

CHAPTER 03

PAY ADMINISTRATION0301 GENERAL PROVISIONS030101. Payroll Computation

A. Payroll computations shall be based on authorized entitlements and in accordance with FPM Supplement 990-2, Books 550 and 610 (reference (k)) and 5 C.F.R. 530,531,532, 534, 550, 551, 572, 581, 591, 595, 610 and 630 (reference (1)). These entitlements shall be evidenced by an SF 50 or other approved documents, and a time and attendance report for days actually worked and any leave actually taken during the period.

B. Documents supporting entries made in the pay, leave, and allowance records shall consist of SFs 50 and other personnel documents; certified copies of travel orders; time and attendance reports, including any necessary supporting documents such as sign-in and sign-out registers or SFs 71; authorizations or approvals of overtime when required separately from time and attendance reports; pay adjustment authorizations; and similar official records.

C. Source documents need not be transmitted to the civilian payroll office provided the pay entitlement data in such documents are transmitted to the civilian payroll office and controlled by feedback to ensure consideration of that data in the pay computation process; controls are established to ensure that all data which should be transmitted are transmitted; and source documents and transmittal and control evidence are retained for audit in accordance with the General Records Schedule 2 (reference (g)).

D. Civilian payroll personnel shall ensure that payroll data are complete, correct, and accurate. Specifically, civilian payroll office personnel shall ensure that an employee's compensation is consistent with grade, position classification and other individual entitlements (retained grade and pay), and employment location. For example, an employee assigned to

stateside duties shall not be paid any foreign area allowances, regardless of authorizing documents. In this example, the civilian personnel office that issued such entitlement documents shall be requested to clarify and/or correct these documents.

E. The pay computation shall be accomplished as soon as possible after the close of the pay period.

F. Pay computations shall be based on the completed time and attendance record maintained for each employee.

G. Adequate channels of communication shall exist between civilian pay, personnel, and liaison offices to ensure that all entitlement information is considered in each pay computation. At least every 4 months, personnel and pay data shall be reconciled and discrepancies corrected promptly. The functional area that entered the incorrect data shall have primary responsibility for reconciling discrepancies in common data. Also see paragraph 010407.

030102. Notification of Changes to Pay. Notification of changes in pay is the responsibility of the civilian personnel office servicing the employee. The civilian payroll office shall adequately inform each employee in writing as to the nature and amount of the changes in gross pay from one pay period to the next. This information may be disclosed on an LES in lieu of a separate written advisory. This information shall be in sufficient detail to show total pay, allowances, deductions, and net pay.

030103. Statutory Ceilings on CompensationA. Limitations on Premium Pay

1. Except as explained below, premium pay (night pay, compensatory pay, overtime pay, premium pay on an annual basis, and pay for Sunday and holiday work), in combination with basic pay, may not cause the

total for any pay period for General Schedule (GS) employees to exceed the maximum rate payable for GS-15. No premium payments or compensatory time may be granted to an employee whose rate of basic pay is greater than the maximum rate for GS-15 (5 U.S.C. 5547(a) (reference (b)) and 5 C.F.R. 550.105 (reference (l))). Computation of the biweekly statutory pay limit for 32 U.S.C. (reference (m)) technicians does not include compensatory time worked. Section 709 of 32 U.S.C. (reference (m)) precludes National Guard technicians from being paid overtime; therefore, compensatory time is a use-or-lose type of leave and will not be paid in kind.

2. The biweekly limitation described in subparagraph 030103.A.1. does not apply to employees who are paid premium pay for work in connection with an emergency that involves a direct threat to life or property. In such situations, the total basic pay and premium pay for most GS employees is limited to the annual rate for GS-15, step 10, for the calendar year. This limit may include locality-based comparability or special salary rates. For GS employees receiving a geographic adjustment, the Supplementary Salary table will be followed to determine the GS-15, step 10 rate. Also, employees in occupations and/or locations for which a special rate has been established for GS-15 are subject to a biweekly limitation equal to the special rate for GS-15, step 10,

B. Aggregate Limitation on Pay

1. The FEPCA (reference (e)) and 5 C.F.R. 530 Subpart B (reference (1)) established a new aggregate limitation on pay. This limitation applies to members of the Senior Executive Service (SES) who previously were covered by an aggregate limitation that was applied on a fiscal year basis under 5 U.S.C. 5383(b)(1) (reference (b)), as well as to most other Federal employees. Under 5 U.S.C. 5307 (reference (b)), a covered employee may not receive any allowance, differential, bonus, award, or other payment in any calendar year to the extent such payment, in combination with the employee's basic pay, would exceed the rate payable for Level I of the Executive Schedule at the end of that calendar year. Amounts in excess of that amount generally will be paid at

the beginning of the next calendar year. If an employee separates from the Federal service, the entire excess amount is payable following a 30-day break in service.

2. The aggregate limitation on pay applies to basic pay, allowances, differentials, bonuses, awards, and other similar cash payments made under 5 U.S.C. 5547 (reference (b)). Some of these payments are made on a one-time basis, and some are paid at the same time and in the same manner as basic pay. The FEPCA (reference (e)) classifies these payments as "continuing" and "noncontinuing payments" respectively.

3. Under the FEPCA (reference (e)), an agency may not authorize any discretionary continuing payment that would cause the total of all continuing payments at any time to exceed the rate payable for Level I of the Executive Schedule (5 C.F.R. 530.203(c)) (reference (1)). Examples of discretionary continuing payments include retention allowances, supervisory differentials, and physicians comparability allowances. Nondiscretionary continuing payments (e.g., basic pay, locality-based comparability payments or interim geographic adjustments, cost of living allowances, post differentials, and remote work site allowances) are not subject to this regulatory restriction.

4. Finally, the FEPCA (reference (e)) provides that nondiscretionary continuing payments may not be discontinued or deferred for any period of time in order to make a continuing payment or discretionary continuing payment that would otherwise cause an employee's pay to exceed any of the limitations in these regulations. The FEPCA (reference (e)) also establishes an order of precedence for nondiscretionary continuing payments and any authorized physicians comparability allowance when the total of such payments exceeds the rate then payable for Level I of the Executive Schedule (5 C.F.R. 530.203 (e) and (f)) (reference (1)).

030104. Multiple Appointments. An employee shall not be entitled to receive pay from more than one position for more than an aggregate of 40 hours of work in one calendar week (Sunday through Saturday) (5 U.S.C. 5533a (reference (b))).

Generally, there is no restriction on the number of appointments which a person may hold, only upon the number of hours for which the person may be paid. An individual may be given more than one simultaneous part-time or intermittent appointment, or an employee on leave with pay may accept another Federal appointment, so long as pay is not received for more than 40 hours a week (unless the employee is regularly paid for more than 40 hours a week under an authorized alternative work schedule) or from two sources for the same hours. Civilian personnel offices will notify civilian payroll offices of multiple appointments via an SF 50.

0302 BASIC PAY

030201. General Schedule (GS) Employees

A. Basic Pay. Generally, basic pay for these employees means the rate of pay set by the law or an administrative action for the job held before any deductions or additional pay of any kind.

B. Pay Computation. Computations will be based on the rates contained in the OPM salary tables.

C. Basic Rates

1. The hourly basic rate is derived by dividing the annual rate by 2,087 with the result adjusted to the nearest cent, counting one-half cent and over as a whole cent.

2. The biweekly rate is derived by multiplying the hourly rate by 80.

3. A daily rate is derived by multiplying the hourly basic rate by the number of daily hours of service.

4. For employees whose pay is monthly or covers one calendar month paid under the provisions of 5 U.S.C. 5505 (reference (b)), the following rules for division of time and computation of pay govern:

a. A month's pay is one-twelfth of a year's pay

b. A day's pay is one-thirtieth of a month's pay;

c. The 31st day of a calendar month is ignored in computing pay, except that 1 day's pay is forfeited for 1 day's unauthorized absence on the 31st day of a calendar month;

d. For each day of the month elapsing before entering on duty, 1 day's pay is deducted from the first month's pay of the individual.

D. Interim Geographic Adjustment.

Under 5 C.F.R. 531.101 (reference (1)), an interim geographic adjustment of 8 percent is authorized for the Consolidated Metropolitan Statistical Areas (CMSA).

1. An employee in one of the three CMSAs paid according to the General Schedule will be entitled to an adjustment of 8 percent.

2. The interim geographic adjustment for an employee in one of the three CMSAs receiving a special salary rate under 5 C.F.R. Part 530 (reference (1)), or a local special salary rate will receive the greater of the GS rate of basic pay multiplied by 1.08, or the special salary rate.

3. The statute provides that adjusted rates of pay will be considered basic pay for purposes of computing retirement deductions and benefits, life insurance premiums and benefits, advances of pay, and premium pay. The adjusted rates also will be considered basic pay for the purpose of computing an employee's entitlement to severance pay.

