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Employee Services

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FROM: Steven Cohen

Subject: Attachment to Guidance on Administratively Uncontrollable Overtime (AUO) Pay

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I. General statutory and regulatory requirements

The head of an agency may approve administratively uncontrollable overtime (AUO) pay for an employee who occupies a position that requires substantial amounts of irregular, unscheduled overtime work which cannot be controlled administratively, with the employee generally being responsible for recognizing, without supervision, circumstances that require the employee to remain on duty. (See 5 [CFR](#) 550.153 for information on the meaning of "substantial amounts of irregular or occasional overtime work," "responsible for recognizing, without supervision," and "circumstances which require the employee to remain on duty." Note particularly that the regulations provide that the performance of "call-back overtime work" alone, as referred to in 5 [CFR](#) 550.112(h), does not constitute a circumstance that requires the employee to remain on duty.)

AUO pay is a substitute form of payment for irregular, unscheduled overtime work and is paid on an annual basis instead of on an hourly basis. However, agencies may not pay AUO pay to a prevailing rate (wage) employee, a member of the United States Park Police or the United States Secret Service Uniformed Division, a member of the Senior Executive Service, or a member of the Federal Bureau of Investigation or Drug Enforcement Administration Senior Executive Service. (See 5 [U.S.C.](#) 5541(2)(iv), (xi), (xvi), and (xvii).)

AUO pay is determined as a percentage, not less than 10 percent nor more than 25 percent, of an employee's rate of basic pay fixed by law or administrative action for the position held by the employee, including any applicable special pay adjustment for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), locality-based comparability payment under 5 [U.S.C.](#) 5304, or continued rate adjustment under

subpart G of 5 CFR part 531, before any deductions and exclusive of additional pay of any other kind. (See 5 CFR 550.151.)

Under Office of Personnel Management (OPM) regulations, the rate of AUO pay that is authorized for a position is based on the average number of hours of irregular or occasional overtime work performed per week. For example, a 25 percent rate is authorized for a position that requires an average of over 9 hours per week of irregular or occasional overtime work. (See 5 CFR 550.154.) Agency reviews of the percentage of AUO pay paid to employees must be conducted "at appropriate intervals" and OPM recommends that such reviews be completed every 3 to 6 months by Federal agencies. If the results of these reviews indicate that the employee is not receiving AUO pay in accordance with the law and regulations, the percentage of annual premium pay must be revised or, if appropriate, AUO pay must be discontinued. (See 5 CFR 550.161(d).)

II. Relationship to other premium pay entitlements

An employee who receives administratively uncontrollable overtime (AUO) pay for irregular or occasional overtime work may also receive overtime pay on an hourly basis for regularly scheduled overtime work. Regularly scheduled overtime work creates an entitlement to overtime pay on an hour-for-hour basis and generally must be officially ordered or approved by a supervisor or manager in advance of the employee's regularly scheduled administrative workweek. (See 5 [U.S.C.](#) 5542(a).)

If an employee who is engaged in law enforcement activities (including security personnel in correctional institutions) receives AUO pay and is nonexempt from (covered by) the overtime pay provisions of the Fair Labor Standards Act (FLSA) of 1938, as amended, he or she is entitled to additional overtime pay equal to 0.5 times the employee's hourly regular rate of pay for all hours of work in excess of 42.75 hours in a week, including meal periods. Other nonexempt employees who receive AUO pay and who are not engaged in law enforcement activities are entitled to additional FLSA overtime pay equal to 0.5 times their hourly regular rate of pay for all hours of work in excess of 40 hours in a week, not including meal periods.

An employee receiving AUO pay is also entitled to night, Sunday, and holiday pay when the requirements for these types of premium pay have been met. However, hazardous duty pay may not be paid for hours of work that are compensated by AUO pay because AUO pay is provided in lieu of other types of premium pay except overtime pay for regularly scheduled overtime work, and premium pay for night, Sunday, and holiday work. (See 5 [U.S.C.](#) 5545(c)(2).)

III. Work scheduling requirements

Whenever possible, work for Federal employees must be scheduled on a regular basis, and administratively uncontrollable overtime (AUO) pay generally cannot be paid for work that has been regularly scheduled. Regularly scheduled work means work that is scheduled in advance of an administrative workweek. An administrative workweek means a period of 7 consecutive calendar days designated in advance by the head of an agency (e.g., Sunday through Saturday midnight). (See 5 [U.S.C.](#) 6101 and subpart A of 5 [CFR](#) part 610.)

