, are not reasonably consistent with the Conforming Methodology, that class
member(s) shall inform OPM in writing within 60 days of the effective date of the allegedly nonconforming

1 OPM regulation or COLA rate and shall set forth the specific reason(s) why that class member(s) believes
2 that the regulations or the COLA rates do not reasonably conform. If OPM believes that its regulations and
3 COLA rates are reasonably consistent with the Conforming Methodology, OPM shall respond in writing to
4 the class member(s) setting forth the reasons why it believes that the regulations and COLA rates are
5 reasonably consistent. If the class member(s) still disagrees, then the class member(s) may so advise the EIS
6 and, if the EIS agrees with the class member(s), then OPM and the EIS may enter into any type of
7 negotiation, discussions, or alternative dispute resolution process to reach an agreement on the issue of
8 reasonable consistency with the Conforming Methodology. OPM and the EIS may also use the services of
9 consultants, experts, research services, or other entities in the dispute resolution process. Nothing herein,
10 however, shall prevent OPM from continuing to follow existing regulations or COLA rates, from issuing new
11 regulations or setting new COLA rates, or from taking any other action which OPM, in its sole discretion,
12 deems advisable, at any time during this process.

13 10.4.2 After a reasonable attempt to settle the issue of nonconformance through
14 the process described in Subsubsection 10.4.1, the class member(s) may file suit in any court of competent
15 jurisdiction seeking a declaratory judgment as to whether the OPM regulation and COLA rate at issue are
16 reasonably consistent with the Conforming Methodology. If the court rules that the OPM regulation and
17 COLA rate are reasonably consistent with the Conforming Methodology, then the plaintiffs agree that the
18 class member(s) will abide by a final judgment of the court. (For purposes of this Section, a final judgment
19 is a judgment which has become final after all rights to further review by higher courts have been exercised
20 or waived or have lapsed.) If, in a final judgment, the court rules that the OPM regulation and COLA rate
21 are not reasonably consistent with the Conforming Methodology, then OPM agrees that it will: 1) change the
22 regulation and COLA rate to be reasonably consistent with the Conforming Methodology; or 2) publish
23 notice that it no longer intends to be bound by the Conforming Methodology. The plaintiffs agree that OPM
24 will not be liable for damages or equitable relief solely on the basis that the regulation or COLA rate at issue
25 is or was not reasonably consistent with the Conforming Methodology. If, however, a court of competent
jurisdiction rules in a final judgment that the regulations or COLA rate at issue violates applicable laws, then
the United States may be liable for damages or equitable relief as determined by the court.

10.4.3 If, at any time, OPM determines that it no longer wishes to be bound by
the Conforming Methodology, it will publish notice to the class members of its decision. OPM may then
revise its regulations or set COLA rates in a manner that is not consistent with the Conforming Methodology.
If it does so, OPM will not incur any liability to the class members, either in damages or for equitable relief,
of any kind or degree solely on the basis that any regulation or COLA rate at issue is not reasonably
consistent with the Conforming Methodology. If, however, a court of competent jurisdiction rules in a final
judgment that the regulations or COLA rate at issue violates applicable laws, then the United States may be
liable for damages or equitable relief as determined by the court.

11. Monetary Settlement. Within 30 days after the date of Court approval of this Stipulation, the
United States shall pay to Robert G. Mullendore, P.S., as Trustee, the lump-sum amount of \$232.5 million
(hereinafter called the "Judgment Amount"). If Court approval of this Stipulation is delayed beyond
September 30, 2000, the Judgment Amount shall be increased beginning October 1, 2000, and ending on the
date of Court approval, at a rate of 5% per annum. The Judgment Amount includes the shares of all COLA
Payors, including the United States Postal Service ("USPS") and other independent payors. The Judgment
Amount is a sum certain that has been agreed to by the parties, and shall be distributed as provided in Section
13 and Exhibits D and E. After the defendants make payment of the Judgment Amount to the Trustee, the
United States and the USPS will have no further monetary liability in this case.

12. Reports from OPM and COLA Payors.

12.1 On or before March 31, 2001, OPM and the USPS shall provide the following
information to the Trustee for all class members with respect to the period from October 1, 1990, through

1 September 30, 2000: (1) OPM will provide extracts from the Central Personnel Data File (“CPDF”) containing quarterly “snapshots” of all Executive Branch employees whose agencies report to the CPDF, containing the following information for each employee: name; social security number; grade; step; adjusted basic pay; duty station; work schedule; agency; pay rate determinant; special pay rate table ID; occupation code; and pay plan; (The CPDF contains information provided by the agencies and may not be complete.)
2
3
4 (2) federal agencies that are not captured by the CPDF will provide appropriate information so that payments can be made; and (3) the USPS will provide the following information for each employee: name; social security number; address of record; total T-COLA paid by calendar year from October 1, 1990, through September 30, 2000 (but only for those portions of the calendar years 1990 and 2000 covered by this Stipulation as described above); annual or hourly salary, as applicable; designation and activity; rate schedule code; and COLA area. The annual salary, designation and activity, rate schedule code, and COLA area information provided by the USPS for each employee will cover the USPS pay period during which the date of each CPDF quarterly “snapshot” falls.

8 12.2 For purposes of assisting OPM and COLA Payors in the performance of their obligations as described in Subsection 12.1, and assisting the Trustee in the process of computing and distributing individual Gross Amounts as provided in Section 13, the Trustee is authorized to contract with private consulting and service firms and to pay the fees and expenses of such firms out of the Settlement Administration Expense Account.