4. Administration of Adjusted Rates of Pay

a. When an employee's official duty station is changed from a location not in an interim geographic adjustment area to a location in an interim geographic adjustment area, payment of the adjusted rate of pay begins on the effective date of the change in official duty station.

b. Entitlement to an adjusted rate of pay terminates on the date an employee's official duty station is no longer located in an interim geographic adjustment area; an employee moves to a position not covered by an interim geographic adjustment; an employee separates from Federal service or an employee's local special salary rate exceeds his or her adjusted rate of pay.

c. An adjusted rate of pay is paid only for those hours an employee is in a pay status.

d. An adjusted rate of pay shall be adjusted as of the effective date of any change in the applicable scheduled rate of pay.

e. An adjusted rate of pay is included in an employee's "total remuneration" as defined in 5 C.F.R. 551.511(b) (reference (1)) and "straight time rate of pay" as defined in 5 C.F.R. 551.512(b) (reference (1)) for the purpose of computations under 29 U.S.C., Sections 201-219 (reference (n)), as amended.

f. Payment of, or an increase in, an adjusted rate of pay is not an equivalent increase in pay within the meaning of 5 U.S.C. 5335 (reference (b)).

g. Termination of an adjusted rate of pay under subparagraph 030201 .D.4.b. is not an adverse action.

E. Special Higher Minimum Rates for Law Enforcement Officers (LEO) at Grades GS-3 through GS-10. Section 403 of FEPCA (reference (e)) provides LEOs at grades GS-3 through GS-10 worldwide special salary rates, beginning in January 1992. A special salary table number 491 authorized by Section 403 of FEPCA, P.L. 101-509 (reference (e)), as amended by P.L. 102-378 is published by OPM. LEOs are entitled to receive the higher of special rates under Section 403 of FEPCA or special salary rates under 5 U.S.C. 5305 (reference (b)).

F. Special Pay Adjustment for Law Enforcement Offices (LEO) in Selected Geographic Areas. Section 404 of FEPCA (reference (e)) establishes special pay adjustments of 4, 8,

and 16 percent for GS, SES, and senior-level LEOs whose official duty stations are in one of eight designated areas. These special pay adjustments are considered basic pay for retirement, life insurance, premium pay, severance pay, workers' compensation purposes, and for advances in pay. For grades GS-3 through GS-10 only, the rates of basic pay must be used for all other pay administration purposes, except as provided in 5 C.F.R. 531.203 (d)(2)(vi) (reference (1)). For all other grades, the rates of basic pay in the General Schedule must be used for all other pay administration purposes. Under 5 U.S.C. 5304(g)(1) (reference (b)), the LEO special pay adjustment, when added to the employee's rate of basic pay under the General Schedule, may not exceed the rate for level IV of the Executive Schedule.

G. Locality-Based Comparability Payments. The FEPCA (reference (e)) authorizes the payment of locality pay for GS employees and certain other categories of positions in 28 locality pay areas. Locality pay is considered basic pay for retirement, life insurance, premium pay, advance pay, severance pay, lump-sum leave and workers' compensation purposes. Eligibility is based on where an employee works, not where he or she lives. Locality pay does not transfer with an employee from one pay zone to another. Employees shall receive whatever rate of pay applies at his or her new duty station. Employees on temporary assignment in a different pay zone shall continue receiving their current salary. Locality pay does not apply overseas, nor in Alaska or Hawaii.

030202. Employees Under the Performance Management and Recognition System (PMRS)

A. On September 30, 1993, P.L. 103-89, Performance Management and Recognition System Termination Act of 1993 (reference (e)), was enacted and terminated the PMRS on October 31, 1993. The provisions of this law apply to all employees who were covered by PMRS on October 31, 1993, and provide for the transition of former PMRS employees into their agency's Performance Management System and the GS pay plan, with its within-grade increases and waiting periods. It also permits agencies to pay

current rates of pay, as adjusted by the 1993 final merit increases.

B. In order to identify all employees who are covered by the provisions of this law, OPM decided to retain the GM pay plan code. The step for all employees using the GM pay plan code will continue to be "00".

C. All GS employees, including those still designated GM after October 31, 1993, will be eligible for within-grade increases according to the waiting periods established in statute. The last PMRS merit increase received, including one for zero dollars, is an equivalent increase for the purpose of calculating and completing the prescribed waiting periods. Within-grade increases have the dollar value of one-ninth of the pay range and employees will have that increase added to their basic pay rate (including an off-step rate) upon completion of the appropriate waiting period, provided performance has been at an acceptable level of competence.

D. Promotion, change to a lower grade, a break in service of more than 3 days, transfer to another non-DoD agency, or reassignment to a nonsupervisory or nonmanagement position will end an employee's coverage under P.L. 103-89 (reference (e)). At that time, the employee's rate of basic pay will be adjusted to the designated GS step rate that meets or exceeds the current rate of pay, not to exceed step 10.

030203. SES Employees

A. Definition. In accordance with 5 U.S.C. 5381-5385 (reference (b)), SES employees are in positions in the Executive Branch which were formerly classified at GS-16, 17, and 18, and Executive Levels IV or V (or their equivalents) which do not require Senate confirmation. Nonsupervisory positions are not covered unless they carry significant policy-making responsibilities.

B. Rate of Pay. There are six rates of basic pay for SES employees. The minimum rate of basic pay is 120 percent of GS-15, step 1 and the maximum rate is Level IV of the Executive Schedule. These rates are adjusted by the President when comparability adjustments are made

in General Schedule rates under the provisions of 5 U.S.C. 5305 (reference (b)).

030204. Senior Level Positions

A. Definition. Senior Level positions, established by Section 102 of the FEPCA (reference (e)), are non-SES positions formerly classified at GS-16, 17, and 18. These positions do not include administrative law judges and board of contract appeals positions which have their own pay schedules.

B. Rate of Pay. These positions are paid under 5 U.S.C. 5376 (reference (b)), which establishes the minimum rate of basic pay at 120 percent of GS-15, step 1 and the maximum rate equal to Level IV of the Executive Schedule. There are no grades or steps under 5 U.S.C. 5376 (reference (b)). Therefore, employees may be paid at any rate between the minimum and maximum rates.

030205. Scientific and Professional Employees

A. Definition. Scientific and professional employees are those in positions above GS-15 who are engaged in research and development positions established under 5 U.S.C. 3104 (reference (b)) and Section 102 of the FEPCA (reference (e)).

B. Rate of Pay. These positions are paid under 5 U.S.C. 5376 (reference (b)), which establishes the minimum rate of basic pay at 120 percent of GS-15, step 1 and the maximum rate equal to Level IV of the Executive Schedule. There are no grades or steps under 5 U.S.C. 5376 (reference (b)); therefore, employees may be paid at any rate between the minimum and maximum rates.

030206. Executive Schedule Employees

A. Definition. The Executive Schedule, defined in 5 U.S.C. 5311-5318 (reference (b)), is divided into five pay levels and is the basic pay schedule for senior management positions described in those sections. SES positions are not included.

B. Rate of Pay. The rate of pay is contained in the OPM annual salary tables.

030207. Federal Wage System (FWS) Employees

A. Definition. An FWS employee means an individual who is in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled or skilled manual labor occupation. Also included is any other individual, including a foreman or a supervisor, in a position having trade, craft or laboring experience and knowledge as a paramount requirement. These positions are commonly referred to as blue collar, wage grade, or wage board. For consistency, the term FWS will be used throughout this Volume. Pay for these positions is based on the prevailing rates in an area. See Appendix A to Subpart B of Part 532 of 5 C.F.R. (reference (1)). FWS employees are hourly rate employees who receive annual wage adjustments based on a review of comparability pay by wage area. Each area pay scale is divided into 5 parts or classes: WG (wage grade employee) WL (wage leader employee); WS (wage supervisor) WD (nonsupervisory employees covered by the production facilitating pay plan); and WN (supervisory employees covered by the production facilitating pay plan).

B. Rate of Pay. The rates are adjusted from time to time for comparable work within a local wage area. Basic pay for FWS employees means the scheduled rate of pay plus any night shift or environmental differential.

0303 PREMIUM PAY

030301. Premium pay consists of certain types of pay such as overtime pay, which is discussed in paragraph 030302.; night pay holiday pay for employees not in receipt of annual premium pay for standby duty; Sunday pay; annual premium pay for regularly scheduled standby duty; annual premium pay for administratively uncontrollable work environmental pay for FWS employees; and hazard pay for GS employees. Rates and authorization for these various pays are contained in the FPM Supplement 990-2, Chapters 550 and 610 (reference (k)) and 5 U.S.C. 5343, 5542, 5544, 5545, 5546a, 5547, and 5549 (reference (b)). Employees, as defined by 5

U.S.C. 5541 (reference (b)), may be paid premium pay as authorized by 5 U.S.C. 5542, 5545(a)-(c), and 5546(a) and (b) (reference (b)) only to the extent that the pay does not cause the aggregate rate of pay for any pay period to exceed the maximum applicable rate for a GS-15. Premium pay cannot be paid to any GS employee whose basic rate of pay equals or exceeds the maximum applicable rate for grade GS-15. Premium pay may be paid to an employee whose basic rate is less than the maximum applicable rate of GS-15 only to the extent that the payment does not cause the total rate of pay for any pay period to exceed the maximum applicable rate for GS-15. The maximum rate does not apply to nonexempt GS employees. See paragraph 030302.B. Hazard pay is excluded from this limitation. SES employees are not entitled to premium pay under any circumstances. TP pay plan employees are excluded from Title 5 (reference (b)) premium pay provisions.