The Comptroller General has determined that while the conditions for AUO pay in 5 U.S.C. 5545(c)(2) "generally" require that an employee's hours of duty may not be subject to administrative control, that does not mean that overtime work must be compensated on an hourly basis as if it were regularly scheduled overtime work when circumstances occasionally require supervisors or managers to direct overtime work for short periods of time. (See B-168048, August 19, 1970.) Also, the courts have ruled that work is not regularly scheduled when an agency cannot predict the beginning or the end of an event (such as a prison riot) that leads to assignment of employees to a temporary period of predictable tours of overtime work until the event ends. (See Robert A. Buchan v. United States, 92-505C (Cl. Ct.), March 30, 1995.)

IV. Administratively uncontrollable overtime (AUO) pay limitations

A law enforcement officer may receive AUO pay only to the extent that the payment will not cause the total of the employee's basic pay and premium pay (including AUO pay; regularly scheduled overtime pay; night, Sunday, or holiday pay; and hazardous duty pay) for any biweekly pay period to exceed the lesser of--

- (1) 150 percent of the minimum rate for GS-15, including a locality-based comparability payment under 5 [U.S.C.](#) 5304 or special pay adjustment under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509) and any special salary rate established under 5 U.S.C. 5305; or
- (2) the rate payable for level V of the Executive Schedule. (See 5 [CFR](#) 550.107.)

A lower biweekly pay limitation applies to employees who are not law enforcement officers. An employee who is not a law enforcement officer may be paid premium pay under subpart A of part 550, Code of Federal Regulations, to the extent that the payment does not cause the total of his or her basic pay and premium pay for any pay period to exceed the maximum rate for GS-15, including a locality-based comparability payment under 5 U.S.C. 5304 and a special rate established under 5 U.S.C. 5305. This limitation may be applied on an annual (calendar year) basis instead of on a biweekly basis if the head of an agency, or his or her designee, has determined that an emergency exists, and the employee has been determined to be performing work in connection with the emergency. (See 5 [CFR](#) 550.105 and 106.) A criminal investigator who is entitled to receive availability pay may not receive AUO pay. (See 5 U.S.C. 5545a(g).)

V. Payment for seasonal work and temporary assignments

When the requirements for administratively uncontrollable overtime (AUO) pay are met by an employee during only part of a year, such as during a given season, an agency may pay AUO pay only during the period when all requirements for AUO pay are met. Further, an agency may continue AUO pay for not more than 10 workdays when an employee receiving AUO pay has been temporarily assigned to duties that do not warrant payment of AUO pay, and such payments for performance of nonqualifying duties may not exceed 30 workdays in a calendar year. One exception is that AUO payments may continue for up to 60 workdays at any one time and cumulatively in a calendar year while an employee is on temporary assignment to a formally approved program for advanced training directly related to the duties for which AUO pay is paid. (See 5 [CFR](#) 550.162(c).) An employee is entitled to continuation of AUO pay during any period of paid leave. (See 5 [CFR](#) 550.162(e).)

VI. Examples of abuse of administratively uncontrollable overtime (AUO) pay authority

The Office of Personnel Management (OPM) strongly encourages agencies to implement the recommendations made by the reports of their Inspectors General and conduct their own reviews as needed to determine whether agency AUO policies, practices, and payments are in accord with law, regulations, and good personnel management practices.

Examples of potential abuses of the AUO pay authority which should be identified and corrected are the following:

- (1) payment of AUO pay to an employee who almost always works in a supervised office environment and does not perform independent investigative or other administratively uncontrollable work;
- (2) crediting of hours of work for AUO pay that are clerical or administrative in nature, can be easily scheduled in advance, and do not involve independent investigative or other administratively uncontrollable work;
- (3) payment of a rate of AUO pay that is unauthorized because the average number of hours of irregular or occasional work is too low;
- (4) payment of AUO pay that causes total basic pay and premium pay received by the employee to exceed the applicable biweekly pay limitation for the employee;
- (5) payment of both AUO pay and overtime pay on an hourly basis for the same hours of work;
- (6) payment of AUO pay to a criminal investigator who is entitled to receive availability pay;
- (7) for an employee engaged in law enforcement activities (including security personnel in correctional institutions) who receives AUO pay and is not exempt from the Fair Labor Standards Act of 1938, as amended, failure to pay an additional 0.5 times the hourly regular rate of pay for each overtime hour in excess of 42.75 hours per week, including meal periods; and
- (8) continuation of AUO pay for more than 10 consecutive prescribed workdays on temporary assignment to perform only regularly scheduled administrative duties.

