



OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
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PERSONNEL AND
READINESS

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
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DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Increased Annual Premium Pay Limitation

Eligible Department of Defense (DoD) employees are authorized an increase to the calendar year 2009 premium pay limitation defined by the provisions of section 5547 of title 5, United States Code (U.S.C.), if they perform work in response to an emergency declared by the President or in direct support of, or directly related to, a military operation, including a contingency operation, while assigned to an overseas area of responsibility of the Commander of the U.S. Central Command (CENTCOM) or an overseas location that that has been moved from the U.S. CENTCOM area of responsibility to the area of responsibility of the Commander of the Africa Command (Appendix A of the attached document). Employees covered by the National Security Personnel System (NSPS) who perform work in response to an emergency declared by the President or in direct support of, or directly related to, a military operation, including a contingency operation, while assigned to an overseas area of responsibility of the Commander of the U.S. CENTCOM or an overseas location that has been moved from the U.S. CENTCOM area of responsibility to the area of responsibility of the Commander of the Africa Command (Appendix A of the attached document) are also authorized this increase. In addition, by agreement with the Under Secretary of Defense for Intelligence (USD(I)), this increase is administratively extended to employees covered

by the Defense Civilian Intelligence Personnel System (DCIPS) who meet the criteria above.

The increase is authorized by section 1101(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub.L. 110-417, dated October 14, 2008) for non-NSPS employees; by section 9901.313 of Title 5, Code of Federal Regulations for NSPS employees; and by sections 1601-1603 of title 10, U.S.C. for DCIPS employees. Eligible DoD employees who are granted a waiver under these authorities will be covered by a higher annual premium pay cap and will be entitled to premium payments to the extent the employee's combined payable amount of basic pay and premium pay for calendar year 2009 does not exceed the annual rate of salary payable to the Vice President under 3 U.S.C. 104 (\$227,300 for 2009).

In addition, under section 1101(b) of Pub.L. 110-417, the aggregate limitation on pay established by 5 U.S.C. 5307 will not apply in calendar year 2009 to any employee covered by 5 U.S.C. chapter 53 who is granted a waiver under section 1101(a). This applies to non-NSPS employees. By agreement with the USD(I), this aggregate pay limitation also will not apply to DCIPS employees. Eligible employees will receive all payments immediately rather than having such payments deferred until 2010.

The aggregate limitation on pay established by section 9901.313 of Title 5, Code of Federal Regulations, will continue to apply in calendar year 2009 to any employee covered by the NSPS. Eligible NSPS employees will receive all covered payments that cause total compensation for 2009 to exceed \$227,300 in the first pay period of calendar year 2010.

The attached guidance, initially distributed for the increased limitation for calendar year 2007, remains in effect. The guidance has been updated to reflect the extension through 2009.



T. F. Hall
Performing the Duties of the
Under Secretary of Defense
(Personnel and Readiness)

Attachment:
As stated

**2009 Annual Limitation of Premium Pay and Aggregate Waiver Provisions
United States Central Command Area of Responsibility for Employees
Covered by 5 U.S.C. §§ 5547 and 5307; 5 C.F.R. 9901.362; and 10 U.S.C. §§ 1601-
1614.**

Premium Pay Waiver

Section 1101 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417, October 14, 2008) extends the authority of the Secretary of Defense to waive the annual premium pay limitation (5 U.S.C. § 5547), for employees otherwise covered by that provision up to the annual rate of the salary payable to the Vice President under section 104 of title 3, United States Code (U.S.C.), or \$227,300 for calendar year 2009. This waiver authority applies to DoD employees who (1) perform work while in an overseas location that is in the area of responsibility of the Commander of the United States Central Command (US CENTCOM) or an overseas location that was formerly in the area of responsibility of the US CENTCOM Commander but has been moved to the area of responsibility of the Commander of the United States Africa Command (US AFRICOM); (2) are subject to the provisions of 5 U.S.C. 5547; (3) are assigned to an overseas location in the US CENTCOM or the US AFRICOM areas of responsibility specified at Appendix A for at least 42 consecutive calendar days; and (4) perform work in response to an emergency declared by the President or 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).

