



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

CPM 2023-05
March 30, 2023

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

**FROM: KIRAN A. AHUJA
DIRECTOR**

Subject: Recent Pay and Leave-Related Legislative Changes

This is to inform you of several legislative changes and extensions affecting Federal employee pay and certain benefits. The changes resulting from the enactment of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Public Law 117-263, December 23, 2022) and the Consolidated Appropriations Act, 2023 (Public Law 117-328, December 29, 2022) are summarized below.

I. James M. Inhofe NDAA for FY 2023 (Public Law 117-263, December 23, 2022)

Section 601 – Reserve Income Replacement Program

Section 601(a) amends 37 U.S.C. 910(g) to extend the expiration date for the Reserve Income Replacement Program from December 31, 2022, to December 31, 2023.

The Reserve Income Replacement Program is administered by the Department of Defense and provides income replacement payments for certain reserve component members experiencing extended and frequent mobilization for active-duty service. (This amendment does not affect the reservist differential authority under 5 U.S.C. 5538, which is a separate program for Federal employees. A Federal employee who is entitled to a reservist differential may not receive payments under 37 U.S.C. 910 for the same period. See the [reservist differential](#) fact sheet for additional information.

Section 1102 – Modification and 1-Year Extension of Authority to Waive Annual Limitation on Premium Pay and Aggregate Limitation on Pay for Certain Federal Civilian Employees Working Overseas

Section 1102(a)(2) extends to calendar year (CY) 2023 the authority provided in section 1101 of the Duncan Hunter NDAA for FY 2009 (Public Law 110-417, October 14, 2008), as amended, for the head of an agency to waive the normally applicable premium pay cap established in 5 U.S.C. 5547. This waiver authority is modified in 2023 to apply to certain civilian employees who perform qualifying work while in any overseas location. In addition, section 1102(a)(1) eliminates the previous geographic

requirement that such work be performed in an area (1) of responsibility of the United States Central Command (CENTCOM) or (2) formerly in the CENTCOM area of responsibility but which has been moved to the area of responsibility of the Commander of the United States Africa Command (AFRICOM). The annual limitation on basic pay and premium pay allowed under the waiver authority in CY 2023 is the officially established annual salary rate for the Vice President under 3 U.S.C. 104 (\$272,100 in 2023). In addition, when an employee is granted a section 1101(a) waiver, any pay in addition to basic pay received for service during the waiver period is not counted as compensation in applying the aggregate limitation on pay under 5 U.S.C. 5307.

Under the amended law, eligible employees may be performing covered work in any overseas location. The change in coverage resulting from dropping the geographic restrictions will apply prospectively starting on the date of enactment (i.e., December 23, 2022). Any work meeting the new coverage conditions performed on or after this date would be covered by the amended law. Any past work that was not covered before the date of enactment is still not covered; there is no retroactive effect. In considering application to CY 2022, note that the annual premium pay cap is applied by calendar year to payments that are payable in the given calendar year. Any work performed in CY 2022 after enactment of Public Law 117-263 will have a payment date in CY 2023. Therefore, premium payments payable in CY 2022 are not affected.

Section 1101(d) of Public Law 110-417 continues to provide the U.S. Office of Personnel Management (OPM) Director with the discretion to issue regulations for this waiver authority. OPM does not currently plan to issue regulations. However, each agency should establish policies for using this waiver authority if it has covered employees. To ensure agencies apply this discretionary authority consistently, we have coordinated with the Department of Defense and the Department of State to develop the attached summary of key elements agencies should include in their policies implementing the waiver authority (Attachment). The attached summary includes additional information on employee coverage, approval criteria, and special instructions on applying the waiver authority to employees working in Iraq.

Section 1103 – 1-Year Extension of Temporary Authority to Grant Allowances, Benefits, and Gratuities to Civilian Personnel on Official Duty in a Combat Zone

Section 1103 grants the head of an agency the discretionary authority until the end of **FY 2024** (i.e., September 30, 2024), to provide an individual employed by, or assigned or detailed to, the agency, allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980. The employee must be on official duty in Pakistan or a combat zone, as defined by section 112(c) of the Internal Revenue Code of 1986.

Section 1103 amends section 1603(a)(2) of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234, June 15, 2006), as added by section 1102 of the NDAA for FY 2009 (Public Law 110-417, October 14, 2008) and amended by section 1112 of the NDAA for FY 2012 (Public Law 112-81, December 31, 2011), section 1104 of the NDAA for FY 2013 (Public Law 112-239, January 2, 2013), section 1102 of the NDAA for FY 2014 (Public Law 113-66, December 26, 2013), section 1102 of the NDAA for FY 2015 (Public Law 113-291, December 19, 2014), section 1102 of the NDAA for FY 2016 (Public Law 114-92, November 25, 2015), section 1133 of the NDAA for FY 2017 (Public Law 114-328, December 23, 2016), section 1108 of the NDAA for FY 2018 (Public Law 115-91, December 12, 2017), section 1115 of the NDAA for FY 2019 (Public Law 115-232, August 13, 2018), section 1104 of the NDAA for FY 2020 (Public Law 116-92, December 20, 2019), section 1106 of the NDAA for FY 2021 (Public Law 116-283, January 1, 2021), and section 1114 of the NDAA for FY 2022 (Public Law 117-81, December 27, 2021).

Section 9717 – Locality Pay for Federal Employees Working Overseas Under Domestic Employee Teleworking Overseas Agreements

Section 9717 authorizes certain employees working overseas under a Domestic Employee Teleworking Overseas (DETO) agreement to receive a special locality payment calculated as the lesser of (1) the amount of locality pay the employee would have been paid under 5 U.S.C. 5304 or 5304a if the employee’s official duty station had not been changed to an overseas location under the applicable DETO agreement or (2) the amount of overseas locality pay the employee would be paid if the employee were an eligible member of the Foreign Service (which, under current law, is two-thirds of the locality pay authorized for a duty station within the District of Columbia). Locality payments under section 9717 must begin to be paid (i.e., take effect) no later than 60 days after the date of enactment of the NDAA for FY 2023 (February 21, 2023) and are subject to the same terms and conditions as locality pay under 5 U.S.C. 5304 or 5304a.