VII. Inspectors General audit reports

The Office of Personnel Management has received 12 Inspectors General audit reports on administratively uncontrollable overtime (AUO) pay. The audit reports were from the Inspectors General for the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Interior, Justice, Transportation, and Treasury (for the Bureau of Alcohol, Tobacco and Firearms; Customs Service; and Secret Service); and the Social Security Administration.

OPM received letters or fax notices from Inspectors General of 45 other agencies stating that no AUO pay was paid by their agencies during Fiscal Year 1996. Therefore, no audit report was

required. The Inspector General for the Central Intelligence Agency (CIA) stated that the CIA's audit report would be provided in May 1997. Therefore, OPM's guidance on AUO pay does not reflect the findings of the CIA report.

VIII. Audit report findings and Office of Personnel Management (OPM) comments

- [Finding 1: Current agency guidance on AUO is not available](#)
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Finding 1: Current agency guidance on administratively uncontrollable overtime (AUO) pay is not available.

In some cases, agency regulations, guidance, manuals, forms, and internal review procedures for AUO pay are out of date, not available to supervisors or managers, and/or not implemented.

Office of Personnel Management (OPM) comments:

It appears that regulations or guidance on administratively uncontrollable overtime (AUO) pay in many agencies were written several years ago and not updated. In some agencies, relatively few employees receive AUO pay, and sufficient attention may not have been paid to recent changes. In other cases, it appears that AUO pay has been viewed incorrectly as a pay entitlement rather than as form of annual premium pay with specific eligibility requirements.

One important statutory change that should be incorporated into agency regulations and guidance was enacted as part of Public Law 101-173, November 27, 1989. This act eliminated the requirement to use the rate of basic pay for GS-10, step 1, as the "cap" or maximum rate of basic pay that can be used for computing annual premium pay for AUO work. (See 5 [U.S.C.](#) 5545(c)(2).) OPM issued final regulations implementing this provision of law on October 10, 1990. The statutory change and corresponding OPM regulations require that an employee whose rate of basic pay is greater than the rate of basic pay for GS-10, step 1, is entitled to AUO pay computed on the rate of basic pay for the employee's actual grade and step.

Another change in law that should be incorporated into agency regulations and guidance, where applicable, is a revision of the biweekly limitation on the payment of AUO pay and certain other types of premium pay for law enforcement officers. The revised limitation is incorporated in 5 [U.S.C.](#) 5547(c) and was added by section 410 of the Federal Employees Pay Comparability Act of 1990. OPM regulations implementing this change in law are found in 5 [CFR](#) 550.107, and the limitation is summarized above in this document in the section on "AUO Pay Limitations."

A third change in law that should be incorporated into agency regulations and guidance is the prohibition on paying AUO pay to criminal investigators who are entitled to receive availability pay. (See 5 [U.S.C.](#) 5545a(g).) The authority for availability pay for criminal investigators (5 [U.S.C.](#) 5545a) was added by section 633 of the Treasury, Postal Service, and General

Government Appropriations Act, 1995 (Public Law 103-329, September 30, 1994). OPM's interim regulations implementing this authority became effective on October 30, 1994, and are found in 5 CFR 550.181 through 550.187.

To the extent that agency regulations and guidance on AUO pay and other types of premium pay are out of date or incomplete, they should be updated to reflect the changes in law summarized above and any other applicable changes in law, OPM regulations, and guidance that have occurred since the agency's documents were last issued. Agencies should also give appropriate consideration to applicable Comptroller General opinions and court decisions in updating these documents, such as those cited in section III of this guidance above, entitled "[Work Scheduling Requirements](#)," and those cited below in OPM's comments under "[Finding 5](#)."

Finding 2: Administratively uncontrollable overtime (AUO) approval process is not adequate.