030302. Overtime Pay. Each employing activity shall be responsible for controlling overtime. Supervisors shall ensure that overtime worked is covered by funds targeted for their employing activity. Approval or disapproval of overtime shall be consistent with the Deputy Secretary of Defense's memorandum (reference (o)). The civilian payroll office shall pay only approved overtime as certified on the time and attendance report. Normally, approval to work overtime shall be made in writing in advance of performing the work.

A. Title 5 Overtime

1. Regularly Scheduled. FPM Supplement 990-2, Book 550, Subchapter S1 (reference (k)) contains provisions on premium pay for overtime. Regular overtime work means overtime work that is scheduled prior to the beginning of an employee's regularly scheduled administrative workweek. For each GS employee whose rate of pay does not exceed the minimum applicable rate for a GS-10, the overtime hourly rate is one and one-half times the employee's hourly rate of pay. For each GS employee whose rate of basic pay exceeds the minimum applicable rate for a GS-10, the overtime hourly rate is one and one-half times the hourly rate of basic pay at the minimum applicable rate for a

GS-10 (5 U.S.C. 5542) (reference (b)). Regular overtime is authorized for full-time, part-time, and intermittent GS employees.

2. Irregular/Occasional. Irregular or occasional overtime work is overtime work that is not part of an employee's regularly scheduled administrative workweek.

B. FLSA (Nonexempt Employees)

1. For employees paid under 29 U.S.C. 201-219 (FLSA) (reference (n)), entitlement to overtime compensation is determined by calculation of an "hourly regular rate." The "hourly regular rate" of pay for all "nonexempt" employees is computed by adding all includable payments for the week, and then dividing by the total hours of work and paid leave. The DoD shall compensate an employee who is nonexempt under the provisions of 5 C.F.R. 551.101 (reference (1)) for all hours of work in excess of 8 a day or 40 in a workweek at a rate equal to one and one-half times the employee's hourly regular rate of pay.

2. Under Section 210 of the FEPCA (reference (e)), effective on May 4, 1991, overtime pay computations for nonexempt employees must be made solely in accordance with the FLSA (reference (n)) regulations in 5 C.F.R. 551 (reference (1)), as amended. Agencies are no longer required to compare overtime pay entitlements for nonexempt employees under 5 C.F.R. 550 and 551 (reference (1)) and pay whichever amount is greater. However, entitlements arising prior to May 1, 1993, must still be calculated using the previous rules. Nonexempt employees continue to be covered by the other premium pay provisions of 5 U.S.C., Subchapter V (reference (b)), for night, Sunday, or holiday and annual premium pay for regularly scheduled standby duty or administratively uncontrollable overtime (AUO) work.

3. According to 5 U.S.C. 5544(a) (reference (b)), as amended by Section 529 of P.L. 101-509 (reference (e)), hours of work (as defined in 5 U.S.C. 5542) (reference (b)) in excess of 8 hours in a day are deemed to be overtime hours for the purposes of Section 7 of the FLSA (29 U.S.C. 207) (reference (n)), if the employee is not

receiving annual premium pay for regularly scheduled standby duty (5 U.S.C. 5545(c)(1)) (reference (b)) or annual premium pay for AUO work (5 U.S.C. 5545(c)(2) (reference (b))); 5 U.S.C. 5544(a) (reference (b)) for FWS employees). Such hours are considered overtime hours under the FLSA (reference (n)) regardless of the total number of hours of work in the workweek. For example, an employee who works 10 hours on the 1st day of the workweek and is on LWOP for the remainder of the workweek is entitled to 2 bouts of overtime pay under FLSA (reference (n)), even though the employee has worked a total of only 10 hours in the workweek.

C. Excluded Employees. SES employees are excluded from premium pay by 5 U.S.C. 5541 (reference (b)). Certain GS and all Executive Schedule employees are also excluded since, under the provisions of 5 U.S.C. 5547 (reference (b)), premium pay may be paid only to the extent that payment does not cause aggregate pay to exceed the maximum rate for GS-15. National Guard technicians are not entitled to premium pay for overtime. Instead, they may earn compensatory time. They are entitled to holiday premium pay if the holiday or the day on which the holiday is observed is worked as part of the basic 40-hour workweek. Otherwise, compensatory time is earned for the actual hours worked.

D. Callback Overtime. A minimum of 2 hours of overtime will be paid if an employee is required to return to the place of employment for unscheduled overtime work or to work unscheduled overtime on a nonscheduled workday. If the callback occurs on a holiday during the employee's regular schedule, a minimum of 2 hours holiday premium pay will be paid. When an FLSA nonexempt employee performs unscheduled overtime work on a day when work was not scheduled for the employee, or for which the employee is required to return to the place of employment, the employee is paid for 2 hours of work or the actual number of hours worked, whichever is greater. In all cases, the actual time worked will be recorded.

E. Compensatory Time

1. Compensatory time worked must be approved in advance in writing and administered in accordance with paragraph 020208. Compensatory time may not be earned when payment of the extra hours at overtime rates would be improper, as in the case of employees whose pay for any period is limited to the maximum rate payable for a GS-15 (26 Comp. Gen. 750 (1947)) (reference (p)). Compensatory time which may be earned by an employee in any one pay period is limited to the number of hours for which there would otherwise be an entitlement to overtime compensation before reaching the limitation on total pay period earnings (37 Comp. Gen 362) (reference (p)). The granting of compensatory time off in lieu of overtime pay under 5 U.S.C. 5542 (reference (b)) is not to be administered in opposition to the overtime pay requirements of the FLSA (reference (n)). For instructions on compensatory time off for nonexempt employees, see FPM Letter 551-6 (reference (q)) and FPM Letter 551-24 (reference (q)),

2. GS employees are eligible for compensatory time off from their scheduled tour of duty instead of payment for an equal amount of time spent in irregular or occasional overtime work. Those employees whose basic rate of compensation exceeds the maximum applicable rate for grade GS-10 may be required by their employing activity to take compensatory time off instead of overtime pay. Nonexempt employees may not be required to take compensatory time off instead of being paid overtime pay unless they request it. See FPM Letter 551-24 (reference (q)).

3. Compensatory time worked cannot be credited to an employee whose basic rate of pay equals or exceeds the maximum rate for grade GS-15. Compensatory time worked in a pay Period may be credited to an employee whose basic rate is less than the maximum rate of GS-15 only to the extent that the monetary value of the compensatory time worked does not cause the total rate of pay for that pay period to exceed the maximum applicable rate for GS-15.

4. Exempt GS employees may choose to earn compensatory time in place of payment for an equal amount of time spent in

occasional or irregular overtime work. They may not earn compensatory time for regularly scheduled overtime. Compensatory time cannot be earned for holiday work.

5. Compensatory time off must be granted to an exempt employee within a reasonable time after the overtime is worked. The limit for the use of compensatory time off is the end of the 26th pay period after that in which the overtime was worked. The unused compensatory time worked will then be paid at the overtime rate at which it was earned.

6. Upon request of a nonexempt employee, an employing activity may grant compensatory time off from a scheduled tour of duty instead of payment under FLSA for an equal amount of time spent in irregular or occasional overtime work, i.e., overtime work not scheduled in advance of the employee's workweek. However, if an employee fails to use compensatory time before the expiration of the established time period, the employee shall be paid for the overtime work at the FLSA overtime rate in effect at the time it was worked. Compensatory time off may not be granted to a FWS employee except as discussed in subparagraph 030302.E.9. See FPM Letter 551-24 (reference (q)).

7. Upon request, the employing activity may also grant compensatory time off to a nonexempt employee on a flexible work schedule under 5 U.S.C. 6122 (reference (b)) instead of payment under FLSA for an equal amount of time spent in overtime work without regard to whether the overtime work was irregular or occasional in nature.

8. GS employees on flexible or compressed schedules may earn compensatory time off.

9. FWS employees on flexible schedules may earn compensatory time off (FPM Supplement 532-1, Subchapter S8-4) (reference (r)).

10. When a GS employee takes compensatory time off during his or her scheduled tour of duty which includes night pay, the

employee is still entitled to night pay for that time if the employee's scheduled tour of duty is between 6 p.m. and 6 a.m. and the employee's leave total is less than 8 hours in a pay period.

11. Compensatory time off may be granted before annual leave is approved except when annual leave would otherwise be forfeited.

12. When an employee separates, dies, or transfers to another employing activity, the losing activity shall pay for any unused compensatory time balances. The balance shall be paid at the overtime rate in effect when the compensatory time was earned.

F. Time Off for Religious Reasons.

Employees may earn compensatory time off for religious observances, under provisions of 5 U.S.C. 5550a (reference (b)). Time off for religious reasons will be recorded in a special leave account and may be worked either before or after the period of time off. Advance time off for religious reasons should be repaid within a reasonable time. Any time-off balance will not transfer. When an employee separates, dies, or transfers to another employing activity, any unused time-off balance will be paid, by the losing activity, at the basic hourly rate in effect when the time was worked, If the employee has an unliquidated advance time-off balance at the time of separation, death or transfer, an indebtedness is created. See paragraph 080309. for liquidation of this indebtedness. Compensatory overtime worked in this manner is exempt from maximum pay limitations and all other provisions of overtime and premium pay contained in 5 U.S.C., Chapter 55, Subchapter V (reference b)), 5 C.F.R. 550.1001-1002 (reference (l)), and 29 U.S.C. 207 (reference (n)).

