



PERSONNEL AND
READINESS

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

MAY 19 2020

MEMORANDUM FOR CHIEF MANAGEMENT OFFICER OF THE DEPARTMENT OF
DEFENSE
SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
CHIEF OF THE NATIONAL GUARD BUREAU
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF COST ASSESSMENT AND PROGRAM
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INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF OPERATIONAL TEST AND EVALUATION
CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF
DEFENSE
ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE
AFFAIRS
ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC
AFFAIRS
DIRECTOR OF NET ASSESSMENT
DIRECTORS OF DEFENSE AGENCIES
DIRECTORS OF DOD FIELD ACTIVITIES

SUBJECT: Exemption of Premium Pay from Otherwise Applicable Limitations on Pay for
Services Primarily Related to Coronavirus Disease 2019

The DoD civilian workforce is vital to the success of the whole of government response to combatting the coronavirus disease 2019 (COVID-19). The Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136) contains two sections providing the Secretary of Defense with authority to exempt premium pay for services primarily related to COVID-19 from the biweekly premium pay and aggregate annual pay limitations found at 5 U.S.C. §§ 5547(a) and 5307, and other similar limitations applicable to employees covered by the Defense Civilian Intelligence Personnel System and employees in the Cyber Excepted Service.

The Secretaries of the Military Departments and the Heads of Defense Agencies and DoD Field Activities with independent personnel appointing authority may determine whether employees are covered by these exemptions, consistent with the criteria below. This authority may be further delegated, in writing.

Exemption for Premium Payments Funded by the Federal Emergency Management Agency (FEMA)

Section 16003 of the CARES Act exempts premium pay from normally applicable biweekly and aggregate annual pay limitations, to include 5 U.S.C. §§ sections 5547(a) and 5307, for services which:

- a. Primarily relate to preparation, prevention, or response to COVID-19;
- b. Were performed during Fiscal Year (FY) 2020; and
- c. Involve premium payments funded, either directly or through reimbursement, by FEMA.

Premium pay (including overtime pay) for such services will not be used to calculate the aggregate amount of premium pay payable on a biweekly or calendar year basis. Despite this general exemption, premium pay for such services may not cause the aggregate of basic pay and premium pay for the applicable calendar year to exceed the rate for level II of the Executive Schedule (\$197,300 for 2020). Premium pay exempted from the regular title 5 premium pay limitations under the section 16003 authority will also be excluded in applying the aggregate limitation on pay under 5 U.S.C. § 5307 during calendar year 2020. The section 16003 authority is effective as if enacted on January 1, 2020, for covered services through the end of FY 2020.

Section 16003 also applies to any other provision of law limiting the aggregate amount of premium pay payable on a biweekly or calendar year basis.

General Exemption for Premium Payments

Section 18110 of the CARES Act exempts premium pay from normally applicable biweekly and aggregate annual pay limitations, to include 5 U.S.C. §§ 5547(a) and 5307, for services which:

- a. Primarily relate to the preparation, prevention, or response to COVID-19; and
- b. Were performed during FY 2020.

Premium pay (including overtime pay) for such services will not be used to calculate the aggregate amount of premium pay payable on a biweekly or calendar year basis. Despite this general exemption, premium pay for such services may not cause the aggregate of basic pay and premium pay for the applicable calendar year to exceed the rate for level II of the Executive Schedule (\$197,300 for 2020). The section 18110 authority is effective as if enacted on February 2, 2020, for covered services through the end of FY 2020.

Unlike the exemption for premium payments funded by FEMA, if the exemption of premium pay for such services results in the payment of additional premium pay to a covered employee of a type that is normally creditable as basic pay for retirement or any other purpose, the additional pay may not be considered basic pay for any purpose or be used in computing a lump-sum payment to the covered employee for accumulated and accrued annual leave.

Other Premium Pay Flexibilities

For employees who perform emergency or mission critical services but are not covered by the exemptions above, personnel appointing authorities may apply the annual maximum earnings limitation instead of the biweekly maximum earnings limitation, pursuant to DoD Instruction 1400.25, Volume 550, "DoD Civilian Personnel Management System: Pay Administration (General)," March 20, 2015, incorporating change 4, August 9, 2019.

If you have any questions or would like additional information, my point of contact is Ms. Kelly Cruz, Director, Employment and Compensation, Defense Civilian Personnel Advisory Service, whom you may reach at (571) 372-1536 or kelly.m.cruz.civ@mail.mil.



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