11 12.3 OPM will consult with the Trustee as to the specifications and instructions to be provided to COLA Payors not covered by the CPDF. In general, the defendants will assist the Trustee in obtaining complete, accurate, and timely information pertaining to all COLA Payors and all class members as described in Subsection 12.1.

13 12.4 Plaintiffs, by and through their counsel, hereby give defendants permission to disclose to the Trustee such personal information as is necessary to execute the intent and terms of this Stipulation, even if such information would otherwise be protected by the Privacy Act, 5 U.S.C. § 551, *et seq.* For purposes of the Privacy Act, including 5 U.S.C. § 552a(b), this provision constitutes prior written consent by the plaintiff class members for defendants to disclose to the Trustee all such necessary information, including, for example: name, social security number, address of record, amount of COLA or T-COLA paid during any relevant period, annual or hourly salary, designation and activity, rate schedule code, COLA area, grade, step, adjusted basic pay, duty station, work schedule, employing agency, pay rate determinant, special pay rate table ID, occupation code, and pay plan. The Trustee agrees to limit his use of personal information received from the defendants to performing those tasks necessary to execute the intent and terms of this Stipulation, to return such information to the government or to destroy it upon completion of these tasks, and not to disclose such information to any third party. For purposes of this provision, the private consulting and service firms referred to in Subsection 12.2 will not be considered third parties if they are acting as the agents of the Trustee, if they enter a confidentiality agreement, and if they agree to the conditions agreed to by the Trustee in this Section.

21 13. Distribution of Gross Amount.

22 13.1 Within 90 days after receiving a report from or for a COLA Payor as provided in Section 12, or by June 30, 2001, whichever is later, the Trustee will mail to class members covered by the report a Claim Verification form summarizing the determination of the Gross Amount. After receiving executed Claim Verifications from class members representing at least 50% of the estimated Aggregate Gross Amount of back pay due to all class members as provided in Exhibit D, but not later than October 1, 2001, the Trustee will begin mailing individual settlement checks for the verified Gross Amounts to class members who have executed and returned their Claim Verification forms. (The terms “Gross Amount” and “Aggregate Gross Amount” are defined in Exhibit D.)

1 13.2 The Trustee is not required to distribute or report, to the class members or to any
2 taxing authority, any information for tax purposes or any similar purpose. The Trustee will have no
3 obligation to locate or notify class members whose addresses are not found in a single search of one
4 commercially available database of personal addresses using a standard address search protocol, or who do
5 not return their Claim Verification forms, or who do not cash their checks. Each check must be negotiated
6 within 90 days after its date. Negotiation of a check constitutes a final and binding acceptance of the
7 calculation and amounts due under this settlement. The amount of any and all uncashed or undeliverable
8 checks will be utilized or distributed as provided in Exhibit E.

9 13.3 On January 1, 2002, (the "Back Pay Termination Date"), the trust shall be closed to
10 further distributions of back pay to class members covered by reports submitted by or for COLA Payors on
11 or before June 30, 2001. Thereafter, the undistributed Gross Amounts shall be utilized by the Trustee to
12 make the further payments described in Exhibit E and to pay Gross Amounts to class members covered by
13 any reports first submitted by or for COLA Payors later than June 30, 2001. With respect to the class
14 members covered by any such late report, those who execute Claim Verification forms shall be entitled to
15 receive checks for their Gross Amounts, but the trust shall be closed to further distributions of back pay to
16 class members covered by any such late report 180 days after the Trustee's receipt of such report.

17 13.4 In general, the Trustee may exercise reasonable discretion, consistent with this
18 Stipulation, in the administration of the trust. Without limiting the generality of the foregoing, the Trustee
19 shall have authority: to make simplifying assumptions and adjustments with respect to the payroll records
20 and employment/earning histories of class members for purposes of computing Gross Amounts and
21 prejudgment interest; to select a reasonable database and an appropriate search protocol for purposes of
22 finding addresses for class members; to make payments to class members in such amounts as are reasonable
23 and consistent with this Stipulation, notwithstanding disagreements between class members and COLA
24 Payors concerning pay records; to make payments to the heirs and assigns of class members in such
25 proportions and amounts as are reasonable and consistent with applicable law; to engage independent
contractors and incur any and all other reasonable costs and expenses relating to the administration of the
trust and the effectuation of this settlement; and to pay such costs and expenses from the Settlement
Administration Expense Account as provided in Exhibit D.

17 14. Investment Earnings. The amounts held for distribution to class members shall be invested
18 only in obligations of or guaranteed by the United States, in money-market funds invested in those
19 obligations, or in federally insured accounts. Earnings on the investment of amounts held in trust will be
20 deposited into a separate Earnings Account. Amounts deposited into the Earnings Account, and further
21 earnings thereon, shall be utilized by the Trustee in the manner set forth in Exhibit E.

22 15. Termination of Trust. The trust shall be terminated as of December 31, 2005 (the "Trust
23 Termination Date"). Any amounts then remaining in the Earnings Account (after payment of all remaining
24 obligations to plaintiffs' attorneys) shall be deposited into the Settlement Administration Expense Account
25 (unless that account has been terminated, in which event any remainder in the Earnings Account will be
credited to the non-profit corporations established pursuant to the settlements in *Alaniz* and *Karamatsu*).
Any remaining balance of the trust (consisting of any undistributed Gross Amounts and reserves, after
payment of all remaining obligations to plaintiffs' attorneys) shall be credited to such non-profit
corporations. Within 90 days after the Trust Termination Date, the Trustee shall file with this Court a final
accounting of the amounts that have been distributed to class members and of the amounts that have been
credited to the non-profit corporations.

