Rules and Regulations

Federal Register
Vol. 80, No. 207
Tuesday, October 27, 2015

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AM88

General Schedule Locality Pay Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations on behalf of the President's Pay Agent. These final regulations link the definitions of General Schedule (GS) locality pay area boundaries to updated metropolitan area definitions established by the Office of Management and Budget (OMB) in February 2013. These final regulations also establish 13 new locality pay areas, which the Federal Salary Council recommended after reviewing pay levels in all ''Rest of U.S.'' metropolitan statistical areas and combined statistical areas with 2,500 or more GS employees.

DATES: The regulations are effective November 27, 2015. The regulations are applicable on the first day of the first pay period beginning on or after January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Joe Ratcliffe, (202) 606–2838; fax: (202) 606–0824; email: *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: Section 5304 of title 5, United States Code (U.S.C.), authorizes locality pay for General Schedule (GS) employees with duty stations in the United States and its territories and possessions. Section 5304(f) authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) 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, 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 Federal Salary Council, which submits annual recommendations on the locality pay program to the Pay Agent. The establishment or modification of locality pay area boundaries must conform to the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553).

On June 1, 2015, OPM published a proposed rule in the **Federal Register** on behalf of the Pay Agent. (See 80 FR 30955.) The proposed rule proposed linking locality pay area definitions to metropolitan areas defined by OMB in February 2013, and proposed establishing 13 new locality pay areas: Albany-Schenectady, NY; Albuquerque-Santa Fe-Las Vegas, NM; Austin-Round Rock, TX; Charlotte-Concord, NC–SC; Colorado Springs, CO; Davenport-Moline, IA–IL; Harrisburg-Lebanon, PA; Kansas City-Overland Park-Kansas City, MO–KS; Laredo, TX; Las Vegas-Henderson, NV–AZ; Palm Bay-Melbourne-Titusville, FL; St. Louis-St. Charles-Farmington, MO–IL; and Tucson-Nogales, AZ. The proposed rule did not propose modifying the standard commuting and GS employment criteria used in the locality pay program to evaluate, as possible areas of application, locations adjacent to the metropolitan area comprising the basic locality pay area. (A *basic locality pay area* is an OMB-defined metropolitan area on which the definition of a locality pay area is based, and an *area of application* is a location that is not part of a basic locality pay area but is included in the locality pay area.) However, the proposed rule proposed using updated commuting patterns data to calculate commuting interchange rates to evaluate, as potential areas of application, locations adjacent to the metropolitan area comprising the basic locality pay area. The updated commuting patterns data used to calculate commuting interchange rates were collected as part of the American Community Survey between 2006 and 2010. In January 2014, the Federal Salary Council recommended use of those commuting patterns data in order to calculate commuting interchange rates used in the locality pay program. (The *commuting interchange rate* is the sum of the percentage of employed residents of the area under consideration who work in the basic locality pay area and the percentage of the employment in the area under consideration that is accounted for by workers who reside in the basic locality pay area. The commuting interchange rate is calculated by including all workers in assessed locations, not just Federal employees.)

The proposed rule provided a 30-day comment period. The Pay Agent reviewed comments received through July 1, 2015. After considering those comments, the Pay Agent has decided to implement the locality pay area definitions in the proposed rule, with three additional changes. Those changes, which are further discussed below, are a name change for one locality pay area; the addition of Berkshire County, MA, to the Albany-Schenectady, NY, locality pay area; and the addition of Harrison County, OH, to the Cleveland-Akron-Canton, OH, locality pay area.