- In some instances, the initial authorization of AUO pay for individual employees has not been reviewed and approved at the agency level or, if it was, it has not been reviewed and reapproved periodically as required by Office of Personnel Management (OPM) regulations.

Office of Personnel Management (OPM) comments:

The head of an agency (or his or her designee) is responsible for determining which employees shall receive AUO pay, consistent with law and applicable OPM and agency regulations. These AUO coverage determinations must be reviewed at appropriate intervals, and AUO pay must be discontinued if the employee is no longer entitled to AUO pay. (See 5 [U.S.C.](#) 5545(c)(2) and 5 [CFR](#) 550.151 and 161(b).)

OPM urges each agency to determine annually in writing whether AUO pay should be continued for each employee who has received it in the past. In addition, agencies should re-examine positions already approved for AUO pay when new employees fill the positions, even if the positions appear to be identical to those that are encumbered by individuals who already receive AUO pay. OPM urges that these determinations be made in writing by the first level supervisor or higher and that the initial determinations be reviewed at a higher management level in the agency. OPM also urges that each agency establish a mechanism for independent review and audit of these determinations (such as by using special internal codes and cost controls to quantify the use of AUO pay or through unannounced staff reviews). The review and audit mechanisms should be designed to measure the accuracy of pay computations and conformance with all applicable legal and regulatory requirements and guidance. In agencies with multiple organizations using the AUO pay authority, the agency-wide AUO program should be reviewed at appropriate intervals (e.g., every 5 years) to ensure consistency.

Finding 3: Insufficient documentation

In many cases, there is insufficient written documentation available to enable an independent outside reviewer to determine whether an employee is entitled to the rate of administratively uncontrollable overtime (AUO) pay he or she receives.

Office of Personnel Management (OPM) comments:

The percentage amount of AUO pay must be established initially and reviewed periodically in accordance with OPM regulations. Agencies do not have the authority to establish alternative methods for determining the percentage rate of AUO pay, such as establishing a uniform percentage of AUO pay for a group of employees based on the average amount of overtime work performed by the group. (See 5 [CFR](#) 550.154 and 550.161(d), (e), and (f).)

To determine the appropriate rate of AUO pay consistent with OPM regulations, it is necessary to determine the average number of irregular or occasional hours of work customarily performed by an employee each week. OPM regulations require that these determinations be based on available records of the hours of irregular or occasional overtime work required in the past and any other information bearing on the number of hours of duty that may reasonably be expected to be required in the future. (See 5 CFR 550.154 and 550.161(d) and (e).) OPM regulations also require that reviews of the rate of AUO pay be conducted at appropriate intervals and that rates of AUO pay be revised or discontinued when necessary to meet legal or regulatory requirements. For additional information, see section I of this guidance above, entitled "[General Statutory and Regulatory Requirements.](#)"

OPM urges that all employees receiving AUO pay and their supervisors and managers receive training and/or detailed information on the difference between regularly scheduled and irregular or occasional overtime work, including an explanation of what constitutes an administratively uncontrollable event requiring irregular or occasional overtime work. For additional information, see section III of this guidance above, entitled "[Work Scheduling Requirements.](#)"

Employees who receive AUO pay and/or their supervisors must be required to keep records of all hours of work, including whether each hour of work is regularly scheduled or irregular and occasional in nature. This documentation is necessary not only to determine the appropriate rate of AUO pay, but also to determine whether employees are entitled to additional pay for regularly scheduled overtime work and premium pay for regularly scheduled night, Sunday, and holiday work. Each agency is responsible for timekeeping records, and the records should include all hours of AUO work (i.e., irregular or occasional overtime work), as well as regularly scheduled overtime work (i.e., hours of work scheduled in advance of the administrative workweek). The timekeeping records should be reviewed and approved in writing by each employee's supervisor.

OPM also urges that each agency establish a mechanism for independent review and audit of timekeeping records and AUO pay rates (as well as other premium pay determinations) at least once every 5 years for accuracy, conformance with all applicable legal and regulatory requirements and guidance, and consistent application within the agency. Supervisors and auditors should especially review the sufficiency and accuracy of documentation for irregular or occasional overtime work. Evidence of overtime work that may not be irregular or occasional in nature may include overtime work that is performed at the same time each day over an extended period of time, on the same day each week, or performed immediately prior to or following the employee's basic daily tour of duty on a regular basis. Agency documentation might also show that the purpose of the overtime work was to complete administrative or clerical duties that are clearly not administratively uncontrollable. However, agencies should note that the law requires only that the employee must "generally" be responsible for recognizing, without supervision,

circumstances which require the employee to remain on duty. Therefore, agencies must consider the work environment as a whole, not just a specific work incidence. (See OPM's regulatory criteria at 5 CFR 550.153.)