16. Notice and Approval of Settlement.

16.1 This Stipulation shall become final and binding upon approval of the Court
following notice to the class members. The parties' attorneys will arrange for the publication to class
members of a notice of this settlement in a form and manner approved by the Court. During the settlement

1 approval process, the parties intend to participate jointly in a series of public meetings in the COLA areas
2 regarding the terms and conditions of the settlement agreement. Following notice and opportunity for
3 comments or objections, the parties will jointly move the Court for approval of this Stipulation. If this
4 Stipulation is not approved in its entirety, it will be void and of no force or effect whatsoever.

5 16.2 The calendar dates specified in Sections 12, 13, and 15 are based upon Court
6 approval of this Stipulation occurring prior to July 1, 2000, and its judgment becoming final thereafter
7 without delay. To the extent that court approval or final judgment is delayed for any reason, the calendar
8 dates specified in Sections 12, 13, and 15 will be deemed to be deferred by a corresponding amount of time.

9 17. Other Cases.

10 17.1 If this settlement is approved by the Court, the following related cases will be
11 dismissed pursuant to Fed. R. Civ. P. 41, the claims asserted in those cases having been fully and finally
12 resolved by this Stipulation and the judgment in this case:

13 *Angelet et al., v. United States*, 97-1378 DRD (D.P.R.)

14 *Cruz et al., v. United States*, 98-00021 JSU (D. Guam)

15 *Matsuo et al., v. United States*, 97-01418 HDM (D. Haw.)

16 17.2 In the cases of *Alaniz v. OPM*, No. A81-072 (D. Alaska), and *Karamatsu v. United*
17 *States*, No. 224-85C (Fed. Cl.), final judgments approving comprehensive settlements were previously
18 entered and have been fully implemented. At the present time, certain funds continue to be held in the trusts
19 in those cases on account of class members who have never been located. The parties have agreed upon a
20 final plan for the distribution of those trust funds, as set forth in separate stipulations which have been or will
21 be filed in those cases, whereby a portion of those funds will be paid into the Settlement Administration
22 Expense Account established as provided in Exhibit D if this Stipulation is approved by the Court.

23 18. Interpretation and Enforcement.

24 18.1 This Stipulation sets forth the entire agreement of the parties with respect to the
25 subject matter hereof. No modification or addition to this agreement or waiver of any right herein will be
effective unless it is approved in writing by the attorneys for the parties and by the Court. Except as
provided in Subsection 10.4, all of the rights and remedies set forth in this agreement are cumulative and in
addition to all rights and remedies available to any class member under existing or future law. Any waiver of
or failure to enforce any right conferred by law or by this agreement will not constitute or be interpreted as a
waiver of such right under any other circumstances, nor as a waiver of any other right, whether of the same
or a different character.

18.2 In agreeing to the terms of this Stipulation, neither the United States, OPM, the
USPS, nor any other federal agency or entity makes any admission of liability in regard to the administration
of the COLA program.

18.3 This Stipulation is in no way related to, or concerned with, income taxes or other
taxes for which plaintiffs are now liable or may be liable in the future as a result of this Stipulation or
otherwise.

18.4 The parties agree that each party, through its counsel, fully participated in the
drafting of this Stipulation. The rule of law that provides that, in interpreting written instruments,
ambiguities will be construed against the drafting party shall not apply to, or be used to resolve, any dispute
over the meaning or intent of this Stipulation or any of its provisions.

18.5 In the event that a party believes that another party has failed to perform an
obligation required by this Stipulation, the non-breaching party must so notify the breaching party and afford
it a reasonable time to cure the breach prior to initiating any legal action to enforce the Stipulation.

18.6 This Stipulation supersedes all other agreements between the parties, and no prior
agreements or representations shall be binding upon the parties.

1 18.7 The parties agree that the law to be applied in all respects to the application,
2 interpretation, or construction of this Stipulation shall be federal law.

3 18.8 All parties agree to accept the amounts to be paid pursuant to this settlement in full
4 satisfaction of any claim demand, or right, alleged or otherwise, to attorney fees, including Equal Access to
5 Justice fees, and costs or expenses from any party to this Stipulation.

6 18.9 No person or entity is intended to be, shall be, or shall be deemed to be, a third-party
7 beneficiary of this Stipulation for any purpose whatsoever.

8 18.10 This Stipulation may be executed in separate counterparts, each of which shall be
9 deemed the original, but all of which when taken together shall constitute one and the same instrument.

10 18.11 This Stipulation shall be binding and inure to the benefit of the parties and their
11 respective successors and assigns.

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LIST OF EXHIBITS

A Safe Harbor Principles
B Committees
C Interim Rates and Survey Cycle

D Judgment Amount
E Earnings and Residue

EXHIBIT A

Safe Harbor Principles

- 1. Fixed Base Weights:** In constructing the price level component of the Cost-of-Living Allowance (“COLA”) index, price relatives will be averaged using a system of fixed expenditure weights. If available, the weights will be drawn from the base area. If base area weights are not available, regional or national weights may be used.