Based on questions OPM staff received on the definition of the ''Harrisburg-York-Lebanon, PA'' locality pay area defined in the proposed rule, the Pay Agent has decided to change the name of that locality pay area to ''Harrisburg-Lebanon, PA.'' The definition of the locality pay area remains the same as in the proposed rule, and the name change is intended to help clarify that York County, PA, is not included in the Harrisburg-Lebanon, PA, locality pay area. Before the name change, that locality pay area's name was based on the name of the February 2013 Harrisburg-York-Lebanon, PA, Combined Statistical Area, the OMB-defined metropolitan area to which the definition of the Harrisburg-Lebanon, PA, locality pay area is linked. However, York County, PA, which has been an area of application to the Washington-Baltimore locality pay area since January 2005, will remain in the Washington-Baltimore-Arlington, DC–MD–VA–WV–PA, locality pay area.

In the proposed rule, the Pay Agent invited comment on how to address

''Rest of U.S.'' locations that are almost but not completely surrounded by potentially higher-paying locality pay areas. After considering comments received, the Pay Agent has decided to include, as areas of application, Berkshire County, MA, in the Albany-Schenectady, NY, locality pay area and Harrison County, OH, in the Cleveland-Akron-Canton, OH, locality pay area. While not completely surrounded by potentially higher-paying locality pay areas, each of those two counties is bordered by three separate locality pay areas. This action includes Berkshire County, MA, and Harrison County, OH, in an adjacent locality pay area with which each county has the highest commuting interchange rate. This policy is consistent with the Pay Agent's treatment, in the proposed rule and under these final regulations, of completely surrounded locations.

Berkshire County, MA, and Harrison County, OH, if left in the ''Rest of U.S.'' locality pay area, would each have a land boundary more than 75 percent bordered by three separate locality pay areas. In addition, Berkshire and Harrison Counties each have commuting interchange rates, with the three locality pay areas they border, that sum to more than 7.5 percent. (The Pay Agent notes that the two completely surrounded locations included in separate locality pay areas under these final regulations—Kent County, MD, which will be included in the Washington-Baltimore-Arlington, DC–MD–VA–WV–PA, locality pay area, and Lancaster County, PA, which will be included in the Harrisburg-Lebanon, PA, locality pay area—also have significant commuting interchange rates. Kent and Lancaster Counties each have commuting interchange rates of more than 7.5 percent with the locality pay area to which they will become areas of application under these final regulations.)

In analyzing counties almost but not completely surrounded by separate locality pay areas under the locality pay area definitions proposed in the proposed rule, the Pay Agent also considered the driving distance by road between an evaluated county's most populous duty station, in terms of GS employment, and the most populous duty station, in terms of GS employment, in the closest county within the adjacent locality pay area with the highest commuting interchange rate. (Driving distances and commuting interchange rates served different purposes in the analysis of locations almost but not completely surrounded by potentially higher-paying locality pay areas. While commuting interchange rates were used to indicate the extent to which a location is part of each adjacent locality pay area's local labor market, driving distances were considered as an indicator of the potential for GS employees to commute to a higher-paying locality pay area.) For both Berkshire County, MA, and Harrison County, OH, the driving distance is less than 50 miles between the county's most populous duty station, in terms of GS employment, and the most populous duty station, in terms of GS employment, in the closest county within the adjacent locality pay area with the highest commuting interchange rate.

The Pay Agent does not believe that a ''Rest of U.S.'' county being mostly bordered by separate locality pay areas necessarily warrants action unless there is evidence of a substantial labor market linkage with one or more neighboring locality pay areas. However, the Pay Agent believes the aforementioned information on commuting and driving distances for Berkshire County, MA, and Harrison County, OH, when considered along with the extent to which each of these counties is bordered by three separate locality pay areas, does warrant action. The other single-county ''Rest of U.S.'' locations bordered by three separate locality pay areas have a smaller percentage of land boundary bordered by separate locality pay areas and/or have lesser commuting or greater driving distances to the adjacent locality pay areas. (No single-county ''Rest of U.S.'' locations are bordered by more than three separate locality pay areas.) Individuals concerned about agency recruitment or retention capabilities in locations bordered by multiple separate locality pay areas and remaining in the ''Rest of U.S.'' locality pay area under these final regulations may provide testimony to the Federal Salary Council on locations of concern.

