



Annual Pay Limitations

A Mandatory Reference for ADS Chapter 472

Reference Issuance Date: 10/05/2011
Policy Issuance Date: 09/20/2010
Responsible Office: M/CFO/FPS
File Name: 472mah_100511

This policy notice provides guidance on the limitation of premium pay and the total aggregate compensation that an employee may receive in a calendar year under Title 5 of the United States Code (5 U.S.C.). It explains the effect of waivers available under the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Public Law 111-84) and the proper treatment of special differentials received under the Foreign Service Act of 1980, as amended. This policy notice applies to USAID direct hires (USDHs) including General Schedule (GS), Foreign Service Officers (FP), Foreign Service Limited (FSL), Foreign Service Commissioned Officers (FO) and Senior Foreign Service (SFS) employees. Its purpose is to explain and demonstrate the impact of pay caps on USDH earnings at locations outside the United States. A link to an excel workbook demonstrating these rules is at the bottom of this notice.

5 U.S.C. 5307, Limitation on Certain Payments

This section establishes the maximum aggregate annual limitation for basic pay plus allowances, bonuses, awards and certain differentials that may be paid in a calendar year. Additional information may be found at <http://www.opm.gov/oca/pay/HTML/aggreatelimitation.asp>.

- For GS, FP, FSL and FO personnel, the aggregate annual limitation for cash payments under Title 5, is level I of the Executive Schedule (\$199,700 in 2010) for the applicable calendar year.
- For SFS personnel, the aggregate annual limitation for cash payments under Title V, is the Vice President's salary (\$230,700 in 2010) for the applicable calendar year.
- Allowances earned in excess of this aggregate annual limitation are carried forward to the following year and paid in a lump sum.
- That subsequent lump sum payment will itself be included in any calculation for determining aggregate compensation in the year of payment.
- If the lump sum payment contributes to or creates amounts in excess of the caps, these amounts are again carried forward until paid.
- Special Differential Pay authorized by Section 412 of the Foreign Service Act of 1980, as amended, is not subject to the aggregate annual limitation established for Title 5 pays.
- Section 5307 creates an administrative task in those countries where employees are earning allowances, differentials, bonuses, awards, or other similar cash payments under Title 5, that, when added to their base pay, total more than the aggregate annual limitation for that calendar year. In those

circumstances, care must be taken to defer the excess earnings to the following calendar year. In the event that an employee is reassigned, the information regarding his carry forward amounts due must be forwarded to the receiving post.

5 U.S.C. 5547, Limitation on Premium Pay

This section establishes the maximum for the biweekly pay rate for premium pay. Additional guidance, and a list of biweekly rates can be found at the OPM Web Site <http://www.opm.gov/oca/pay/HTML/10GSCap.asp> (2010 BIWEEKLY CAPS ON PREMIUM PAY).

- Bi-weekly pay is limited to the extent that the sum of basic pay and premium pay for the pay period does not exceed the greater of the biweekly rate payable for GS-15, step 10 (including any applicable locality payment or special rate supplement), or the rate payable for level V of the Executive Schedule.
- Premium pay includes basic pay, overtime, Sunday differential, holiday premium pay, night pay and compensatory time earned.
- The formula for calculating the biweekly rate is (annual basic pay +locality pay) divided by 2087 x 80 hours. A list of bi-weekly pay rates may be found at <http://www.opm.gov/oca/pay/HTML/10GSCap.asp>.
- Unlike Section 5307 (above), this section does not contain language providing for carry forward of earnings in excess of this cap. OPM guidance is that premium pay earned in excess of this premium pay cap is forfeited. It does not carry forward.
- This section permits agency heads (or their designees) to effectively waive the biweekly premium pay cap and apply only the annual premium pay cap to deal with emergency situations that are critical to the agency mission:
- ONLY THE BIWEEKLY CAP is removed with this specific waiver. THE ANNUAL CAP remains unchanged.
- See USAID Interim Update 02-07, New Higher Pay Cap on Premium Pay in Effect for required documentation. (<http://www.usaid.gov/policy/ads/400/updates/iu4-0207.pdf>)
- Special Differential Pay authorized by Section 412 of the Foreign Service Act of 1980, as amended, and not by Title 5. As such it is not subject to the aggregate annual limitation for premium pay under Title 5.