While section 9717 did not give OPM authority to regulate or administer the DETO locality pay program, OPM has coordinated with the Department of State and the Department of Defense to provide information to agencies to assist them in implementing the program. See the attached information sheet on Domestic Employees Teleworking Overseas (DETO) – Locality Pay for additional guidance.

Section 11706 – Improving Professional Mariner Staffing

Section 11706(a) amends subtitle E of the National Oceanic and Atmospheric Administration (NOAA) Commissioned Corps Act of 2002 (33 U.S.C. 3071 et seq.) by adding a new section 269B providing for shore leave for professional mariners. Section 269B(b) authorizes the granting of shore leave for “professional mariners” at a rate of 4 days per pay period. As defined by section 269B(c), a “professional mariner” is “an individual employed on a vessel of the [National Oceanic and Atmospheric]

Administration who has the necessary expertise to serve in the engineering, deck, steward, electronic technician, or survey department.” A qualifying mariner serving in a temporary promotion position aboard a vessel may be paid the difference between such mariner's temporary and permanent rates of pay for leave accrued while serving in the temporary promotion position. As provided by section 269B(a), the Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator may prescribe regulations relating to shore leave for professional mariners without regard to the requirements of 5 U.S.C. 6305 and related OPM regulations in 5 CFR part 630, subpart G.

II. Consolidated Appropriations Act, 2023 (Public Law 117-328, December 29, 2022)

Section 440 of Division G – Continued Premium Pay Limitation Waiver Authority for Emergency Wildland Fire Suppression Activities

Section 440 extends through CY 2023 the temporary authority found in section 1701 of division B of the Extending Government Funding and Delivering Emergency Assistance Act (Public Law 117-43, September 30, 2021), as amended by section 601 of division HH of the Consolidated Appropriations Act, 2022 (Public Law 117-103, March 15, 2022), requiring the Departments of the Interior and Agriculture to waive the premium pay limitation under 5 U.S.C. 5547(a) for wildland firefighters and other fire management response officials performing services related to emergency wildland fire suppression activities. Under this authority the aggregate of a covered employee's basic pay and premium pay for calendar year 2023 may not exceed the rate payable for level II of the Executive Schedule (\$212,200 in 2023). Any premium pay not applied to the premium pay cap under 5 U.S.C. 5547(a) will not apply towards the aggregate limitation on pay under 5 U.S.C. 5307.

Additional Information

Agency headquarters-level human resources offices may contact OPM at pay-leave-policy@opm.gov. Employees should contact their agency human resources office for further information on this memorandum.

Attachments (see 508-conformant PDFs below)

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, and Human Resources Directors

Authority to Waive Annual Limitation on Premium Pay and Aggregate Limitation on Pay for Certain Federal Civilian Employees Working Overseas

Summary of Key Necessary Elements in Agency Policies Implementing Section 1101 of Public Law 110-417, as Amended, for Calendar Year 2023

Section 1101 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417, October 14, 2008), as amended, provides a special authority for the head of an agency to waive the normally applicable premium pay cap established in 5 U.S.C. 5547 for certain employees in calendar year 2023. Each agency should establish policies for using this waiver authority if it has covered employees. To ensure agencies apply this discretionary authority consistently, we are providing a summary of key elements agencies should include in their policies implementing the waiver authority. The summary below includes additional information on employee coverage, approval criteria, and special instructions on applying the waiver authority to employees working in Iraq.

Authority

Section 1102 of Public Law 117-263, December 23, 2022, amends and extends to calendar year 2023 the authority of section 1101 of Public Law 110-417, October 14, 2008, as amended by section 1106 of Public Law 111-84, October 28, 2009; section 1103 of Public Law 111-383, January 7, 2011; section 1104 of Public Law 112-81, December 31, 2011; section 1101 of Public Law 112-239, January 2, 2013; section 1101 of Public Law 113-66, December 26, 2013; section 1101 of Public Law 113-291, December 19, 2014; section 1108 of Public Law 114-92, November 25, 2015; section 1137 of Public Law 114-328, December 23, 2016; section 1105 of Public Law 115-91, December 12, 2017; section 1104 of Public Law 115-232, August 13, 2018; section 1105 of Public Law 116-92, December 20, 2019; section 1105 of Public Law 116-283, January 1, 2021; and section 1112 of Public Law 117-81, December 27, 2021. (Hereafter, all references to “section 1101” in this attachment refer to section 1101 of Public Law 110-417, as amended.) Historical background regarding the application of this waiver authority can be found in [CPM 2012-02](#), March 21, 2012; [CPM 2012-05](#), July 17, 2012; [CPM 2013-04](#), March 21, 2013; [CPM 2013-11](#), June 17, 2013; [CPM 2014-04](#), February 10, 2014; [CPM 2014-08](#), July 22, 2014; [CPM 2015-02](#), March 26, 2015; [CPM 2015-06](#), July 27, 2015; [CPM 2016-02](#), February 18, 2016; [CPM 2016-08](#), August 1, 2016; [CPM 2017-04](#), March 13, 2017; [CPM 2017-11](#), September 7, 2017; [CPM 2018-07](#), March 26, 2018; [CPM 2018-12](#), August 8, 2018; [CPM 2019-09](#), March 19, 2019; [CPM 2019-20](#), September 17, 2019; [CPM 2020-06](#), March 17, 2020; [CPM 2020-12](#), September 11, 2020; [CPM 2021-12](#), February 16, 2021; [CPM 2021-21](#), October 5, 2021; [CPM 2022-06](#), March 24, 2022; and [CPM 2022-19](#), October 21, 2022.