Impact and Implementation

Using February 2013 OMB-defined metropolitan area definitions as the basis for locality pay area boundaries and using updated commuting patterns data to evaluate potential areas of application will add a number of counties now included in the ''Rest of U.S.'' locality pay area to separate locality pay areas, which will impact about 6,300 GS employees.

Establishing 13 new locality pay areas will impact about 102,000 GS employees. Implementing the 13 new locality pay areas will not automatically change locality pay rates now applicable in those areas because locality pay percentages are established by Executive order under the President's authority in 5 U.S.C. 5304 or 5304a, and the President decides each year whether to adjust locality pay percentages. When locality pay percentages are increased, past practice has been to allocate a percent of the total GS payroll for locality raises and to have the overall dollar cost for such pay raises be the same, regardless of the number of locality pay areas. If a percent of the total GS payroll is allocated for locality pay increases, the addition of new areas could result in a smaller amount to allocate for locality pay increases in existing areas. Implementing higher locality pay rates in the 13 new locality pay areas could thus result in relatively lower pay increases for employees in existing locality pay areas than they would otherwise receive.

Comments on the Proposed Rule

OPM received 707 comments on the proposed rule. Most commenters supported the proposed changes in the definitions of locality pay areas.

Many commenters expressed the belief that various indicators of living costs should be considered in defining locality pay areas or in setting locality pay. Living costs are not directly considered in the locality pay program. Locality pay is not designed to equalize living standards for GS employees across the country. Under 5 U.S.C. 5304, locality pay rates are based on comparisons of GS pay and non-Federal pay at the same work levels in a locality pay area. Relative living costs may indirectly affect non-Federal pay levels, but living costs are just one of many factors that affect the supply of and demand for labor, and therefore labor costs, in a locality pay area.

Some commenters disagreed it is appropriate to establish 13 new locality pay areas. A number of those commenters expressed concern that existing locality pay areas' future pay levels could be set lower than they otherwise would, due to establishment of new locality pay areas. The President's Pay Agent continues to believe it is appropriate to establish the 13 new locality pay areas. The goal of the locality pay program is to reduce disparities between GS pay and non-Federal pay for the same levels of work in locations where such disparities are significant. The Federal Salary Council recommended the 13 new locality pay areas after reviewing pay levels in all ''Rest of U.S.'' metropolitan statistical areas and combined statistical areas with 2,500 or more GS employees. The Federal Salary Council found that the percentage difference between GS and non-Federal pay levels for the same levels of work—*i.e.,* the pay disparity—

in these 13 locations was substantially greater than the ''Rest of U.S.'' pay disparity over an extended period. Because pay disparities calculated for the ''Rest of U.S.'' locality pay area are based on average pay across many metropolitan areas throughout the United States with varying pay levels, and because pay in those metropolitan areas can change over time, the Pay Agent believes it is appropriate to monitor pay levels in ''Rest of U.S.'' metropolitan areas to the extent it is feasible to do so. When such monitoring reveals that a metropolitan area has a pay disparity significantly exceeding the overall ''Rest of U.S.'' pay disparity over an extended period, the Pay Agent believes it is appropriate to establish the metropolitan area as a separate locality pay area.

Some commenters disagreed it is appropriate to use February 2013 OMB-defined metropolitan areas to define locality pay areas. Some of those commenters made living-cost comparisons between different portions of the February 2013 OMB metropolitan areas, *e.g.,* comparisons between the central and outlying portions of those metropolitan areas. Some commenters expressed concern that future locality pay levels might be set lower than they otherwise would due to including certain portions of a metropolitan area, such as its outlying locations, in a locality pay area. Some commenters suggested splitting OMB-defined metropolitan areas into separate locality pay areas so that some locations in a metropolitan area could receive higher pay rates than other locations within the metropolitan area.