Discussion: The Office of Personnel Management (“OPM”) will use Bureau of Labor Statistics (“BLS”) Consumer Expenditure Survey (“CES”) data to compute weights. OPM will not use micro data or data that could not be made available to the public under the Privacy Act or Freedom of Information Act. OPM will use Washington, DC, CES data to the extent practicable and will use nationwide CES Total Complete Reporting data at any level (e.g., the subcategory, sub-subcategory, etc., and item level) for which there are no DC area data. Nationwide data may also be used when the DC-area data appear to be highly variable over time. OPM will not use rolling averages because surveys will be conducted only once every 3 years. If BLS combines Washington and Baltimore for CES reporting purposes and the DC CES data are no longer available, OPM may use Washington/Baltimore CES data.

- 2. Democratic Weights:** To the extent feasible, weights for calculating the price level component will be based on an average, weighted by population, of expenditure shares in the expenditure range typical of Federal employees.

- 3. Single Income Approach:** In producing the price level component of the COLA index, a single set of weights will be used to represent spending patterns as reflected in the CES data used under Safe Harbor Principle (“SHP”) 1.

Discussion: OPM will use a single set of weights that will be derived as described in the “Discussion” in SHP 1 and in SHP 2. Because CES “pre-pub” data for the DC area are not currently available by income level OPM may have to select another approach in consultation with the Employee Involvement Structure (“EIS”) (for the purposes of these Safe Harbor Principles, EIS refers to the entities described in SHP 24A - 24C) and the Technical Advisory Committee (“TAC”) (described in SHP 25).

- 4. Market Basket Composition:** Limited variations are allowable among the COLA areas in the items to be used for pricing. The base area items will be matched with those used for each allowance area.

Discussion: As is its current approach, OPM will determine the significant CES items by selecting relatively well-defined items (e.g., “apples”) as compared with groups of miscellaneous items (e.g., “miscellaneous fresh fruits”) that have a significant weight in terms of consumer expenditures. Generally, OPM selects two items for each item category (e.g., “apples” and “oranges”). Prior to each survey, OPM will choose appropriate products (types, brands, models, and sizes) that represent the selected CES items. The items and products chosen will be those that are most relevant to the COLA area and also found in the DC area.

- 5. Quality and Quantity Comparisons:** The items used for pricing goods and services in a COLA area will be compared with identical items in the base area insofar as reasonably possible. To the extent that prices are compared for items which are not identical, such items will be of closely similar quality and quantity, with quantity adjustments as necessary.

Discussion: This principle affirms OPM’s current practice, which OPM will continue.

- 6. Sale Prices:** Price of items, excluding motor vehicles, will be recorded as actually charged at the time surveyed. If the item is on sale, that price will be used, but this does not include market-wide distress sales.

Discussion: With two exceptions, OPM will survey the price of the item at the time of the survey. If the

item is on sale, the sale price will be used. The only exceptions will be (1) the price of motor vehicles and (2) the price of other items when the price is reduced because of a market-wide distress sale or because the establishment is going out of business. In the latter case, another outlet will be selected, if possible.

7. **Outlet Selection:** In consultation with the EIS and the TAC, while it exists, OPM will, as warranted, conduct periodic Point of Purchase surveys (“POPS”) to determine the outlets or types of outlets in the COLA areas in which to price items. Items will be priced in the same types of outlets in the COLA areas and in the base area to the extent reasonably practicable. OPM will determine the frequency and content of the POPS in consultation with the EIS and TAC.

Discussion: This principle allows OPM discretion to conduct POPS in consultation with the EIS and TAC, while it exists, when they are warranted.

8. **Item Selection:** OPM will consult with the EIS to select representative items (types and brands) to be priced in each COLA area. Items may be selected using judgmental sampling. Then these same items will be surveyed in the COLA area and the base area. The survey items and replicates (i.e. prices) will, as warranted, be reallocated or the number increased to reduce overall index variance. For example, too many items may now be surveyed under food and automobile maintenance and too few in medical services, clothing, appliances. In general, it is likely to be more important to increase the range of items within a category like men’s footwear rather than the number of brands of a given item. For example, rather than add a second brand of men’s shoes, it is likely to produce a more stable measure if another type of shoe, say a hiking boot, were added.

Discussion: This principle allows OPM discretion to make such changes in consultation with the EIS and TAC, while it exists. OPM will give serious consideration to surveying more items in categories where prices seem highly variable over time. The extent to which OPM can do this will depend on resources and workload. This principle envisions that fewer items could be surveyed in other categories, thereby offsetting at least some of the potential workload increase.

9. **Utility Function:** A function (rather than a good) will be adopted for utilities. The function will be maintenance of a standard ambient temperature of a standard (e.g., 2000 square foot living space) house in each area. A survey of employees will be used, as warranted, to determine heating/cooling energy sources and to arrive at a weighted cost. Information on typical energy requirements will be obtained from appropriate local sources. Other energy requirements for the standard house can also be considered.

Discussion: Currently, OPM knows of no alternate acceptable data sources and believes an employee survey is the only way that such data could be obtained. The principle does not exclude the use of other data sources. For example, if the Department of Housing and Urban Development has data appropriate for this application, OPM should be able to use that data in place of surveying Federal employees.

In applying this principle, the Government anticipates that OPM will use only new home construction in each area; otherwise engineering estimates could vary greatly. Although energy costs will be estimated for the same standard home (i.e., same size and room count) in each area, the construction (number of floors, materials, insulation, energy sources) and climate will vary by area.