(Please note that the scheduled Vice President's salary rate referenced in CPM 2013-04 did not take effect. See [Executive Order 13641](#), April 5, 2013, and [CPM 2013-05](#), April 5, 2013.)

Summary of Key Elements

- Section 1101(a) authorizes the waiver of the normal biweekly or annual premium pay cap under 5 U.S.C. 5547 and establishes a higher annual cap linked to the Vice President's salary rate established under 3 U.S.C. 104, as explained below.
- The premium pay cap waiver authority under section 1101(a) may be applied in calendar year 2023 to a civilian employee who meets all of the following conditions for coverage eligibility:
 - The employee is covered by 5 U.S.C. 5547 (dealing with limitations on premium pay) or a limitation on premium pay similar to one set forth in 5 U.S.C. 5547 (as determined by the head of the Executive agency in which such employees are employed).
 - The employee is assigned to work in an overseas location and remains in that location for at least 42 consecutive calendar days (unless an authorized agency official grants a waiver of the 42-day requirement in very limited and extraordinary circumstances – e.g., where an employee's 42 consecutive days are interrupted by an unplanned short trip outside the area required by the agency in an emergency situation). (If the employee meets the 42-day requirement, the section 1101 limitation may be applied to days before that requirement was satisfied, as long as the employee was performing work in a covered and approved category on those days. Although section 1101 applies only to payments payable in calendar year 2023, the 42-day period may overlap a calendar year—i.e., begin in 2022 and end in 2023, or begin in 2023 and end in 2024.)

Note on geographic changes: Section 1102 of Public Law 117-263 (December 23, 2022) amended section 1101(a) to remove the requirement that the employee be assigned to work in an overseas location that (1) is in the area of responsibility of the Commander of the U.S. Central Command (CENTCOM) or (2) was formerly in the CENTCOM area of responsibility but has been moved to the area of responsibility of the Commander of the United States Africa Command (AFRICOM). Under the amended law, eligible employees may be performing covered work in any overseas location. The change in coverage resulting from dropping the geographic restrictions will apply prospectively starting on the date of enactment (i.e., December 23, 2022). Any work meeting the new coverage conditions performed on or after this date would be covered by the

amended law. Any past work that was not covered before the date of enactment is still not covered; there is no retroactive effect. In considering application to calendar year 2022, note that the annual premium pay cap is applied by calendar year to payments that are payable in the given calendar year. Any work performed in calendar year 2022 after enactment of Public Law 117-263 will have a payment date in calendar year 2023. Therefore, premium payments payable in calendar year 2022 are not affected.

- At the overseas location described in paragraph 2 above, the employee performs work in direct support of, or directly related to, (1) a military operation (including a contingency operation, as defined in 10 U.S.C. 101(a)(13)) or (2) an operation in response to a national emergency declared by the President. (“Military operation” is a Department of Defense (DOD) term of art, defined in the DOD Dictionary of Military and Associated Terms.) Prior to authorizing any premium pay cap waiver under section 1101 on the basis of a military operation, an agency must confirm any DOD operation in countries in which such a waiver is being considered meets the DOD definition.
- The employee is in a category of employees for whom coverage under section 1101 has been approved by an authorized agency official. (Note: Section 1101 establishes a discretionary authority that agencies may exercise, not an entitlement.)
- Employees who are granted a waiver under section 1101(a) in calendar year 2023 will be covered by a higher annual premium pay cap in lieu of the normal biweekly and annual premium pay caps under 5 U.S.C. 5547. The employee will be entitled to premium payments identified in 5 U.S.C. 5547(a), or similar limitation, to the extent it does not cause the employee’s combined payable amount of basic pay and premium pay for calendar year 2023 to exceed the annual rate of salary established for the Vice President under 3 U.S.C. 104. (Note: Under section 5547(b), the normally applicable annual limitation is based on certain annual pay rates in effect at the end of the calendar year. Accordingly, the 2023 limitation is based on the Vice President’s rate under 3 U.S.C. 104 in effect on December 31, 2023.)
- The higher annual limitation on premium pay established under section 1101(a) applies during calendar year 2023 to an employee’s annual aggregate basic pay plus premium pay even after the employee has stopped performing work covered by section 1101. After an employee stops performing covered work, the employee’s earnings will again be subject to the biweekly premium pay limitation under 5 U.S.C. 5547, or similar limitation, and the employee could receive payments up to the biweekly premium pay limitation each pay period until the section 1101(a) annual limitation is reached.

Note: If such an employee's aggregate projected basic pay plus premium pay payable for 2023 is less than the annual limit established under 5 U.S.C. 5547, an agency may invoke that annual limit, if appropriate, and pay premium pay in excess of the biweekly limit. (See 5 U.S.C. 5547(b) and 5 CFR 550.106–550.107.) Once the section 5547 annual limit is reached, the employee would be again subject to the section 5547 biweekly limit and simultaneously subject to the section 1101(a) annual limit. If the employee's projected basic pay plus premium pay payable for 2023 already exceeds the section 5547 annual limit, the waiver of the biweekly limit and invoking of the section 5547 annual limit would not provide additional premium pay in any biweekly pay period. Therefore, the normal section 5547 biweekly limit would apply to any premium pay earned for each successive pay period, as long as the employee does not reach the section 1101(a) annual limit. If the employee reaches the section 1101(a) annual limit, the employee may not earn any additional premium pay during calendar year 2023.

