



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

Thursday, March 21, 2013

CPM 2013-04

MEMORANDUM FOR: Heads Of Executive Departments And Agencies

FROM: John Berry
Director

Subject: Recent Pay Legislative Changes

This is to inform you of several legislative changes affecting Federal employee pay and certain benefits. Several changes resulting from the enactment of the National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Public Law 112-239, January 2, 2013) (“the Act”) are summarized below. All of the sections identified are effective on the date of enactment of the Act (January 2, 2013), unless otherwise stated.

Section 321 – Expansion and Reauthorization of Multi-Trades Demonstration Project

Section 321 amends section 338 of the FY 2004 NDAA (Public Law 108-136), as amended by section 329 of the FY 2008 NDAA (Public Law 110-181), to expand and reauthorize the Multi-Trades Demonstration Project carried out in accordance with 5 U.S.C. 4703.

The amendment removes the limits on the number of demonstration projects that may be carried out, and makes a change to the reference to the Navy Fleet Readiness Center. This amendment also reauthorizes the project through FY 2018, and expands the reporting requirement to January 19, 2019.

Section 611 – Reserve Income Replacement Program

Section 611(8) amends 37 U.S.C. 910(g) to extend the expiration date for the Reserve Income Replacement Program from December 31, 2012, to December 31, 2013.

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/policy-data-oversight/pay-leave/pay-administration/#u....>)

Section 681 – Equal Treatment for Members of Coast Guard Reserve Called to Active Duty under Title 14

Section 681(a) amends 10 U.S.C. 101(a)(13)(B) to add to the existing definition of the term “contingency operation” a military operation resulting in a call or order to active duty under 14 U.S.C. 712. This addition is an authority pertaining to the Coast Guard Ready Reserve.

Under section 681(d)(2), the amendments made by section 681 are deemed to have been enacted on December 31, 2011, for the purposes of various provisions of law, including the reservist differential authority in 5 U.S.C. 5538. Section 5538 allows for special payments to civilian Federal employees who are absent to perform active duty in the uniformed services pursuant to a call or order to active duty under a provision of law referred to in 10 U.S.C. 101(a)(13)(B). By adding a reference to 14 U.S.C. 712 in section 101(a)(13)(B), active duty performed under that title 14 authority is now qualifying active duty for the purpose of reservist differential, effective December 31, 2011. Additional information on reservist differential is found at <http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/#u...> The U.S. Office of Personnel Management (OPM) will revise its guidance to conform with this change in law.

Section 1101 – 1-Year Extension of Authority to Waive Pay Limitations for Certain Federal Civilian Employees Working Overseas

Effective January 1, 2013, section 1101 extends to calendar year 2013 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, for the head of an agency to waive the normally applicable premium pay cap established in 5 U.S.C. 5547. (Section 1101 of Public Law 110-417 was previously amended by various sections of the National Defense Authorization Acts for FY 2010, 2011, and 2012—respectively, section 1106 of Public Law 111-84, October 28, 2009; section 1103 of Public Law 111-383, January 7, 2011; and section 1104 of Public Law 112-81, December 31, 2011.)

As in calendar years 2011 and 2012, this waiver authority in 2013 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.

Based on the operation of current law, the annual limitation on basic pay and premium pay allowed under the waiver authority in calendar year 2013 will increase to \$231,900, which is the annual rate of salary for the Vice President under 3 U.S.C. 104 scheduled to be in effect at the end of calendar year 2013 as of the date of this memorandum. Based on 3 U.S.C. 104 and the delay in the scheduled adjustment of General Schedule pay rates, the Vice President’s rate of pay is scheduled to increase from \$230,700 to \$231,900 on April 1, 2013. (See [CPM 2012-13](#), December 27, 2012, and [Executive Order](#) 13635, December 27, 2012.) The waiver authority

modifies the limitation of premium pay under 5 U.S.C. 5547 to provide a higher limitation. Under section 5547, the normally applicable annual limitation is based on certain annual pay rates in effect at the end of the calendar year. (See 5 U.S.C. 5547(b).) We advise agencies not to make premium payments that cause an employee's projected annual aggregate total basic pay plus premium pay to exceed \$230,700 until after the new rate of \$231,900 actually takes effect. Any payments that are temporarily blocked by this approach will become immediately payable on the effective date of the new rate.

Section 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 2013, if (during the same year) the employee is granted a waiver under subsection 1101(a) of the normally applicable premium pay limitations.

Section 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.

Section 1101(d) continues to provide the Director of 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, on May 18, 2012, President Obama issued a notice to continue for 1 year (through May 22, 2013) the declared national emergency with respect to the stabilization of Iraq. (See the President's notice at <http://www.gpo.gov/fdsys/pkg/FR-2012-05-21/pdf/2012-12487.pdf>.)

Based on this notice, agencies may continue to apply the waiver authority through May 18, 2013, which is the last day of the last full biweekly pay period ending before May 22, 2013, 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 18, 2012 (77 FR 30183). 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 18, 2013. If the national emergency is extended or other conditions change, we will revise this guidance as appropriate. (See Attachment.)

Additional guidance regarding this provision as it applies to employees in Iraq is provided in [CPM 2012-02](#), March 21, 2012, and [CPM 2012-05](#), July 17, 2012. Please refer to them for any additional questions and a historical background of the changes that have occurred in the application of the waiver authority.

