



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Tuesday, March 30, 2010
CPM 2010-08

MEMORANDUM FOR: Heads Of Executive Departments And Agencies

FROM: John Berry, Director

Subject: Expiration of "Grandfathered" Compensatory Time Off

On March 15, 2007, the U.S. Office of Personnel Management (OPM) issued final regulations that required agencies to establish a 26 pay period time limit for using compensatory time off earned in lieu of overtime pay. (See 72 FR 12032, at <http://edocket.access.gpo.gov/2007/pdf/E7-4696.pdf>, and 5 CFR §§ 550.114(d)-(f) and 551.531(d)-(f).) Prior to the issuance of OPM's regulations, many agencies permitted employees to accumulate large balances of compensatory time off without an expiration date. In order to provide employees with sufficient time to use their compensatory time off already earned, the regulations authorized a 3-year grace period to use the accumulated compensatory time off to the employees' credit as of May 14, 2007. This memorandum serves as a reminder of the coming expiration of the 3-year grace period, and prompts agencies and/or payroll providers to remind their employees to schedule and use any "grandfathered" compensatory time by May 22, 2010 (i.e., the last day of the pay period ending 3 years after May 14, 2007).

Forfeiture or Liquidation of "Grandfathered" Compensatory Time

If the accumulated compensatory time off to the credit of an employee (including an employee who accrued compensatory time off before placement in a Senior Executive Service position), as of May 14, 2007, is not used by May 22, 2010, agencies will be required to either liquidate (i.e., pay) or forfeit the unused compensatory time off, as applicable. Fair Labor Standards Act (FLSA) nonexempt employees must be paid for their unused compensatory time off; it may not be forfeited (5 CFR § 551.531(e)). However, the decision of whether to liquidate or forfeit unused compensatory time off earned under title 5 by FLSA exempt employees will be based on the agency's internal policy (unless the failure to take the compensatory time off is due to an exigency of the service beyond the employee's control, in which case the employee must receive payment for the unused compensatory time off). (See 5 CFR § 550.114(e).)

There is no authority to waive or extend the 3-year period in which "grandfathered" compensatory time off must be used. The procedures for using the "grandfathered" and newly earned compensatory time off are based on internal guidelines established by the agency and its payroll provider, in accordance with applicable laws and regulations. At this time, OPM encourages agencies and their payroll providers to review their internal guidelines to ensure, to the extent possible, that employees have sufficient opportunity to use grandfathered compensatory time off prior to the 3-year expiration date (May 22, 2010) without losing any of

the more recent compensatory time earned subject to the 26 pay period limitation. For additional information, please visit OPM's website at www.opm.gov/oca/pay/HTML/COMP.htm.

Impact on Aggregate Limitation on Pay

As a form of premium pay under 5 U.S.C. chapter 55, subchapter V, compensatory time off for FLSA exempt employees is subject to the aggregate limitation on pay under 5 U.S.C. 5307 and 5 CFR part 530, subpart B. If an agency included the value of the employee's compensatory time off in the employee's aggregate compensation subject to the aggregate limitation on pay when it was earned or credited to the employee, the agency may not include the value of that compensatory time off in the employee's aggregate compensation subject to the aggregate limitation on pay at the time that it is liquidated or paid out. If an agency did not include the value of the employee's compensatory time off in the employee's aggregate compensation subject to the aggregate limitation on pay when it was earned or credited to the employee, the agency must include the value of the compensatory time off in the employee's aggregate compensation subject to the aggregate limitation on pay when it is liquidated or paid out. For additional information, please visit OPM's website at www.opm.gov/oca/pay/HTML/aggreatelimitation.asp.

For additional information, agency Chief Human Capital Officers and/or Human Resources Directors should contact their assigned OPM Human Capital Officer. Employees should contact their agency human resources office for assistance.

cc: Chief Human Capital Officers
Human Resources Directors