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

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PERSONNEL AND
READINESS

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: Increased Annual Pay Limitations

Eligible Department of Defense (DoD) employees are authorized an increase to the calendar year 2010 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). Employees covered by the National Security Personnel System (NSPS) 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 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub.L. 110-417, dated October 18, 2008) as

amended by section 1106(a) of the National Defense Authorization Act for Fiscal Year 2010 (Pub.L. 111-84, dated October 28, 2009) for non-NSPS employees; by section 1106(b) of the National Defense Authorization Act for Fiscal Year 2010, and 5 CFR 9901.313 for NSPS employees; 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 2010 does not exceed the annual rate of salary payable the Vice President under section 104 of title 3, U.S.C. 104, which is $230,700 for 2010.

In addition, under section 1106(b) of Pub.L. 111-84, the aggregate limitation on pay established by section 5307 of title 5, U.S.C., or a similar limitation otherwise established, will not apply in calendar year 2010 to any employee who is granted a premium pay waiver under section 1106. For 2010 this waiver applies to non-NSPS employees, NSPS employees, and, by agreement with the USD(I), to DCIPS employees.

The attached guidance, initially distributed for the increased limitation for calendar year 2007, remains in effect. The guidance has been updated to reflect the changes applicable in CY 2010.

Clifford L. Stanley

Attachment:
As stated

2010 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

Section 1101 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Pub. L. No. 110-417, October 14, 2008), as amended by section 1106 of the NDAA for Fiscal Year 2010 (Pub. L. No. 111-84, October 28, 2009) authorizes the Secretary of Defense to waive the annual premium pay limitation resulting from 5 U.S.C. § 5547 or a similar limitation otherwise established for employees up to the annual rate of the salary payable to the Vice President pursuant to 3, U.S.C. § 104, which is $230,700 for calendar year 2010. 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 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 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 pursuant to 3 U.S.C. § 104, which is $230,700 for calendar year 2010. This waiver authority applies to DoD employees covered by DCIPS who meet the four specified criteria described in the paragraph above.

In addition, pursuant to 5 C.F.R. § 9901.362(a), for employees covered by the National Security Personnel System (NSPS) the annual premium pay cap is waived for NSPS employees who meet the four specified criteria described in the first paragraph above.

For all covered employees, the increased annual premium pay limitation was effective on January 1, 2010, and applies to premium payments payable to an eligible employee during the 2010 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 2010 calendar year to exceed $230,700. 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 $230,700 limitation if paid during the 2010 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 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 10 U.S.C. 101(a)(13), 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, 2010, the 42 consecutive days may include days served in 2009. The 42 consecutive days also may include days served in 2011, although the higher annual pay limitation addressed in this policy will apply only to premium pay payable in 2010.

Aggregate Pay

Pursuant to Section 1101(b) of the Duncan Hunter NDAA for Fiscal Year 2009, as amended by section 1106(b) of the NDAA for 2010, the calendar year 2010 aggregate pay limitation for total annual compensation ($199,700) does not apply to employees covered by 5 U.S.C. § 5307, or similar limitation (such as 5 CFR § 9901.313), for whom the annual premium pay cap is waived under this policy. These employees are limited to base pay and premium pay payable in 2010 not to exceed $230,700 but all other compensation that normally would be

subject to the aggregate pay cap in 5 U.S.C. § 5307, or similar limitation (such as 5 CFR § 9901.313), 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 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 geographic 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 under 10 U.S.C. §§ 1601-1603, as applicable.

The higher annual limitation on premium pay established under section 1101 of Pub. L. No. 110-417, as amended by 1106(a) of Pub.L. No. 111-84, and, for NSPS and DCIPS employees by this policy, will apply during calendar year 2010 to an employee's annual basic pay plus premium pay even after the employee has stopped performing work covered by section 1101 of Pub. L. No. 110-417, as amended by 1106(a) of Pub.L. No. 111-84 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 5 U.S.C. § 5547, 10 U.S.C. §§ 1601-1603, 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 $230,700 annual premium pay limitation under section 1101(a) of Pub.L. No. 110-417, or this policy, as applicable, is reached.

If an employee's premium pay limitation is increased to $230,700 and, at the end of calendar year 2010, 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 2009 remain essentially the same. Those procedures will be modified, however, to support waiver of the aggregate limitation on pay employees covered by NSPS. 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 similar pursuant to 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 similar pursuant to 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 10 U.S.C. §§ 331-335, 688, 12301(a), 12302, 12304, 12305,12406, 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**