- Under section 1101(b), when an employee is granted a section 1101(a) waiver, the aggregate limitation on pay under 5 U.S.C. 5307 will still apply during calendar year 2023, but any pay in addition to basic pay received for service during the waiver period is not counted as compensation in applying the aggregate limitation. Under the aggregate limitation on pay, payments (other than basic pay) in excess of the aggregate limitation must be deferred and are generally paid as a lump-sum payment at the beginning of the following calendar year. Employees granted a section 1101(a) waiver will be subject to the aggregate limitation in calendar year 2023, but any pay in addition to basic pay during the section 1101(a) waiver period will be exempted in applying the aggregate limitation. In other words, pay in addition to basic pay received for service **outside** of the section 1101(a) waiver period is covered by the aggregate limitation under 5 U.S.C. 5307. However, pay received in addition to basic pay for service **within** the section 1101(a) waiver period is excluded in applying the aggregate limitation under 5 U.S.C. 5307. That is, an employee is able to receive pay in addition to basic pay during the section 1101(a) waiver period that otherwise would have been deferred due to the aggregate limitation on pay.
- Under section 1101(c), any additional premium pay that results from application of the higher premium pay cap under section 1101(a), may not be considered basic pay for retirement or any other purpose, nor may it be used in computing a lump-sum payment for accumulated and accrued annual leave under 5 U.S.C. 5551. Under 5 U.S.C. 5547 and 5 CFR 550.107, various types of premium pay creditable for retirement and other purposes are always subject to a biweekly cap, even in emergencies that would normally trigger the annual premium pay limit. Thus, in applying section 1101(a), an agency should consider any premium pay of a type that is normally basic pay for retirement or other purposes as being paid before any other premium payment and apply the biweekly cap to determine the amount of

basic pay creditable for retirement and other purposes. In other words, section 1101(a) would allow these types of premium payments to exceed the normally applicable biweekly limit, but any excess beyond the biweekly limit would be attributable to section 1101(a) and therefore would not be treated as basic pay for retirement or other purposes. Similarly, for premium payments that are normally used in computing an annual leave lump-sum payment, only the portion below the biweekly limit may be used in the computation.

- *Special Information Related to Employees Working in Iraq:* As noted above, the United States has a contingency operation in Iraq (Operation Inherent Resolve), so the higher premium pay cap can be applied to eligible employees performing qualifying service connected to that operation through **December 31, 2023**. To be eligible while working in Iraq, employees must be performing work in direct support of, or directly related to, either Operation Inherent Resolve or an operation in response to the current national emergency declared by the President, as described in the Presidential notice of May 9, 2022. *Background:* The President issued a notice on May 9, 2022, that continues the declared national emergency in Iraq for 1 year (through May 22, 2023) to support stabilization efforts. (See the President's [notice](#)) The President modified the scope of the national emergency declared in Executive Order 13303, May 22, 2003, and took additional steps in response to this national emergency through the issuances of additional Executive Orders. Please refer to these orders— Executive Order 13315, August 28, 2003, Executive Order 13350, July 29, 2004, Executive Order 13364, November 29, 2004, Executive Order 13438, July 17, 2007, and Executive Order 13668 of May 27, 2014. Based on this notice, agencies may continue to apply the section 1101(a) waiver authority **through May 22, 2023**, for eligible employees in Iraq based on qualifying service connected to the national emergency. However, since the United States currently has a contingency operation in Iraq (Operation Inherent Resolve), the higher premium pay cap may also be applied to eligible employees working in Iraq in support of that operation on that basis through **December 31, 2023**.

Section 1101 of Public Law 110-417, October 14, 2008, as amended by section 1106 of Public Law 111-84, October 28, 2009; section 1103 of Public Law 111-383, January 7, 2011; section 1104 of Public Law 112-81, December 31, 2011; section 1101 of Public Law 112-239, January 2, 2013; section 1101 of Public Law 113-66, December 26, 2013; section 1101 of Public Law 113-291, December 19, 2014; Section 1108 of Public Law 114-92, November 25, 2015; section 1137 of Public Law 114-328, December 23, 2016; section 1105 of Public Law 115-91, December 12, 2017; section 1104 of Public Law 115-232, August 13, 2018; section 1105 of Public Law 116-92, December 20, 2019; section 1105 of Public Law 116-283, January 1, 2021; section 1112 of Public Law 117-81, December 27, 2021; and section 1102 of Public Law 117-263, December 23, 2022.

SEC. 1101. AUTHORITY TO WAIVE ANNUAL LIMITATION ON PREMIUM PAY AND AGGREGATE LIMITATION ON PAY FOR FEDERAL CIVILIAN EMPLOYEES WORKING OVERSEAS.

(a) **WAIVER AUTHORITY.**- During the calendar years 2009 through 2023, and notwithstanding section 5547 of title 5, United States Code, the head of an executive agency may waive the premium pay limitations established in that section up to the annual rate of the salary payable to the Vice President under section 104 of title 3, United States Code, for an employee who performs work while in an overseas location, in direct support of or directly related to—

- (1) a military operation, including a contingency operation; or
- (2) an operation in response to a national emergency declared by the President.

(b) **APPLICABILITY OF AGGREGATE LIMITATION ON PAY.**— In applying section 5307 of title 5, United States Code, any payment in addition to basic pay for a period of time during which a waiver under subsection (a) is in effect shall not be counted as part of an employee's aggregate compensation for the given calendar year.

(c) **ADDITIONAL PAY NOT CONSIDERED BASIC PAY.** — To the extent that a waiver under subsection (a) results in payment of additional premium pay of a type that is normally creditable as basic pay for retirement or any other purpose, such additional pay shall not be considered to be basic pay for any purpose, nor shall it be used in computing a lump-sum payment for accumulated and accrued annual leave under section 5551 of title 5, United States Code.

(d) **REGULATIONS.** — The Director of the U.S. Office of Personnel Management may issue regulations to ensure appropriate consistency among heads of executive agencies in the exercise of the authority granted by this section.

Information on New Overseas Locality Pay for Domestic Employees Teleworking Overseas (DETOs)

The FY 2023 National Defense Authorization Act (NDAA) included a provision providing special locality pay to Civil Service Domestic Employees Teleworking Overseas (DETOs).