Prior to implementation of locality pay, the Federal Salary Council recommended, and the Pay Agent approved, the use of OMB-defined metropolitan areas as the basis for locality pay area boundaries, and OMB-defined metropolitan areas have been the basis for locality pay area boundaries since locality pay was implemented in 1994. (A detailed history of the use of OMB-defined metropolitan areas in the locality pay program can be found in the Federal Salary Council's January 2014 recommendations, which are posted on the OPM Web site at *https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/federal-salary-council/recommendation13.pdf.*)

The Pay Agent continues to believe it is appropriate to use OMB-defined metropolitan areas as the basis for locality pay area boundaries and has no evidence that it is appropriate to split an OMB-defined metropolitan area into separate locality pay areas. Since OMB-defined metropolitan areas will continue to serve as the basis for locality pay area boundaries, the Pay Agent believes it makes sense to update the metropolitan areas used in the locality pay program to the February 2013 OMB-defined metropolitan areas, since the definitions of those metropolitan areas reflect the most recent information on population distribution and commuting patterns. Departing from the practice of defining basic locality pay areas based on OMB-defined metropolitan areas or splitting those metropolitan areas into separate locality pay areas would be a significant change, and the implications would have to be carefully considered. Individuals interested in recommending alternatives to defining basic locality pay areas based on entire OMB-defined metropolitan areas may provide testimony to the Federal Salary Council.

Some commenters disagreed it is appropriate to establish new areas of application or maintain existing ones, with some commenters expressing concern that future locality pay levels could be set lower than they otherwise would due to including new areas of application in locality pay areas. Prior to implementation of locality pay, the Federal Salary Council recommended, and the Pay Agent agreed, that OMB-defined metropolitan areas not be the sole basis for defining locality pay areas. Ever since locality pay was implemented in 1994, criteria have been used in the locality pay program to evaluate, as potential areas of application, locations adjacent to the metropolitan area comprising the basic locality pay area. The Pay Agent continues to believe it is appropriate to establish areas of application when approved criteria for doing so are met.

Some commenters disagreed it is appropriate to retain, in their current locality pay area, locations that would otherwise move to a potentially lower-paying locality pay area as a result of using February 2013 OMB-defined metropolitan areas as the basis for locality pay area boundaries. The Pay Agent continues to believe it is appropriate to retain such locations in their current locality pay area. If such a location were moved to a lower-paying locality pay area, current GS employees in the location might be entitled to pay retention under 5 U.S.C. 5363 and 5 CFR part 536 and would not have a reduction in pay. GS employees hired after movement of the location to the lower-paying locality pay area would not be entitled to pay retention and would receive the lower locality pay rates that would be applicable in the location. The Pay Agent believes such an outcome would be disruptive for agencies and employees in affected locations.

A number of commenters objected that locations not included in a separate locality pay area were to remain in the ''Rest of U.S.'' locality pay area under the proposed rule. Some of those locations are metropolitan areas for which the Federal Salary Council has studied disparities between non-Federal pay and Federal pay (pay disparities) over several years of data and found that the pay disparities do not significantly exceed the pay disparity for the ''Rest of U.S.'' locality pay area over the same period. Other locations referred to in this category of comments do not meet the criteria for areas of application. In some cases, commenters cited possible recruitment and retention difficulties the commenters believe agencies may have in certain locations that would remain in the ''Rest of U.S.'' locality pay area when these final regulations are put into effect. The Pay Agent has no evidence that the changes these final regulations will make in locality pay area definitions will create recruitment and retention challenges for Federal employers. However, should recruitment and retention challenges exist in a location, Federal agencies have considerable administrative authority to address those challenges through the use of current pay flexibilities. Information on these flexibilities is posted on the OPM Web site at *http://www.opm.gov/policy-data-oversight/pay-leave/pay-and-leave-flexibilities-for-recruitment-and-retention.*

A number of commenters expressed their views on pay levels in locality pay areas. Some commenters suggested specific locality pay percentages to apply to new or existing locality pay areas, and some commenters offered opinions on the extent to which pay increases are needed in some locality pay areas compared to others. Such comments as these are outside of the scope of these final regulations. The purpose of these final regulations is to define the boundaries of locality pay areas. The role of the Pay Agent with regard to locality pay percentages is to report annually to the President what locality pay percentages would go into effect under the Federal Employees Pay Comparability Act of 1990. The President establishes a base General Schedule and sets locality pay percentages each year by Executive order.