030303. Night and Shift Differential

A. GS Employees. Under 5 U.S.C. 5545(a) (reference (b)), night differential, at a rate of 10 percent of the hourly basic rate, is payable to employees for work between 6 p.m. and 6 a.m. if the regular tour of duty includes work during such hours. Accordingly, the hourly basic rate is multiplied by 10 percent, with the result adjusted to the nearest cent, counting one-half

cent and over as a whole cent. The hours worked must be part of the regular tour. An employee is entitled to a night differential for a period of paid leave only when the total amount of that leave in a pay period, including both night and day hours, is less than 8 hours. Exceptions to this rule are employees on court leave, military leave including leave for law enforcement and encampment purposes, holiday leave, administrative leave, and time off awards. Employees in an official travel status and on COP are entitled to night differential. They get night differential no matter how long they are on leave (5 C.F.R. 550.121-122) (reference (l)) and (FPM Supplement 990-2, Book 550) (reference (k)). Night differential is payable for overtime work between the hours of 6 p.m. and 6 a.m. if the overtime is regularly scheduled in advance of the administrative workweek.

B. FWS Employees. Under 5 U.S.C. 5343(f) (reference (b)), FWS employees will receive shift differential at the rate of 7.5 percent of their hourly rate for nonovertime work when a majority of scheduled hours occur between 3 p.m. and midnight, or 10 percent of their hourly rate for nonovertime work when the majority of scheduled hours occur between 11 p.m. and 8 a.m. (see FPM Supplement 532-1, paragraph S8-4c) (reference (r)). An employee may be paid shift differential only when 5 or more hours of the regularly scheduled 8-hour shift (including meal periods) occur during the hours specified. See 53 Comp. Gen. 814 (1974) (reference (p)). Shift differential is also payable when an employee is:

1. Excused from duty on a holiday.
2. In an official travel status during the hours of the regular shift.
3. On paid leave such as court leave, military leave, holiday leave, COP, and administrative leave.
4. Temporarily assigned to a different tour of duty.

C. National Guard Technicians. Army and Air National Guard technicians are

not entitled to payment of night differential during periods of overtime work (50 Comp. Gen. 847 (1971)) (reference (p)). National Guard technicians are not entitled to premium pay for overtime. They earn compensatory time.

D. Part-time Employees. Part-time GS employees are eligible for night differential for work performed between 6 p.m. and 6 a.m. as part of their regularly scheduled administrative workweek.

E. Intermittent Employees. Intermittent GS employees who have no regularly scheduled tour of duty are not eligible for night differential. These employees are eligible for night differential during temporary assignment to a regular tour of duty with night work.

030304. Sunday Premium Pay. Under 5 U.S.C. 5544, 5546(a), and 5550 (for FWS employees) (reference (b)), additional pay at a rate of 25 percent of the hourly basic rate is payable to full-time employees whose regularly scheduled basic workweek (which does not include overtime hours) includes Sunday. The additional pay is payable for the entire period of nonovertime service for each daily tour of duty that includes Sunday. The maximum number of hours of Sunday premium pay that an employee can be paid for one Sunday is 16 hours. (This would be for two 8-hour tours: one starting on Saturday night and ending on Sunday morning; and the next tour starting Sunday night and ending on Monday morning.) To calculate, the hourly basic rate is multiplied by 25 percent with the result adjusted to the nearest cent, counting one-half cent and over as a whole cent (FPM Supplement 990-2, Book 550) (reference (k)) and FPM Supplement 532-1, paragraph S8-4e) (reference (r)).

A. Flexible Work Schedule. A full-time employee on a flexible work schedule who performs regularly scheduled nonovertime work during a period of duty, a part of which is performed on Sunday, is entitled to Sunday pay for the entire period of duty, not to exceed 8 hours. A part-time employee is not entitled to Sunday pay.

B. Compressed Work Schedule. A full-time employee on a compressed work sched-

ule who performs nonovertime work during a period of duty, a part of which is performed on Sunday, is entitled to Sunday pay for his or her entire period of duty on that day. A part-time employee is not entitled to Sunday pay.

030305. Holiday Premium Pay. In accordance with 5 U.S.C. 5546 (reference (b)), an employee who performs work on a holiday designated by Federal statute is entitled to pay at the rate of basic pay plus premium pay at a rate equal to the rate of the basic pay, for that holiday work which is not in excess of the scheduled tour of duty or overtime work as defined by 5 U.S.C. 5542 (reference (b)). An employee required to perform any work on a designated holiday is entitled to pay for at least two hours of holiday work. An employee who performs overtime work as defined by 5 U.S.C. 5542(a) (reference (b)) on a Sunday or a designated holiday is entitled to pay for that overtime work in accordance with 5 U.S.C. 5542 (reference (b)). Premium pay under 5 U.S.C. 5546 (reference (b)) is in addition to premium pay which may be due for the same work under 5 U.S.C. 5545(a) and (b) (reference (b)), which provides premium pay for night work.

A. Flexible Work Schedule. For an employee working a flexible work schedule, holiday pay for nonovertime work is limited to 8 hours in a day. A part-time employee, scheduled to work on a day designated as an “in lieu of holiday for full-time employees, is not entitled to a premium for work performed on that day.

B. Compressed Work Schedule. For an employee working a compressed work schedule, holiday pay for nonovertime work is limited to the number of hours normally scheduled for that day. A part-time employee, scheduled to work on a day designated as an “in lieu or holiday for full-time employees, is not entitled to a premium for work performed on that day.

C. GS Employees. GS employees receive their basic pay, including any night differential, for holidays on which they are not required to work. Employees are entitled to additional holiday premium pay for work performed on a holiday not to exceed 8 hours,

during the hours of their regularly scheduled tour of duty.

D. FWS Employees. FWS employees who have a regular tour of duty and are not required to work due to a holiday are entitled to the same rate of pay for that day as if they had worked. When work is performed on a holiday, FWS employees are entitled to their basic rate plus premium pay at a rate equal to their basic pay for holiday work which is not more than 8 hours or is not overtime work.

E. Callback. Unscheduled overtime work performed by an employee on a day when work was not scheduled, or for which the employee is required to return to the place of employment, is deemed at least 2 hours in duration (5 U.S.C. 5542) (reference (b)). If the callback occurs on a holiday during the employee's regular schedule, a minimum of 2 hours holiday premium pay will be paid. However, the actual time worked shall be recorded for time and attendance purposes. If the employee works more than 2 hours, the actual number of hours worked will be paid.

030306. Regularly Scheduled Standby Duty Pay. Employees in a position requiring them to remain at, or within the confines of, the station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work can receive premium pay on an annual basis instead of premium pay provided by other provisions, except for irregular, unscheduled overtime duty in excess of the regularly scheduled weekly tour. Premium pay under 5 C.F.R. 550.141-550.144 (reference (l)) is determined as an appropriate percentage, not in excess of 25 percent, of such part of the rate of basic pay for the position as does not exceed the minimum applicable rate of basic pay for GS-10 (including any applicable locality based comparability payment under 5 U.S.C. 5304 (reference (b)) or similar provision of law, and any applicable special rate of pay under 5 U.S.C. 5304 (reference (b)) or similar provisions of law).

A. Firefighter Positions. Firefighters are generally scheduled for duty six 12-hour days for an average of 72 hours a week or three

alternate 24-hour shifts during each administrative workweek. When firefighters are scheduled only during daylight hours, a 60-hour week consisting of five 12-hour days may be established. The rate of standby premium pay is determined by the civilian personnel office and forwarded to the civilian payroll office via SF 50 data. It is subject to retirement and life insurance deductions. Further guidance regarding firefighters and law enforcement personnel may be found in FPM Letters 551-5, 551-14, 551-20, and 551-24 (reference (q)).

B. Other Fire Protection Personnel. Fire chiefs, assistant fire chiefs, fire prevention inspectors, and similar fire protection personnel have basic weekly tours of duty of 40 hours unless duties require substantial amounts of standby time. The rate of standby premium pay is determined by the civilian personnel office and forwarded to the civilian payroll office via SF 50 data. It is subject to retirement and life insurance deductions.

030307. Administratively Uncontrollable Overtime (AUO) - Annual Premium Pay for Overtime. Premium pay may be paid on an annual basis (except premium pay for regular overtime work and work at night, on Sundays, and on holidays), when an employee is in a position in which the hours of duty cannot be controlled administratively. The position requires substantial amounts of irregular, unscheduled overtime duty, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. Annual premium pay under 5 U.S.C. 5545(c)(2), as amended (reference (b)), provides that premium pay for AUO is an appropriate percentage, not less than 10 percent nor more than 25 percent, of the employee's rate of basic pay which includes any interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under Section 302, 403, or 404 of FEPCA (reference (e)), a locality-based comparability payment under 5 U.S.C. 5304 (reference (b)), and any applicable special rate of pay under 5 U.S.C. 5305 (reference (b)) or similar provision of law (5 C.F.R. 550.151) (reference (1)). The rate is determined by the civilian personnel office and forwarded to the civilian

payroll office via the SF 50 data. AUO for law enforcement personnel, which includes the office of special investigations agents, is subject to retirement and life insurance deductions (5 U.S.C. 8331(3)(D) and 8704(c)(2)) (reference (b)). AUO for Open Mess/Club Managers is not subject to retirement or life insurance deductions (5 U.S.C. 8331(3)(C) and (D), and 8704(c)(1) and (2)) (reference (b)).