DETOs

A DETO is a U.S. Government Civil Service or Foreign Service employee assigned to a domestic position who is approved to telework from an overseas location for a limited period of time. Although the domestic employee is not assigned or detailed to the overseas location, the DETO's duty station will be temporarily changed to reflect the overseas alternate worksite for the duration of the DETO arrangement. A DETO arrangement is a limited-duration workplace flexibility option that an agency may consider to allow U.S. Government employees who are assigned to domestic positions to accomplish the duties of their position from a foreign country. DETOs may be Foreign Service or Civil Service employees. (In this document, we are using the State Department's construction of "Civil Service" to exclude the Foreign Service. See discussion under "Coverage" paragraph below.) The Department of State provides policy guidance on the DETO program for its own employees in its Foreign Affairs Manual—see [3 FAM 2370](#).

Section 6202 of the Fiscal Year 2022 National Defense Authorization Act (Public Law 117-81, December 27, 2021) requires all Federal agencies to "establish a policy enumerating the circumstances under which employees may be permitted to temporarily perform work requirements and duties from approved overseas locations where there is a related Foreign Service assignment pursuant to an approved Domestically Employed Teleworking Overseas (DETO) agreement." The language "related Foreign Service assignment" refers to the overseas assignment of an employee's spouse by U.S. Government orders.

The State Department has given the following DETO program information to other Federal agencies:

- Federal employees should direct inquiries to their agency Telework Managing Officers and/or agency Telework Coordinators who serve as their primary point of contact to determine whether there is an agency policy for DETO arrangements and if so, obtain agency procedures for applying. Federal agencies are strongly encouraged to designate a clear, central DETO point of contact for their agency.

- For questions about DETO policy development, please email queries to detopolicy@state.gov. DETO reference documents including templates and standard operating procedures are available as attachments upon request.
- Sponsored DETOs: These are DETOs who are on the orders of a U.S. Government-employed spouse assigned abroad on Government orders, which spouse acts as the DETO's sponsor. (Note: In 3 FAM 2371.7 (dealing with a DETO's official status overseas), State Department states that its sponsored DETOs are not eligible for any allowance benefits or payments in their own right— any eligibility for allowance benefits or payments is only derived from the sponsoring employee without exception.)
- Independent DETOs: These are DETOs who are not on the orders of a U.S. Government-employed spouse assigned abroad on Government orders. The State Department does not allow independent DETOs for its own employees but other Federal agencies may allow both sponsored and independent DETOs. Agencies considering independent DETO arrangements must carefully consider the implications of these arrangements, including added costs and an added measure of difficulty in obtaining necessary approvals.
- There is no authority to permit a U.S. Government Civil Service or Foreign Service employee with a domestic position to telework from an overseas location without a DETO arrangement.
- Please send inquiries or requests for information on DETOs to: detopolicy@state.gov.

DETO Locality Pay

General

DETO locality pay for Civil Service employees (hereafter referred to as “DETO locality pay”) is authorized under section 9717 of division I (Department of State Authorizations) in the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (FY 2023 NDAA, H.R. 7776, Public Law 117-263, Dec. 23, 2022. See [enrolled bill](#). (Section 9717 from the enrolled bill is set forth in Attachment 1.)

Agency Responsibility

Section 9717 did not give the Office of Personnel Management (OPM) authority to regulate or administer the DETO locality pay program. Each agency is responsible for implementing the program for its DETOs. To assist agencies, OPM has coordinated with the Department of State and the Department of Defense (DOD) in preparing this information document. (See Note in section “Treatment of DETO Locality Payment”

regarding OPM role with respect to use of DETO locality payments in applying OPM-administered programs.)

Coverage

To be eligible for DETO locality pay, an employee must serve in a position in the “civil service” (as defined in 5 U.S.C. 2101) and must be working overseas under a Domestic Employee Teleworking Overseas agreement. The term “civil service” as used in 5 U.S.C. 2101 is a broad term that would include members of the Foreign Service; however, in this document, references to “Civil Service” are understood to exclude the Foreign Service, since Foreign Service DETOs are already receiving overseas comparability pay under section 9802(c) of division I of the FY 2023 NDAA. Under section 9717, “overseas” means any geographic location that is not in the continental United States or in a nonforeign area (as defined in 5 CFR 591.205)—hereafter in this document referred to as the “United States” or “U.S.” This basically means the employee is working in a foreign area. In addition, to be eligible for DETO locality pay, a Civil Service employee must be in a position that would provide entitlement to title 5 locality pay if the employee were stationed in the United States. A Civil Service employee whose position is not covered by title 5 locality pay program would not receive DETO locality pay because, under section 9717(b), an employee is entitled to the lesser of two amounts of locality pay—one of which is the locality pay that would have been paid under the title 5 locality pay authority (5 U.S.C. 5304 or 5304a) if the employee’s official duty station had not been changed from a U.S. location to a foreign location. If the employee is not eligible for title 5 locality pay in the position in question even if the employee were stationed in the U.S., then the title 5 locality pay entitlement would be zero, and zero would be the lesser of the two amounts. We note that Civil Service employees not eligible for title 5 locality pay may be covered by a pay system under which the pay system administrator has discretion to provide a parallel overseas locality payment under independent authority.

Payment Amount

Under section 9717(b), the DETO locality payment is equal to the lesser of—

- (1) the amount of title 5 locality pay the employee would have been paid if the official duty station of the employee had not been changed to an overseas location under the DETO arrangement; or
- (2) the amount of overseas locality pay the employee would be paid if the employee were an eligible member of the Foreign Service (i.e., designated class 1 or below for purposes of section 403 of the Foreign Service Act), as continued to be authorized under section 9802(c) of the FY 2023 NDAA.