Some commenters expressed concern that certain Federal pay systems outside of the General Schedule would not benefit from the changes planned for

definitions of GS locality pay areas. Other commenters suggested that Federal retirees should receive increased retirement payments if, before they retired, they worked in a ''Rest of U.S.'' duty station that will now be included in a higher-paying locality pay area. Such comments as these are outside of the scope of these final regulations. The purpose of these final regulations is to define locality pay areas for current Federal employees who receive locality pay under 5 U.S.C. 5304, not to set pay levels for Federal employees who do not receive locality pay under 5 U.S.C. 5304 or to determine retirement payments.

A number of comments reflected misunderstanding of the proposed rule's definitions of locality pay areas, with some comments indicating a belief that certain counties actually included in a proposed locality pay area were excluded. The definitions of locality pay areas are based on combined statistical areas (CSAs) and metropolitan statistical areas (MSAs). Because over time counties can be added to CSAs and MSAs, and because the Pay Agent wanted any such changes in CSAs and MSAs to be reflected automatically in the definitions of locality pay areas, rather than list every county in each locality pay area, these final regulations will define locality pay areas by listing the CSA and MSA comprising the basic locality pay area, with areas of application listed as single counties. These final regulations define *CSA* as the geographic scope of a CSA, as defined in OMB Bulletin No. 13–01, plus any areas subsequently added to the CSA by OMB, and define *MSA* as the geographic scope of an MSA, as defined in OMB Bulletin No. 13–01, plus any areas subsequently added to the MSA by OMB. (OMB Bulletin 13–01 can be found at *https://www.whitehouse.gov/sites/default/files/omb/bulletins/2013/b-13-01.pdf.*)

A number of comments concerned locations which, under the locality pay area definitions in the proposed rule, would remain in the ''Rest of U.S.'' locality pay area and be bordered by multiple locality pay areas. For the reasons discussed above in the ''Supplementary Information'' section of this final rule, after evaluating single-county locations bordered by multiple locality pay areas, the Pay Agent has decided to include, as areas of application, Berkshire County, MA, in the Albany-Schenectady, NY, locality pay area and Harrison County, OH, in the Cleveland-Akron-Canton, OH, locality pay area. Individuals concerned about locations that are bordered by multiple separate locality pay areas and remain in the ''Rest of U.S.'' locality pay area, under the locality pay area definitions implemented by these final regulations, may provide testimony to the Federal Salary Council on locations of concern.

Several commenters expressed concern that U.S. counties that are isolated off the coast of the U.S. mainland, and which do not meet criteria for areas of application, remain in the ''Rest of U.S.'' locality pay area under the changes these regulations will make in the definitions of locality pay areas. Some of these comments anecdotally referred to recruitment and retention challenges the commenters attributed to the locations being limited to ''Rest of U.S.'' locality pay. Federal agencies have considerable discretionary authority to provide pay and leave flexibilities to address significant recruitment and retention challenges, and information on these flexibilities is posted on the OPM Web site at *http://www.opm.gov/policy-data-oversight/pay-leave/pay-and-leave-flexibilities-for-recruitment-and-retention.*

One commenter opposed any movement of ''Rest of U.S.'' locations to separate pay areas, and said the Government should find less costly alternatives, such as moving Federal employment sites to areas with lower living or labor costs and increasing the use of telework. The Pay Agent does not believe that the need to vary pay levels geographically based on labor costs can be substantially reduced in the near term by relocating Government agencies' duty stations or expanding telework programs. In addition, such a comment is outside the scope of these final regulations. The purpose of these regulations is to establish locality pay area boundaries the Pay Agent has determined to be appropriate.

