

**Functional Series 400
Personnel**

INTERIM UPDATE 02-07

SUBJECT: New Higher Pay Cap on Premium Pay in Effect

NEW MATERIAL: This Interim Update explains recent amendments to regulation that raise the biweekly premium pay cap for USAID General Schedule (GS) and noncommissioned Foreign Service (FS) employees and provide authority to use an annual cap instead of a biweekly cap in emergency and mission-critical situations. In addition, these amendments provide that these caps now apply to law enforcement officers who were previously subject to separate premium pay limitations.

EFFECTIVE DATE: 05/05/2002

POLICY

**USAID/General Notice
M/HR/PPIM/PP
06/13/2002**

Subject: New Higher Pay Cap on Premium Pay in Effect

The U.S. Office of Personnel Management issued interim regulations on April 19, 2002, to implement recent premium pay limitations established by section 1114 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107, December 28, 2001).

Section 1114 amended 5 USC 5547 that establishes biweekly or annual limitations on the premium pay that may be received by a Federal employee covered by Title 5, United States Code premium pay provisions (see paragraph 5 below).

These amendments raise the biweekly premium pay cap for USAID General Schedule (GS) and noncommissioned Foreign Service (FS) employees and provide authority to use an annual cap instead of a biweekly cap in emergency and mission-critical situations. In addition, these amendments provide that these caps now apply to law enforcement officers who were previously subject to separate premium pay limitations.

The law provides that these statutory amendments will become effective on the first day of the first pay period beginning on or after April 27, 2002. For USAID, these new provisions became effective on May 5, 2002, in pay period 9 (May 5, 2002 through May 18, 2002).

General Schedule and noncommissioned Foreign Service employees are covered by the premium pay provisions of subchapter V of Chapter 55 of Title 5, United States Code. Executive Schedule, Senior Executive Service, Senior Foreign Service, commissioned Foreign Service Officers, Foreign Service Nationals as well as experts and consultants are excluded.

Key provisions of the changes in the premium pay limitations are summarized below.

1. Section 1114 ties the premium pay limitations to the greater of two rates: (1) The rate of basic pay for GS-15, step 10 (including any applicable locality payment or special rate); or (2) The rate payable for Level V of the Executive Schedule (5 USC 5546 and 5 CFR 550.105). For most Federal employees, this results in a higher pay cap.

Previously, premium pay was capped to the extent that it caused the sum of the employee's basic pay and premium pay in a biweekly pay period to exceed the applicable biweekly rate of basic pay for GS-15, Step 10.

- a. Under the new higher pay cap, USAID GS and noncommissioned FS employees may receive premium pay including overtime, night, Sunday, and holiday pay or compensatory time off, provided their basic pay plus any premium pay for the pay period does not exceed Level V of the Executive Schedule. The new higher biweekly premium pay cap that applies to USAID employees is Level V of the Executive Schedule or \$4,661.60 in a pay period.

Prior to May 5, 2002, the 2002 biweekly premium pay cap was \$4,588.00 for USAID employees in the Washington, D.C. locality pay area. For employees assigned overseas, the biweekly cap was \$4115.20.

- b. The new pay cap applies to USAID employees regardless of whether they are assigned to Washington, D.C. or overseas. In some cases, employees who are assigned to another duty station in the continental U.S. could be subject to a higher biweekly pay cap if the applicable GS-15, Step 10, locality rate of pay for that particular locality pay area exceeded the rate for Level V of the Executive Schedule.
- c. Note that overtime work, as well as other types of premium compensation including night, Sunday and holiday work, must be ordered in advance by the immediate supervisor and authorized in writing on AID Form 430-3 by the responsible Administrative Management Staff (AMS). (For additional information, see ADS 472, Premium Compensation, 3 FAM 3130, Premium Compensation and USAID/General Notice dated 8/27/99, "Use of Details and Overtime Compensation.")