The State Department has prepared a 2023 DETO locality pay table for Civil Service DETOs covered by the General Schedule (GS), which reflects a locality payment of 21.66 percent, which is 2/3rds of the 2023 Washington, DC, locality rate of 32.49 percent—the same overseas locality pay percentage that applies to Foreign Service employees as described in paragraph (2) above. (See Attachment 2 for the 2023 GS DETO locality pay table based on a 21.66 percent locality payment.) Note that the table with a locality rate

equal to 2/3rds of the DC locality rate (21.66 percent in 2023) applies to an employee only if that locality pay percentage is less than the locality pay percentage the employee would have been paid had the official duty station of the employee not been changed to reflect an overseas location under the DETO agreement. In other words, in 2023, if the title 5 locality pay percentage that would have been paid to an employee without the DETO duty station change is less than 21.66 percent, then that lesser locality pay percentage is applicable to the overseas DETO. (See Attachment 3.) Each agency is responsible for ensuring that a DETO receives the correct locality payment and that the correct pay table is applied to the DETO in the payroll system.

Effective Date

Section 9717(c)(1) states that DETO locality pay must begin to be paid—i.e., the locality pay entitlement must begin to be effective—not later than 60 days after the date of enactment of the FY 2023 NDAA, which was December 23, 2022. Thus, for current DETOs, each agency must make the entitlement to DETO locality payments effective no later than February 21, 2023. The effective date may be set retroactively. We recommend that the effective date correspond with the beginning of a biweekly pay period. For example, the State Department made DETO locality pay for its employees effective on January 1, 2023.

Treatment of DETO Locality Payment

Section 9717(c)(2) states that DETO locality pay must be treated in the same manner, and subject to the same terms and conditions, as a locality payment under title 5 (5 U.S.C. 5304 or 5304a). The treatment of title 5 locality pay is addressed in 5 U.S.C. 5304(c)(2) and 5 CFR 531.610. Among other things, this means—

- DETO locality pay is basic pay for the same purposes as title 5 locality pay—e.g., retirement and life insurance.
- DETO locality pay is included as part of basic pay in applying title 5 overtime pay and other premium pay rules. The adjusted rate of basic pay for GS-15, step 10, rate used in establishing an employee’s premium pay cap under 5 U.S.C. 5547 would include the DETO locality payment.
- A DETO receives the highest applicable rate of pay—which could be the DETO locality rate, a special rate under 5 U.S.C. 5305 (based on the DETO’s overseas position and location and not any special rate associated with the former U.S./domestic duty station), or a retained rate under 5 U.S.C. 5363. Consistent with the treatment of title 5 locality pay, DETO locality pay is not paid on top of a special rate or a retained rate. (See OPM’s locality pay regulation at 5 CFR 531.608; special rate regulations at 5 CFR 530.303(d) and 530.307(e); and retained rate regulations at 5 CFR 536.308(a)(2) and (c)(2).)

- DETO locality pay is treated the same as title 5 locality pay in applying GS maximum payable rate rules in 5 CFR 531.221-531.223. This is the case even though the receipt of DETO locality pay is causing the recipient to be coded in data systems as receiving a special rate. (See section entitled “*Pay Rate Determinant (PRD) Code*” below.)

Note: While OPM is not responsible for implementing the DETO locality pay provision, it is responsible for administering various payments (e.g., overtime pay and other premium pay) and for determining how the DETO locality pay interacts with those payments.

Data Coding and Reporting

Agencies must comply with the following instructions on data coding and reporting in connection with DETO locality pay:

Processing Personnel Actions

In documenting a change in the duty station to an overseas location under a DETO agreement, OPM is requiring that the nature of action code (NOAC) 894 be used with a legal authority of ZLM (DETO: Sec 9717 of P.L. 117-263). OPM will be adding a rule in Table 17-A of chapter 17 (Pay and Step Changes) in the Guide to Processing Personnel Actions (GPPA), which will apply to GS DETOs. OPM is directing agencies to use the following rule pending the formal revision of Table 17-A:

<i>RULE</i>	<i>If Basis for Action is</i>	<i>And</i>	<i>Then NOAC is</i>	<i>NOA is</i>	<i>Auth Code is</i>	<i>Authority is</i>
30	Establishment, change in percentage, or termination of overseas locality payment for a Domestic Employee Teleworking Overseas (DETO)		894	Gen Adj	ZLM (DETO: Sec 9717 of P.L. 117-263)	DETO: Sec 9717 of P.L. 117-263

Since the pay entitlement authority is changing when DETO locality pay is established or terminated, use the above rule even if the amount of the employee’s locality payment does not change. In the future, OPM will establish prospectively a special legal authority code for actions related to DETO locality pay.

On an employee’s Notification of Personnel Action (SF 50), DETO locality pay should be reported as “Locality Adj.” on the SF 50 (blocks 12B or 20B, as applicable) and included in the “Adj. Basic Pay” (blocks 12C or 20C, as applicable). The Remarks in block 45 must document any change in status related to DETO locality pay. Pending further instructions, the following free-form remarks must be used, as applicable:

- Employee is commencing a temporary assignment working under a Domestic Employee Teleworking Overseas (DETO) Agreement and commencing to receive DETO locality pay (section 9717 of Public Law 117-263). *[Note: This remark is used regardless of whether the employee's locality rate changes.]*
- Employee's DETO locality payment has been adjusted due to changes in the payable locality pay percentage. *[Note: The percentage amount of the DETO locality payment could change due to (1) a change in the locality pay percentage for the employee's former U.S. location, (2) a change in the DC locality pay percentage, or (3) a change in relationship between locality pay in the former U.S. location and locality pay in DC (i.e., a change in which one those rates is lesser).]*
- Employee is no longer entitled to locality pay in connection with a Domestic Employee Teleworking Overseas (DETO) Agreement. *[Note: This remark is used for any reason DETO locality pay is terminated.]*

Special Note: When an employee's DETO locality pay is terminated via a General Adjustment (NOAC 894/LAC ZLM) and the employee will be receiving locality pay under 5 U.S.C. 5304, an additional General Adjustment must be processed, with the same effective date, returning the employee to locality pay under 5 U.S.C. 5304 (NOAC 894/LAC VGR – see rule 23 of Table 17-A, GPPA Chapter 17). These actions may be processed concurrently (on the same SF-52/50) or as separate SF-52/50 actions. In processing the second action, use the following free-form remark: "Employee is entitled to locality pay under 5 U.S.C. 5304."

