Tuesday, February 16, 2021
CPM 2021-12

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

MEMORANDUM FOR: HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

From: Kathleen M. McGettigan, Acting Director

Subject: Recent Pay and Leave-Related Legislative Changes

This is to inform you of several legislative changes and extensions affecting Federal employee pay and certain benefits. The changes resulting from the enactment of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Public Law 116-283, January 1, 2021), and the Consolidated Appropriations Act, 2021 (Public Law 116-260, December 27, 2020), are summarized below.

I. William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Public Law 116-283, January 1, 2021)

Section 611 – Reserve Income Replacement Program

Section 611(a) amends 37 U.S.C. 910(g) to extend the expiration date for the Reserve Income Replacement Program from December 31, 2020, to December 31, 2021.

The Reserve Income Replacement Program is administered by the U.S. Department of Defense (DOD) and provides income replacement payments for certain reserve component members experiencing extended and frequent mobilization for active duty service. (This amendment does not affect the reservist differential authority under 5 U.S.C. 5538, which is a separate program for Federal employees. A Federal employee who is entitled to a reservist differential may not receive payments under 37 U.S.C. 910 for the same period. Additional information on reservist differential is found at http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/#url=Reservist-Differential.)

Section 1103 – Paid Parental Leave Technical Corrections

Section 1103 makes technical amendments related to Family and Medical Leave Act (FMLA) leave, including paid parental leave. See CPM 2021-07 for information regarding the technical amendments.

Section 1105 – 1-Year Extension of Authority to Waive Annual Limitation on Premium Pay and

Aggregate Limitation on Pay for Certain Federal Civilian Employees Working Overseas

Section 1105 extends to **calendar year 2021** the authority provided in section 1101 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417, October 14, 2008), as amended, for the head of an agency to waive the normally applicable premium pay cap established in 5 U.S.C. 5547. This waiver authority in 2021 applies to certain civilian employees who perform qualifying work while in an overseas location that (1) is in the area of responsibility of the United States Central Command (CENTCOM) or (2) was formerly in the CENTCOM area of responsibility but has been moved to the area of responsibility of the Commander of the United States Africa Command (AFRICOM). Based on the operation of current law, the annual limitation on basic pay and premium pay allowed under the waiver authority in calendar year 2021 is the officially established annual salary rate for the Vice President in 2021 under 3 U.S.C. 104 ($255,800 in 2021). In addition, when an employee is granted a section 1101(a) waiver, any pay in addition to basic pay received for service during the waiver period is not counted as compensation in applying the aggregate limitation on pay under 5 U.S.C. 5307.

Section 1101(d) of Public Law 110-417 continues to provide the U.S. Office of Personnel Management (OPM) Director with the discretion to issue regulations for this waiver authority. OPM does not currently plan to issue regulations. However, each agency should establish policies for using this waiver authority if it has covered employees. To ensure agencies apply this discretionary authority consistently, we have developed the attached summary of key elements agencies should include in their policies implementing the waiver authority. The attached summary includes additional information on employee coverage, approval criteria, and special instructions on applying the waiver authority to employees working in Iraq.

Section 1106 – 1-Year Extension of Discretionary Authority to Grant Allowances, Benefits, and Gratuities to Personnel on Official Duty in a Combat Zone

Section 1106 grants the head of an agency the discretionary authority until the end of **fiscal year 2022** (i.e., September 30, 2022), to provide an individual employed by, or assigned or detailed to, the agency, allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980. The employee must be on official duty in Pakistan or a combat zone, as defined by section 112(c) of the Internal Revenue Code of 1986.

Section 1106 amends section 1603(a)(2) of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234, June 15, 2006), as added by section 1102 of the NDAA for FY 2009 (Public Law 110-417, October 14, 2008) and amended by section 1112 of the NDAA for FY 2012 (Public Law 112-81, December 31, 2011), section 1104 of the NDAA for FY 2013 (Public Law 112-239, January 2, 2013), section 1102 of the NDAA for FY 2014 (Public Law 113-66, December 26, 2013), section 1102 of the NDAA for FY 2015 (Public Law 113-291, December 19, 2014), section 1102 of the NDAA for FY 2016 (Public Law 114-92, November 25, 2015), section 1133 of the NDAA for FY 2017 (Public Law 114-328, December 23, 2016), section 1108 of the NDAA for FY 2018 (Public Law 115-91, December 12, 2017), section 1115 of the NDAA for FY 2019 (Public Law 115-232, August 13, 2018), and section 1104 of the NDAA for FY 2020 (Public Law 116-92, December 20, 2019).

