

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 531

RIN 3206-AM25

#### General Schedule Locality Pay Areas

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** On behalf of the President's Pay Agent, the U.S. Office of Personnel Management is issuing interim regulations on the locality pay program for General Schedule employees. The interim regulations establish separate locality pay areas for the States of Alaska and Hawaii and extend coverage of the Rest of U.S. locality pay area to include American Samoa, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Territory of Guam, the U.S. Virgin Islands, and all other U.S. possessions listed in 5 CFR 591.205, applicable on the first day of the first pay period beginning on or after January 1, 2011.

**DATES:** *Effective Date:* The regulations are effective November 1, 2010.

*Applicability Date:* The regulations apply on the first day of the first pay period beginning on or after January 1, 2011.

*Comment Date:* We must receive comments on or before November 29, 2010.

**ADDRESSES:** Send or deliver comments to Jerome D. Mikowicz, Deputy Associate Director for Pay and Leave, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200; FAX: (202) 606-4264; or e-mail: *pay-performance-policy@opm.gov*.

**FOR FURTHER INFORMATION CONTACT:** Allan Hearne, (202) 606-2838; FAX:

(202) 606-4264; e-mail: *pay-performance-policy@opm.gov*.

**SUPPLEMENTARY INFORMATION:** Section 5304 of title 5, United States Code, authorizes locality pay for General Schedule (GS) employees with duty stations in the United States and its territories and possessions. The Non-Foreign Area Retirement Equity Assurance Act of 2009 (NAREA), Public Law 111-84, title XIX, subtitle B (October 28, 2009), extended locality pay to the States of Alaska and Hawaii and the U.S. territories and possessions effective in January 2010. While the statute included a sense of Congress that one locality pay area cover the entire State of Alaska and one cover the entire State of Hawaii, it did not actually establish any new locality pay areas.

Section 5304(f) of title 5, United States Code, authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget, and the Director of the Office of Personnel Management) to determine locality pay areas. The boundaries of locality pay areas must be based on appropriate factors, which may include local labor market patterns, commuting patterns, and the practices of other employers. The Pay Agent must give thorough consideration to the views and recommendations of the Federal Salary Council (Council), a body composed of experts in the fields of labor relations and pay policy and representatives of Federal employee organizations. The President appoints the members of the Council, which submits annual recommendations to the Pay Agent about the locality pay program.

The Federal Salary Council has been unable to meet to consider what locality pay areas should be established for the States of Alaska and Hawaii and the U.S. territories and possessions. Since establishing locality pay areas by regulation takes a substantial amount of time, we are publishing this interim rule now, even though the Council has not yet met, to insure these new locality pay areas are established in time for the January 2011 pay adjustments. We are hopeful the Council will be able to meet during the comment period for these regulations to formulate and submit recommendations.

In the absence of Council recommendations, the Pay Agent has concluded that separate locality pay

areas should be established for the States of Alaska and Hawaii. We have non-Federal salary survey data collected under the National Compensation Survey (NCS) that can be used to set and adjust locality pay rates for these locations. This is the same survey source currently used in the other locality pay areas. In fact, the Council's recommendation letter of November 4, 2009, included a pay disparity for Alaska (based on a survey of Anchorage) of 54.98 percent and a pay disparity for Hawaii (based on a survey of Honolulu) of 38.41 percent. These measures were generated using the methodology adopted by the Council and the Pay Agent and salary surveys conducted by the Bureau of Labor Statistics (BLS) and both are well above the Rest of U.S. locality pay area pay disparity of 27.81 percent included in our 2009 annual report to the President. Establishing single pay areas for all of Alaska and all of Hawaii also coincides with a sense of Congress provision that these locations each be covered by a single separate locality pay area. Since it is not feasible for BLS to conduct salary surveys using the current survey methods at current budget levels in additional locations in Alaska, Hawaii, or the U.S. territories and possessions, the Pay Agent concludes Alaska and Hawaii should become whole-State locality pay areas and the other locations should be part of the Rest of U.S. (RUS) locality pay area. This decision may be revisited if the Federal Salary Council makes a different recommendation when it next convenes.