Coding of Payment and Pay Table

For EHRI reporting purposes, the DETO locality pay is considered a "special basic pay supplement" that is connected to a special pay table identifier, similar to a special rate supplement. OPM is establishing a special pay table identifier of OTDX for DETOs who are entitled to a locality payment equal to 2/3rds of the locality payment for Washington, DC. For DETO locality payments equal to locality payments on a domestic locality pay table (in areas where the locality payment is less than two-thirds of the DC locality payment), OPM is establishing special pay table identifier codes as shown in Attachment 3. Agencies may begin to immediately use these special pay table identifier codes while OPM goes through the process of officially establishing the codes in OPM data systems.

Pay Rate Determinant (PRD) Code –

At this time, due to current system requirements, OPM is directing agencies to use the PRD codes that are associated with special rates (i.e., 5, 6, E, and F) for DETOs who are receiving DETO locality pay in order to provide timely payment to covered employees. This PRD code assignment does not change the statutory requirement to treat DETO

locality pay the same as title 5 locality pay for all purposes. (See above discussion of the maximum payable rate rule in the section entitled “*Treatment of DETO Locality Payment.*”)

System edits

Any edits in agencies’ HR data systems or payroll systems that block payment of locality pay in overseas duty stations must be revised to allow DETO locality pay.

Questions

If agencies have questions on implementation of DETO locality pay, they should contact DETOPolicy@state.gov. The State Department will coordinate with OPM and DOD as necessary.

Attachment 1: Law Providing Overseas Locality Pay to DETOs

Section 9717 of Division I (Department of State Authorizations) in the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year 2023 (H.R. 7776, Public Law 117-263, Dec. 23, 2022—[enrolled bill](#)).

SEC. 9717. LOCALITY PAY FOR FEDERAL EMPLOYEES WORKING OVERSEAS UNDER DOMESTIC EMPLOYEE TELEWORKING OVERSEAS AGREEMENTS.

(a) DEFINITIONS—In this section:

(1) CIVIL SERVICE—The term “civil service” has the meaning given the term in section 2101 of title 5, United States Code.

(2) COVERED EMPLOYEE—The term “covered employee” means an employee who—

(A) occupies a position in the civil service; and

(B) is working overseas under a Domestic Employee Teleworking Overseas agreement.

(3) LOCALITY PAY—The term “locality pay” means a locality-based comparability payment paid in accordance with subsection (b).

(4) NONFOREIGN AREA—The term “nonforeign area” has the meaning given the term in section 591.205 of title 5, Code of Federal Regulations, or any successor regulation.

(5) OVERSEAS—The term “overseas” means any geographic location that is not in—

(A) the continental United States; or

(B) a nonforeign area.

(b) PAYMENT OF LOCALITY PAY—Each covered employee shall be paid locality pay in an amount that is equal to the lesser of—

(1) the amount of a locality-based comparability payment that the covered employee would have been paid under section 5304 or 5304a of title 5, United States Code, had the official duty station of the covered employee not been changed to reflect an overseas location under the applicable Domestic Employee Teleworking Overseas agreement; or

(2) the amount of a locality-based comparability payment that the covered employee would be paid under section 1113 of the Supplemental Appropriations Act, 2009 (Public Law 111- 32), as limited under section 9802(c)(2) of this Act, if the covered employee were an eligible member of the Foreign Service (as defined in subsection (b) of such section 1113).

(c) APPLICATION—Locality pay paid to a covered employee under this section—

(1) shall begin to be paid not later than 60 days after the date of the enactment of this Act; and

(2) shall be treated in the same manner, and subject to the same terms and conditions, as a locality-based comparability payment paid under section 5304 or 5304a of title 5, United States Code.

Attachment 2



**United States Department of State
2023 Civil Service Salary Schedule
Overseas DETO
Effective January 1, 2023**

Rates in U.S. Dollars

Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
1	25,547	26,405	27,253	28,100	28,948	29,444	30,285	31,132	31,166	31,964
2	28,726	29,410	30,361	31,166	31,517	32,444	33,371	34,298	35,225	36,152
3	31,344	32,390	33,435	34,480	35,525	36,570	37,615	38,660	39,705	40,750
4	35,185	36,358	37,531	38,704	39,876	41,049	42,222	43,395	44,568	45,741
5	39,366	40,678	41,991	43,304	44,616	45,929	47,242	48,555	49,867	51,180
6	43,883	45,345	46,807	48,270	49,732	51,195	52,657	54,119	55,582	57,044
7	48,764	50,389	52,015	53,640	55,265	56,891	58,516	60,141	61,767	63,392
8	54,004	55,804	57,605	59,405	61,206	63,006	64,807	66,608	68,408	70,209
9	59,647	61,635	63,623	65,611	67,599	69,587	71,575	73,563	75,551	77,539
10	65,684	67,874	70,064	72,254	74,444	76,634	78,824	81,013	83,203	85,393
11	72,167	74,573	76,978	79,383	81,788	84,194	86,599	89,004	91,409	93,814
12	86,499	89,382	92,266	95,149	98,032	100,916	103,799	106,682	109,566	112,449
13	102,859	106,287	109,715	113,144	116,572	120,001	123,429	126,857	130,286	133,714
14	121,548	125,599	129,651	133,702	137,753	141,804	145,856	149,907	153,958	158,010
15	142,972	147,738	152,503	157,269	162,034	166,800	171,565	176,330	181,096	183,500 ¹

Note: Civil Service employees are eligible to receive salary rates in accordance with this schedule only if the locality pay rate associated with this schedule (21.66% in 2023) is less than the locality pay rate the employee would have been paid had the official duty station of the employee not been changed to reflect an overseas duty location under the applicable DETO agreement.