- The Section 5547 waiver creates an administrative task in regards to those personnel who will be earning premium pay in excess of the normal biweekly cap:
- Calculations must be made to determine the point at which the premium payments will stop but basic pay will continue. The object of this is to avoid paying an employee in excess of the annual cap.
- A failure to accurately compute the point at which the premium payments must stop that results in an employee being paid in excess of the cap will create a debt for the employee.

The National Defense Authorization Act for Fiscal Year 2010 (NDAA)

Under section 1106 of the NDAA for Fiscal Year 2010 (Public Law 111-84, October 28, 2009), agency heads may waive the biweekly premium pay limits for USDH employees in specific countries and establishes the Vice President's salary (\$230,700 for 2010) as the pay cap for the total amount of basic pay and premium pay payable in the calendar year. This authorization is not permanent and must be renewed each year by Congress as part of the NDAA.

Presently, the NDAA waiver applies to employees:

- --Performing work in CENTCOM or those parts of AFRICOM that used to be part of CENTCOM,
 - In support of or directly related to U.S. military operations, or
 - In support of work declared by the President to be an emergency.
 - Currently, the only two countries meeting all requirements for waiver requests are Afghanistan and Iraq.

Other critical aspects of the NDAA are:

- Written guidance from OPM , states that this is a "hard cap" and that premium pay amounts earned in excess of the NDAA premium pay cap are forfeited and not carried forward.
- OPM guidance states that Section 1106 also provides that the aggregate limitation on pay under 5 U.S.C. 5307 will not apply to an employee in calendar year 2010 if the employee is granted a waiver of the normally applicable premium pay limitations. This guidance may be found at <http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=2653>.
- The NDAA premium pay cap waiver does not apply to commissioned FO's or SFS because they do not receive premium pay under Title 5. They are still subject to the aggregate limitation established by Section 5307 above.
- The NDAA waiver creates an administrative task in regards to those personnel who will be earning premium pay in excess of the normal biweekly cap:

- Calculations must be made to determine the point at which the premium pay will stop but basic pay will continue. The object of this is to avoid paying an employee in excess of the cap.
- A failure to accurately compute the point at which the premium pay must stop resulting in an employee being paid in excess of the cap will create a debt for the employee.

Special Differential Pay

Special Differential Pay is authorized under Section 412 of the Foreign Service Act of 1980, as amended, for payment to commissioned FO's in Afghanistan, Iraq and Pakistan who are directed to perform additional work on a regular continuing basis in substantial excess of normal requirements notwithstanding the fact that they are not authorized to receive premium pay under Title 5. Note that tenured employees should continue to receive premium pay under Title 5 until such time as the commissioning process has been completed with attestation by the President as the final step. The clearance process involved in commissioning is quite extensive with numerous internal and external clearances required. It normally takes six to twelve months to complete all of the necessary clearances up to the President's attestation.

Critical aspects of Special Differential Pay are:

- The Special Differential is 20% for the first year of service in Afghanistan, Iraq and Pakistan.
- The 2nd Year Special Differential is 15%, in addition to the 20% Special Differential, for serving a second consecutive year.
- It is available only to commissioned FOs in grades FS-01 through FS-04.
- It is not subject to premium pay limitations or annual aggregate limitations. (See 3 FAM 3139.7 Relationship to Other Payments)
<http://www.state.gov/documents/organization/85016.pdf>

Applying Pay Limitations

OPM has primary responsibility for developing guidance on the application of Title 5 U.S. Codes. They have incorporated 5 CFR 530.202 Definitions of aggregate compensation and aggregate limitation into their guidance for applying the aggregate pay limitations in countries not affected by the NDAA waiver. This guidance may be found at this link <http://www.opm.gov/oca/pay/HTML/aggreatelimitation.asp>.

For the purpose of calculating aggregate pay amount in a country not covered by an NDAA authorized waiver, aggregate compensation includes: base pay, overtime, Sunday pay, Night pay, Holiday pay, allowances, post differential, danger pay, awards, bonuses, and lump disbursements of prior years allowances earned and carried forward.

Specials Differentials authorized under Section 412 of the Foreign Service Act of 1980, as amended, are not included in the 5 CFR 530.202 Aggregate pay and limitation definitions.

472mah_100511