



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

Wednesday, March 21, 2012

CPM 2012-02

MEMORANDUM FOR: Heads Of Executive Departments And Agencies

FROM: John Berry Director

Subject: Recent Pay and Leave Legislative Changes

This is to inform you of several legislative changes affecting Federal employee pay, leave, and certain benefits.

I. National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81, December 31, 2011)

Several changes resulting from the enactment of the National Defense Authorization Act for FY 2012 ("the Act") are summarized below. All of the sections identified are effective on the date of enactment of the Act (December 31, 2011), unless otherwise stated.

Section 611 – Reserve Income Replacement Program

Subsection 611(7) amends 37 U.S.C. 910(g) to extend the expiration date for the Reserve Income Replacement Program from December 31, 2011, to December 31, 2012.

The Reserve Income Replacement Program is administered by the 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. An 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/reservist/>.)

Section 1104 – 1-Year Extension of Authority to Waive Pay Limitations for Certain Federal Civilian Employees Working Overseas

Effective January 1, 2012, section 1104 extends to calendar year 2012 the authority provided in section 1101(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417, October 14, 2008), as amended by section 1103 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383, January 7, 2011), for the head of an agency to waive the premium pay cap provisions under 5 U.S.C. 5547.

As in calendar years 2010 and 2011, this waiver authority in 2012 applies to certain civilian employees who perform 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). The overseas work must meet one of two additional qualifying conditions: (1) performance of work in direct support of or directly related to a military operation (including a contingency operation as defined in 10 U.S.C. 101(a)(13)), or (2) performance of work in direct support of or directly related to an operation in response to a national emergency declared by the President.

The annual limitation on basic pay and premium pay allowed under the waiver authority remains at **\$230,700 in calendar year 2012** (the annual rate of salary payable to the Vice President under 3 U.S.C. 104). Subsection 1101(b) continues to provide that the aggregate limitation on pay under 5 U.S.C. 5307 will not apply to an employee in calendar year 2012 if, during the same year, the employee is granted a waiver under subsection 1101(a) of the normally applicable premium pay limitations.

Subsection 1101(c) also continues to apply and provides that any payments made under the subsection 1101(a) waiver authority resulting in additional premium pay of a type normally creditable as basic pay will not be considered basic pay for any purpose (e.g., retirement). Also, such additional premium pay may not be used in computing lump-sum payments for accumulated and accrued annual leave under 5 U.S.C. 5551.

Subsection 1101(d) continues to provide the Director of the U.S. Office of Personnel Management (OPM) 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 a summary of key elements agencies should include in their policies implementing the waiver authority.

Iraq Mission. The attached summary of key elements includes guidance on the coverage of employees stationed in Iraq, since U.S. military operations have ceased in that country.

The premium pay cap waiver authority is dependent on a requirement that an employee must be performing work in direct support of, or directly related to, (1) military operations or (2) an operation in response to a national emergency declared by the President. Since the U.S. 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 17, 2011, that continues the declared national emergency in Iraq for 1 year (through May 22, 2012) to support stabilization efforts. (See [Federal Register](#) notice (76 FR 29141, May 19, 2011).) Based on this notice, agencies may continue to apply the waiver authority through May 19, 2012, which is the last day of the last full pay period ending before May 22, 2012, for employees who are performing work in direct support of, or directly related to, an operation in response to the national emergency described in the Presidential notice of May 17, 2011 (76 FR 29141). The attachment to this memorandum provides additional guidance on the application of the waiver authority for employees working in Iraq. Absent appropriate Presidential or Congressional action, agencies may not apply the premium pay cap waiver to employees based on work performed in Iraq after May 19, 2012. If the national emergency is extended or other conditions change, we will revise this guidance as appropriate. (See Attachment.)

Section 1108 – Sense of Congress Relating to Pay Parity for Federal Employees Serving at Certain Remote Military Installations

Section 1108 states that it is the sense of Congress that the Secretary of Defense and the Director of OPM should develop procedures for determining locality pay in the United States for employees of DOD in circumstances that may be unique to such employees, such as the assignment of employees to a military installation so remote from the nearest established communities or suitable places of residence as to handicap significantly the recruitment or retention of well qualified individuals, due to the difference between the cost of living at the post of assignment and the cost of living in the locality or localities where such employees generally reside.

