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Date

**DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT**

HUMAN RESOURCES BULLETIN #146, FY11

SUBJECT: Annual Pay Limitation for Overseas Emergency Work

EFFECTIVE DATE: January 1, 2011 for payments payable beginning in calendar year (CY) 2011

EXPIRATION DATE: December 31, 2011

SUPERSEDES: Human Resources (HR) Bulletin #095, FY09, 5 United States Code (U.S.C.), "Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law 110-417" dated December 4, 2008

REVISIONS: This bulletin extends the authority to waive the annual pay limitation during CY 2011 for certain overseas emergency work or a Presidential declared emergency operation (as described in the bulletin) for up to \$230,700.

BACKGROUND: Effective January 1, 2011, section 1103 extends to CY 2011 the authority provided in section 1101(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law (P. L.) 110-417, October 14, 2008), as amended by section 1106 of the National Defense Authorization Act for Fiscal Year 2010 (P. L. 111-84, October 28, 2009), for the head of an agency to waive the premium pay cap provision under Title 5, U.S.C. § 5547.

PURPOSE: To update the annual pay limitation policy for overseas emergency work in direct support of or directly related to a military operation or performance of work in direct support of or directly related to an operation in response to an emergency declared by the President.¹

POLICY: In accordance with section 1101 of P.L. 110-417, as amended by section 1106 of P.L. 111-84, employees performing emergency work in connection with a military operation or an operation in response to a declared emergency in an overseas location may have alternative annual earnings limitation applied in lieu of the annual earnings limitation. This means that employees may receive premium pay in CY 2011 to the extent that such premium pay would not

¹ On November 18, 2004, a Department-wide exception to the biweekly salary cap was authorized for employees performing work in connection with an emergency, its aftermath, or for mission-critical activities. This exception remains in effect until otherwise notified.

cause the employee's aggregate amount of basic pay and premium pay in the CY to exceed an expected \$230,700. This limitation is applied to premium payments that are payable during CY 2011, i.e., payments earned in a pay period for which the pay date falls in the CY, or up to and including Pay Period 25, 2011. Premium pay for this purpose includes allowances, differentials, bonuses, awards, or other similar payments authorized under Title 5, U.S.C.

The alternative annual limitation continues to apply to an employee's annual aggregate basic pay and premium pay, even after the employee has stopped performing work covered under this authority. At this point, the employee's earnings will be subject to the biweekly premium pay limitation under Title 5, U.S.C. § 5547. However, the employee may receive payments up to the biweekly premium pay limitation of section 5547, each pay period until the alternative annual limitation of \$230,700 is reached.

Section 1101 of P.L. 110-417 does not provide authority to waive the aggregate compensation limitation in Title 5, U.S.C. § 5307, which bars payment of compensation (including premium pay) under Title 5, in addition to basic pay to the extent such payment would cause the employee's aggregate annual compensation received in a CY to exceed a specified annual rate.² Since the section 1101 annual limitation is \$230,700, an employee may be entitled to premium pay under section 1101 that cannot be paid during CY 2011 due to the section 5307 limitation. In this case, any excess payments should be deferred until the beginning of CY 2012 (see Title 5, Code of Federal Regulations (CFR) §§ 530.203(f) and 530.204) and are to be counted toward the 2012 aggregate pay limitation under section 5307. (A deferred payment of premium pay is not considered in applying the applicable 2012 premium pay limitation under Title 5, U.S.C. § 5547 or similar authority.)

APPLICABILITY: This HR Bulletin applies to employees performing emergency work in connection with a military operation or an operation in response to a declared emergency in an overseas location under one of the following areas of responsibility:

- (1) Commander of the United States Central Command (CENTCOM). The following 20 countries are in the area of CENTCOM responsibility: Egypt, Jordan, Saudi Arabia, Yemen, Oman, United Arab Emirates, Qatar, Bahrain, Kuwait, Pakistan, Iran, Iraq, Afghanistan, Tajikistan, Kyrgyzstan, Kazakhstan, Uzbekistan, Turkmenistan, Syria, and Lebanon; or
- (2) Commander of the United States Africa Command (AFRICOM) for areas that were formally in the CENTCOM area but have since been moved under AFRICOM. The following seven countries are in the area of AFRICOM responsibility: Djibouti, Eritrea, Sudan, Kenya, Ethiopia, Somalia, and Seychelles.

The premium pay cap waiver authority under section 1101 of P.L. 110-417, as amended, may be applied in CY 2009–2011 to an employee who meets all of the following conditions:

² For most employees, this is the rate payable to the Vice President, or an expected \$230,700 in 2011.

- (1) The employee is covered by Title 5, U.S.C. § 5547 (dealing with limitations on premium pay);
- (2) The employee is assigned to work in an overseas location under the responsibility of CENTCOM or AFRICOM and remains in that location for at least 42 consecutive calendar days. If the employee meets the 42-day requirement, this limitation may be applied to days before that requirement was met, as long as the employee was performing work in a covered and approved category on those days. The 42-day period may overlap a CY; that is, it can begin in 2008 and end in 2009, or begin in 2009 and end in 2010, or begin in 2010 and end in 2011;
- (3) The employee performs work in direct support of (or directly related to) an operation in response to an emergency declared by the President, or a military operation, including a contingency operation as defined in Title 10, U.S.C., Part 101(a) (13); and
- (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, but is not an entitlement.)

PROCEDURES: Before applying the annual salary cap, webTA reports must be coded to allow employees to exceed the biweekly salary cap. To effect this change, a “4” must be coded in the RSO/Salary Cap field in the T&A Profile of webTA.

The following types of premium pay remain subject to the biweekly salary cap when other premium pay entitlements are subject to the annual salary cap: standby duty under Title 5, U.S.C. § 5545(c) (1); administratively uncontrollable overtime under Title 5, U.S.C. § 5545(c)(2); availability pay for criminal investigators under Title 5, U.S.C. § 5545a; and firefighter overtime pay for hours in the regular tour of duty under Title 5, U.S.C. § 5545b. Since the National Finance Center does not track the annual salary cap, agencies will have to track premium pay earned to ensure employees do not exceed the new annual cap.

Waivers resulting in receipt of additional premium pay that is normally creditable as basic pay for retirement (or any other purpose) is not to be considered basic pay and may not be used in computing a lump-sum payment for accumulated and accrued annual leave under Title 5, U.S.C. § 5551.

REFERENCES: Public Law 111-383; Section 1101 of Public Law 110-417; 5 U.S.C. 5551; 5 U.S.C. 5547; 5 U.S.C. 5307; 5 CFR 550.107

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