One commenter suggested that adjacent locality pay areas be combined into single locality pay areas, with resultant cost savings to the Government. Such a change would be a significant departure from current practices in the locality pay program and could have significant implications. The implications for adjacent locality pay areas are unknown and would have to be carefully considered. Individuals interested in pursuing this idea may provide testimony to the Federal Salary Council.

Some comments reflected a mistaken belief that the calculation of commuting interchange rates in the locality pay program includes only commuting by Federal employees, rather than commuting by all types of workers in assessed locations. Some commenters expressed the opinion that commuting interchange rates including only commuting for Federal employees should be considered in defining locality pay areas. In evaluating locations adjacent to basic locality pay areas as potential areas of application, commuting by all types of workers, not just Federal employees, is used as a criterion. Commuting interchange rates used in the locality pay program are a measure of economic linkage between a basic locality pay area and an adjacent location. Commuting interchange rates used in the locality pay program are used to indicate the extent to which a location is part of the locality pay area's entire local labor market, not to indicate the extent to which Federal employees commute between locations.

Executive Order 13563 and Executive Order 12866

OMB has reviewed this rule in accordance with E.O. 13563 and E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Beth F. Cobert,

Acting Director.

Accordingly, OPM is amending 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, 5305, and 5941(a), 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 § 531.602, the definitions of CSA and MSA are revised to read as follows:

§ 531.602 Definitions.

* * * * *

CSA means the geographic scope of a Combined Statistical Area, as defined by the Office of Management and Budget (OMB) in OMB Bulletin No. 13–01, plus any areas subsequently added to the CSA by OMB.

* * * * *

MSA means the geographic scope of a Metropolitan Statistical Area, as defined by the Office of Management and Budget (OMB) in OMB Bulletin No. 13–01, plus any areas subsequently added to the MSA by OMB.

* * * * *

■ 3. 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) Albany-Schenectady, NY—consisting of the Albany-Schenectady, NY CSA and also including Berkshire County, MA;

(3) Albuquerque-Santa Fe-Las Vegas, NM—consisting of the Albuquerque-Santa Fe-Las Vegas, NM CSA;

(4) Atlanta—Athens-Clarke County—Sandy Springs, GA–AL—consisting of the Atlanta—Athens-Clarke County—Sandy Springs, GA CSA and also including Chambers County, AL;

(5) Austin-Round Rock, TX—consisting of the Austin-Round Rock, TX MSA;

(6) Boston-Worcester-Providence, MA–RI–NH–CT–ME—consisting of the Boston-Worcester-Providence, MA–RI–NH–CT CSA, except for Windham County, CT, and also including Androscoggin County, ME, Cumberland County, ME, Sagadahoc County, ME, and York County, ME;

(7) Buffalo-Cheektowaga, NY—consisting of the Buffalo-Cheektowaga, NY CSA;

(8) Charlotte-Concord, NC–SC—consisting of the Charlotte-Concord, NC–SC CSA;

(9) Chicago-Naperville, IL–IN–WI—consisting of the Chicago-Naperville, IL–IN–WI CSA;

(10) Cincinnati-Wilmington-Maysville, OH–KY–IN—consisting of the Cincinnati-Wilmington-Maysville, OH–KY–IN CSA and also including Franklin County, IN;

(11) Cleveland-Akron-Canton, OH—consisting of the Cleveland-Akron-Canton, OH CSA and also including Harrison County, OH;

(12) Colorado Springs, CO—consisting of the Colorado Springs, CO MSA and also including Fremont County, CO, and Pueblo County, CO;

(13) Columbus-Marion-Zanesville, OH—consisting of the Columbus-Marion-Zanesville, OH CSA;

(14) Dallas-Fort Worth, TX–OK—consisting of the Dallas-Fort Worth, TX–OK CSA and also including Delta County, TX, and Fannin County, TX;

