



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

The Director

November 3, 2006

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

**FROM:** LINDA M. SPRINGER   
**DIRECTOR**

**SUBJECT:** Pay and Leave Administration Policy Changes

This is to inform you of two changes in pay and leave administration policies resulting from the enactment of the Fiscal Year 2007 National Defense Authorization Act (the Act), which was signed into law by President George W. Bush on October 17, 2006 (Public Law 109-364).

**Accrual of Annual Leave for Members of the Uniformed Services on Terminal Leave Performing Dual Employment**

Section 1101 of the Act amends 5 U.S.C. 5534a to entitle an individual appointed to a civilian position while on terminal leave pending retirement from a uniformed service to accrue annual leave in the manner specified in section 6303(a) of title 5, United States Code, for a retired member of a uniformed service. This means agencies must determine the annual leave accrual rate for an individual appointed to a civilian position while on terminal leave pending military retirement in the same manner as determining the annual leave accrual rate for a retired member of a uniformed service appointed to a civilian position. The agency may count only certain military service as creditable service for the purpose of determining the employee's annual leave accrual rate (e.g., actual service during a war declared by Congress or while participating in a campaign or expedition for which a campaign badge is authorized and active duty when retirement was based on a disability received as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war as defined in 38 U.S.C. 101(11)). This provision became effective on October 17, 2006.

**Extension of Authority to Waive Annual Limitation on Total Compensation Paid to Federal Civilian Employees**

Section 1105 of the Act amended section 1105 of Public Law 109-163 to provide authority (under specified conditions) to waive the premium pay cap provisions under 5 U.S.C. 5547 in calendar year 2007. Previously, the waiver authority was limited to calendar year 2006. The amendment also increases the annual limitation on basic pay and premium pay allowed under the waiver authority from \$200,000 in calendar year 2006 to \$212,100 in calendar year 2007. Under

this provision, the head of an agency may exercise the waiver authority 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, in direct support of or directly related to a military operation (including a contingency operation as defined in section 101(13) of title 10, United States Code). Under the amended section 1105, a covered employee may receive premium pay in calendar year 2007 to the extent that such premium pay would not cause the employee's aggregate amount of basic pay and premium pay payable in calendar year 2007 to exceed \$212,100. We have attached an updated version of the *Summary of Key Common Elements in Department of Defense and State Department Policies Implementing Section 1105 of Public Law 109-163, as amended by Section 1105 of Public Law 109-364, for Calendar Year 2007*. (We previously issued the *Key Common Elements* for calendar year 2006 to agency Chief Human Capital Officers in May 2006.) We strongly encourage all other agencies to adopt policies that are consistent with the key elements of the Department of Defense and State Department policies in their implementation of section 1105.

### **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.

cc: Chief Human Capital Officers  
Human Resources Directors

**Summary of Key Common Elements in  
Department of Defense and State Department Policies  
Implementing Section 1105 of Public Law 109-163,  
as amended by Section 1105 of Public Law 109-364,  
for Calendar Year 2007**

- Section 1105 may be applied to an employee who meets all of the following conditions for coverage eligibility:
  - (1) The employee is otherwise covered by 5 U.S.C. 5547 (dealing with limitations on premium pay).
  - (2) The employee is assigned to work in an overseas location that is in the area of responsibility of the Commander of the U.S. Central Command and remains in that location for at least 42 consecutive calendar days (unless an authorized agency official grants a waiver in very limited circumstances). (If the employee meets the 42-day requirement, the section 1105 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 1105 applies only to payments payable in calendar year 2007, the 42-day period may overlap a calendar year—i.e., begin in 2006 and end in 2007, or begin in 2007 and end in 2008.)
  - (3) The employee performs work in direct support of, or directly related to, a military operation (including a contingency operation, as defined in section 101(13) of title 10, United States Code). (“Military operation” is a DoD term of art, defined in the DoD *Dictionary of Military and Associated Terms*.) Prior to authorizing any premium pay cap waiver under section 1105 on the basis of a military operation, an agency must confirm that any DoD operation in countries in which such a waiver is being considered meets the DoD definition. The State Department and DoD have determined that 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 1105 has been approved by an authorized agency official. (Note: Section 1105 establishes a discretionary authority that agencies may exercise, not an entitlement.)
- For employees covered by section 1105 in calendar year 2007, an alternative annual limitation of \$212,100 will be used in lieu of the normal biweekly and annual limitations under 5 U.S.C. 5547. This means that an employee covered by section 1105 may receive premium pay in calendar year 2007 to the extent that such premium pay would not cause the employee’s aggregate amount of basic pay and premium pay payable in the calendar year to exceed \$212,100. (Like the section 5547 limitation, the section 1105 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 \$212,100 annual limitation will continue to apply to an employee’s annual aggregate basic pay plus premium pay even after the employee has stopped performing work covered by section 1105. 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, and the employee could receive payments up to the section 5547 biweekly premium pay limitation each pay period until the section 1105 annual limitation is reached.
- Section 1105 does not provide authority to waive the aggregate compensation limitation in 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 calendar year to exceed a specified annual rate—for most employees, the rate for level I of the Executive Schedule.\* Since the section 1105 annual limitation is \$212,100 which is greater than the rate for level I of the Executive Schedule, an employee may be entitled to premium pay under section 1105 that cannot be paid during calendar year 2007 due to the section 5307 limitation. As provided by section 5307, any such excess payments would be deferred until the beginning of calendar year 2008. (See 5 CFR 530.203(f) and 530.204.) Any such deferred payment would count toward the 2008 aggregate pay limitation under section 5307. (Such a deferred payment of premium pay is not considered in applying the applicable 2008 premium pay limitation under 5 U.S.C. 5547 or similar authority.)
- Under section 1105(c), any additional pay that results from this new premium pay cap 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. 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 1105, 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 1105 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 1105 and therefore would not be treated as basic pay for retirement or other purposes.

\* Based on laws in effect as of the date of issuance of the cover memorandum, the EX-I rate will be adjusted by 1.7 percent to \$186,600 effective with the first day of the first pay period beginning on or after January 1, 2007.

## COUNTRIES IN CENTCOM OVERSEAS AREA OF RESPONSIBILITY

1. Djibouti
2. Egypt
3. Eritrea
4. Sudan
5. Kenya
6. Ethiopia
7. Somalia
8. Jordan
9. Saudi Arabia
10. Yemen
11. Oman
12. United Arab Emirates
13. Qatar
14. Bahrain
15. Kuwait
16. Pakistan
17. Iran
18. Iraq
19. Afghanistan
20. Tajikistan
21. Kyrgyzstan
22. Kazakhstan
23. Uzbekistan
24. Turkmenistan
25. Seychelles
26. Syria
27. Lebanon