#### Impact and Implementation

This rule will affect rates of pay for about 44,100 civilian white-collar employees in the States of Alaska and Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and other U.S. possessions. Under the rule, approved locality pay rates would likely be higher than in the RUS locality pay area for employees in Alaska and Hawaii. Federal civilian white-collar employees in the U.S. territories and possessions will be covered by the RUS locality pay rate.

#### Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving

the general notice of proposed rulemaking. Notice is being waived to comply with the intent of Congress that employees affected by the NAREA in Alaska and Hawaii have separate locality pay areas established for January 2011 pay adjustments. In addition, notice is being waived to ensure that employees in the U.S. territories and possessions who are affected by the NAREA are included in the RUS locality pay area in time for the January 2011 pay adjustments. I find that provision of the general notice of proposed regulations is both impracticable and unnecessary in this instance because Congress has indicated its intent that these changes be effected in time for the January 2011 pay adjustments, and because the process of promulgating proposed and final rules to establish these changes would introduce unnecessary delay resulting in effecting these changes beyond the date on which the January 2011 pay adjustments take effect. In addition, since the latest available data indicates that, for Alaska and Hawaii, the locality pay rates will be higher than that for the RUS locality pay area, the process of promulgating proposed and final rules would be contrary to the public interest in that it would cause unnecessary delay in applying the higher locality pay rates in these areas in time for the January 2011 pay adjustments.

#### E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

#### Paperwork Reduction Act

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13.

#### 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 apply only to Federal agencies and employees.

#### List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

#### John Berry,

Director, U.S. Office of Personnel Management.

■ Accordingly, OPM amends 5 CFR part 531 as follows:

#### PART 531—PAY UNDER THE GENERAL SCHEDULE

■ 1. The authority citation for part 531 continues to read as follows:

**Authority:** 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103-89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335 and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304 and 5305; E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

#### Subpart F—Locality-Based Comparability Payments

■ 2. In § 531.603, paragraph (b) is revised to read as follows:

##### § 531.603 Locality pay areas.

\* \* \* \* \*

(b) The following are locality pay areas for the purposes of this subpart:

(1) Alaska—consisting of the State of Alaska;

(2) Atlanta-Sandy Springs-Gainesville, GA—AL—consisting of the Atlanta-Sandy Springs-Gainesville, GA—AL CSA;

(3) Boston-Worcester-Manchester, MA—NH—RI—ME—consisting of the Boston-Worcester-Manchester, MA—RI—NH CSA, plus Barnstable County, MA, and Berwick, Eliot, Kittery, South Berwick, and York towns in York County, ME;

(4) Buffalo-Niagara-Cattaraugus, NY—consisting of the Buffalo-Niagara-Cattaraugus, NY CSA;

(5) Chicago-Naperville-Michigan City, IL—IN—WI—consisting of the Chicago-Naperville-Michigan City, IL—IN—WI CSA;

(6) Cincinnati-Middletown-Wilmington, OH—KY—IN—consisting of the Cincinnati-Middletown-Wilmington, OH—KY—IN CSA;

(7) Cleveland-Akron-Elyria, OH—consisting of the Cleveland-Akron-Elyria, OH CSA;

(8) Columbus-Marion-Chillicothe, OH—consisting of the Columbus-Marion-Chillicothe, OH CSA;

(9) Dallas-Fort Worth, TX—consisting of the Dallas-Fort Worth, TX CSA;

(10) Dayton-Springfield-Greenville, OH—consisting of the Dayton-Springfield-Greenville, OH CSA;

(11) Denver-Aurora-Boulder, CO—consisting of the Denver-Aurora-Boulder, CO CSA, plus the Ft. Collins-Loveland, CO MSA;

(12) Detroit-Warren-Flint, MI—consisting of the Detroit-Warren-Flint, MI CSA, plus Lenawee County, MI;

(13) Hartford-West Hartford-Willimantic, CT—MA—consisting of the Hartford-West Hartford-Willimantic, CT CSA, plus the Springfield, MA MSA and New London County, CT;