10. **Employee Surveys:** Periodic employee surveys will be conducted, as warranted, to get specific information on current issues as recommended by the TAC, while it exists, and the EIS.

Discussion: This principle reflects OPM’s current practice. As it has in the past, OPM is willing to conduct employee surveys as the need arises and as resources permit. This principle makes it clear that such surveys are not mandatory.

11. **Out-of-Area Prices:** In consultation with the EIS, OPM may use prices for categories other than housing that are gathered in one area to estimate (with appropriate adjustments) prices in other areas within the same region. This does not preclude adoption of adjacent area prices where local prices are unavailable for individual items.

Discussion: The principle acknowledges that OPM has authority to decide whether to make expanded use of out-of-area prices (e.g., Maui's Food-at-Home prices for Kauai). Currently, except for catalog pricing, OPM uses out-of-area prices in only two situations: The first is when the item (e.g., a specific brand and model) cannot be found within an area at the time of the survey. In that case, OPM normally does one of two things. If the relative prices for the other items within the subcategory appear to be sound, OPM foregoes the price and increases the weight of the other items in the subcategory. Otherwise, OPM uses the price from another retailer in a neighboring area (e.g., it uses a Kailua Kona price for Hilo) or uses the regional average price (e.g., the average of the price in Anchorage and Fairbanks for Juneau). The second is when the item is not sold within an area (e.g., new car purchase in Nome), in which case OPM obtains the price in an appropriate area and adds the cost of shipping and handling costs to get the item to the survey area. This principle allows expanded use of out-of-area prices. Although this could potentially reduce OPM's workload, research is necessary to see if and where it might be appropriate to adopt such a methodology. Until that research is completed, OPM will not apply the portion of the principle that addresses expanded use of out-of-area prices.

12. **Elimination of Components and Cost Buildup:** OPM will use the categorization that BLS uses in BLS's publication of CES results, and OPM will use a price relative approach, rather than a cost-buildup approach, to the extent practicable.

Discussion: Current regulations specify four components: Goods and Services, Housing, Transportation, and Miscellaneous. Runzheimer, in developing the original model, used a cost-buildup approach for housing and transportation. The components and cost-buildup approach are unnecessary. In their place, OPM will use the aggregation levels reported in the CES and use a straight index approach rather than the cost-buildup approach, to the extent practicable.

13. **Elimination of the Survey of Rest of the State of Alaska:** Rather than conducting an onsite survey of one or more places in the Rest of the State of Alaska COLA area, OPM may use alternative sources of information to set the COLA rate for this area; provided that if the use of such information indicates that the COLA rate for that area should be reduced, OPM shall re-institute the onsite surveys on one or more locations and publish the results prior to implementing a COLA reduction, if the surveys confirm a reduction is warranted.

Discussion: OPM will stop surveying this COLA area and instead will use other available data, e.g., that published by the University of Alaska, which compares many prices and costs in towns and villages in this area to prices and costs in Anchorage, Fairbanks, and Juneau. If in using this methodology the index for this allowance area ever falls below 125, OPM will conduct one or more onsite surveys to verify whether the reductions are warranted.

14. **Elimination of Commissary/Exchange COLA Rate:** OPM will not make an offset to COLA based on any special purchasing privileges offered Federal employees in the COLA areas.

Discussion: OPM will recommend that Executive Order 10000 be changed so that OPM no longer has to make special adjustments when Government quarters or commissary and exchange shopping privileges are provided. The rent for quarters is set according to Office of Management and Budget Circular A-47 at prevailing rates, so no COLA offset should be necessary. Likewise, when commissary and exchange shopping privileges are offered as a recruitment incentive, an offset essentially undoes the incentive.

15. **Allowance and Survey Area Definitions:** The current allowance and survey area definitions will remain in place until changes appear warranted, at which time OPM will consult with the EIS before making a final determination regarding such changes.

Discussion: The principle makes it clear that the current allowance and survey area boundary definitions have been and are appropriate and that OPM does not need to change these definitions. In the future, however, OPM may change the boundary definitions as warranted to meet changing circumstances provided that OPM first seeks the advice of the EIS.

16. **Base Area:** Base area for living cost and other allowance determinations (but not necessarily weight determinations) will be the Washington, DC metropolitan area. Until the issue is reexamined through an

employee survey, the “metropolitan area” can continue to be the current OPM survey area. OPM will consult with the EIS before making changes in the definition of the area.

Discussion: This principle affirms OPM’s current approach, which OPM will continue. Current regulations, however, are out of date as a result of the Office of Management and Budget redefinition of the Washington, DC, metropolitan statistical area. Therefore, this principle makes it clear which geographic areas are covered in the DC area survey.

17. Interim Adjustments: Prices for housing, goods and services will be collected once every 3 years and rotated by region. Interim annual adjustments will use the existing Consumer Price Index – Urban (“CPI-U”) data (relative to base area) as available. OPM will use the Honolulu index for all of Hawaii and Guam; the Anchorage index for all of Alaska; and the Puerto Rico index for the Caribbean. OPM will consult with the EIS prior to making changes to the definition of regions or using different indexes.

18. Hedonic Housing Model and Rental Equivalence: Shelter price relatives will be estimated for owners and renters from the triennial regional sample. The sample for the region will be pooled with the comparison sample from the base area and price relatives for the COLA areas will be estimated using hedonic regression models to adjust for quality differences.