¹ Rate limited to the rate for level IV of the Executive Schedule (5 U.S.C. 5304 (g)(1)) which is \$183,500.

Attachment 3: Special Pay Table Identifier Codes for DETOs

The table below provides special pay table identifier (SPTI) codes that may potentially be used for DETOs. There are 32 locality pay areas that currently have a locality pay percentage that is lower than 2/3rds of the locality pay percentage applicable to employees stationed in Washington, DC (21.66 percent in 2023). Since these codes correspond to locality pay areas, we are using the applicable EHRI two-character locality pay area code as the last two characters in special pay table identifier code. Each special pay table identifier begins with “OT” which represents “overseas telework.” For example, the special pay table code for DETOs whose overseas locality pay is linked to locality pay for the St. Louis locality pay area would be “OTSL”. For DETOs whose overseas locality pay will be fixed at 2/3rds of the locality payment for Washington, DC (21.66 percent in 2023), the special pay table identifier code will be “OTDX.” OPM is authorizing agencies to immediately commence using these DETO special pay table identifier codes. OPM will recognize the codes as effective as of January 1, 2023. The table below also provides a crosswalk to corresponding locality pay table codes used by OPM for other purposes.

SPTI	SPTI Description (including description of and code for locality pay area to which the special pay table is linked)	Corresponding Locality Pay Table Code
OTAL	For DETO overseas locality pay linked to locality pay area Albany-Schenectady, NY-MA [AL]	AL
OTAQ	For DETO overseas locality pay linked to locality pay area Albuquerque-Santa Fe-Las Vegas, NM [AQ]	AQ
OTAU	For DETO overseas locality pay linked to locality pay area Austin-Round Rock, TX [AU]	AU
OTBH	For DETO overseas locality pay linked to locality pay area Birmingham-Hoover-Talladega, AL [BH]	BH
OTBU	For DETO overseas locality pay linked to locality pay area Buffalo-Cheektowaga, NY [BU]	BU
OTBN	For DETO overseas locality pay linked to locality pay area Burlington-South Burlington, VT [BN]	BN
OTCT	For DETO overseas locality pay linked to locality pay area Charlotte-Concord, NC-SC [CT]	CT
OTCI	For DETO overseas locality pay linked to locality pay Cincinnati-Wilmington-Maysville, OH-KY-IN [CI]	CIN

SPTI	SPTI Description (including description of and code for locality pay area to which the special pay table is linked)	Corresponding Locality Pay Table Code
OTCS	For DETO overseas locality pay linked to locality pay area Colorado Springs, CO [CS]	CS
OTCO	For DETO overseas locality pay linked to locality pay area Columbus-Marion-Zanesville, OH [CO]	COL
OTCC	For DETO overseas locality pay linked to locality pay area Corpus Christi-Kingsville-Alice, TX [CC]	CC
OTDV	For DETO overseas locality pay linked to locality pay area Davenport-Moline, IA-IL [DV]	DV
OTDG	For DETO overseas locality pay linked to locality pay area Dayton-Springfield-Sidney, OH [DG]	DAY
OTDM	For DETO overseas locality pay linked to locality pay area Des Moines-Ames-West Des Moines, IA [DM]	DM
OTHB	For DETO overseas locality pay linked to locality pay area Harrisburg-Lebanon, PA [HB]	HB
OTHU	For DETO overseas locality pay linked to locality pay area Huntsville-Decatur-Albertville, AL [HU]	HU
OTHI	For DETO overseas locality pay linked to locality pay area Hawaii [HI]	HI
OTIN	For DETO overseas locality pay linked to locality pay area Indianapolis-Carmel-Muncie, IN [IN]	IND
OTKC	For DETO overseas locality pay linked to locality pay area Kansas City-Overland Park-Kansas City, MO-KS [KC]	KC
OTLR	For DETO overseas locality pay linked to locality pay area Laredo, TX [LR]	LR
OTLV	For DETO overseas locality pay linked to locality pay area Las Vegas-Henderson, NV-AZ [LV]	LV
OTOM	For DETO overseas locality pay linked to locality pay area Omaha-Council Bluffs-Fremont, NE-IA [OM]	OM
OTPB	For DETO overseas locality pay linked to locality pay area Palm Bay-Melbourne-Titusville, FL [PB]	PB
OTPX	For DETO overseas locality pay linked to locality pay area Phoenix-Mesa-Scottsdale, AZ [PX]	PX

SPTI	SPTI Description (including description of and code for locality pay area to which the special pay table is linked)	Corresponding Locality Pay Table Code
OTPI	For DETO overseas locality pay linked to locality pay area Pittsburgh-New Castle-Weirton, PA-OH-WV [PI]	PIT
OTRA	For DETO overseas locality pay linked to locality pay area Raleigh-Durham-Chapel Hill, NC [RA]	RA
OTZX	For DETO overseas locality pay linked to locality pay area Rest of U.S. [ZX]	RUS
OTRI	For DETO overseas locality pay linked to locality pay area Richmond, VA [RI]	RCH
OTSO	For DETO overseas locality pay linked to locality pay area San Antonio-New Braunfels-Pearsall, TX [SO]	SO
OTSL	For DETO overseas locality pay linked to locality pay area St. Louis-St. Charles-Farmington, MO-IL [SL]	SL
OTTU	For DETO overseas locality pay linked to locality pay area Tucson-Nogales, AZ [TU]	TU
OTVB	For DETO overseas locality pay linked to locality pay area Virginia Beach-Norfolk, VA-NC [VB]	VB
OTDX	For DETO overseas locality pay linked to locality pay area Washington-Baltimore-Arlington, DC-MD-VA-WV-PA [WA]- 2/3rds of locality pay for that area	Linked to DCB