



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Tuesday, March 19, 2019
CPM 2019-09

MEMORANDUM FOR: HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: MARGARET M. WEICHERT, ACTING DIRECTOR

Subject: Pay-Related Legislative Changes in the National Defense Authorization Act, FY 2019

This is to inform you of several legislative changes and extensions affecting Federal employee pay and certain benefits. The changes resulting from the enactment of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Public Law 115-232, August 13, 2018) are summarized below.

Section 611 – Reserve Income Replacement Program

Section 611(a) amends 37 U.S.C. 910(g) to extend the expiration date for the Reserve Income Replacement Program from December 31, 2018, to December 31, 2019.

The Reserve Income Replacement Program is administered by the U.S. Department of Defense (DOD) and provides income replacement payments for certain reserve component members experiencing extended and frequent mobilization for active duty service. (This amendment does not affect the reservist differential authority under 5 U.S.C. 5538, which is a separate program for Federal employees. A Federal employee who is entitled to a reservist differential may not receive payments under 37 U.S.C. 910 for the same period. Additional information on reservist differential is found at <http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/#url=Reservist-Differential>.)

Section 1103 – Rate of Overtime Pay for U.S. Department of the Navy Employees Performing Work to Support the Nuclear Aircraft Carrier Forward Deployed in Japan

Section 1103 extends the authority provided under section 1105 of the NDAA, FY 2011 (Public Law 111-383, January 7, 2011) until **September 30, 2021**. Subsection 1105(a) of the NDAA, FY 2011, amended 5 U.S.C. 5542(a) by adding a new paragraph (6)(A) to provide the overtime hourly rate of pay for a qualifying employee of the U.S. Department of the Navy is an amount equal to one and one-half times the hourly rate of basic pay of the employee, notwithstanding the normally applicable cap on the overtime hourly rate. This provision applies only to an employee who (1) is assigned to temporary duty to perform work aboard, or dockside in direct support of, the nuclear aircraft carrier that is forward deployed in Japan and (2) would be nonexempt under the Fair Labor Standards Act but for the application of the foreign area exemption in 29 U.S.C. 213(f). For further information on this provision, please see [CPM 2011-03](#).

Section 1104 – 1-Year Extension of Authority to Waive Pay Limitations for Certain Federal Civilian Employees Working Overseas and Modification of the Applicability of the Aggregate Limitation on Pay

Section 1104(a) extends to **calendar year 2019** the authority provided in section 1101 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417, October 14, 2008), as amended, for the head of an agency to waive the normally applicable premium pay cap established in 5 U.S.C. 5547. This waiver authority in 2019 applies to certain civilian employees who perform qualifying work while in an overseas location that (1) is in the area of responsibility of the United States 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). Based on the operation of current law, the annual limitation on basic pay and premium pay allowed under the waiver authority in calendar year 2019 is the officially established annual salary rate for the Vice President in 2019 under 3 U.S.C. 104.

Section 1104(b) also amends section 1101(b) of Public Law 110-417 concerning the applicability of the aggregate limitation on pay for employees granted a waiver of the premium pay cap for a covered period of time, as authorized under section 1101(a). Previously, an employee was exempted from the aggregate limitation on pay under 5 U.S.C. 5307 during the entire calendar year when granted a section 1101(a) waiver. Under amended section 1101(b), when an employee is granted a section 1101(a) waiver, the aggregate limitation will still apply during the affected calendar year, 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.

Section 1104 was effective upon enactment (i.e., August 13, 2018). Therefore—

- Employees granted a section 1101(a) waiver, on or before August 12, 2018, will be exempted from the aggregate limitation for the entire 2018 calendar year.
- Employees granted a section 1101(a) waiver on or after August 13, 2018, will be subject to the aggregate limitation in calendar year 2018, but any pay in addition to basic pay during the section 1101(a) waiver period will be exempted in applying the aggregate limitation.
- Employees granted a section 1101(a) waiver during calendar year 2019 will be subject to the aggregate limitation in 2019, but any pay in addition to basic pay during the section 1101(a) waiver period will be exempted in applying the aggregate limitation.

Section 1101(d) of Public Law 110-417 continues to provide the U.S. Office of Personnel Management (OPM) Director with the discretion to issue regulations for this waiver authority. OPM does not currently plan to issue regulations. However, each agency should establish policies for using this waiver authority if it has covered employees. To ensure agencies apply this discretionary authority consistently, we have developed the attached summary of key elements agencies should include in their policies implementing the waiver authority. The attached summary includes additional information on employee coverage, approval criteria, and special instructions on applying the waiver authority to employees working in Iraq.

Section 1115– 1-Year Extension of Discretionary Authority to Grant Allowances, Benefits, and Gratuities to Personnel on Official Duty in a Combat Zone

Section 1115 grants the head of an agency the discretionary authority until the end of **fiscal year 2020** (i.e., September 30, 2020), to provide an individual employed by, or assigned or detailed to, the agency, allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980. The employee must be on official duty in Pakistan or a combat zone, as defined by section 112(c) of the Internal Revenue Code of 1986.

Section 1115 amends section 1603(a)(2) of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234, June 15, 2006), as added by section 1102 of the NDAA for FY 2009 (Public Law 110-417, October 14, 2008) and amended by section 1112 of the NDAA for FY 2012 (Public Law 112-81, December 31, 2011), section 1104 of the NDAA for FY 2013 (Public Law 112-239, January 2, 2013), section 1102 of the NDAA for FY 2014 (Public Law 113-66, December 26, 2013), section 1102 of the NDAA for FY 2015 (Public Law 113-291, December 19, 2014), section 1102 of the NDAA for FY 2016 (Public Law 114-92, November 25, 2015), section 1133 of the NDAA for FY 2017 (Public Law 114-328, December 23, 2016), and section 1108 of the NDAA for FY 2018 (Public Law 115-91, December 12, 2017).

Additional Information

Agency headquarters-level human resources offices may contact OPM at pay-leave-policy@opm.gov. Employees should contact their agency human resources office for further information on this memorandum.

Attachment (see 508-conformant PDF below)

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, and Human Resources Directors