Discussion: OPM will adopt a rental-equivalence approach to estimate shelter costs and a hedonic regression approach to compare housing of similar quality. To identify the living communities to be surveyed, OPM will use the results of the 1992/93 employees survey, JPC’s survey, and/or other appropriate information. How the housing data will be collected is not known or stipulated. OPM may survey Federal employees, collect the data on its own or through a contractor, enter into an interagency agreement with another Federal agency (e.g., the Department of Interior), or use some other appropriate approach.

19. Natural Disasters: OPM will have flexibility in application of the program in the event of natural disasters. OPM and the EIS will review natural disasters in COLA areas on a case-by-case basis, and OPM may make temporary COLA rate adjustments, changes in methodology, survey timing changes, or other appropriate changes.

Discussion: OPM currently has this flexibility. If a natural disaster significantly affects living costs for a substantial period of time (e.g., for a year), OPM will be able to implement an interim rule to conduct an off-cycle, on-site price survey or make some other appropriate change or adjustment. This principle does not require OPM to take any action except as OPM determines is appropriate.

20. Rounding COLA Rates, Decrement, and Threshold: COLA rates shall be calculated to the nearest whole percentage point and shall not be diminished by any decrement greater than 1 percentage point per year. The threshold level will be a COLA index (i.e., the price index plus the adjustment included pursuant to SHP 23) of 102.00.

Discussion: OPM will adopt the practice of rounding COLA rates to the nearest whole percentage and reducing COLA by no more than 1 percentage point per year. The limitation on reductions will apply whether the reduction is due to a change in the methodology or relative change in living cost. If survey results cause a COLA index to go below the threshold, the 1-point decrease limitation will continue until the rate is eliminated or the index equals or exceeds the threshold. (For example, if an existing COLA rate is 2 percent and the new index does not equal or exceed 102.00, the 1 percentage point decrement would apply (i.e., the new COLA rate would be 1 percent). The next year, if the index still did not reach or exceed 102.00, the COLA rate would be zero.)

21. Natural Disaster Insurance: Losses due to natural disasters will be included in the price index to the extent they are reflected in insurance costs.

Discussion: Homeowner natural disaster insurance is a cost born by the owner and passed on to the renter as part of the rent. Therefore, consistent with the rental equivalence approach, OPM will not survey the price of homeowner insurance. OPM will continue its practice of surveying the price of renter insurance. To the extent that companies in the allowance or DC areas generally offer additional riders to renter insurance

policies to cover disaster losses, OPM will include the price of such riders in the price of the renter’s insurance it surveys.

22A. Survey Plans and Methodology: Prior to the conduct of each living-cost survey, OPM will consult with the EIS on the details of the survey plans and methodology. Also, OPM will publish for notice and comment any change in the survey methodology that requires a change in regulations. Where, however, no change in the regulations is required, it will not be necessary for OPM to publish for notice and comment the survey plans and methodology in advance of the surveys.

22B. Survey Reports: After each living-cost survey, OPM will continue to publish living-cost survey reports for notice and comment in generally the same manner it currently publishes them. It will not be necessary for OPM to publish survey reports in greater detail or to use some other approach or tabulation.

Discussion: OPM publishes the results of its living-cost surveys as a notice in the Federal Register. The publication strives to provide an overview of the survey results with a meaningful level of detail. OPM takes into consideration

the comments it receives in two ways. First, as appropriate, OPM makes changes in the way the data it collected are used and analyzed. Second, as appropriate, OPM makes changes in the design of prospective surveys, analytical techniques, and other policies and practices.

23. Adjustment Factor: OPM will adopt the following adjustment factors to reflect differences in need, availability of and access to goods and services, and quality of life. These factors will be added to the price index.

| Allowance Area | Amount Added to Price Index |
|-----------------------------|-----------------------------|
| Anchorage, AK | 7.0 |
| Fairbanks, AK | 9.0 |
| Juneau, AK | 9.0 |
| Rest of the State of Alaska | 9.0 |
| Honolulu County, HI | 5.0 |
| Hawaii County, HI | 7.0 |
| Kauai County, HI | 7.0 |
| Maui County, HI | 7.0 |
| Guam and CNMI* | 9.0 |
| Puerto Rico | 7.0 |
| U.S. Virgin Islands | 9.0 |

*Commonwealth of the Northern Mariana Islands

24. Employee Involvement Structure (“EIS”): In OPM’s work with the EIS, the TAC and/or other committees in all phases of implementation, the parties recognize that OPM must comply with the Federal Advisory Committee Act (5 U.S.C. app. 2) and other relevant law.

24A. Employee Involvement (First Phase): During the period from the date the settlement agreement is approved by the appropriate court(s) until the date OPM issues final regulations to implement the settlement, the Survey Implementation Committee (“SIC”) and the TAC will advise OPM as it prepares both its proposed and final regulations. Funding relating to the activities of the SIC and TAC will be provided in the manner set forth in Exhibit D.

