



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Thursday, March 3, 2011
CPM 2011-03

MEMORANDUM FOR: Heads Of Executive Departments And Agencies

FROM: John Berry, Director

Subject: Recent Pay-Related Legislative Changes

This is to inform you of several changes in Federal employee pay administration resulting from the enactment of the Ike Skelton National Defense Authorization Act for FY 2011 (Public Law 111-383, January 7, 2011) (hereafter referred to as "the Act"). All of the sections identified below are effective on the date of enactment of the Act (January 7, 2011), unless otherwise stated.

Sections 601 and 611 – Reservist Income Replacement Program and Relationship to Reservist Differential Program

Sections 601 and 611 amend the Reserve Income Replacement Program authority under 37 U.S.C. 910. The Reserve Income Replacement Program is administered by the Department of Defense and provides income replacement payments for certain reserve component members experiencing extended and frequent mobilization for active duty service.

Subsection 601(a) amends 37 U.S.C. 910(b) to clarify that a civilian employee of the Federal Government who is also a member of a reserve component is not entitled to a payment under section 910(b) for any period for which the employee is entitled to (1) a reservist differential payment under 5 U.S.C. 5538, or (2) a comparable benefit under an administratively established program for civilian employees absent from a position of employment with the Federal Government in order to perform active duty in the uniformed services.

Subsection 611(7) amends 37 U.S.C. 910(g) to extend the expiration date for the Reserve Income Replacement Program from December 31, 2010 to December 31, 2011.

Section 1103 – 1-year Extension of Authority to Waive Pay Limitations for Certain Federal Civilian Employees Working Overseas

Effective January 1, 2011, section 1103 extends to calendar year 2011 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 1106 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84, October 28, 2009), for the head of an agency to waive the premium pay cap provisions under 5 U.S.C. 5547.

As in calendar years 2009 and 2010, this waiver authority in 2011 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 an 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 2011** (the annual rate of salary payable to the Vice President under 3 U.S.C. 104). Subsection 1101(b) continues to provide the aggregate limitation on pay under 5 U.S.C. 5307 will not apply to an employee in calendar year 2011 if 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 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. (See Attachment.)

Section 1105 – Rate of Overtime Pay for Department of the Navy Employees Performing Work to Support the Nuclear Aircraft Carrier Forward Deployed in Japan

Subsection 1105(a) amends 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 Department of the Navy is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay. 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).

This authority will expire on September 30, 2014.

Not later than September 30, 2013, the Secretary of the Navy is required to submit to the Secretary of Defense and the Director of OPM a report that describes the use of this new authority, to include associated costs and an evaluation of the extent to which the exercise of the authority helped the Navy meet its mission, and provides a recommendation on whether an extension of the authority is needed.

Not later than March 31, 2014, OPM is required to submit a report to Congress that evaluates the use of this temporary authority and analyzes the possibility of extending the expiration date of the authority and of expanding the authority to cover other employees.

Additional Information

For additional information, agency Chief Human Capital Officers and/or Human Resources Directors should contact their assigned OPM Human Capital Officer. Employees should contact their agency human resources office for assistance.

Attachment

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 2011

- Section 1103 of Public Law 111-383, January 7, 2011, extends to calendar year 2011 the previous authority of section 1101 of Public Law 110-417, October 14, 2008, as amended by section 1106 of Public Law 110-84, October 28, 2009.
- The premium pay cap waiver authority under section 1101 of Public Law 110-417, as amended, may be applied in calendar years 2009 through 2011 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 circumstances). (If the employee meets the 42-day requirement, the section 1106 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 1106 applies only to payments payable in calendar year 2011, the 42-day period may overlap a calendar year—i.e., begins in 2010 and ends in 2011, or begins in 2011 and ends in 2012.)
 3. 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 an 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 1106 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 State Department and DOD have determined all their employees serving in Iraq and Afghanistan are performing work in direct support of, or directly related to, a military operation. In other locations, they will make determinations on a case-by-case basis.)
 4. The employee is in a category of employees for whom coverage under section 1106 has been approved by an authorized agency official. (Note: Section 1106 establishes a discretionary authority that agencies may exercise, not an entitlement.)

- Employees who are granted a waiver under section 1101 in calendar year 2011 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 2011 to exceed the annual rate of salary payable to the Vice President under 3 U.S.C. 104, which remains at the 2010 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 2011 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.
- 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) in that calendar year (2011). 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 2011, 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.

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 (U.A.E)
19. Uzbekistan
20. Yemen

COUNTRIES IN AFRICOM OVERSEAS AREA OF RESPONSIBILITY

(formerly in CENTCOM overseas area of responsibility)

1. Djibouti
2. Ethiopia
3. Eritrea
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 as further amended by section 1103 of Public Law 111-383, January 7, 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 2011, 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 an 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.