



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Wednesday, April 2, 1997
CPM 97-03

MEMORANDUM FOR: Other Stakeholders

FROM: Donald J. Winstead, Assistant Director for Compensation Policy

Subject: Guidance on Pay Caps in Calendar Years with 27 Pay Days

On October 23, 1996, the Office of Personnel Management (OPM) issued a memorandum to the Directors of Personnel (CPM 96-12) concerning the effect of 27 pay days in calendar year 1996 on the payment of retention allowances and the aggregate limitation on pay. For some agencies, calendar year 1997 also contains 27 pay days instead of the usual 26. Over a period of several years, all agencies can expect to experience 27 pay days in a calendar year. This memorandum provides additional guidance to all agencies on the effect of an additional (27th) pay day in a calendar year on certain annual pay limitations. Information on the following subjects can be found in this memorandum: [Basic Pay](#), [Aggregate Limitation on Pay](#), [Premium Pay Limitations](#).

Basic Pay

The payment of basic pay to employees covered by the biweekly pay period provisions of 5 U.S.C. 5504 is not affected by an additional (27th) pay day in a calendar year. Employees can actually receive more or less than their annual rate of basic pay in a given calendar year. This is because the employee's rate of pay is computed on a biweekly basis for the work year using a payroll divisor of 2,087 hours. For example, the annual rate of basic pay for a member of the Senior Executive Service at the ES-5 pay level is \$115,700. Under 5 U.S.C. 5504, the employee's biweekly rate is determined as follows:

Hourly rate: $\$115,700 \div 2,087 \text{ hours} = \55.44

Biweekly rate: $\$55.44 \times 80 \text{ hours} = \$4,435.20$

In this example, the aggregate amount of basic pay received by an employee in a calendar year with 26 pay days would be \$115,315.20 ($\$4,435.20 \times 26$). The aggregate amount of basic pay received by an employee in a calendar year with 27 pay days would be \$119,750.40 ($\$4,435.20 \times 27$). The employee would be entitled to the full \$119,750.40 earned in a calendar year with 27 pay days even though that amount exceeds the annual rate of \$115,700.

Heads of agencies and other employees covered by 5 U.S.C. 5505 whose pay is computed on a monthly basis may not earn basic pay in a calendar year in excess of the applicable annual rate of pay. (See Comptroller General opinion B-120604, August 30, 1976.) This is because 5 U.S.C. 5505 specifies that a month's pay is one-twelfth of a year's pay. For example, the annual rate for level II of the Executive Schedule is \$133,600. The monthly rate is computed by dividing

\$133,600 by 12 (i.e., \$11,133.33). We note that the Comptroller General determined that agencies may pay such employees on a semi-monthly basis as long as the actual rate is first calculated on a monthly basis (47 Comp. Gen. 485 (1968)). In calendar years with 27 pay days, agencies must ensure that the basic pay earned in a calendar year by employees paid on a semi-monthly basis does not exceed 12 times their monthly rate of pay.

Aggregate Limitation on Pay

An additional pay check in a calendar year may cause the allowances, differentials, bonuses, awards, or similar cash payments received by certain employees, when added to basic pay, to exceed the aggregate limitation on pay established by 5 U.S.C. 5307 (\$148,400, the rate for level I of the Executive Schedule). If it is estimated that the level I pay limitation will be reached, most payments may be deferred and paid in a lump-sum payment at the beginning of the next calendar year in accordance with 5 CFR part 530, subpart B. (The aggregate limitation on pay does not permit an agency to reduce or defer basic pay. Please note that locality pay is not basic pay for this purpose.)

If an employee's aggregate compensation is estimated incorrectly earlier in the calendar year, the sum of the employee's remaining payments of basic pay may exceed the difference between the aggregate compensation the employee actually received to date in the calendar year and the rate of basic pay for level I of the Executive Schedule. In this case, the employee will become indebted to the Federal Government for any amount that is paid in excess of the level I aggregate limitation. If the erroneous excess is attributable to amounts that should have been deferred and would have been payable at the beginning of the next calendar year, the debt will be extinguished on January 1 of the next calendar year. As part of the correction of the error, the amount of the erroneous excess must be deemed to have been paid on January 1 as if it were a deferred excess payment as described in 5 CFR 530.204. The amount of the erroneous excess also must be considered part of the employee's aggregate compensation for the new calendar year.

Retention allowances under 5 U.S.C. 5754 may not be authorized (even on a deferred basis) if it is estimated that the level I pay limitation will be reached. Under 5 CFR 575.306(b), agencies are prohibited from authorizing a retention allowance that, when added to the employee's estimated aggregate compensation, would cause the aggregate compensation actually received by the employee during the calendar year to exceed the rate for level I of the Executive Schedule. Also, for existing retention allowance authorizations, 5 CFR 575.307(a) requires agencies to reduce or suspend a retention allowance when an increase in one or more nondiscretionary payments causes an employee's estimated aggregate compensation to exceed the aggregate limitation on pay so that the aggregate compensation that the employee actually receives in a calendar year does not exceed the rate for level I of the Executive Schedule. Agencies should regularly review their retention allowance authorizations to ensure that an additional (27th) pay check or an increase in a nondiscretionary payment does not cause an employee's estimated aggregate compensation to exceed the level I pay cap.

Premium Pay Limitations

An additional (27th) pay day in a calendar year may affect the annual maximum earnings limitation on premium pay for work in connection with an emergency under 5 U.S.C. 5547(b). Section 5547(b) provides that an employee (as defined in 5 U.S.C. 5541(2)) performing work in connection with an emergency may not be paid certain types of premium pay if the aggregate of such employee's basic pay (including any locality adjustment) and premium pay in a calendar year exceeds the maximum rate payable for GS-15 (including any locality adjustment) in effect at the end of the calendar year. In calendar years with 27 pay days, agencies may wish to consider making appropriate adjustments in work schedules and in authorizing premium pay so that the annual aggregate limitation on premium pay is not exceeded. Premium pay that may not be paid to the extent that it causes the annual aggregate limitation to be exceeded includes title 5 overtime pay, availability pay for criminal investigators, night differential authorized by 5 U.S.C. 5545(a), annual premium pay for regularly scheduled standby duty, annual premium pay for administratively uncontrollable overtime (AUO) work, and premium pay for work on a Sunday or a holiday. Overtime pay earned under the Fair Labor Standards Act of 1938, as amended, is not capped by the annual premium pay limitation. Prevailing rate (wage) employees are not covered by the annual premium pay limitation.

An additional (27th) pay day in a calendar year does not affect the biweekly premium pay limitation under 5 U.S.C. 5547(a). An additional pay day also does not affect the biweekly premium pay limitation for law enforcement officers under 5 U.S.C. 5547(c).

For further information you may contact the Compensation Administration Division, Office of Compensation Policy, (202) 606-2858 or email: payleave@opm.gov.