A determination that hours of regularly scheduled overtime work are being credited improperly as irregular or occasional in nature may result in a determination that the rate of AUO pay must be revised or discontinued. This also may result in a determination that the employee is entitled to overtime pay and other premium pay on an hour-for-hour basis for regularly scheduled overtime work that was ordered or approved in advance.

Finding 4: Errors in computation of administratively uncontrollable overtime (AUO) percentage rate

In some cases, agencies have not determined the rate of AUO pay correctly because the number of irregular or occasional hours per week has been determined incorrectly.

Office of Personnel Management (OPM) comments:

OPM regulations provide for determining the rate of AUO pay by calculating the average number of hours of irregular or occasional overtime work performed by an employee per week. (See 5 [CFR](#) 550.154.) For example, the regulations establish a 25 percent rate of AUO pay for a position that requires an average of over 9 hours a week of irregular or occasional overtime work. See OPM's comments on "[Finding 3,](#)" above, for determining whether hours of overtime work are irregular or occasional in nature.

It is also necessary to calculate the number of weeks correctly. Agencies may use the number of calendar weeks or the number of administrative workweeks (as defined in 5 CFR 610.102) for the review period in determining the rate of AUO pay for an employee. However, in determining the number of weeks in a review period, there is no authority to reduce the number of weeks by subtracting hours of paid leave (such as annual leave or sick leave), hours of unpaid leave (such as hours of leave without pay, including leave without pay under the [Family and Medical Leave Act of 1993 \(FMLA\)](#), or hours during which an employee is suspended without pay), hours of excused absence with pay, hours or days during which an employee has been detailed to other duties for which employees seldom or never perform irregular or occasional overtime work, or hours in a training status.

Nevertheless, there is a permissible way to ensure that an employee's AUO rate of pay is not adversely affected by an extended absence from performing normal duties, such as an extended period of training, receipt of continuation of pay under the Federal Employees Compensation Act (FECA), detail to duties that do not require a substantial amount of irregular or occasional overtime work, or leave without pay (including leave without pay approved under the FMLA or the FECA). Specifically, an agency may establish a policy to disregard a period of time that would otherwise be included in its established review periods under these circumstances. For example, an agency could establish a policy that an AUO review period will normally cover a 6-month period with a specified beginning and ending date. However, an agency could also decide to make an exception in certain circumstances to begin or end a particular AUO review period when an employee will not be performing regular AUO duties for a specified amount of time

(e.g., up to 12 weeks) because of approved leave without pay, extended training, continuation of pay, or extended detail to other duties that do not require substantial amounts of irregular or occasional overtime work. Thus, an agency could vary the length of the normal AUO review cycle so as to accommodate unusual circumstances as they arise.

Such a policy could provide that the next AUO review period will begin when the employee returns to a paid working status that includes substantial amounts of irregular or occasional overtime hours for which AUO pay has previously been approved. OPM recommends that agencies avoid permitting gaps between AUO review periods of more than 12 weeks or the full length of time an employee is not working and is receiving workers compensation benefits. An agency policy permitting gaps between AUO review periods in these limited circumstances is permitted because OPM regulations simply provide that agencies must review AUO rate determinations at appropriate intervals. However, agencies must not create exceptions for the AUO review period for absences resulting from paid leave (unless annual leave or sick leave is substituted for leave without pay, as appropriate, under the FMLA for a period of up to 12 weeks, as discussed above), excused absence with pay, or suspensions without pay. In addition, OPM strongly recommends that agency AUO review periods for determining the rate of AUO pay never exceed 1 year in length.

An agency policy permitting gaps between AUO review periods on an exception basis will help the agency comply with the requirement in 5 [U.S.C.](#) 6384 that an employee shall not lose any employment benefits as a result of a period of leave without pay under the FMLA. In addition, a policy permitting gaps between AUO review periods is consistent with OPM's recommendation that the same rate of AUO pay be continued during a period of continuation of pay or leave without pay (even though the employee may not actually be paid AUO pay during a period of leave without pay), provided that the employee is in receipt of benefits under the FECA and that AUO pay continues to be authorized by the agency for the position.