By agreement with the Under Secretary of Defense for Intelligence (USD(I)), the annual premium pay cap for employees under the Defense Civilian Intelligence Personnel System (DCIPS) is waived up to the annual rate of the salary payable to the Vice President under section 104 of title 3, U.S.C., or \$227,300 for calendar year 2009. This waiver authority applies to DoD employees covered by DCIPS who (1) perform work while in an overseas location that is in the area of responsibility of the Commander of the United States Central Command (US CENTCOM) or an overseas location that was formerly in the area of responsibility of the US CENTCOM Commander but has been moved to the area of responsibility of the Commander of the United States Africa Command (US AFRICOM); (2) are assigned to an overseas location in the US CENTCOM or the US AFRICOM areas of responsibility specified at Appendix A for at least 42 consecutive calendar days; and (3) perform work in response to an emergency declared by the President or 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).

Pursuant to 5 C.F.R. 9901.362(a)(1), for employees covered by the National Security Personnel System (NSPS) the annual premium pay cap is waived for NSPS employees

who (1) perform work while in an overseas location that is in the area of responsibility of the Commander of the United States Central Command (US CENTCOM) or an overseas location that was formerly in the area of responsibility of the US CENTCOM Commander but has been moved to the area of responsibility of the Commander of the United States Africa Command (US AFRICOM); (2) are assigned to an overseas location in the US CENTCOM or the US AFRICOM areas of responsibility specified at Appendix A for at least 42 consecutive calendar days; and (3) perform work in response to an emergency declared by the President or 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).

For all covered employees, the increased annual premium pay limitation was effective on January 1, 2009, and applies to premium payments payable to an eligible employee during the 2009 calendar year.

Employees may be paid premium pay only to the extent that the payment does not cause the total of his or her basic pay and premium pay payable in the 2009 calendar year to exceed \$227,300. Premium payments earned before an employee is assigned to the US CENTCOM or the US AFRICOM areas of responsibility specified at Appendix A are not covered by the increased premium pay cap but will be counted toward the \$227,300 limitation if paid during the 2009 calendar year.

Employees assigned to Iraq and/or Afghanistan for at least 42 days are deemed to meet the eligibility requirements for the increased premium pay cap. Determinations about whether employees in other US CENTCOM or US AFRICOM overseas areas of responsibility (Appendix A) perform work that meets the eligibility criteria must be made on a case-by-case basis.

Secretaries of the Military Departments and the Heads of Defense Agencies and DoD Field Activities with independent appointing authority on behalf of themselves and their serviced populations are hereby delegated the authority to determine when employees, other than employees assigned to Iraq and/or Afghanistan, meet the eligibility criteria. This authority may be further delegated, in writing, to managerial and supervisory levels deemed appropriate.

For employees who were serving in the area on January 1, 2009, the 42 consecutive days may include days served in 2008. The 42 consecutive days also may include days served in 2010, although the higher annual pay limitation addressed in this policy will apply only to premium pay payable in 2009.

Aggregate Pay

Pursuant to Section 1101(b) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, the calendar year 2009 aggregate pay limitation for total annual

compensation (\$196,700) does not apply to employees covered by 5 U.S.C. § 5307, for whom the annual premium pay cap is waived under this policy. These employees are limited to base pay and premium pay payable to 2009 not to exceed \$227,300 but all other compensation that normally would be subject to the aggregate pay cap in 5 U.S.C. § 5307 will be paid as it is earned. By agreement with the USD(I), this aggregate pay limitation waiver also applies in the same manner to employees covered by DCIPS. This waiver does not, however, apply to employees covered by NSPS, whose aggregate pay remains capped at the annual rate of the salary payable to the Vice President under section 104 of title 3, U.S.C., or \$227,300 for calendar year 2009.