Section 1112 – 2-Year Extension of Discretionary Authority to Grant Allowances, Benefits, and Gratuities to Personnel on Official Duty in a Combat Zone

Section 1112 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 amended by section 1102 of the Duncan Hunter National Defense Authorization Act for FY 2009 (Public Law 110-417, October 14, 2008), to grant the head of an agency the discretionary authority until the end of fiscal year 2013 (i.e.—September 30, 2013), to provide an individual employed by, or assigned or detailed to, such 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. This provision is effective retroactively to the beginning of fiscal year 2012.

II. Intelligence Authorization Act for Fiscal Year 2012 (Public Law 112-87, January 3, 2012)

Section 432 – Federal Bureau of Investigation Participation in the Department of Justice Leave Bank

Section 432 amends 5 U.S.C. 6372(b) to grant the Director of the Federal Bureau of Investigation (FBI) authority to allow employees of the FBI to participate in a leave bank program administered by the Department of Justice under 5 U.S.C. chapter 63, subchapter IV, if in the Director's judgment such participation will not adversely affect the protection of intelligence sources or methods.

III. Repeal of Regulations for DOD's National Security Personnel System

Section 1113 of the National Defense Authorization Act for FY 2010 (Public Law 111-84, October 28, 2009) repealed the legal authority for the National Security Personnel System (NSPS) and provided that any existing NSPS regulations would cease to be effective on January 1, 2012. On December 28, 2011, DOD and OPM issued a final notice in the Federal Register to remove the NSPS regulations found in chapter XCIX of title 5, Code of Federal Regulations, effective January 1, 2012 (76 FR 81359).

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: 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 the work performed by their employees is qualifying at a given location.)

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.
 - **Iraq Mission**. Section 1101 may be applied to eligible employees performing work in direct support of, or directly related to, an operation in response to the current national emergency declared by the President in Iraq, as explained below. If the national emergency is extended or other conditions change, we will revise this guidance as appropriate.
1. Since the U.S. 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 17, 2011, that continues the declared national emergency in Iraq for one year (through May 22, 2012) to support stabilization efforts. (See Federal Register notice (76 FR 29141, May 19, 2011).) 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 May 19, 2012, which is the last day of the last full pay period before May 22, 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 described in the Presidential notice of May 17, 2011 (76 FR 29141).
 2. The requirements listed above continue for application of the premium pay cap waiver to employees in Iraq. This includes the guidance in the fourth bullet above that the higher annual premium pay limit will continue to limit premium payments payable to an employee after May 19, 2012, until the end of calendar year 2012 if that employee was working in Iraq and under an approved waiver during the period from January 1, 2012, through May 19, 2012. Thus, while the regular biweekly limit on premium pay under 5 U.S.C. 5547 applies to an employee for work performed in Iraq after May 19, 2012, any premium payments under that biweekly limit would be simultaneously subject to the section 1101(a) annual limit—meaning that premium payments would cease when the section 1101(a) annual limit is reached.

3. Service in Iraq after May 19, 2012, will count towards the 42 consecutive days requirement, if the 42-day period began on or before May 19, 2012. When an employee in Iraq satisfies the 42-day requirement after May 19, 2012, the waiver will apply retroactively but will apply only to payments payable for covered pay periods ending on or before May 19, 2012, consistent with paragraph 5 below.
4. The waiver of the aggregate pay limitation in section 5307 applies to an employee after May 19, 2012, (for the whole calendar year 2012) if that employee was working in Iraq and covered by an approved waiver during any part of the period from January 1, 2012, through May 19, 2012.
5. Agencies may not apply the premium pay cap waiver to employees based on work performed in Iraq after May 19, 2012, unless specific authority is provided by appropriate Presidential or Congressional action. (Note: The premium pay cap waiver may apply to the pay check for the pay period ending on May 19, 2012.)
6. 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 13438](#), July 17, 2007.

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.