OPM notes that employees are not paid AUO pay during any period in a nonpay status and that OPM has established regulations limiting payment of AUO pay for periods of training and detail to nonqualifying duties. See section V of this guidance above, entitled "[Payment for Seasonal Work and Temporary Assignments](#)," and OPM regulations at 5 CFR 550.162.

Finding 5: Improper administratively uncontrollable overtime (AUO) percentage rates of pay

- In some cases, employees have received AUO pay who are not qualified to receive it, have received a percentage of AUO pay lower or higher than is authorized by OPM regulations, or have not received premium pay they are entitled to receive for regularly scheduled overtime work.

Office of Personnel Management (OPM) comments:

The Inspectors General audit reports indicate that in several instances employees who receive AUO pay are not qualified to receive it or are entitled to a lower or higher percentage rate of AUO pay than has actually been paid. Agencies must terminate payment of AUO pay to any

employee who does not qualify for it and must reduce the amount of any AUO pay that is earned in excess of the rate authorized by OPM regulations.

For each overpayment of AUO pay, agencies must determine whether the employee is required to reimburse the Government for all or part of the overpayment or whether all or part of the overpayment may be waived. (See the legal requirements for waiving such overpayments in 5 [U.S.C. 5584](#).) Agencies must also increase the rate of AUO pay in instances where employees are entitled to a higher rate than they have received and must determine an employee's entitlement, if any, to back pay in such circumstances.

Agencies may not provide AUO pay to an employee who is entitled to availability pay. (See 5 U.S.C. 5545a(g).) Also, agencies may not provide AUO pay to employees who do not perform substantial amounts of irregular or occasional overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. In addition, agencies may not pay AUO pay for customary and routine work duties and work duties that are primarily administrative in nature or occur in noncompelling circumstances, e.g., work that should have been regularly scheduled. (See section 650 of the Treasury, Postal Service, and General Government Appropriations Act, 1997. Also, see section I of this guidance above, entitled "General Statutory and Regulatory Requirements.")

While the conditions for AUO pay in 5 U.S.C. 5545(c)(2) "generally" require that an employee's hours of duty may not be subject to administrative control, this does not mean that overtime work must be compensated on an hour-for-hour basis as if it were regularly scheduled overtime work when circumstances occasionally require supervisors or managers to direct overtime work for short periods of time in connection with responses to administratively uncontrollable events. (See "Work Scheduling Requirements," above.) However, in instances where documentation shows that overtime work exists (i.e., the employee has performed work in excess of the overtime standards--generally 8 hours in a day or 40 hours in a week), overtime pay has been approved (i.e., by the employee's supervisor or another designated agency official), and an overtime work pattern exists (i.e., indicating that overtime work has been performed at the same time each day or each week over an extended period of time), agencies would have to conclude that the work is not irregular or occasional in nature and could not be properly compensated by payment of AUO pay unless convincing evidence exists to the contrary.

In general, regularly scheduled overtime work must be ordered or approved in advance of the applicable regularly scheduled administrative workweek by the employee's supervisor or another agency official designated by the head of an agency to schedule work, including hours of overtime work. However, OPM regulations provide that failure by authorized officials to regularly schedule work in advance of the applicable administrative workweek does not eliminate an employee's entitlement to overtime pay and other premium pay for regularly scheduled overtime work. Thus, when overtime work that should have been regularly scheduled in advance of the workweek is ordered or approved during a workweek, the employee is entitled to premium pay for regularly scheduled overtime work if the designated scheduling official:

- (1) had knowledge of the specific days and hours of the work requirement in advance of the administrative workweek; and

- (2) had the opportunity to determine which employees had to be scheduled, or rescheduled, to meet the specific days and hours of that work requirement. (See 5 CFR 610.111(a)(2) and 5 [CFR](#) 610.121(b)(3).