030308. Hazardous Duty and Environmental Differentials

A. Hazardous Duty Pay (HDP)

1. Under 5 U.S.C. 5545(d) and 5548(d) (reference (b)), and 5 C.F.R. 550.901-907 (reference (l)), this entitlement, determined by the civilian personnel office, involves additional pay to GS employees for the performance of hazardous duty or duty involving physical hardship. Hazardous duty means a duty performed under conditions in which an accident could result in serious injury or death. Duty involving physical hardship means duty that may not in itself be hazardous, but causes extreme physical discomfort or distress and is not adequately alleviated by protective or mechanical devices, such as duty involving exposure to extreme temperatures for a long period of time, arduous physical exertion, or exposure to fumes, dust, or noise that causes nausea, skin, eye, ear, or nose irritation.

2. The amount of HDP is determined by multiplying the percentage rate authorized for the exposure, found in Appendix A, 5 C.F.R. Part 550, Subpart I (reference (f)), by the employee's hourly rate of pay. That amount is then multiplied by the number of HDP hours to be paid.

3. HDP is not included as part of the employee's basic rate of pay for computation of overtime, holiday pay, Sunday premium, or the amount of retirement and life insurance deductions.

4. HDP is paid for all hours in a pay status the day on which the exposure occurs.

5. Payment of HDP is not subject to the limit placed on other premium pay.

6. HDP may not be more than 25 percent of the employee's rate of basic pay.

7. TP pay plan employees are not authorized HDP.

B. Environmental Differential Pay (EDP)

1. Under 5 C.F.R. 532.511 (reference (1)), EDP is included as part of an FWS employee's basic rate of pay for computation of overtime, holiday pay, Sunday premium, and the amount of retirement and life insurance deductions. It is not part of basic pay for purposes of lump-sum leave payments and severance pay. The civilian personnel offices determine the local situation for which EDP is payable and obtain approval from OPM for additional categories not listed in Appendix J to FPM Supplement 532-1 (reference (r)). TP pay plan employees are not authorized EDP.

2. EDP is payable for actual exposure or for all hours in a pay status. The amount that is payable is determined by multiplying the percentage rate authorized for the exposure by the basic hourly rate of a WG 10, step 2. That amount is then multiplied by the number of EDP hours to be paid.

a. When environmental differential is payable for actual exposure, consider each exposure separately. Hours posted must not exceed the hours of active duty on the day of exposure. If the exposure is less than 1 hour, a minimum of 1 hour must be paid. If the exposure is longer than 1 hour, the actual amount of time exposed is payable in 15 minute increments.

b. When EDP is payable for all hours in a pay status, it will be paid for all regular and overtime hours the employee is in a pay status that day.

0304 FOREIGN AND NONFOREIGN DIFFERENTIALS AND ALLOWANCES

030401. Under 5 U.S.C. 5941 (reference (b)) and 5 C.F.R. Part 591 (reference (l)), allowances and differentials payable to employees officially stationed in nonforeign areas and the 50 states are established by OPM. Under 5 U.S.C. 5921 (reference (b)) and Executive Order No. 10,903 (reference (s)), allowances and differentials payable to employees officially stationed in foreign areas are established by the Secretary of State and published in the Department of State Standardized Regulations (DSSR) (reference (t)). DoD 1400.25-M, CPM Chapter 592 (reference (u)) sets forth the specific rules regarding foreign allowances and differentials for DoD civilian employees. Civilian personnel offices will notify the civilian payroll office via SF 50 data when an employee is eligible for a nonforeign differential or allowance. The civilian payroll office will pay foreign differentials and allowances upon receipt of the original, completed, and signed SF 1190.

030402. Allowances and Differentials in Foreign Areas

A. Quarters Allowances. Quarters allowances are intended to reimburse an employee for substantially all costs for either temporary or residence quarters whenever Government-owned or Government-rented quarters are not provided to the employee without charge. See 5 U.S.C. 5923(a)(1) and (2) (reference (b)) and DoD 1400.25-M, CPM Chapter 592, Subchapter 2 (reference (u)).

1. Living Quarters Allowance (LQA). LQA is intended to reimburse the employee for substantially all of his/her costs for either temporary or residence quarters whenever Government-owned or Government-rented quarters are not provided. Included is rent plus any costs not included in the rent for heat, light, fuel, gas, electricity and water. Employees receiving LQA may not receive the temporary quarters subsistence allowance (TQSA) for the same period of time. The daily rate is derived by dividing the annual amount by the number of days in a calendar year. It is paid for all applicable days in a pay period. See DSSR, Chapter 100 (reference (t)), 5 U.S.C. 5923(a)(1) and (2) (reference (b)), and DoD 1400.25-M, CPM Chapter 592, Subchapter 2 (reference (u)).

2. Temporary Quarters Subsistence Allowance. TQSA is an allowance granted to an employee for the reasonable cost of temporary quarters, meals and laundry expenses incurred by the employee and / or family members for a period not to exceed 90 days after first arrival at a new post in a foreign area or a period ending with the occupation of residence (permanent) quarters, if earlier; or for a period not to exceed 30 days immediately preceding final departure from the post subsequent to the necessary vacating of residence quarters. A possible extension of up to 60 additional days may be granted in compelling circumstances. TQSA is authorized during periods when travel per diem is being paid. No post allowance is authorized while an employee is receiving TQSA. Receipts are required for lodging and laundry expenses, and the employee must supply a certified statement indicating a per meal per day cost. TQSA is based on the maximum per diem rate for the foreign location found in Section 925 of the DSSR (reference (t)). Also see DSSR, Chapter 100, Section 120 (reference (t)), 5 U.S.C. 5923(a)(1) and (2) (reference (b)) and DoD 1400.25-M, CPM Chapter 592, Subchapter 2 (reference (u)).

B. Cost of Living Allowance (COLA). COLA is intended to reimburse an employee for certain excess costs, exclusive of any quarters costs, which result from being officially stationed in a foreign area. See DSSR, Chapter 200 (reference (t)) and 5 U.S.C. 5924 (reference (b)).

1. Post Allowance. The Post Allowance is a cost-of-living allowance granted to an employee officially stationed where the cost-of-living, exclusively of quarters cost, is substantially higher than in Washington D.C. It is intended to reimburse an employee for certain excess costs resulting from being stationed in a foreign area. Post allowance, which is an annual rate, is a percentage amount based on salary, size of family and location of the post. The daily rate is derived by dividing the annual amount by the number of days in a calendar year. It is paid for all applicable days in a pay period. No post allowance is authorized at the same time an employee is receiving TQSA. (DSSR, Chapter 200, Section 220) (reference (t)) and (DoD

1400.25-M, CPM Chapter 592, Subchapter 3) (reference (u)).

2. Foreign Transfer Allowance.

The foreign transfer allowance is an allowance for extraordinary, necessary, and reasonable expenses, not otherwise compensated for, incurred by an employee incident to establishing that employee at any post of assignment in a foreign area. This allowance is intended to reimburse an employee for allowable expenses incurred in the United States, its territories, possessions, the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands, prior to departure for such post. The foreign transfer allowance is composed of a lump sum miscellaneous expense to assist with certain extraordinary costs, a lump sum wardrobe expense and a predeparture subsistence expense. The lump sum payment may not exceed 1 week's salary for an employee without a family and 2 weeks for an employee with a family. In any case, the ceiling for reimbursement shall be the salary for a GS-13, step 10. Only the miscellaneous expense portion and the subsistence portion are authorized for payment within the DoD. See DSSR, Chapter 200, Section 240 (reference (t)) and DoD 1400.25-M, CPM 592, Subchapter 5 (reference (u)).

3. Home Service Transfer Allowance. The home service transfer allowance is an allowance for extraordinary, necessary, and reasonable expenses, not otherwise compensated for, incurred by an employee in connection with a transfer to a post of assignment in the United States. The allowance is composed of a miscellaneous expense portion, a wardrobe expense portion, a subsistence expense portion, and a lease penalty expense portion. This allowance is not authorized for payment within the DoD. See DSSR, Chapter 200, Section 250 (reference (t)) and DoD 1400.25-M, CPM 592, Subchapter 1 (reference(u)).

4. Separate Maintenance Allowance. Separate maintenance allowance is a cost-of-living allowance to assist an employee in meeting additional expenses of maintaining quarters other than on the assigned post. The employee must be compelled to obtain, or authorized, such quarters for one or more of the

following reasons: dangerous, notably unhealthy, or excessively adverse living conditions; for the convenience of the government; or because of special family needs. The rate is determined by the number of dependents maintained elsewhere and is computed and paid as an annual rate. The daily rate is derived by dividing the annual amount by the number of days in a calendar year. It is paid for all applicable days in a pay period. See DSSR, Chapter 200, Section 260 (reference (t)) and DoD 1400.25-M, CPM Chapter 592, Subchapter 6 (reference (u)).