24B. Employee Involvement (Second Phase): The SIC will continue to exist during the period from the date OPM issues final regulations to implement the settlement to the end of the first survey cycle in all COLA areas (i.e., during the first 3 years of implementation of the new regulations). Funding for the expenses related to the meetings of the SIC will be provided in the manner set forth in Exhibit D. Prior to each survey conducted in this cycle, the SIC will review the plans and methodology for the survey and provide to the appropriate OPM management official(s) advice or comments. Following each survey, the SIC will again meet to review the analysis of the results of the COLA surveys. During this period, OPM may establish other committees, which may be comprised of agency representatives, collective bargaining representatives, and others, including representatives of the COLA Defense Corporations. Such committees may be established, possibly on a test or pilot basis, pursuant to regulations issued during the first or second phase and may advise OPM concerning any aspect of the COLA program, including the planning and conduct of the survey and analysis of the results. The SIC may discuss the development of regulations providing for ongoing involvement of agency and collective bargaining representatives in the administration of the COLA program beyond the second phase. At the end of the second phase, the SIC will dissolve, and OPM will determine the nature and extent of prospective agency and collective bargaining representatives' involvement in the COLA program by issuing regulations.

24C. Employee Involvement (Third Phase): After the end of the first survey cycle in all COLA areas, OPM may involve agency, collective bargaining, and other representatives in the COLA program and in accordance with any regulations issued during or after the Second Phase.

25. Expert Consultants: A one to three member TAC will be established to advise the SIC and the appropriate OPM management official(s) during the First and Second Phases as needed on economic and statistical issues relating to the COLA program. OPM or the SIC may refer questions involving the application of the settlement agreement, including the Safe Harbor principles and implementing regulations, to the TAC. Funding for the necessary expenses of the TAC will be provided in the manner set forth in Exhibit D. At the end of the Second Phase, the TAC will dissolve.

26. Access to Data: Employees shall be afforded access to survey data within the limits of law. Generally, OPM will consult with the EIS before deciding or agreeing with a third party to keep categories or levels of data confidential.

Discussion: This is OPM's current policy. The policy generally favors disclosure.

EXHIBIT B

Committees

SURVEY IMPLEMENTATION COMMITTEE

Manuel Q. Cruz
Denise Hernandez
Linda Hoffman (OPM designee)
Juan Lugo
Joyce K. Matsuo
Albert E. Miller
Wilfredo Morales
Don Paquin (OPM designee)
Sharon Warren

TECHNICAL ADVISORY COMMITTEE

Alan Heston
Eva Jacobs
Harold Watts

EXHIBIT C

Interim Rates and Survey Cycle

| <u>COLA Area</u> | <u>Interim COLA Rate</u> | <u>First Survey</u> |
|---------------------|--------------------------|---------------------|
| Puerto Rico | 11.00 * | 2001 |
| St. Croix | 22.50 * | 2001 |
| St. Thomas/St. John | 22.50 * | 2001 |
| Anchorage | 25.00 | 2002 |
| Fairbanks | 25.00 | 2002 |
| Juneau | 25.00 | 2002 |
| Other Alaska | 25.00 | 2002 |
| Honolulu | 25.00 | 2003 |
| Kauai | 22.50 | 2003 |
| Maui/Molokai | 23.75 * | 2003 |
| Hawaii | 16.50 * | 2003 |
| Guam/CNMI | 23.75 * | 2003 |
| Guam Commissary/PX | 22.50* | 2003 |

The rates indicated by * include an increase from the rate published October 21, 1998, which increase becomes effective October 1, 2000. These rates, along with the rate for Kauai, may increase further (effective October 1, 2000) depending upon the results of the 1998 price surveys and the surveys conducted under the New Regulations. Under this settlement, the COLA rates in effect as of October 1, 2000, will be the higher of (a) those in effect as of September 30, 2000, or (b) a rate determined by adding to the September 30, 2000, rate one-half of the amount by which a rate set by adding the adjustment points set forth in Safe Harbor Principle 23 to the price index resulting from the 1997 or 1998 survey (whichever is higher) would exceed the rate in effect as of September 30, 2000. These rates will not be reduced nor will Consumer Price Index adjustments pursuant to Safe Harbor Principle 17 be implemented until the effective date of the final rule implementing the results of the third survey conducted in the first survey cycle. During this same period, COLA rates will increase where warranted by application of the Conforming Methodology.

EXHIBIT D

Judgment Amount

The Judgment Amount is based, in part, on estimated¹ employee counts and average salary levels in all COLA areas during a period consisting of ten consecutive fiscal years beginning October 1, 1990, and ending September 30, 2000, which period is herein called the “Back Pay Period.” For purposes of this settlement, the term “Gross Amount” refers to 100% of the amount of additional COLA that a class member would have received during the Back Pay Period if COLA rates had been set using the same levels of adjustment that have been agreed upon for future application pursuant to Safe Harbor Principle 23. The term “Aggregate Gross Amount” means the total of all Gross Amounts for all class members. The Aggregate Gross Amount for purposes of this settlement is estimated to be \$201,595,815. This is one component of the Judgment Amount.²

Another portion of the Judgment Amount, equal to 15% of the estimated Aggregate Gross Amount, will be used to offset attorneys’ fees for the back pay recovery and as a reserve in case the actual Aggregate Gross Amount exceeds the amount estimated for purposes of settlement as described above. The attorneys’ fees for the back pay recovery will be equal to 10% of the Aggregate Gross Amount. The attorneys’ fees for other benefits of the Safe Harbor process and settlement will be determined in accordance with agreements between the plaintiffs’ attorneys and the non-profit corporations established pursuant to the settlements in *Alaniz* and *Karamatsu* (the “COLA Defense Corporations”), and the method of calculating such fees will be specified in the notice to class members published pursuant to the order of the court. A Reserve Account will be established in the amount of 5% of the Aggregate Gross Amount, or \$10,079,790. In the event that the actual Aggregate Gross Amount exceeds the estimated Aggregate Gross Amount by more than 5%, the Gross Amounts for all class members will be proportionally reduced so that the actual Aggregate Gross Amount equals 105% of the estimated amount.

