

## **Summary of Key Necessary Elements in Agency Policies Implementing Section 1101 of Public Law 110-417, as Amended, for Calendar Year 2022**

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 2022. 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 1112 of Public Law 117-81, December 27, 2021, extends to calendar year 2022 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; and section 1105 of Public Law 116-283, January 1, 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; and CPM 2021-21, October 5, 2021. (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 2022 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 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) 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 is 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 2022, the 42-day period may overlap a calendar year—i.e., begin in 2021 and end in 2022, or begin in 2022 and end in 2023.)
  - At the 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 2022 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 2022 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 2022 limitation is based on the Vice President’s rate under 3 U.S.C. 104 in effect on December 31, 2022.)

- The higher annual limitation on premium pay established under section 1101(a) applies during calendar year 2022 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 2022 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 2022 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 2022.

- 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 2022, 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 2022, 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, 2022**. 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 6, 2021. *Background:* The President issued a notice on May 6, 2021, that continues the declared national emergency in Iraq for 1 year (through May 22, 2022) to support stabilization efforts. (See the President's notice at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/06/notice-on-the-continuation-of-the-national-emergency-with-respect-to-the-stabilization-of-iraq/>.) 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, 2022**, 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, 2022**.

## COUNTRIES IN CENTCOM OVERSEAS AREA OF RESPONSIBILITY

1. Afghanistan
2. Bahrain
3. Egypt
4. Iran
5. Iraq
6. Israel
7. Jordan
8. Kazakhstan
9. Kuwait
10. Kyrgyzstan
11. Lebanon

12. Oman
13. Pakistan
14. Qatar
15. Saudi Arabia
16. Syria
17. Tajikistan
18. Turkmenistan
19. United Arab Emirates (U.A.E.)
20. Uzbekistan
21. Yemen

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**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 2022, 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 that is in the area of responsibility of the Commander of the United States Central Command, or an overseas location that was formerly in the area of responsibility of the Commander of the United States Central Command but has been moved to the area of responsibility of the Commander of the United States Africa Command, 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.