

Congress of the United States
Washington, DC 20515

October 4, 2013

Ms. Elaine Kaplan
Acting Director
U.S. Office of Personnel Management
1900 E Street, N.W.
Washington, DC 20415

Dear Director Kaplan:

We are writing to express our deep concern over the Office of Personnel Management's (OPM) position on the issues of the underpayment of retirement annuities of federal employees in the non-foreign areas and the underpayment of annual salaries paid to current federal employees in those areas. We also write to request your help to obtain an administrative settlement to the claims being presented by the affected federal employees and retirees.

Unfortunately, OPM's actions on these two issues have had, and continue to have, a severe negative impact on tens of thousands of current federal employees and retirees in Puerto Rico, as well as those in other U.S. "non-foreign" areas which include U.S. Virgin Islands, Guam, the Northern Mariana Islands, Hawaii, and Alaska.

As the federal agency responsible for managing the retirement annuities of federal employees, OPM, has followed, and continues to follow, a practice of excluding Cost of Living Allowances (COLA) - payable since 1948 to offset the extremely high costs of living in non-foreign areas - from the base used to calculate the amount of said retirement annuities, even while including similar payments made to federal employees in high-cost areas of the contiguous 48 States. As a result, Federal retirees in these areas have dramatically lower standards of living during the last years of their lives than federal retirees everywhere else in our Nation.

In 2009, at the urging of OPM, Congress decided that COLA should be gradually replaced by "locality pay" in non-foreign areas - payable to federal employees elsewhere in the United States since the early 1990's - as the method for adjusting GS salaries for the high cost of living in those areas. However, the methodology utilized by OPM for setting locality pay rates was developed for the contiguous States and does not take into consideration the unique circumstances and high cost of living in the remote and insular non-foreign areas. The consequences are that the salary amounts above GS levels that are received by Federal employees in Puerto Rico and the other non-foreign areas will be as much as 40% lower than the amounts received by their counterparts working in Washington, D.C., even though living costs in these areas - as measured by OPM - are up to 25% higher than in the D.C. area.

The tangible negative impacts of these unfair and unequal OPM decisions and practices are not only felt in the pocketbooks of the federal employees and retirees, but also in the decreased capacity of the federal government to recruit, hire and retain the best talent in workforce for non-foreign areas which is the core mission of OPM. A disturbing example of this was revealed at a June 21, 2012 hearing of the House Homeland Security Subcommittee on Oversight, Investigations and Management, where the negative impact of high vacancy rates in federal law enforcement agencies in Puerto Rico on our overall national security was discussed in detail. The numbers presented at that time were dramatic and deeply concerning: 39% vacancy rates for ATF, 12% for DEA, and 15% for ICE, among others. Undoubtedly there are multiple factors that contribute to these numbers, but it's clear that receiving a lower federal salary for the same work and responsibility is a significant disincentive for highly qualified professionals wishing to enter and stay in the federal workforce in the non-foreign jurisdictions. The significance of this is also increased by the fact that many if not all of these non-foreign areas are of strategic importance to the security interests of the United States.

We firmly believe that Congress did not intend for any of these results. Rather, it intended to prevent them as evidenced by the fact that the claims, which are currently pending before OPM and the Administration, are based on statutes and executive orders governing the payment of higher salaries to Federal employees in non-foreign areas, statutes prohibiting racial and ethnic discrimination in federal employment throughout the United States, and statutes mandating pay of equal value for work of equal value within the Federal workforce.

We believe that Congress, in authorizing additional compensation for federal employees who reside in non-foreign areas, clearly intended to include the full amount of the higher salary in the base used for calculating the retirement annuity. Comparable employees everywhere else in the United States receive similar additional compensation which is included in their retirement base, and there is no basis for discriminating against employees in non-foreign areas. Also, we believe that restricting additional compensation to locality pay, which is designed for employment in the contiguous United States, will prolong discrimination against the large numbers of minority employees in non-foreign areas and fall short of providing all employees in those areas with equal pay for equal work. One option is the implementation of special rates of regular pay for all federal employees in non-foreign areas, as authorized by existing law.

It is our view that the prompt and fair settlement of these claims is not only in the best interests of all parties, but will improve morale and productivity within our Federal workforce, enhance recruitment and retention of Federal employees in these vital areas, and correct long-standing and unintended inequities against mostly racial and ethnic minorities.

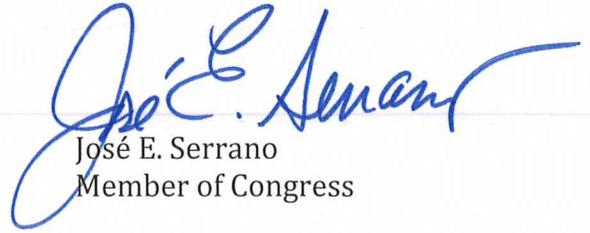
As you are well aware our concerns are also shared by others in Congress and by many national organizations, including, among others, the National Puerto Rican Coalition, Latino Justice PRLDEF, the National Active and Retired Federal Employees Association (NARFE), and the American Federation of Government Employees (AFGE).

Therefore, we respectfully urge OPM to work together with the affected parties to reach a prompt administrative settlement pursuant to 31 U.S.C. § 3702(a) or any other appropriate authority. Thank you for your consideration.

Sincerely,



Pedro R. Pierluisi
Member of Congress



José E. Serrano
Member of Congress

cc: The Hon. David Agnew, Deputy Assistant to the President and Director of Intergovernmental Affairs, The White House
The Hon. Tony West, Associate Attorney General, U.S. Department of Justice