Section 1111 – Temporary Increase in Limitation on Accumulation of Annual Leave for Executive Branch Employees

Section 1111 provides the Director of OPM with discretionary authority to establish, for eligible

Executive branch employees, a higher annual leave carryover limit—125 percent of the limit that would otherwise apply to a given employee—to be applied at the beginning of the 2021 leave year (January 3, 2021, for most employees).

See **CPM 2021-05** for the Director's authorization action and policy guidance regarding the section 1111 authority.

Section 1113 – Extension of Rate of Overtime Pay Authority for Department of the Navy Employees Performing Work Aboard or Dockside in Support of the Nuclear-Powered Aircraft Carrier Forward Deployed in Japan

Section 1113 extends the authority provided under section 1105 of the NDAA, FY 2011 (Public Law 111-383, January 7, 2011) until September 30, 2026. Subsection 1105(a) of the NDAA, FY 2011, amended 5 U.S.C. 5542(a) by adding a new paragraph (6)(A) to provide the overtime hourly rate of pay for a qualifying employee of the U.S. Department of the Navy is an amount equal to one and one-half times the hourly rate of basic pay of the employee, notwithstanding the normally applicable cap on the overtime hourly rate. This provision applies only to an employee who (1) is assigned to temporary duty to perform work aboard, or dockside in direct support of, the nuclear aircraft carrier that is forward deployed in Japan and (2) would be nonexempt under the Fair Labor Standards Act but for the application of the foreign area exemption in 29 U.S.C. 213(f). For further information on this provision, please see **CPM 2019-09** and **CPM 2011-03**.

II. Consolidated Appropriations Act, 2021 (Public Law 116-260, December 27, 2020)

Section 737 of Division E – Prevailing Rate Pay Adjustments

Section 737 contains provisions affecting the determination of pay adjustments for certain prevailing rate (wage) employees in Fiscal Year (FY) 2021. See **CPM 2021-02** for further guidance on the FY 2021 prevailing rate pay adjustments.

Section 748 of Division E – Continued Pay Freeze for Certain Senior Political Officials

Section 748 contains a provision that continues the pay freeze on the payable pay rates for the Vice President and certain senior political appointees at the rates of pay and applicable limitations on payable rates of pay in effect on December 31, 2020, by operation of section 749 of division C of Public Law 116-93 (December 20, 2019). The section 748 pay freeze is scheduled to end on the last day of the last pay period that begins in calendar year 2021 (i.e., January 1, 2022, for those on the standard biweekly pay period cycle). Future Congressional action will determine whether the pay freeze continues beyond that date.

See **CPM 2021-04** for further guidance on the continued pay freeze for certain senior political officials.

Section 303 of Division M – Premium Pay Cap Waiver Authority

Section 303 allows the head of an agency to disregard premium pay for services an employee performs during 2020 and 2021 related to the "preparation, prevention, or response to [the] coronavirus" in applying the premium pay cap under 5 U.S.C. 5547(a). In addition, any such premium pay must also be disregarded in calculating the employee's aggregate pay for purposes of the aggregate pay limitation under 5 U.S.C. 5307. Under this temporary authority, the combination of basic and premium pay, however, cannot exceed the rate for level II of the Executive Schedule as in

effect at the end of the applicable calendar year ($199,300 for 2021). The additional premium payments are not creditable as basic pay for retirement purposes and must not be included in a lump-sum payment for accumulated or accrued annual leave. This waiver authority is effective as if enacted on February 2, 2020. See **CPM 2020-07** for information on a similar premium pay cap waiver authority in section 18110 of the "Coronavirus Aid, Relief, and Economic Security Act" (CARES Act) (Public Law 116-136, March 27, 2020).

Additional Information

Agency headquarters-level human resources offices may contact OPM at **pay-leave-policy@opm.gov**. Employees should contact their agency human resources office for further information on this memorandum.

Attachment

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, and Human Resources Directors

Attachment(s): **2021 Attachment--Summary of Key Necessary Elements in Agency Policies.pdf**