



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

The Director

Thursday, April 22, 2021  
CPM 2021-14

**MEMORANDUM FOR: HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES**

FROM: Kathleen M. McGettigan, Acting Director

Subject: Premium Pay Guidance for Federal Employees Performing Work in Support of the Unaccompanied Children Program

To support the Administration's urgent efforts to care for and place unaccompanied children who have entered the United States via the southern border, the Department of Health and Human Services (HHS) has solicited Federal employees to serve in volunteer deployment details as part of the HHS, Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), Unaccompanied Children (UC) Program. I want to thank agencies for allowing certain Federal employees to be away from their normal duties for this important cause.

The U.S. Office of Personnel Management (OPM) has received questions from agencies regarding the application of title 5 premium pay caps and determining an employee's Fair Labor Standards Act (FLSA) exemption status for employees working in support of the HHS UC Program. While this matter is addressed in OPM regulations and online guidance, we are providing the attached additional guidance to assist agencies.

**Waiver of Biweekly Premium Pay Cap**

Federal employees are covered by an *annual* premium pay cap in lieu of the normally applicable *biweekly* cap when performing work in connection with an emergency that involves a direct threat to life or property, including work performed in the aftermath of such emergency. OPM regulations require (1) a determination that such an emergency exists and (2) a determination that an employee is performing work in connection with such a qualifying emergency or its aftermath (5 CFR 550.106(a)(1)). Under OPM regulations, these determinations are generally made by the agency head or his/her designee. However, OPM also has the authority to make a determination that a qualifying emergency exists.

The presence of unaccompanied children at the southern border has given rise to an unusual set of circumstances that requires use of volunteers from other agencies, in addition to HHS, to assist with the urgent needs being addressed under the HHS UC Program. The UC Program provides a safe and appropriate environment to children and youth who enter the United States without immigration status and without a parent or legal guardian who is able to provide for their physical and mental well-being. ORR provides a continuum of care for children, including placements in ORR foster care, shelter, and residential care providers that provide temporary housing and other services to unaccompanied children in ORR custody. ORR and its care

providers work to ensure that children are released timely and safely from ORR custody to parents, other family members, or other adults (often referred to as “sponsors”) who can care for the child’s physical and mental well-being.

Under OPM regulations, an emergency is defined as a temporary condition posing a direct threat to human life or property (5 CFR 550.103). The unaccompanied children who are being assisted by HHS following entry are subject to conditions posing a direct threat to their lives, as they are in need of food, shelter, supervision, and protection, and unable to provide such resources for themselves.

OPM has determined that the presence of unaccompanied children at the southern border constitutes an emergency for purposes of the premium pay cap determination; thus, any employees determined by the agency head to be performing work in connection with this emergency are covered by the annual premium pay cap. This determination applies to all Federal employees covered by the title 5 premium pay provisions performing work in support of the HHS UC Program, including employees voluntarily detailed to HHS from other agencies.

This waiver of the biweekly premium pay limitation—and application of an annual limitation—will apply to employees performing work in support of the UC Program until their voluntary assignment or detail ends and they return to their home agencies or resume their normal duties. Application of the annual limitation to such employees is effective on the first day of the pay period in which such work began, including such work performed before the date of this memorandum.

### **Additional Information**

Agency headquarters-level human resources offices may contact Pay and Leave at OPM at [pay-leave-policy@opm.gov](mailto:pay-leave-policy@opm.gov). Employees should contact their agency human resources or payroll 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