

FEDERAL PAY EQUITY IN NON-FOREIGN AREAS

Proposed Legislation

(a) Equality for American Samoa

American Samoa is the only non-foreign area having a substantial population of federal employees that is not designated by the Office of Personnel Management as a cost-of-living allowance area. It is the only U.S. territory where COLA is not paid.

This inequity is the result of administrative failures by OPM. The territory of American Samoa has been covered by the COLA statute and by Executive Order 10000 at all times since those laws took effect in 1948. Yet the agency has never acted to protect the rights of federal employees in this remote area. If OPM had carried out its responsibilities, the COLA rate in American Samoa would have been 25% (the statutory maximum) in 2009, as it was in the territories of Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. That was the year Congress finally authorized locality pay for non-foreign areas and fractionally reduced COLA rates. Still, COLA is and will remain a vital component of federal pay in non-foreign areas.

This legislation will provide federal employees in American Samoa with COLA or equivalent compensation to the same extent as provided to federal employees in all other United States territories.

(b) Equal Retirement Benefits

When Congress created the locality pay program in 1990, salaries under the General Schedule were lagging far behind private-sector salaries in many parts of the contiguous United States. (The same situation had existed in non-foreign areas before Congress authorized the COLA program in 1948.) There were large differences in living costs from one area to another. Rather than continue relying on uniform GS rates to set federal pay, Congress followed the COLA model and authorized additional compensation in varying percentages from area to area. If a gap remained between average federal pay and average non-federal pay, it would be the same gap, proportionally, in all areas.

In the 1990 act, Congress made sure that locality pay is included in the retirement base. It is an integral and indispensable part of regular salaries, and must be taken into account in calculating retirement annuities.

Congress left non-foreign areas, with their extremely high costs of living, out of the locality pay program, knowing that COLA had long served the same purpose that locality pay would serve in the contiguous United States. It went without saying that the older form of additional compensation called COLA should be treated like the new form called locality pay for purposes of calculating retirement annuities and other benefits. In fact, research confirms that Congress has always intended COLA to be included in the retirement base. It is an integral and indispensable part of regular salaries, like locality pay.

This legislation directs OPM to include COLA in base pay and basic pay for purposes of calculating retirement annuities and other benefits.

(c) Equal Pay Raises

Since 1994, when federal employees in the contiguous United States began receiving locality pay, Congressional appropriations for salary increases payable to GS employees have been divided between (1) an amount to be used for increasing all dollar amounts in the GS pay grid by a certain percentage and (2) an amount to be used for increasing the average locality pay rate by a certain number of percentage points. However, pay raises in category (2) have been systematically denied to federal employees in non-foreign areas. They did not even receive locality pay until 2010. From 1994 through 2009, locality pay rates increased five-fold, from an average of 3.95% in 1994 to an average of 19.40% in 2009. These were pay raises that employees in non-foreign areas simply did not receive. They received only the GS increases.

This equal pay gap, unfortunately, was masked by the complexities of the COLA program. From 1948 through 2009, each COLA rate reflected what Congress has called “the unusual and unique circumstances” of non-foreign areas, providing additional compensation for costs of living that are significantly different in kind and degree from costs in the Washington DC area. In any non-foreign area, if these costs did not increase faster than living costs around Washington DC, the COLA rate could not increase. Also, even if costs of living in the non-foreign area increased faster, the COLA rate could not exceed a statutory 25% cap. There is no similar ceiling on locality pay. Thus, while locality pay rates were increasing by a factor of 5 before 2010, COLA rates remained essentially flat. Rising costs of living, covered by locality pay increases in the contiguous United States, just cut deeper and deeper into the living standards of federal employees in non-foreign areas.

This discrimination is continuing today, and the equal pay gap is widening with each increase in locality pay. This is because, even after the locality pay program was extended to non-foreign areas beginning in 2010, locality pay raises in non-foreign areas are being cancelled out by commensurate decreases in COLA. As a result, the equal pay gap increased to 15.30% in 2010 and to 15.60% in 2016.

The principle of equal pay for equal work is deeply engrained in the laws governing federal civil service. Federal employees have the right to receive salaries and retirement benefits that are substantially equal in value, as determined by the standard of living they afford, to the salaries and retirement benefits of other federal employees who perform substantially the same work or work of substantially the same value. Any denial of equal-value pay for equal-value work within the federal workforce is inherently in conflict with the government's vital need to recruit and retain the best available employees. It is and has been the responsibility of the Office of Personnel Management to uncover and correct pay inequality insofar as possible by means of special rates established pursuant to 5 U.S.C. § 5305, as well as by other means.

This legislation directs OPM to utilize its administrative authority under 5 U.S.C. § 5305 and 31 U.S.C. § 3702 to provide federal employees in non-foreign areas with the same percentage increases in take home pay as provided under 5 U.S.C. §§ 5303, 5304, and 5304a to federal employees in all other parts of the United States.