(15) Davenport-Moline, IA–IL—consisting of the Davenport-Moline, IA–IL CSA;

(16) Dayton-Springfield-Sidney, OH—consisting of the Dayton-Springfield-Sidney, OH CSA and also including Preble County, OH;

(17) Denver-Aurora, CO—consisting of the Denver-Aurora, CO CSA and also including Larimer County, CO;

(18) Detroit-Warren-Ann Arbor, MI—consisting of the Detroit-Warren-Ann Arbor, MI CSA;

(19) Harrisburg-Lebanon, PA—consisting of the Harrisburg-York-Lebanon, PA CSA, except for Adams County, PA, and York County, PA, and also including Lancaster County, PA;

(20) Hartford-West Hartford, CT–MA—consisting of the Hartford-West Hartford, CT CSA and also including Windham County, CT, Franklin County, MA, Hampden County, MA, and Hampshire County, MA;

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

(22) Houston-The Woodlands, TX—consisting of the Houston-The Woodlands, TX CSA and also including San Jacinto County, TX;

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

(24) Indianapolis-Carmel-Muncie, IN—consisting of the Indianapolis-Carmel-Muncie, IN CSA and also including Grant County, IN;

(25) Kansas City-Overland Park-Kansas City, MO–KS—consisting of the Kansas City-Overland Park-Kansas City, MO–KS CSA and also including Jackson County, KS, Jefferson County, KS, Osage County, KS, Shawnee County, KS, and Wabaunsee County, KS;

(26) Laredo, TX—consisting of the Laredo, TX MSA;

(27) Las Vegas-Henderson, NV–AZ—consisting of the Las Vegas-Henderson, NV–AZ CSA;

(28) Los Angeles-Long Beach, CA—consisting of the Los Angeles-Long Beach, CA CSA and also including Kern County, CA, and Santa Barbara County, CA;

(29) Miami-Fort Lauderdale-Port St. Lucie, FL—consisting of the Miami-Fort Lauderdale-Port St. Lucie, FL CSA and also including Monroe County, FL;

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

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

(32) New York-Newark, NY–NJ–CT–PA—consisting of the New York-Newark, NY–NJ–CT–PA CSA and also including all of Joint Base McGuire-Dix-Lakehurst;

(33) Palm Bay-Melbourne-Titusville, FL—consisting of the Palm Bay-Melbourne-Titusville, FL MSA;

(34) Philadelphia-Reading-Camden, PA–NJ–DE–MD—consisting of the Philadelphia-Reading-Camden, PA–NJ–DE–MD CSA, except for Joint Base McGuire-Dix-Lakehurst;

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

(36) Pittsburgh-New Castle-Weirton, PA–OH–WV—consisting of the Pittsburgh-New Castle-Weirton, PA–OH–WV CSA;

(37) Portland-Vancouver-Salem, OR–WA—consisting of the Portland-Vancouver-Salem, OR–WA CSA;

(38) Raleigh-Durham-Chapel Hill, NC—consisting of the Raleigh-Durham-Chapel Hill, NC CSA and also including Cumberland County, NC, Hoke County, NC, Robeson County, NC, Scotland County, NC, and Wayne County, NC;

(39) Richmond, VA—consisting of the Richmond, VA MSA and also including Cumberland County, VA, King and Queen County, VA, and Louisa County, VA;

(40) Sacramento-Roseville, CA–NV—consisting of the Sacramento-Roseville, CA CSA and also including Carson City, NV, and Douglas County, NV;

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

(42) San Jose-San Francisco-Oakland, CA—consisting of the San Jose-San Francisco-Oakland, CA CSA and also including Monterey County, CA;

(43) Seattle-Tacoma, WA—consisting of the Seattle-Tacoma, WA CSA and also including Whatcom County, WA;

(44) St. Louis-St. Charles-Farmington, MO–IL—consisting of the St. Louis-St. Charles-Farmington, MO–IL CSA;

