



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Tuesday, July 17, 2012
CPM 2012-05

MEMORANDUM FOR: Heads Of Executive Departments And Agencies

FROM: John Berry, Director

Subject: Continuation of National Emergency in Iraq

On May 18, 2012, President Obama issued a notice to continue for 1 year the declared national emergency with respect to the stabilization of Iraq. (See the President's notice at <https://obamawhitehouse.archives.gov/the-press-office/2012/05/18/notice-continuatio...>) As a result of this notice, agency heads may continue to apply a special premium pay cap waiver authority for eligible civilian employees working in Iraq.

On March 21, 2012, we issued a memorandum providing guidance on the authority extended by section 1104 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81, December 31, 2011) for the head of an agency to waive the premium pay cap under 5 U.S.C. 5547 for civilian employees working in certain overseas locations. (See [CPM 2012-02](#) – Recent Pay and Leave Legislative Changes.) In that memorandum, we advised agencies that the premium pay cap waiver authority could not be applied to employees working in Iraq after May 19, 2012, absent an extension of the national emergency.

As a result of the President's notice continuing the declared national emergency in Iraq, we have updated our guidance on the premium pay cap waiver authority in the attachment. This revised guidance applies to civilian employees working in qualifying overseas locations, including Iraq. While the national emergency in Iraq is extended through May 22, 2013, the premium pay cap waiver authority under section 1104 of Public Law 112-81 expires on December 31, 2012. Therefore, agencies may continue to apply the waiver authority to eligible employees through December 31, 2012. The guidance in the attachment to this memorandum supersedes the guidance we issued on March 21, 2012.

Additional Information

Agency headquarters-level human resources offices may contact Pay and Leave at OPM at pay-leave-policy@opm.gov. Employees should contact their agency human resources or payroll office for further information on this memo and agency field offices should contact their appropriate headquarters-level agency human resources office. For general information on Federal pay, leave, and work scheduling policies, please visit <http://www.opm.gov/oca/index.asp>.

cc: Chief Human Capital Officers
Human Resources Directors

Attachment- Summary of Key Necessary Elements in Agency Policies Implementing Section 1101 of Public Law 110-417, as Amended, for Calendar Year 2012

Section 1104 of Public Law 112-81, December 31, 2011, extends to calendar year 2012 the previous 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, and section 1103 of Public Law 111-383, January 7, 2011.

The premium pay cap waiver authority under section 1101 of Public Law 110-417, as amended, may be applied in calendar years 2009 through 2012 to an employee who meets all of the following conditions for coverage eligibility:

1. 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 section 5547 of title 5, United States Code (as determined by the head of the Executive agency in or under which such employees are employed).
2. 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 2012, the 42-day period may overlap a calendar year— i.e., begins in 2011 and ends in 2012, or begins in 2012 and ends in 2013.)
3. 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.

NOTE 1: The Department of State and DOD have made a blanket determination that all their employees serving in Afghanistan are performing work in direct support of, or directly related to, a military operation. In other locations, they will make determinations regarding whether the work performed by a given group of their employees is qualifying based on the particular situation in that location. In some situations, determinations may need to be made on a case-by-case basis after taking into account the individual employee’s duties. Other agencies will need to make their own determinations regarding whether the

work performed by their employees is qualifying at a given location. (See NOTE 2 for specific information on employees serving in Iraq.)

NOTE 2: Since the United States no longer has a military operation in Iraq, the higher premium pay cap cannot be applied to employees working in Iraq on that basis. However, the President issued a notice on May 18, 2012, that continues the declared national emergency in Iraq for one year (through May 22, 2013) to support stabilization efforts. (See the President's notice at <https://obamawhitehouse.archives.gov/the-press-office/2012/05/18/notice-continuatio...>. 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, and Executive Order 13488, July 17, 2007.) Based on this notice, agencies may continue to apply the section 1101(a) waiver authority for eligible employees in Iraq based on service performed through December 31, 2012. To be eligible in Iraq, employees must be performing work in direct support of, or directly related to, an operation in response to the current national emergency declared by the President, as described in the Presidential notice of May 18, 2012.

4. 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 in calendar year 2012 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 2012 to exceed the annual rate of salary payable to the Vice President under 3 U.S.C. 104, which remains at the 2011 level of \$230,700. (Like the section 5547 limitation, the section 1101 limitation is applied to premium payments that are "payable" during the calendar year--i.e., earned in a pay period for which the pay date falls in the calendar year.)

The higher annual limitation on premium pay established under section 1101(a) continues to apply during calendar year 2012 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 2012 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. 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.)

Under section 1101(b), the aggregate limitation on pay under 5 U.S.C. 5307 will not apply in a calendar year to any employee who is granted a waiver under section 1101(a) (i.e., premium pay cap waiver) during any part of that calendar year (2012). When the aggregate limitation on pay under 5 U.S.C. 5307 is applied, 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. However, if section 1101(b) applies to an employee in calendar year 2012, the employee is entitled to receive applicable payments immediately without deferral.

Section 1101(c) continues to apply. Under section 1101(c), any additional 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 that is 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 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.

COUNTRIES IN CENTCOM OVERSEAS AREA OF RESPONSIBILITY

1. Afghanistan
2. Bahrain
3. Egypt
4. Iran
5. Iraq
6. Jordan
7. Kazakhstan
8. Kuwait
9. Kyrgyzstan
10. Lebanon
11. Oman
12. Pakistan
13. Qatar

14. Saudi Arabia
15. Syria
16. Tajikistan
17. Turkmenistan
18. United Arab Emirates (UAE)
19. Uzbekistan
20. Yemen

COUNTRIES IN AFRICOM OVERSEAS AREA OF RESPONSIBILITY
(formerly in CENTCOM overseas area of responsibility)

1. Djibouti
2. Eritrea
3. Ethiopia
4. Kenya
5. Seychelles
6. Somalia
7. Sudan

Section 1101 of Public Law 110-417, October 14, 2008, as amended by section 1106 of Public Law 111-84, October 28, 2009, and section 1103 of Public Law 111-383, January 7, 2011, and as further amended by section 1104 of Public Law 112-81, December 31, 2011

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 2012, 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.** —
- (1) **IN GENERAL.** — Section 5307 of title 5, United States Code, shall not apply to any employee in any calendar year in which that employee is granted a waiver under subsection (a).
 - (2) **OTHER LIMITATIONS.** — In the case of any employees who (disregarding subparagraph (A)) would otherwise be subject to a limitation on premium pay similar to one set forth in section 5547 of title 5, United States Code (as determined by the head of the Executive agency in or under which such employees are employed) —
 - (A) the agency head may waive that otherwise applicable limitation, to the same extent and in the same manner as would be allowable under subsection (a) if those employees were instead subject to such section 5547; and
 - (B) if a waiver under subparagraph (A) is granted with respect to such employees, then, neither section 5307 of title 5, United States Code, nor any other similar limitation (as determined by the agency head) shall apply with respect to such employees for purposes of any calendar year for which such waiver is so granted.
- (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 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.