



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

The Director

Tuesday, April 14, 2020  
CPM 2020-07

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

FROM: MICHAEL J. RIGAS, ACTING DIRECTOR

Subject: Waiver of the Premium Pay Limitation and Aggregate Pay Limitation for Employees Working in Response to Coronavirus Disease 2019 (COVID-19).

The recently enacted “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) (Public Law 116-136, March 27, 2020) contains two sections providing an agency head with the authority to waive the biweekly premium pay limitation found at 5 U.S.C. 5547(a) and apply a higher annual premium pay cap and to exclude premium pay from the aggregate limitation on pay found at 5 U.S.C. 5307 for work performed in response to COVID-19. The U.S. Office of Personnel Management (OPM) is issuing this memorandum to provide information on these new provisions. (See Attachment for the legislative text of sections 16003 and 18110 of the CARES Act.) For previously issued OPM guidance concerning COVID-19, please visit: [www.opm.gov/coronavirus](http://www.opm.gov/coronavirus).

For employees who perform work in emergency or mission critical situations that do not meet the coverage conditions of the CARES Act waiver authorities, the head of an agency may apply an annual premium pay cap instead of a biweekly premium pay cap, subject to the conditions provided in law and regulation. (See 5 U.S.C. 5547(b) and 5 CFR 550.106-550.107.) OPM has no authority to further waive the title 5 premium pay limitation or aggregate pay limitation.

**Section 16003**

Section 16003 of the CARES Act permits the head of an agency to waive the premium pay limitation (5 U.S.C. 5547(a)) and apply a higher annual premium pay cap for services performed by an employee during fiscal year 2020 that the head of the agency determines are primarily related to the preparation, prevention, or response to COVID-19. Section 16003 also provides that any premium pay for such services is excluded from the aggregate limitation on pay (5 U.S.C. 5307). The agency head may utilize the section 16003 authority only if the premium payments normally subject to the 5 U.S.C. 5547(a) limitation are funded, either directly or through reimbursement, by the Federal Emergency Management Agency. An employee provided a waiver under section 16003 may be paid premium pay (including overtime pay) only to the extent that it would not cause the aggregate of basic pay and premium pay for the applicable calendar year to exceed the rate for level II of the Executive Schedule (\$197,300 for 2020). Premium pay exempted from the regular title 5 premium pay limitations under the

section 16003 authority will also be excluded in applying the aggregate limitation on pay under 5 U.S.C. 5307 during calendar year 2020. The aggregate limitation on pay remains at the rate for level I of the Executive Schedule (\$219,200 for 2020) or the rate payable to the Vice President (\$253,300 for 2020), as applicable. The section 16003 authority is effective as if enacted on January 1, 2020, for covered services through the end of fiscal year 2020.

Section 16003 also applies to any other provision of law limiting the aggregate amount of premium pay payable on a biweekly or calendar year basis. The agency responsible for administering such laws must determine which payments are “premium pay” under section 16003.

### **Section 18110**

Section 18110 of the CARES Act permits the head of an agency to waive the premium pay limitation (5 U.S.C. 5547(a)) and apply a higher annual premium pay cap for services performed by an employee during fiscal year 2020 that the head of the agency determines are primarily related to the preparation, prevention, or response to COVID-19. Section 18110 also provides that any premium pay for such services is excluded from the aggregate limitation on pay (5 U.S.C. 5307). An employee provided a waiver under section 18110 may be paid premium pay (including overtime pay) that is normally subject to the 5 U.S.C. 5547(a) limitation only to the extent that it would not cause the aggregate of basic pay and premium pay for the applicable calendar year to exceed the rate for level II of the Executive Schedule (\$197,300 for 2020). Premium pay exempted from the regular title 5 premium pay limitations under the section 18110 authority will also be excluded in applying the aggregate limitation on pay under 5 U.S.C. 5307 during calendar year 2020. The aggregate limitation on pay remains at the rate for level I of the Executive Schedule (\$219,200 for 2020) or the rate payable to the Vice President (\$253,300 for 2020), as applicable. The section 18110 authority is effective as if enacted on February 2, 2020, for covered services through the end of fiscal year 2020.