Section 1104 – 1-Year Extension of Discretionary Authority to Grant Allowances, Benefits, and Gratuities to Personnel on Official Duty in a Combat Zone

Section 1104 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 Duncan Hunter National Defense Authorization Act for FY 2009 (Public Law 110-417, October 14, 2008) and amended by section 1112 of the NDAA for Fiscal Year 2012 (Public Law 112-81, December 31, 2011), to grant the head of an agency the discretionary authority until the end of fiscal year 2014 (i.e., September 30, 2014), 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 2014.

Section 1107 – Interagency Personnel Rotations

The purpose of this section is to increase the efficiency and effectiveness of the Government by fostering greater interagency experience among executive branch personnel on national security and homeland security matters involving more than one agency by specifying that the head of each agency participating in the program shall ensure that, in selecting individuals to fill senior positions within a national security function (e.g., Emergency Management), the agency gives a strong preference to individuals who have performed interagency rotational service within that national security functional area.

Section 1107 establishes a Committee on National Security Personnel within the Executive Office of the President. The members of the Committee will be designees of the Director of the Office of Management and Budget, the Director of OPM, the Assistant to the President for National Security Affairs, the Secretary of Defense, the Secretary of State, the Secretary of Homeland Security, and other members as the President designates.

No later than 270 days after enactment of the Act, the Committee, in consultation with representatives from other agencies, must develop and issue a National Security Human Capital Strategy providing policies, processes, and procedures for a program for the interagency rotation of personnel among positions within the National Security Interagency Communities of Interest.

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 and 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 2013

Section 1101 of Public Law 112-239, January 2, 2013, extends to calendar year 2013 the 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; section 1103 of Public Law 111-383, January 7, 2011; and section 1104 of Public Law 112-81, December 31, 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 2013 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 5 U.S.C. 5547 (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 2013, the 42-day period may overlap a calendar year—i.e., begins in 2012 and ends in 2013, or begins in 2013 and ends in 2014 .)
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 2013 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 2013 to exceed the annual rate of salary payable to the Vice President under 3 U.S.C. 104, which is scheduled to increase to \$231,900 in calendar year 2013, based on laws in effect as of the date of this memorandum (see NOTE below). (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.)

NOTE: Based on the operation of current law as of the date of this memorandum, the annual limitation on basic pay and premium pay allowed under the waiver authority in calendar year 2013 will increase to \$231,900, which is the annual rate of salary for the Vice President under 3 U.S.C. 104 scheduled to be in effect at the end of calendar year 2013. Based on 3 U.S.C. 104 and the delay in the scheduled adjustment of General Schedule pay rates under section 114 of Public Law 112-175, the Vice President's rate of pay is scheduled to increase from \$230,700 to \$231,900 on April 1, 2013. (See CPM 2012-13, December 27, 2012, and Executive Order 13635, December 27, 2012.) The waiver authority modifies the limitation of premium pay under 5 U.S.C. 5547 to provide a higher limitation. Under section 5547, the normally applicable annual limitation is based on certain annual pay rates in effect at the end of the calendar year. (See 5 U.S.C. 5547(b).) Thus, the replacement rate under section 1101 used to cap premium pay must also be the rate in effect at the end of the calendar year. We advise agencies to not make premium payments that cause an employee's projected annual aggregate total basic pay plus premium pay to exceed \$230,700 until after the new rate of \$231,900 actually takes effect. Any payments that are temporarily blocked by this approach will become immediately payable on the effective date of the new rate.

The higher annual limitation on premium pay established under section 1101(a) continues to apply during calendar year 2013 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 2013 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. If the employee's projected basic pay plus premium pay payable for 2013 already exceeds the section 5547 annual limit, the waiver of the biweekly limit and invoking of the section 5547 annual limit would not provide additional premium pay in any biweekly pay period.)

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 (2013). 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 2013, 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. On May 18, 2012, President Obama issued a notice to continue for 1 year (through May 22, 2013) the declared national emergency with respect to the stabilization of Iraq. (See the President's notice at <http://www.gpo.gov/fdsys/pkg/FR-2012-05-21/pdf/2012-12487.pdf>.) 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 18, 2013, which is the last day of the last full pay period before May 22, 2013. 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 18, 2012 (77 FR 30183).
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 18, 2013, until the end of calendar year 2013 if that employee was working in Iraq and under an approved waiver during the period from January 1, 2013, through May 18, 2013. 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 18, 2013, 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. (Note: As explained in the note in the fourth bullet, an agency may waive the biweekly limit and invoke the annual limit under 5 U.S.C. 5547 (higher of EX-V or applicable GS-15/10 rate), if the employee's aggregate projected basic pay plus premium pay payable for 2013 is less than that annual 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.)

3. Service in Iraq after May 18, 2013, will count towards the 42 consecutive days requirement, if the 42-day period began on or before May 18, 2013. When an employee in Iraq satisfies the 42-day requirement after May 18, 2013, the waiver will apply retroactively but will apply only to payments payable for covered pay periods ending on or before May 18, 2013, consistent with paragraph 5 below.
4. The waiver of the aggregate pay limitation in section 5307 applies to an employee after May 18, 2013, (for the whole calendar year 2013) if that employee was working in Iraq and covered by an approved waiver during any part of the period from January 1, 2013, through May 18, 2013.
5. Agencies may not apply the premium pay cap waiver to employees based on work performed in Iraq after May 18, 2013, 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 18, 2013.)
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 13488, 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; section 1103 of Public Law 111-383, January 7, 2011; section 1104 of Public Law 112-81, December 31, 2011; and section 1101 of Public Law 112-239, January 2, 2013.

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 2013, 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)—
- C.** 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

- D. 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.
- E. **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.
- F. **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.