5. Education Allowance. The Education allowance assists the employee with the extraordinary and necessary expenses, not otherwise compensated for, incurred because of service in a foreign area in providing adequate elementary and secondary education for his or her dependents. The allowance is not authorized for payment within the DoD. However, reimbursement is authorized for transportation costs of dormitory student dependents of eligible employees between the employee's overseas duty station and the DoD approved school. See DSSR Chapter 200, Section 270 (reference (t)), DoD 1400.25-M, CPM Chapter 592 Subchapter 8 (reference (u)), and 5 U.S.C. 5924 (reference (b)).

6. Education Travel. Educational travel is reimbursement for travel to and from a school in the United States for purposes of attending a full-time course for secondary or college education. Reimbursement will be limited to one annual round trip. An annual trip is defined as one round trip at any time within any one 12 month period. Any portion of the round trip not taken in the 12 month period does not accrue to a subsequent period. See DSSR Chapter 200, Section 280 (reference (t)), DoD 1400.25-M, CPM Chapter 592, Subchapter 8 (reference (u)), and 5 U.S.C. 5924 (reference (b)).

C. Representation Allowance. Representation allowances are intended to cover allowable items of expenditure by employees, including foreign national employees, whose official positions entail responsibility for establishing and maintaining relationships of value to the United States in foreign countries and by adult family members acting with, or on behalf of, these employees. Examples of allowable items

are those of an entertainment or protocol nature, tips and gratuities, purchase of flowers, wreaths, etc., and other representational expenses which the head of an agency may authorize or approve as being a type to promote the interest of the United States. The employee's position must first be designated by the Secretary of Defense as eligible for the allowance. A voucher of expenses incurred will be the basis of payment. See DSSR, Chapter 300 (reference (t)) and DoD 1400.25-M, CPM Chapter 592, Subchapter 9 (reference (u)).

D. Official Residence Allowance. The defraying of official residence expenses is intended to make possible the operation and maintenance of official residences in which a principal representative can properly represent the United States abroad. Such representation includes extending official (as distinct from personal) hospitality to foreign dignitaries and important visitors, receiving official deputations and callers, and holding requisite and appropriate ceremonies smoothly and with dignity. This representation also includes keeping the residence appropriately staffed and operating. The Secretary of State must designate eligible employees. See DSSR, Chapter 400 (reference (t)), 5 U.S.C. 5913 (reference (b)), and DoD 1400.25-M, CPM Chapter 592, Subchapter 10 (reference (u)).

E. Post Differential. Post differential is established for a location with extraordinarily difficult living conditions, excessive physical hardship, or notably unhealthful conditions affecting the majority of employees officially stationed or detailed at that place. Living costs are not considered in differential determination. Post Differential is additional compensation based on an established percentage over basic compensation ranging from 10 to 25 percent. Post differential is not included in the computation of lump-sum leave payments upon separation from Federal service. See DSSR, Chapter 500 (reference (t)), 5 U.S.C. 5925 (reference (b)) and DoD 1400.25-M, CPM Chapter 592, Subchapter 11 (reference (u)).

F. Danger Pay Allowance (DPA). An employee serving in a foreign area may be granted DPA on the basis of civil insurrection, civil war, terrorism or wartime conditions which

threaten physical harm or imminent danger to the health or well-being of the employee. DPA may not exceed 25 percent of the basic pay of the employee, except that if an employee is granted additional differential pay with respect to an assignment, the sum of the additional differential and any DPA may not exceed 25 percent of the basic pay of the employee. DPA is paid to full-time employees, temporary employees assigned for 24 consecutive hours or longer, and part-time and intermittent employees. For part-time regularly scheduled employees and intermittent employees, the DPA shall be computed at the prescribed percentage of basic compensation earned during the applicable period. The DPA is not subject to any ceiling that would provide less than the full percentage rate authorized for the post. DPA is included as part of the FWS employee's basic rate of pay for computation of overtime, holiday, Sunday premium pay, retirement, and life insurance. DPA is subject to Federal income tax, Social Security/Medicare, State and city, and local tax deductions. Danger pay is not included as part of the lump-sum leave payment. See 5 U.S.C. 5928 (reference (b)), DSSR Chapter 650 (reference (t)) and DoD 1400.25-M, CPM Chapter 592, Subchapter 13 (reference (u)).

G. Tropical Differential. Entitlement to tropical differential is limited to a maximum of 25 percent of basic pay when authorized for U.S. employees in Panama.

H. Cuba Benefit Allowance. The Cuba benefit allowance applies to DoD non U.S. citizens, NAP and appropriated fund employees in the Guantanamo Bay, Cuba, area. The benefit allowance includes cash allowances (laundry, clothing, meals and transportation). The total pay rate will include the base rate plus the benefit allowance. Premium pay is to be calculated on the base rate only.

030403. Entitlement When Both an Allowance and a Differential Have Been Established. Extra pay from an allowance or a differential, or both, may not exceed 25 percent of the employee's rate of basic pay. An employee eligible for an allowance is entitled to the full allowance set for a nonforeign area; therefore, the allowance should be paid first. If the allowance is less than 25

percent of the employee's basic pay, that part of the differential that will bring such employee's total extra pay to 25 percent of the basic rate shall be paid.

030404. Allowances and Differentials in Non-foreign Areas

A. Categories

1. Nonforeign Cost-of-Living Allowance. Nonforeign cost-of-living allowance is payable under 5 U.S.C. 5941 (reference (b)), at a location in a nonforeign area where living costs are substantially higher than those in the Washington, DC area. Nonforeign areas are the states of Alaska and Hawaii, the Commonwealths of Northern Mariana Island and Puerto Rico, territories and possessions of the United States that the Secretary of State designates as being within the scope of Part 11 of Executive Order 10,000, as amended (reference (s)).

2. Nonforeign Post Differential. Nonforeign post differential is payable under 5 U.S.C. 5941 (reference (b)), at a location in a nonforeign area if conditions of environment differ substantially from conditions of environment in the contiguous United States and warrant its payment as a recruitment incentive.

B. Basic Requirement in Nonforeign Areas

1. When an allowance or a differential (or both) is set, each executive department, independent establishment, and wholly-owned Government corporation must pay it (or both). They must pay it to all their civilian employees in the area whose basic pay is fixed by statute and who are eligible; however, certain exceptions do exist.

2. The pay of employees under the FWS is based on the wages paid in the locality therefore, these employees are not covered under this section.

C. Processing Allowances and Differentials

1. Notice of Eligibility. The civilian payroll office will accept SF 50 data as notice of an employee's eligibility for allowances or differentials. It will be a source document for payroll purposes. The civilian personnel office must report promptly to the civilian payroll office any changes in assignment and employment status that affect an employee's eligibility (including changes in rates).

2. Entitlement When Both an Allowance and a Differential Have Been Established. Extra pay from an allowance or a differential, or both, may not exceed 25 percent of the employee's rate of basic pay. An employee eligible for an allowance is entitled to the full allowance set for a nonforeign area; therefore, the allowance should be paid first. If the allowance is less than 25 percent of the employee's basic pay, that part of the differential that will bring such employee's total extra pay to 25 percent of the basic rate shall be paid.

D. Payment of Allowances and Differentials

1. Payment. An allowance or differential shall not be paid for time for which an employee does not receive basic pay except as stated in subparagraph 070202.B.

2. Duration of Payment. Payment of allowances and differentials shall start as of the date of arrival at the post of duty on regular assignments or on the date of entrance on duty, when an employee is recruited locally. Payment shall be stopped on the date of separation or as of the date of departure or transfer to a new post of regular assignment.

3. Effect on Other Salary Payments. Allowances or differentials shall not be included in the base used to compute overtime pay, night differential, holiday pay, or any other extra pay, allowance or pay differential, or retirement or FEGLI deductions.

4. Effect on Gross Pay. Allowances shall not be included in gross income for Federal income tax purposes, and State tax deductions except for the state of Hawaii. Include the differentials in gross income for

Social Security/Medicare, Federal, State, and city income tax deductions. See Table 4-1.

0305 OTHER DIFFERENTIALS AND ALLOWANCES

030501. Physicians' Comparability Allowance

A. Part 595 of 5 C.F.R. (reference (1)) and 5 U.S.C. 5948(e) (reference (b)) authorize the payment of allowances to certain eligible Federal physicians who enter into service agreements with their agencies. These allowances are paid only in the case of categories of physicians for which the agency is experiencing recruitment and retention problems, and are fixed at the minimum amounts necessary to deal with such problems. Unless otherwise provided in the agreement or if the head of the agency by which the physician is employed determines that the failure was necessitated by circumstances beyond the control of the physician, if the physician fails to complete at least 1 year of service, (either voluntarily or because of misconduct) a refund of the total amount received is required.

B. The amount received shall not exceed:

1. \$14,000 per annum if, at the time the agreement is entered into, the Government physician had served as a Government physician for 24 months or less, or

2. \$20,000 per annum if the Government physician has served as a Government physician for more than 24 months.

C. An allowance may not be paid pursuant to this section to any physician who:

1. Is employed less than 20 hours per week or on an intermittent basis,

2. Occupies an internship or residency training position,

3. Is a reemployed annuitant, or

4. Is fulfilling a scholarship obligation to the U.S. Government.

D. Any allowance paid under this section shall not be considered as basic pay for the purposes of 5 U.S.C. 5551, 5552 and 5595, Chapters 81, 83, or 87 (reference (b)), or other benefits related to basic pay. See also 5 U.S.C. 5948(h)(1) (reference (b)).