(14) Hawaii—consisting of the State of Hawaii;

(15) Houston-Baytown-Huntsville, TX—consisting of the Houston-Baytown-Huntsville, TX CSA;

(16) Huntsville-Decatur, AL—consisting of the Huntsville-Decatur, AL CSA;

(17) Indianapolis-Anderson-Columbus, IN—consisting of the Indianapolis-Anderson-Columbus, IN CSA, plus Grant County, IN;

(18) Los Angeles-Long Beach-Riverside, CA—consisting of the Los Angeles-Long Beach-Riverside, CA CSA, plus the Santa Barbara-Santa Maria-Goleta, CA MSA and all of Edwards Air Force Base, CA;

(19) Miami-Fort Lauderdale-Pompano Beach, FL—consisting of the Miami-Fort Lauderdale-Pompano Beach, FL MSA, plus Monroe County, FL;

(20) Milwaukee-Racine-Waukesha, WI—consisting of the Milwaukee-Racine-Waukesha, WI CSA;

(21) Minneapolis-St. Paul-St. Cloud, MN—WI—consisting of the Minneapolis-St. Paul-St. Cloud, MN—WI CSA;

(22) New York-Newark-Bridgeport, NY—NJ—CT—PA—consisting of the New York-Newark-Bridgeport, NY—NJ—CT—PA CSA, plus Monroe County, PA, Warren County, NJ, and all of Joint Base McGuire-Dix-Lakehurst;

(23) Philadelphia-Camden-Vineland, PA—NJ—DE—MD—consisting of the Philadelphia-Camden-Vineland, PA—NJ—DE—MD CSA excluding Joint Base McGuire-Dix-Lakehurst, plus Kent County, DE, Atlantic County, NJ, and Cape May County, NJ;

(24) Phoenix-Mesa-Scottsdale, AZ—consisting of the Phoenix-Mesa-Scottsdale, AZ MSA;

(25) Pittsburgh-New Castle, PA—consisting of the Pittsburgh-New Castle, PA CSA;

(26) Portland-Vancouver-Hillsboro, OR—WA—consisting of the Portland-Vancouver-Hillsboro, OR—WA MSA, plus Marion County, OR, and Polk County, OR;

(27) Raleigh-Durham-Cary, NC—consisting of the Raleigh-Durham-Cary, NC CSA, plus the Fayetteville, NC MSA, the Goldsboro, NC MSA, and the Federal Correctional Complex Butner, NC;

(28) Richmond, VA—consisting of the Richmond, VA MSA;

(29) Sacramento—Arden-Arcade—Yuba City, CA—NV—consisting of the Sacramento—Arden-Arcade—Yuba City, CA—NV CSA, plus Carson City, NV;

(30) San Diego-Carlsbad-San Marcos, CA—consisting of the San Diego-Carlsbad-San Marcos, CA MSA;

(31) San Jose-San Francisco-Oakland, CA—consisting of the San Jose-San Francisco-Oakland, CA CSA, plus the Salinas, CA MSA and San Joaquin County, CA;

(32) Seattle-Tacoma-Olympia, WA—consisting of the Seattle-Tacoma-Olympia, WA CSA, plus Whatcom County, WA;

(33) Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA—consisting of the Washington-Baltimore-Northern Virginia, DC-MD-VA-WV CSA, plus the Hagerstown-Martinsburg, MD-WV MSA, the York-Hanover-Gettysburg, PA CSA, and King George County, VA; and

(34) Rest of U.S.—consisting of those portions of the United States and its territories and possessions as listed in 5 CFR 591.205 not located within another locality pay area.

