UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

PERSONNEL AND
READINESS

APR 11 2012

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
COMMANDERS OF THE COMBATANT COMMANDS
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Calendar Year 2012 Waiver of Annual Pay Limitations for Certain Employees

Eligible Department of Defense (DoD) employees are authorized an increase to the calendar year 2012 premium pay limitations, as defined by the provisions of Section 5547 of title 5, United States Code (U.S.C.), if they perform work in direct support of, or directly related to, a military operation, including a contingency operation or an operation in response to an emergency declared by the President. Eligible employees are those assigned to an overseas area of responsibility of the Commander of the U.S. Central Command (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 U.S. Africa Command (Appendix A of the attached document). 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 exercising the waiver granted in Section 1104 of the National Defense Authorization Act (NDAA) for Fiscal Year 2012 (Public Law 112-81, December 31, 2011) (NDAA 2012), which extends the authority in Section 1101(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417, dated October 18. 2008) (NDAA 2009) as amended by Section 1106(a) of the NDAA for Fiscal Year 2010 (Public Law 111-84, dated October 28, 2009) (NDAA 2010), and by Section 1106(b) and 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 2012 does not exceed the annual rate of

salary payable to the Vice President under Section 104 of title 3, U.S.C. which is $230,700 for 2012.

In addition, subsection 1101(b) of NDAA 2009 continues to apply and provides that the aggregate limitation on pay under Section 5307 of title 5, U.S.C. will not apply to an employee in calendar year 2012 if the employee is granted a waiver of the normally applicable premium pay limitations under subsection 1101(a). Subsection 1101(c) of NDAA 2009 also continues to apply and provides that any payments made under the subsection 1101(a) waiver authority resulting in additional premium pay of a type normally creditable as basic pay will not be considered basic pay for any purpose (e.g., retirement). Further, such additional premium pay may not be used in computing lump-sum payments for accumulated and accrued annual leave under Section 5551 of title 5, U.S.C.

For 2012, this waiver again applies, by agreement with the USD(I), to DCIPS employees. The attached guidance, initially distributed for the increased limitation for Calendar Year 2010, remains in effect, and has been updated to reflect the changes applicable in Calendar Year 2012.

Questions may be addressed to Mr. Seth Shulman, Chief, Compensation Division, Defense Civilian Personnel Advisory Service, at seth.shulman@cpms.osd.mil or 703-696-2104.

Jo Ann Rooney
Acting

Attachment:
As stated

Attachment

2012 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 9901.313; and 10 U.S.C. §§ 1601-1614

Premium Pay Waiver

Effective January 1, 2012, Section 1101(a) of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Pub. L. 110–417) (NDAA 2009), as amended by Section 1106(a) of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84) (NDAA 2010), Section 1103 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383) (NDAA 2011), and Section 1104 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81) (NDAA 2012), is further amended by striking "through 2011" and inserting "through 2012". It authorizes the Secretary of Defense to waive the annual premium pay limitation resulting from Section 5547 of title 5. U.S.C. or a similar limitation otherwise established for employees up to the annual rate of the salary payable to the Vice President pursuant to Section 104 of title 3 U.S.C., which is $230,700 for calendar year 2012. 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 Section 5547 of title U.S.C. or a similar limitation otherwise established; (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 direct support of, or directly related to the response to a national emergency declared by the President or a military operation, including a contingency operation as defined in Section 101(a)(3) of title 10, U.S.C.

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 pursuant to Section 104 of title 3, U.S.C., which is $230,700 for calendar year 2012. This waiver authority applies to DoD employees covered by DCIPS who meet the four specified criteria described in the paragraph above.

For all covered employees, the increased annual premium pay limitation was effective on January 1, 2012, and applies to premium payments payable to an eligible employee during the 2012 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 2012 calendar year to exceed $230,700. The increased premium pay cap cannot be applied to premium payments earned before an employee is assigned to the US CENTCOM or the US AFRICOM areas of responsibility specified at Appendix A but those payments will be counted toward the $230,700 limitation if paid during the 2012 calendar year.

Employees assigned to Iraq or Afghanistan for at least 42 days are deemed to meet the eligibility requirements for the increased premium pay cap and no further determination regarding these employees is required. Determinations about whether employees in other U.S. CENTCOM or U.S. AFRICOM overseas areas of responsibility (Appendix A) perform work that meets the fourth eligibility criterion described in the first paragraph above, i.e., whether the employee is performing work in direct support of, or directly related to the response to a national emergency declared by the President or a military operation, including a contingency operation as defined in Section 101(a)(13) of title 10 U.S.C., 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 or Afghanistan, meet the eligibility criteria. This authority may be further delegated, in writing, to managerial and supervisory levels deemed appropriate.