(45) Tucson-Nogales, AZ—consisting of the Tucson-Nogales, AZ CSA and also including Cochise County, AZ;

(46) Washington-Baltimore-Arlington, DC–MD–VA–WV–PA—consisting of the Washington-Baltimore-Arlington, DC–MD–VA–WV–PA CSA and also including Kent County, MD, Adams County, PA, York County, PA, King George County, VA, and Morgan County, WV; and

(47) 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. 2015–27380 Filed 10–26–15; 8:45 am]

BILLING CODE 6325–39–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 390

RIN 3064–AE19

Removal of Transferred OTS Regulations Regarding Electronic Operations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (''FDIC'') is adopting a final rule to rescind and remove from the Code of Federal Regulations the transferred regulation entitled ''Electronic Operations.'' This regulation was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision (''OTS'') on July 21, 2011, in connection with the implementation of applicable provisions of title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). There is no corresponding FDIC Electronic Operations rule and the rule is deemed obsolete, unnecessary, and burdensome. Therefore, the FDIC has decided to rescind and remove the regulation in its entirety.

DATES: The final rule is effective on November 27, 2015.

FOR FURTHER INFORMATION CONTACT: Jennifer Maree, Legal Division, (202) 898–6543; Frederick Coleman, Division of Risk Management Supervision, (703) 254–0452.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Dodd-Frank Act

Title III of the Dodd-Frank Act [1] provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, codified at 12 U.S.C. 5411, the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (''OCC''), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (''FRB''), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act, codified at 12 U.S.C. 5414(b), provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such materials were in effect on the day before the transfer date, they continue to be in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act, codified at 12 U.S.C. 5414(c), further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations which would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[2]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act, codified at 12 U.S.C. 5412(b)(2)(B)(i)(II), granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act (''FDI Act'') and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act amended the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act, 12 U.S.C. 1813(q), to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify and rescind regulations involving such associations, as well as for State nonmember banks and insured branches of foreign banks.

As noted, on June 14, 2011, pursuant to this authority, the FDIC's Board of Directors reissued and redesignated certain transferring OTS regulations. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[3] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

One of the OTS rules transferred to the FDIC requires State savings associations to notify the FDIC at least 30 days before establishing a transactional Web site. The OTS rule, formerly found at 12 CFR part 555, subpart B (''part 555, subpart B''), was transferred to the FDIC with only technical changes and is now found in the FDIC's rules at 12 CFR part 390, subpart L (''part 390, subpart L''), entitled ''Electronic Operations.'' The FDIC has no such corresponding rule. After careful review of part 390, subpart L, the FDIC has decided to rescind part 390, subpart L, in its entirety, because, as discussed below, it is obsolete, unnecessary, and burdensome.

II. Proposed Rule

A. Removal of Part 390, Subpart L (Former OTS Part 555, Subpart B)

On July 21, 2014, the FDIC published a Notice of Proposed Rulemaking (''Proposed Rule'') regarding the removal of part 390, subpart L, which governs electronic operations of State savings associations.[4] The Proposed Rule would have removed part 390, subpart L, from the CFR in an effort to streamline FDIC regulations for all FDIC-supervised institutions. As discussed in the Proposed Rule, the FDIC carefully reviewed the transferred rule, part 390, subpart L, and determined that it should be rescinded because it is obsolete, unnecessary, and burdensome.

III. Comments

The FDIC issued the Proposed Rule with a 60-day comment period, which closed on September 19, 2014. No comments on the Proposed Rule were received by the FDIC. Consequently, the final rule (''Final Rule'') is adopted as proposed without any changes.

IV. Explanation of the Final Rule

As discussed in the Proposed Rule, the OTS enacted the Electronic Operations rule, part 390, subpart L,

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] 76 FR 39247 (July 6, 2011).

[3] 76 FR 47652 (Aug. 5, 2011).

[4] 79 FR 42231 (July 21, 2014).