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Modified Pay Retention Rules for Employees in Non-Foreign Areas Outside the Contiguous United States

Modified pay retention rules are being implemented to prevent pay inequities resulting from the Defense Intelligence Enterprise's plan to phase out non-foreign area TLMS and certain NSA field adjustments. These rules are described in recently published interim guidance, and become effective on January 15, 2012.

Background

- The Non-Foreign Area Retirement Equity Assurance Act of 2009 (NAREAA) permitted employee basic pay to exceed the level IV rate of the Executive Schedule (the statutory limit) as a result of increases granted during the three-year phase-in of locality pay in non-foreign areas.
- NAREAA requires that these employees be placed on pay retention on January 15, 2012. This provision applies to Defense Intelligence employees in non-foreign areas outside the contiguous United States who received targeted local market supplement (TLMS) increases between January 3, 2010 and January 1, 2012.
- In November 2010, the Defense Intelligence Enterprise decided to phase-out the general non-foreign area TLMS rates, and certain NSA field adjustments, over a 3-year period beginning in January 2013. These rates will no longer be used after January 2015.
- Since the TLMS/field adjustment portion of employee basic pay is decreasing from January 2013 to January 2015, modified pay retention rules are being implemented to maintain pay equity between employees who are on pay retention and those who are not.

Modified Pay Retention Rules

- Employees whose basic pay exceeds the level IV rate of the Executive Schedule ($155,500) will be placed on pay retention on January 15, 2012.
- From January 2013 to January 2015, employees on pay retention whose basic pay exceeds the level IV rate of the Executive Schedule will receive a decrease in basic pay equivalent to the decreases in non-foreign area TLMS or NSA field adjustments (as applicable).
- This reduction will be calculated by virtually separating the employee's retained rate into an underlying base rate plus the TLMS/field adjustment rate, and reducing the TLMS/field adjustment portion.
- An employee is no longer on pay retention when his or her rate of basic pay falls at or below the level IV rate of the Executive Schedule.

An Example Of How Retained Rates Are Adjusted

- On December 31, 2011, an employee in Hawaii at GG 15/Step 7 has basic pay (base plus Hawaii TLMS) of $159,234. On January 1, 2012, TLMS is increased from 33.19% to 37.72%, resulting in basic pay of $164,650. In accordance with NAREAA, this employee is placed on pay retention on January 15, 2012. Under modified pay retention rules, this retained rate is viewed as an underlying base rate of $119,554 plus a TLMS adjustment of $45,096.
- On the first day of the first pay period in 2013, Hawaii TLMS is reduced to a projected rate of 31.15%. Assuming a hypothetical 1% increase in the underlying base rate, this is how the new retained rate would be calculated.

  1) 2013 underlying base rate = $119,554 + 1% = $120,750
  2) 2013 TLMS adjustment = $120,750 * 31.15% = $37,613
  3) 2013 retained rate = $120,750 + $37,613 = $158,363

- The retained rate for 2014 would be determined in the same manner using the 2014 TLMS adjustment (projected to be approximately 24.58%). In subsequent years, the calculations would use the LMS adjustment since TLMS is being phased out after 2014.

Geographic Reassignment While on Pay Retention

- Employees who are reassigned to a non-foreign area with a different TLMS or NSA field adjustment rate will have the new TLMS/field adjustment factored into their retained rates.
- Employees who are reassigned to a position within the contiguous United States or to a foreign area will have a new retained rate calculated based on the LMS, TLMS, or NSA field adjustment for the new location. Future adjustments to the retained rate will be calculated in accordance with standard pay retention rules found in title 5 § 536.305 of the Code of Federal Regulations.
- Pay retention would cease if the new LMS, TLMS, or NSA field adjustment results in the employee's basic pay falling at or below the level IV rate of the Executive Schedule.

Within-Grade Increases, Awards, and Performance-Based Salary Increases

- Employees in non-foreign areas whose basic pay exceeds the level IV rate of the Executive Schedule due to increases in TLMS or NSA field adjustments are eligible for within-grade increases (WGIs), and awards resulting in base pay increases, or for performance-based salary increases in organizations operating under pay bands.
- WGIs, awards resulting in base pay increases, and performance-based salary increases will result in an increase to the employee's underlying base rate, but not to the TLMS/field adjustment portion of the retained rate.