E. Any allowance under this section for a Government physician shall be paid in the same manner and at the same time as the physician's basic pay is paid. This allowance is subject to Federal, State, and local income tax, social Security and Medicare. This allowance is not subject to retirement or TSP.

030502. Supervisory Differential

A. Section 5755 of 5 U.S.C. (reference (b)) authorizes payment of a supervisory differential to an employee under the General Schedule who has supervisory responsibility for one or more civilian employees not under the General Schedule. The differential is allowed if one or more of the subordinate civilian employees would, in the absence of such a differential, be paid more than the supervisory employee. A supervisory differential shall be calculated as a percentage of the supervisor's rate of basic pay. A dollar amount equal to the value of the authorized percentage will be provided by the civilian personnel office via SF 50 data. This differential is subject to Federal, State, and local income tax, Social Security and Medicare. This differential is not subject to retirement or TSP.

B. The supervisory differential shall be paid in the same manner and at the same time as basic pay, but shall not be considered to be part of basic pay for any purpose.

030503. Staffing Differential. Staffing differential is the annual total dollar amount (equal to 5 percent of basic pay) paid over and above basic pay to make it easier to hire and retain employees in selected GS grades and / or occupational groups, when authorized by OPM (P.L. 101-509, Section 529) (Section 209 of the FEPCA) (reference (e)) and (5 U.S.C. 5305 note) (reference (b)). Effective on the first day of the first applicable pay period beginning on or after January 1, 1991, the President may establish staffing differentials equal to 5 percent of basic pay.

A. Eligibility. The staffing differential may be paid to each employee whose position is in grade GS-5 or 7; or a 2-grade-interval occupational series, as determined by OPM.

B. A staffing differential shall be paid in the same manner and at the same time as the employee's basic pay is paid, but may not be considered to be part of basic pay for any purpose. The differential may be reduced or eliminated by OPM in its sole discretion as the amendments made by the FEPCA (reference (e)) take effect. However, no such reduction or elimination shall have the effect of reducing the total amount of pay (determined by adding basic pay and staffing differential) which any employee is receiving.

030504. Retention Allowance

A. A retention allowance of up to 25 percent of basic pay may be offered to certain current employees in order to retain their services. A retention allowance may be paid to any current employee who holds a position in the General Schedule, the Law Enforcement Pay System, the SES, the Senior Level, and the Executive Level or equivalent pay grades.

B. Payment of retention allowances are authorized by 5 U.S.C. 5754 (reference (b)) and 5 C.F.R. 575 (reference (1)). Only the Secretary or Deputy Secretary of Defense may approve retention allowances for individuals appointed to Schedule C positions, as defined in 5 U.S.C. 2103 (reference (b)); non-career positions in the SES (including limited term and limited emergency appointments), as defined in 5 U.S.C. 3394 (reference (b)); and positions paid pursuant to 5 U.S.C. 5312-5317 (reference (b)).

C. A retention allowance shall be paid in the same manner, and at the same time, as basic pay although it shall not be considered a part of basic pay. The retention allowance may be paid for as long as the conditions warranting the allowance continue to exist. This allowance is subject to Federal, State, and local income tax, Social Security and Medicare. This allowance is not subject to retirement or TSP.

030505. Remote Site Allowance. The remote site allowance is paid to an employee who is assigned to duty, except temporary duty, at a site so remote from the nearest established communities or suitable places of residence as to require an appreciable degree of expense, hardship, and inconvenience. Such hardships and inconveniences must extend beyond that normally encountered in metropolitan commuting, on the part of the employee in commuting to and from his / her residence and such work site. When so assigned, the employee is entitled, in addition to pay otherwise due him, to an allowance not to exceed \$10 per day (5 U.S.C. 5942, reference (b)).

0306 RECRUITMENT AND RELOCATION BONUSES

030601. Section 208(a) of the FEPCA (reference (e)), 5 U.S.C. 5753 (reference (b)), and 5 C.F.R. 575 (reference (1)) authorize payment of a recruitment and relocation bonuses. A remittance or relocation bonus of up to 25 percent of basic pay may be offered to recruit certain newly appointed employees or retain certain current employees who must relocate to accept a position in a different commuting area. The approval of recruitment and relocation bonuses is treated in the same manner as the retention allowance in paragraph 030504.

030602. Eligibility Criteria. Candidates for hard-to-fill positions and / or occupations that are critical to the organization's mission are eligible for recruitment or relocation bonuses. TP pay plan employees are not eligible to receive recruitment and relocation bonuses. TP pay plan employees are not eligible to receive recruitment and relocation bonuses.

030603. Service Agreement. OPM regulations (5 C.F.R. 575.106 and 206) (reference (1)) require that, before a recruitment or relocation bonus may be paid, the employee offered such bonus shall sign a written agreement to serve a specified number of months with the Department. The minimum period of such service shall be 12 months.

030604. Documentation and Recordkeeping. Each recruitment or relocation bonus shall be

documented by the civilian personnel office via SF 50 data.

030605. Payment and Reduction or Termination of Recruitment and Relocation Bonuses. The recruitment or relocation bonus shall be paid as a lump sum and shall be considered a supplemental wage. Federal income taxes shall be withheld at a flat 28 percent of the bonus. Social Security and Medicare shall be withheld as applicable. State and local taxes shall be withheld in accordance with tax formulas in effect for supplemental wages.

A. The bonus may be included with regular salary payments if it is separately identified on the LES. If the bonus cannot be separately identified on the LES, a separate payment shall be made, and a separate LES issued.

B. The bonus shall not be considered part of basic pay for any purpose; i.e., withholdings shall not be made for retirement coverage (CSRS/FERS) or life insurance.

C. The bonus shall be included in determining the aggregate limitation on pay as defined by 5 U.S.C. 5307 (reference (b)). Any portion of the bonus which shall cause aggregate pay to exceed Level I of the Executive Schedule shall not be paid. This portion shall be paid in a lump sum at the beginning of the following calendar year.

D. The bonus shall be recovered if the employee fails to complete the period of employment established by the service agreement. The amount to be repaid shall be determined by providing credit for each full month of employment completed by the employee under the service agreement. The amount owed by the employee shall then be recovered in accordance with provisions established by debt collection regulations. If a recruitment or relocation bonus must be recovered, the civilian personnel office shall notify the civilian payroll office via SF 50 data.

0307 LUMP-SUM LEAVE PAYMENTS

030701. Regulations. The regulations governing lump-sum payment for annual leave are con-

tained in 5 U.S.C. 5551, as amended (reference (b)).

030702. Lump-Sum Payable. Lump-sum payment for accumulated and current accrued annual leave is as follows:

A. Separated Employees. An employee who is separated is paid in a lump-sum for all unused annual leave through the last full pay period before separation. However, if the employee is separated or has a break in service (from one agency to another), and is reemployed in a position under a leave system before a lump-sum payment check can be issued by the separating activity, payment is made for the days the employee was not in the Federal service (less withholding tax) and the remainder of the annual leave is transferred to the gaining agency.

B. Certain Other Employees. An employee is entitled to a lump-sum payment for accumulated and accrued annual leave when the employee:

1. Transfers to a position not under a leave system to which annual leave may be transferred;

2. Moves to a position as an intermittent employee for whom there is no established regular tour of duty or to a position as a temporary employee engaged in construction work at hourly rates;

3. Enters the Armed Forces or transfers to a public international organization, provided the employee does not elect to retain the annual leave to his or her credit. However, leave restored under 5 U.S.C. 6304(d) (reference (b)) must be liquidated by lump-sum payment even though election is made to retain the accumulated and current accrued annual leave.

C. Payment to Beneficiary. Accumulated and accrued annual leave to the credit of an employee at the time of death shall be paid in a lump sum to a designated beneficiary. If the employee has not designated a beneficiary, a lump sum shall be paid in the established order

of precedence under 5 U.S.C. 5581-5582 (reference (b)).

030703. Lump-Sum Not Payable. A lump-sum payment may not be made to an employee for accumulated annual leave:

A. When transferring to a position to which annual leave is transferable

B. When a student trainee is placed in an intermittent status between full-time tours of duty.

030704. Computation of Lump-Sum Payment

A. General Rule. The lump-sum payment for annual leave, including restored and reinstated leave, is based on the rate of pay the employee is receiving at the time of separation. Payment is also based upon the employee's rights under all applicable laws and regulations existing at the time which would have affected the pay had a separation from service not occurred during the projected lump-sum leave period. Thus, for example, an employee whose retained pay is scheduled to terminate during the projected leave period should have the lump-sum leave payment computed on the basis of the pay being received at the time of separation for the period covered by the retained rate, with the remainder computed at the scheduled reduced rate. Also, an employee is entitled to an adjustment in the lump-sum leave payment whenever a statutory change in pay becomes effective on a date which occurs during the projected leave period. The lump-sum payment for an FWS employee is similarly adjusted if the separation occurs after the issue date of a wage schedule or after a wage survey was ordered, but before the effective date of the wage increase as follows:

1. When an FWS employee is on the rolls on the date an order granting an increase is issued, but separates before the effective date of the wage increase and if his or her accrued annual leave extends beyond the effective date of the wage increase, the employee is entitled to have his or her lump-sum annual leave payment, authorized under 5 U.S.C. 5551 (a) (reference (b)), paid at the higher rate for

the leave that extends beyond the effective date of the increase (59 Comp. Gen. 494 (1980)) (reference (p)).