The Comptroller General has ruled that an employee may be paid both regularly scheduled overtime on an hour-for-hour basis and AUO pay for irregular or occasional overtime work, as long as the same work is not compensated twice. Thus, an employee may receive two different types of payment for two different types of overtime work. The separate types of premium pay are mutually exclusive methods for compensating two distinct forms of overtime work. (See 52 Comp. Gen. 310 (1972).) The Comptroller General has also stated that if an employee is found to be entitled to overtime pay for regularly scheduled overtime work but was already compensated improperly for that work with AUO pay improperly, the excess amount of AUO pay should be used to pay for the allowable regularly scheduled overtime pay. (See 52 Comp. Gen. 319 (1972) and B-196328, April 22, 1980.)

Finding 6: Misperceptions of premium pay costs and limitations

In some cases, agencies have misperceptions about premium pay costs and limitations.

Office of Personnel Management (OPM) comments:

OPM encourages agencies to analyze all positions that require a substantial amount of overtime work to determine the most cost-effective and efficient way to accomplish work requirements. This may be done in part by assessing the feasibility of the various work scheduling and premium pay options that are permitted by law and OPM regulations. Payment of administratively uncontrollable overtime (AUO) pay may not necessarily be the most efficient and cost-effective way to compensate all the employees who now receive it. On the other hand, AUO pay may be appropriate for some positions and grade levels for which it has not been approved previously.

Some considerations that should be taken into account when assessing work scheduling and premium pay options for compensating employees who have substantial amounts of irregular or occasional overtime work have been provided in previous sections of this guidance, and others are mentioned below.

As noted under "[Finding 1](#)," above, a change in law enacted in 1989 eliminated the requirement to use the rate of basic pay for GS-10, step 1, as the maximum rate of basic pay for computing annual premium pay for AUO work. Final OPM regulations implementing that change became effective in September 1990. However, for overtime hours that are not compensated by AUO pay, the hourly overtime pay rate is limited for employees who are exempt from (not covered by) the Fair Labor Standards Act (FLSA) of 1938, as amended. The hourly overtime pay limitation for a law enforcement officer is found in 5 U.S.C. 5542(a)(4). The hourly overtime pay limitation for most other FLSA-exempt employees is found in 5 [U.S.C.](#) 5542(a)(1) and (2).

These hourly overtime pay limitations do not apply to employees who are nonexempt from (covered by) by the FLSA. In addition, FLSA-nonexempt employees who are paid for irregular or occasional overtime work on an hourly basis are not only entitled to overtime pay for hours of work that are ordered or approved, but are also entitled to overtime pay for hours of work that

are "suffered or permitted." "Suffered or permitted work" means any work performed by an employee for the benefit of an agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed.

The following additional premium pay entitlements must also be taken into account, whether or not the employee receives AUO pay, for employees who are covered by subchapter V of chapter 55 of title 5, United States Code:

- When an employee performs hours of work between 6 p.m. and 6 a.m. that are regularly scheduled in advance of the administrative workweek by the employee's supervisor, the employee is entitled to a night pay differential of 10 percent of his or her hourly rate of basic pay for each hour of night work, including overtime hours at night.
- When an employee performs hours of work during any tour of duty that begins or ends on Sunday and was scheduled by the employee's supervisor in advance of an administrative workweek, the employee is entitled to Sunday premium pay at the rate of 25 percent of his or her hourly rate of basic pay for up to 8 nonovertime hours of each Sunday tour of duty.
- When an employee is required to perform hours of work on a holiday (during hours when he or she would otherwise perform nonovertime work if not for the holiday), the employee is entitled to his or her rate of basic pay plus holiday premium pay equal to the employee's rate of basic pay for each hour of holiday work.

Entitlements to night, Sunday, and holiday premium pay differ from those summarized above for employees under flexible or compressed work schedules. See OPM's [Handbook On Alternative Work Schedules](#) for guidance on these types of premium pay for employees under alternative work schedules. For further information on premium pay limitations and entitlements, see section II of this guidance above, entitled "[Relationship to Other Premium Pay Entitlements](#)," and section IV of this guidance above, entitled "[AUO pay limitations](#)."

In implementing this guidance from OPM, agencies need to be mindful of any obligations they may have to negotiate or consult, as appropriate, with the exclusive representative(s) of their employees. In addition, agencies are also urged to utilize existing Partnership arrangements that they may have with the exclusive representative(s) of their employees.

For further information or assistance concerning the administration of AUO pay, please contact our Compensation Administration Division at (202) 606-2858, FAX: (202) 606-0824, or email at payleave@opm.gov.