Additional Guidance

When an eligible employee (including an employee covered by NSPS or DCIPS) no longer performs work in support of a declared emergency or a covered military operation or when the employee is reassigned to a position outside the covered area of responsibility, the employee will be subject to the biweekly limitation for that position and location as established by 5 U.S.C. § 5547, 5 CFR 9901.362, or 10 U.S.C. §§ 1601-1603, as applicable.

The higher annual limitation on premium pay established under section 1101(a) of Pub.L. 110-417, and, for NSPS and DCIPS employees by this policy, will apply during calendar year 2009 to an employee's annual basic pay plus premium pay even after the employee has stopped performing work covered by section 1101(a) or this policy. After an employee stops performing covered work, the employee's earnings again will be subject to the biweekly premium pay limitation under 5 USC § 5547, 10 U.S.C. §§ 1601-1614, or 5 CFR 9901.362(a)(1), as applicable. Employees still could receive premium payments up to the biweekly premium pay limitation each pay period until the \$227,300 annual premium pay limitation under section 1101(a), or this policy, as applicable, is reached.

If an employee's premium pay limitation is increased to \$227,300 and, at the end of calendar year 2009, the employee did not meet the eligibility criteria, the employee must reimburse the Department for premium payments made in excess of the applicable limitation. The debt collection process for continuing employees is outlined in DoD 7000.14-R, Department of Defense Financial Management Regulation (DoDFMR), Volume 8, and the debt collection process for debtors no longer in government service is found in DoDFMR, Volume 5.

To the extent that a waiver results in payment of additional premium pay of a type that is normally credited 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 5 U.S.C. 5551.

Time and attendance and electronic personnel and payroll procedures established in 2008 remain the same. Timekeepers should continue to provide the Defense Finance and Accounting Service (DFAS) with the necessary data on employees who are projected to work in a covered overseas location for a period of at least 42 consecutive days.

Authorized management officials should ensure personnel records are established in the Defense Civilian Personnel Data System (or equivalent) and DFAS is provided the required data even if the employee has left the overseas location prior to the issuance date of this policy. Authorized management officials also must update personnel records when an employee departs the area prior to meeting the 42 day eligibility criterion.

DEFINITION OF TERMS

Aggregate Pay Limitation. The maximum amount of an employee's total calendar year payable income as specified in 5 U.S.C. § 5307, 5 CFR 9901.313(b), or under 10 U.S.C. §§ 1601-1603, as applicable.

Annual Premium Pay Limitation. The maximum amount of basic pay and premium pay payable in a calendar year to an employee as specified in 5 U.S.C. § 5547(a), 5 CFR 9901.362(a), or under 10 U.S.C. §§ 1601-1603, as applicable.

Area of Responsibility. The geographic area associated with a combatant command within which a combatant commander has authority to plan and conduct operations.

Contingency Operation. As defined in 10 U.S.C. 101(a)(13), a military operation that is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing force; or results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of title 10, U.S.C., chapter 15 of title 10 U.S.C., or any other provision of law during a war or during a national emergency declared by the President or Congress.

Declared Emergency. A condition declared by the President or the Congress by virtue of powers previously vested in them that authorize certain emergency actions to be undertaken in the national interest. Action to be taken may include partial, full, or total mobilization of national resources.

Military Operations. Operations that encompass the use of military capabilities across the range of military operations. These military actions can be applied to complement any combination of the other instruments of national power and occur before, during, and after war.

Premium Pay. Premium pay subject to the annual premium pay limitation is the dollar value of earned hours of compensatory time off and additional pay authorized for overtime, night, Sunday, or holiday work; or for standby duty, administratively uncontrollable overtime work, or availability duty. It excludes overtime pay paid to employees under the Fair Labor Standards Act and compensatory time off earned in lieu of such overtime pay.

Appendix A

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**
- 19. Uzbekistan**
- 20. Yemen**

COUNTRIES IN AFRICOM OVERSEAS AREA OF RESPONSIBILITY (Formerly in US CENTCOM Overseas Area of Responsibility)

- 1. Djibouti**
- 2. Eritrea**
- 3. Ethiopia**
- 4. Kenya**
- 5. Seychelles**
- 6. Somalia**
- 7. Sudan**