NOTE: Following withdrawal of military forces from Iraq, civilian employees assigned to Iraq are no longer considered to be supporting a military operation. Instead, beginning in 2012, such employees are deemed to meet the eligibility requirements for the increased premium pay cap based on their performance of work in direct support of, or directly related to the response to a national emergency declared by the President; Continuation of the National Emergency with Respect to the Stabilization of Iraq, signed May 17, 2011. If the National Emergency with Respect to the Stabilization of Iraq is not continued beyond May 22, 2012, employees assigned to Iraq will again become subject to the premium pay limitations under Section 5547 of title 5, U.S.C. However, payment for the pay period ending May 19, 2012, will remain subject to the higher limitation.

For employees who were serving in the area on January 1, 2012, the 42 consecutive days may include days served in 2011. The 42 consecutive days also may include days served in Afghanistan in 2013, although the higher annual pay limitation addressed in this policy will apply only to premium pay payable in 2012. For employees serving in Iraq, work days subsequent to termination of the the national emergency declared by the President on May 22, 2012 may be counted toward the 42 day consecutive service requirement. If the national emergency is extended by the President, employees in Iraq will continue to be covered by the higher pay limitations.

Aggregate Pay

Pursuant to Section 1101(b) of the NDAA 2009, amended as noted above, the calendar year 2012 aggregate pay limitation for total annual compensation ($199,700) does not apply to employees covered by Section 5307 of title 5, U.S.C., or similar limitation (such as Section 9901.313 of title 5 of the Code of Federal Regulations (C.F.R.), for whom the annual premium pay cap is waived under this policy. These employees are limited to base pay and premium pay payable in 2012 not to exceed $230,700 but all other compensation that normally would be subject to the aggregate pay cap in Section 5307 of title 5, U.S.C., or similar limitation 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.

Additional Guidance

When an eligible employee (including an employee covered by 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 geographic area of responsibility, the employee will be subject to the biweekly limitation for that position and location as established by Section 5547 of title 5, U.S.C., Section 9901.362 of titles 5, C.F.R., or under Sections 1601-1603 of title 10, U.S.C., as applicable.

The higher annual limitation on premium pay established under Section 1101 of the NDAA 2009, as amended by 1104 of the NDAA 2010, and, for DCIPS employees by this policy, will apply during calendar year 2012 to an employee's annual basic pay plus premium pay even after the employee has stopped performing work covered by Section 1101 of Public Law No. 110-417, as amended by 1104(a) of Public Law No. 112-81 and this policy. After an employee stops performing covered work, the employee's earnings again will be subject to the biweekly premium pay limitation under Section 5547 of title 5, U.S.C., or Sections 1601-1603 of title 10, U.S.C., as applicable. Employees still could receive premium payments up to the biweekly premium pay limitation each pay period until the $230,700 annual premium pay limitation under Section 1101(a) of NDAA 2009, or this policy, as applicable, is reached. (Note: If such an employee's aggregate projected basic pay plus premium pay payable for 2012 is less than the annual limit established under Section 5547 of title 5, U.S.C., an agency may invoke that annual limit, if appropriate, and pay premium pay in excess of the biweekly limit. Once the Section 5547 annual limit is reached, the employee would be again subject to the Section 5547 biweekly limit and simultaneously subject to the $230,700 annual premium pay limit.)

If an employee's premium pay limitation is increased to $230,700 and, at the end of calendar year 2012, 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 Section 5551 of title 5, U.S.C.

Time and attendance and electronic personnel and payroll procedures established in 2009 remain essentially 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 Section 5307 of title 5, U.S.C., Section 9901.313(b) of title 5, C.F.R., or similar pursuant to Sections 1601-1603 of title 10, U.S.C., 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 Section 5547(a) of title 5, U.S.C., Section 9901.362(a) of title 5, C.F.R., or similar pursuant Sections 1601-1603 of title 10, U.S.C., 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 Section 101(a)(13) of title 10, U.S.C., 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 Sections 331-335, 688, 12301(a), 12302, 12304, 12305, 12406, 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.

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.

National 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.

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