Any additional premium pay that is paid as a result of the section 18110 authority may not be considered basic pay of the covered employee for any purpose (including premium pay that is normally creditable as basic pay for retirement or any other purpose) and may not be used in computing a lump-sum payment to the covered employee for accumulated and accrued annual leave under 5 U.S.C. 5551 or 5552.

Section 18110 also applies to any other provision of law limiting the aggregate amount of premium pay payable on a biweekly or calendar year basis. The agency responsible for administering such laws must determine which payments are “premium pay” under section 18110(d)(3).

### **Additional Information**

Agency headquarters-level human resources offices may contact OPM at [pay-leave-policy@opm.gov](mailto:pay-leave-policy@opm.gov). Agency field offices should contact their appropriate headquarters-level agency human resources office. Employees should contact their agency human resources office for further information on this memorandum.

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

**Attachment: Text of Section 16003 and Section 18110 of the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) Public Law 116-136, March 27, 2020**

**Text of Section 16003**

SEC. 16003.

- a) **PREMIUM PAY AUTHORITY.**—If services performed during fiscal year 2020 are determined by the head of the agency to be primarily related to preparation, prevention, or response to coronavirus, any premium pay that is funded, either directly or through reimbursement, by the Federal Emergency Management Agency shall be exempted from the aggregate of basic pay and premium pay calculated under section 5547(a) of title 5, United States Code, and any other provision of law limiting the aggregate amount of premium pay payable on a biweekly or calendar year basis.
- b) **OVERTIME AUTHORITY.**—Any overtime that is funded for such services described in subsection (a), either directly or through reimbursement, by the Federal Emergency Management Agency shall be exempted from any annual limit on the amount of overtime payable in a calendar or fiscal year.
- c) **APPLICABILITY OF AGGREGATE LIMITATION ON PAY.**—In determining whether an employee’s pay exceeds the applicable annual rate of basic pay payable under section 5307 of title 5, United States Code, the head of an Executive agency shall not include pay exempted under this section.
- d) **LIMITATION OF PAY AUTHORITY.**—Pay exempted from otherwise applicable limits under subsection (a) shall not cause the aggregate pay earned for the calendar year in which the exempted pay is earned to exceed the rate of basic pay payable for a position at level II of the Executive Schedule under section 5313 of title 5, United States Code.
- e) **EFFECTIVE DATE.**—This section shall take effect as if enacted on January 1, 2020.

**Text of Section 18110**

SEC. 18110.

- a) If services performed by an employee during fiscal year 2020 are determined by the head of the agency to be primarily related to preparation, prevention, or response to coronavirus, any premium pay for such services shall be disregarded in calculating the aggregate of such employee’s basic pay and premium pay for purposes of a limitation under section 5547(a) of title 5, United States Code, or under any other provision of law, whether such employee’s pay is paid on a biweekly or calendar year basis.
- b) Any overtime pay for such services shall be disregarded in calculating any annual limit on the amount of overtime pay payable in a calendar or fiscal year.

- c) With regard to such services, any pay that is disregarded under either subsection (a) or (b) shall be disregarded in calculating such employee's aggregate pay for purposes of the limitation in section 5307 of such title 5.
1. Pay that is disregarded under subsection (a) or (b) shall not cause the aggregate of the employee's basic pay and premium pay for the applicable calendar year to exceed the rate of basic pay payable for a position at level II of the Executive Schedule under section 5313 of title 5, United States Code, as in effect at the end of such calendar year.
  2. For purposes of applying this subsection to an employee who would otherwise be subject to the premium pay limits established under section 5547 of title 5, United States Code, "premium pay" means the premium pay paid under the provisions of law cited in section 5547(a).
  3. For purposes of applying this subsection to an employee under a premium pay limit established under an authority other than section 5547 of title 5, United States Code, the agency responsible for administering such limit shall determine what payments are considered premium pay.
- d) This section shall take effect as if enacted on February 2, 2020.
- e) If application of this section results in the payment of additional premium pay to a covered employee of a type that is normally creditable as basic pay for retirement or any other purpose, that additional pay shall not—
1. be considered to be basic pay of the covered employee for any purpose; or
  2. be used in computing a lump-sum payment to the covered employee for accumulated and accrued annual leave under section 5551 or section 5552 of title 5, United States Code