- d. Note that although the biweekly premium pay cap is higher, the overtime hourly rate remains capped at 1-1/2 times the hourly rate of GS-10, Step 1. For employees assigned to USAID/W, the maximum overtime hourly rate is capped at \$30.41; for overseas employees, the maximum overtime hourly rate is capped at \$27.27.
2. In limited situations, agencies may waive biweekly pay caps when extra work hours are critical. This authority is not to be used routinely. In such situations, agencies are permitted to apply a special annual premium cap instead of the biweekly cap for employees performing work in the aftermath of an emergency involving a direct threat to life or property. For example work performed by emergency workers following a hurricane would qualify. In addition, an agency head, or designee, may approve the use of an annual cap if it is determined that the work in question is critical to the mission of the agency and that an annual cap is needed.
 - a. The annual premium pay cap is the greater of: (1) The maximum annual rate of basic pay payable for GS-15, step 10 (including any applicable locality payment or special rate of pay) in effect on the last day of the calendar year; or (2) The annual rate payable for Level V of the Executive Schedule in effect on the last day of the calendar year (see 5 CFR 550.106).
 - b. Under OPM regulations, certain types of premium pay, including standby pay, administratively uncontrollable overtime (AUO) and availability pay, remain subject to a biweekly cap, even while other types of premium pay may be paid under the annual cap provisions (see 5 USC 5545 and 5 CFR 550.107).
 - c. Use of annual caps for emergency or mission-critical work allows premium payments in excess of the normal biweekly cap only in pay periods during which emergency or mission-critical work is performed. When an employee ceases to perform approved mission-critical or emergency work, the normal biweekly cap must then be applied in subsequent pay periods.
 - d. For the pay period(s) during which an annual cap is approved for employees performing emergency or mission-critical work, they may earn above the biweekly cap as long as the total of their basic pay and any premium pay for the calendar year does not exceed the applicable annual pay cap in effect on the last day of the calendar year. The annual cap applicable to USAID employees is the annual rate payable for Level V of the Executive Schedule (\$121,600 in 2002).
 - e. For USAID, the authority to approve the use of an annual premium pay cap for employees performing emergency or mission-critical work is

delegated to the responsible Assistant Administrator, Independent Office Head or Mission Director.

- f. The determination to use an annual premium pay cap must be documented in writing and approved by the responsible official. The determination must contain the nature of the emergency or mission-critical situation requiring use of an annual cap as well as the name(s) of employee(s) and specific pay periods designated by the responsible authorizing official for which an annual cap has been approved.
- g. A copy of the written determination approving the use of an annual pay cap must be sent or faxed directly to M/FM/P, Angela Burkard, Chief, Payroll Division, before any payments under this authority will be made to the affected employee. The FAX number is (202) 712-3541. Ms. Burkard may be reached on (202) 712-0225.
- h. Under regulations in 5 CFR 550.106(e), the Agency has authority to delay payment of the additional premium pay payable to an employee because of an annual cap until the end of the calendar year. In such a case, payment could be deferred to prevent overpayments that would otherwise result because of erroneous projections of basic pay. For example, an unanticipated promotion could cause an employee's annual total of basic pay to be greater than expected and result in an overpayment to the employee.
- i. Under regulations in 5 CFR 550.106(f), any payment made in the current calendar year that corrects an underpayment of premium pay in a previous calendar year must be treated as being made in the previous calendar year for the purpose of applying the annual pay cap.

The information in this notice is based on interim regulations recently issued by OPM. Final regulations will be issued by OPM at a later date. Employees will be advised of any changes in the final regulations, should they occur.

This notice will be posted on the Overtime Compensation webpage of the Office of Human Resources (M/HR) website. The location is <http://inside.usaid.gov/M/HR>. From the M/HR home page, click on "Overtime Compensation."

Point of Contact: Inquiries regarding this notice may be directed to M/HR/PPIM/PP, Joann Jones, on (202) 712-5048.

Notice 0628

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