The Judgment Amount also includes an amount equal to \$664,813, or approximately 0.3% of the estimated Aggregate Gross Amount, for purposes of paying expenses in connection with the administration of the settlement. A Settlement Administration Expense Account (“SAEA”) in this amount will be established and used by the trustee to pay all expenses of settlement administration, including without limitation the following: obtaining information needed for calculating individual Gross Amounts for all class members; analysis of information and calculation of individual Gross Amounts (along with individual amounts of prejudgment interest); mailing of Claim Verification forms to all class members and compilation of the resulting verifications, including analysis and handling of discrepancies and individual problems; mailing of individual checks to class members who have submitted Claim Verifications; handling and accounting for Claim Verification forms and individual settlement checks that are mailed but returned as undeliverable; reconciliation of bank statements and review and analysis of other reports and financial information; preparation of reports concerning the results of all the foregoing activities; and reimbursement of plaintiffs’ attorneys for out-of-pocket expenses incurred for any of the foregoing purposes. The SAEA also will be used to pay for the activities of the Survey Implementation Committee (“SIC”) and any sub-committees of the SIC, the Technical Advisory Committee (“TAC”), and OPM (with the joint approval of the SIC and OPM³) during the process of developing and implementing new COLA regulations through the end of the first survey cycle. The SAEA may survive the termination of the trust. Any amount remaining in such account when the implementation of the settlement is completed will be paid or credited to the COLA Defense Corporations to meet their needs and obligations.

¹ In negotiating the Judgment Amount, the plaintiffs have used certain data provided by the defendants. It is expressly understood by the parties that the defendants cannot guarantee the accuracy of this data since it is based on government-wide estimates and assumptions.

² Initially, the data upon which the Judgment Amount is based included only full-time, permanent, non-seasonal employees in those agencies which report to OPM’s Central Personnel Data File (“CPDF”) and the employees of the USPS. The data did not cover non-USPS, part-time, temporary, or intermittent employees or any employees of those agencies which do not report to the CPDF. Based upon the initial data set, the Aggregate Gross Amount was estimated to be \$178,095,815. Including the omitted groups increases this estimate by approximately \$23,500,000.

³ Any funds transferred to this account from the OPM Account established in *Alaniz* and *Karamatsu* for purposes of the Safe Harbor process will be available for use at OPM’s sole discretion.

EXHIBIT E

Earnings and Residue

Earnings on the investment of amounts held in trust will be credited to a separate Earnings Account and shall be utilized by the Trustee to pay the unreimbursed expenses and unpaid fees of plaintiffs' attorneys. Interest will not be paid on amounts due to class members. Any amount remaining in the Earnings Account upon the termination of the trust (after payment of all remaining obligations to plaintiffs' attorneys) shall be deposited into the Settlement Administration Expense Account ("SAEA") if the SAEA remains in existence at that time. Earnings on the SAEA after the termination of the trust will be deposited into such account and used for the purposes of that account. If the SAEA has been terminated, any remainder in the Earnings Account upon the termination of the trust will be paid or credited to the non-profit corporations established pursuant to the settlements in *Alaniz* and *Karamatsu* (the "COLA Defense Corporations") to meet their needs and obligations.

After the first checks for back pay are issued by the trustee to class members (representing 100% of the Gross Amount due to each class member), the trustee shall determine the amount of the Reserve Account, and any amount of the Aggregate Gross Amount as originally estimated for purposes of settlement, which are in excess of the actual Gross Amount due to all class members. The amount of such excess shall be applied to the payment of any remaining unpaid fees of plaintiffs' attorneys. The balance (if any) of such reserves shall be available for the payment of prejudgment interest to class members as described below.

With respect to the undistributed principal remaining in the trust as of the Back Pay Termination Date (including all amounts held for non-responding class members, all amounts of uncashed checks, and any amounts of the Reserve Account and estimated Aggregate Gross Amount remaining after payment of all obligations to plaintiffs' attorneys), the Trustee shall determine an appropriate amount to be retained for any class members not covered by timely reports submitted by or for COLA Payors as provided in Section 12 of the Stipulation and to cover outstanding checks for back pay issued within the previous 90 days. The remainder of such undistributed principal (the "PJI Fund") shall be utilized by the Trustee to pay prejudgment interest to all class members who have submitted Claim Verification forms and cashed their checks for the Gross Amount. (Such class members are referred to as "participating class members.")

The amount of prejudgment interest distributable to each participating class member shall be that class member's proportionate share of the PJI Fund (exclusive of earnings on such fund), which share, however, shall not exceed 100% of the amount of prejudgment interest due on the class member's Gross Amount under the Back Pay Act. Such proportionate share is equal to the estimated amount of prejudgment interest allocable to the Gross Amount due to the participating class member divided by the sum of all estimated amounts of prejudgment interest allocable to the Gross Amounts due to all participating class members. Such estimates will be based on simplifying assumptions and adjustments as provided in the Stipulation.

On the Trust Termination Date, any and all amounts remaining in trust (including undistributed amounts of principal from the PJI Fund, together with all further accumulated earnings on the trust) shall be applied first to the payment of any remaining obligations to plaintiffs' attorneys. Any remaining balance shall be paid or credited to the COLA Defense Corporations to meet their needs and obligations.