[FR Doc. 2010-24495 Filed 9-29-10; 8:45 am]

BILLING CODE 6325-01-P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 360

RIN 3064-AD55

#### Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After September 30, 2010

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** The Federal Deposit Insurance Corporation (“FDIC”) has adopted an amended regulation regarding the treatment by the FDIC, as receiver or conservator of an insured depository institution, of financial assets transferred by the institution in connection with a securitization or a participation (the “Rule”). The Rule continues the safe harbor for financial assets transferred in connection with securitizations and participations in which the financial assets were transferred in compliance with the existing regulation. The Rule also imposes further conditions for a safe harbor for securitizations or participations issued after a transition period. On March 11, 2010, the FDIC established a transition period through September 30, 2010. In order to provide

for a transition to the new conditions for the safe harbor, the Rule provides for an extended transition period through December 31, 2010 for securitizations and participations. The Rule defines the conditions for safe harbor protection for securitizations and participations for which transfers of financial assets are made after the transition period; and clarifies the application of the safe harbor to transactions that comply with the new accounting standards for off balance sheet treatment as well as those that do not comply with those accounting standards. The conditions contained in the Rule will serve to protect the Deposit Insurance Fund (“DIF”) and the FDIC’s interests as deposit insurer and receiver by aligning the conditions for the safe harbor with better and more sustainable securitization practices by insured depository institutions (“IDIs”).

**DATES:** Effective September 30, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Michael Krimminger, Office of the Chairman, 202-898-8950; George Alexander, Division of Resolutions and Receiverships, (202) 898-3718; Robert Storch, Division of Supervision and Consumer Protection, (202) 898-8906; or R. Penfield Starke, Legal Division, (703) 562-2422, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In 2000, the FDIC clarified the scope of its statutory authority as conservator or receiver to disaffirm or repudiate contracts of an insured depository institution with respect to transfers of financial assets by an IDI in connection with a securitization or participation when it adopted a regulation codified at 12 CFR 360.6 (the “Securitization Rule”). This rule provided that the FDIC as conservator or receiver would not use its statutory authority to disaffirm or repudiate contracts to reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by an IDI in connection with a securitization or in the form of a participation, provided that such transfer met all conditions for sale accounting treatment under generally accepted accounting principles (“GAAP”). The rule was a clarification, rather than a limitation, of the repudiation power. Such power authorizes the conservator or receiver to breach a contract or lease entered into by an IDI and be legally excused from further performance, but it is not an avoiding power enabling the conservator or receiver to recover assets

that were previously sold and no longer reflected on the books and records on an IDI.

The Securitization Rule provided a “safe harbor” by confirming “legal isolation” if all other standards for off balance sheet accounting treatment, along with some additional conditions focusing on the enforceability of the transaction, were met by the transfer in connection with a securitization or a participation. Satisfaction of “legal isolation” was vital to securitization transactions because of the risk that the pool of financial assets transferred into the securitization trust could be recovered in bankruptcy or in a bank receivership. If the transfer satisfied this condition, the Securitization Rule confirmed that the transferred assets were “legally isolated” from the IDI in an FDIC conservatorship or receivership. The Securitization Rule, thus, addressed only purported sales which met the conditions for off balance sheet accounting treatment under GAAP.

Since its adoption, the Securitization Rule has been relied on by securitization participants as assurance that investors could look to securitized financial assets for payment without concern that the financial assets would be interfered with by the FDIC as conservator or receiver. However, the implementation of new accounting rules has created uncertainty for securitization participants.

#### *Modifications to GAAP Accounting Standards*

On June 12, 2009, the Financial Accounting Standards Board (“FASB”) finalized modifications to GAAP through Statement of Financial Accounting Standards No. 166, *Accounting for Transfers of Financial Assets, an Amendment of FASB Statement No. 140* (“FAS 166”) and Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* (“FAS 167”) (the “2009 GAAP Modifications”). The 2009 GAAP Modifications are effective for annual financial statement reporting periods that begin after November 15, 2009. The 2009 GAAP Modifications made changes that affect whether a special purpose entity (“SPE”) must be consolidated for financial reporting purposes, thereby subjecting many SPEs to GAAP consolidation requirements. These accounting changes may require some IDIs to consolidate an issuing entity to which financial assets have been transferred for securitization onto their balance sheets for financial reporting purposes primarily because an affiliate of the IDI retains control over