2. When an FWS employee separates after a wage survey is ordered, but before the date the order granting the wage increase is issued and if his or her accrued annual leave extends beyond the effective date of the increase, the employee is entitled to have the lump-sum annual leave payment paid at the higher rate for the leave that extends beyond the effective date of the increase. However, the order granting the new wage rate must be issued before the effective date set by 5 U.S.C. 5344(b)(1) and (2) (reference (b)). Refer to 59 Comp. Gen. 494 (1980) (reference (p)).

B. Projecting the Leave. Nonworkdays (except holidays) are not counted against the leave when projecting the period over which the leave would otherwise be charged. The period covered by a lump-sum leave payment is not counted as civilian Federal service.

C. Additional Pay. There is no provision to pay any premium pay for the period covered by a lump-sum payment and, therefore, employees are only entitled to their basic pay. However, employees who receive annual premium pay for standby duty under 5 U.S.C. 5545(c)(1) (reference (b)) and employees who meet the definition of a law enforcement officer receiving annual premium pay for administratively uncontrollable overtime under 5 U.S.C. 5545(c)(2) (reference (b)) will also receive annual premium pay as part of their basic pay. Consequently, only those premium pays would be included in a lump-sum payment. Excluded from the lump-sum payment are any post differentials under 5 U.S.C. 1925 (reference (b)) and danger pay allowances under 5 U.S.C. 5928 (reference (b)).

D. Reemployed Annuitants. The lump-sum payment for reemployed annuitants upon separation from the service is based on the full pay rate without any reduction by the amount of the annuity.

E. Temporary Promotions. If the civilian personnel office has not terminated a

temporary promotion prior to or as of the employee's separation date, lump-sum leave will be paid at the rate of the temporary promotion through the not-to-exceed date. After that time, the rate will revert to the employee's permanent rate of pay.

F. Payment. Lump-sum leave will be paid after the end of the pay period in which the separation transaction is received. Thus, lump-sum leave may or may not be included with any regular pay earned, depending on when the separation transaction is received. Payments will be identified separately, allowing the lump-sum leave to be taxed at a flat 28 percent for Federal withholding, except when the employee's exemptions claimed on the W-4 exceed the regular pay. In the latter situation, the lump-sum leave and the regular pay for the pay period will be combined, and the taxes will be computed as if the total were a single payment.

030705. Refunds. When a lump-sum payment has been made, and the employee reenters the Federal service in a position subject to a formal leave system, he is required to refund the unexpired portion of the period covered by the lump-sum leave payment. This refund is required because all such unexpired leave is subject to recredit even though transfer to a different leave system is involved. Recredit of leave will be determined subject to the following paragraphs. See FPM Supplement 990-2, Book 550, Subchapter 2 (reference (k)).

A. Regular Annual Leave

1. If reemployment is in the same leave year, any part of the refund which is for a period of leave in excess of the employee's formerly established leave ceiling for the year shall become subject to the regular procedures regarding forfeiture or possible restoration at the end of the leave year. Excess leave may be paid in another lump-sum payment if another separation occurs before the end of the leave year (FPM Supplement 990-2, Book 550, paragraph 2-4a(1)(b) (reference (k))).

2. If reemployment is in a subsequent leave year, and any part of the refund is for a period represented by more than the leave

ceiling (e.g., 240 hours), a refund will be required of all the unexpired portion. However, only a maximum of the leave ceiling hours may be recredited to the regular leave account. Any hours in excess of the leave ceiling are considered forfeited, unless it can clearly be established that the excess would have become restored in a separate account if the separation had not occurred .

B. Restored Annual Leave. If any part of the refund is for a period of restored leave, the restored leave shall again be established in a separate account. The limiting date for its use shall be the same date as that originally established during the former employment. If the originally established limiting date for the use of the restored leave would have occurred before the date of reemployment, a refund will be required for all of the unexpired portion. However, none of that restored leave may be recredited.

C. Procedures. Obtain a refund in the gross amount equal to the gross compensation received for the unexpired portion of the leave period. Make collections either by cash or payroll deduction.

1. Processing Actions:

a. Audit the transferred SF 1150.

b. Credit the refund to the appropriation currently charged for the employee's salary.

c. Process the cash collection or payroll deduction.

d. Credit the employee's leave account when the total amount has been collected.

e. Process as a cash collection any check for the unexpired portion of lump sum leave payable to the Treasurer of the United States received from another DoD installation.

2. After collection of the full amount of the refund, prepare a statement for the employee including:

a. References to 5 U.S.C. 5551 (reference (b)) as the basis for the refund.

b. Date the refund was fully paid.

c. Total amount collected.

d. Statement that the earnings shown on Form W-2, "Wage and Tax Statement," for the calendar year in which the refund was made were not decreased by the refund amount. If refund is spread over 2 payroll years, make a separate statement for each year.

3. Distribute the statement as follows:

a. Give the signed original and one copy to the employee.

b. Attach a signed copy to Form W-2 or tapes sent to the SSA.

c. Send a copy to any State or local taxing authority as appropriate.

0308 SEVERANCE PAY

030801. Qualifications. An employee who qualifies under 5 U.S.C. 5595 (reference (b)) is entitled to severance pay in regular pay period intervals and amounts equal to that paid before separation. An employee separated within a pay period rather than at the end of a pay period receives an initial payment of severance pay for the remainder of that pay period. Severance pay for employees with variable work schedules or rates of pay is computed on the basis of the average rate of basic pay for the last position held during the 26 biweekly pay periods immediately preceding separation (5 C.F.R. 550.707) (reference (1)). Collection of an indebtedness from an employee's severance pay is permissible under 31 U.S.C. 3716 (reference (d)). Additionally, under 5 C.F.R. 581.103 (reference (1)), severance pay is subject to court-ordered garnish-

ments for alimony, child support, and commercial debts.

030802. Payments

A. Severance payments will be made by the civilian payroll office. If the civilian payroll office is deactivated, the civilian payroll office assuming responsibility for servicing the closed civilian payroll office continues payment for the period of eligibility. The deactivated payroll office will discontinue the payments and send the new civilian payroll office enough pay data to establish the severance payments.

B. Severance payments are made based on SF 50 data provided. Appropriate withholding will be made for Federal, State and local income taxes. In the case of employees covered by FICA at the time of separation, Social Security and Medicare deductions will be taken. If a former employee dies before the expiration of the entitlement period, severance payments will be continued on a biweekly basis to the beneficiary of the deceased or held in account until identification of the beneficiary by the civilian personnel office. These payments are subject to collection for any outstanding debts owed the Government. However, any court-ordered garnishments are canceled upon the death of an employee. Payments to beneficiaries are not subject to Federal tax withholding requirements.

030803. Withholding Tax Reports

A. When a separated employee has been paid the total severance pay to which entitled, or at the end of the calendar year, whichever is earlier, a Form W-2 will be issued.

B. Severance pay paid to beneficiaries of deceased employees will be reported on Form 1099-MISC.

030804. Discontinued Entitlement. When the civilian payroll office that is making severance payments to a former employee receives official notification from a civilian personnel office or other appropriate source that the individual has been reemployed in the Federal service, severance payments will be discontinued. Discontin-

ation of such payments shall be effective on the date of reemployment. The total of amounts paid will be reported to the gaining activity or agency. This information will be used in determining future entitlement to severance pay since total severance pay during an employee's lifetime cannot exceed 1 year's pay at the rate received immediately before separation (5 U.S.C. 5595(c)) (reference (b)).

0309 ADVANCE OF PAY

030901. Policy

A. Section 107 of the FEPCA (reference (e)) enacted a new law (5 U.S.C. 5524a) (reference (b)) to allow agencies to make advances of pay to new hires. However, the DoD has not authorized the use of these advances.

B. Advances of pay for DoD civilian employees proceeding to or arriving at a post of assignment in a foreign area are authorized, when applicable. An advance of pay is a prepayment made available to an employee in a pay status. A teacher in a nonpay status because of the summer recess shall be eligible for an advance of pay. A single, lump-sum pay advance of up to 3 months' net pay maybe authorized to an employee with each permanent change of station (PCS) to a foreign area. Net pay is base pay less deductions, allotments, and collections authorized at the time of the advance. The advance shall be computed as if the net pay were received each payday, not to exceed 6 paydays. Advances are intended to finance unusual employee expenses associated with overseas assignments that often are not otherwise reimbursed and to aid foreign assignment recruitment and retention. Such expenses may include transportation, storage of household goods, shipping costs, deposits on living quarters overseas, and purchase of household items. See 5 U.S.C. 5927 (reference (b)) and DoD 1400.25-M, CPM Chapter 592, Subchapter 15 (reference (u)).

C. For purposes of this section, a DoD civilian employee is defined as a full-time DoD employee who is a U.S. citizen paid from appropriated, revolving, or trust funds. New hires who are in a pay status and traveling to a foreign area on travel orders are also included.

With respect to teachers, employment during a normally scheduled shift shall be considered full-time.

D. A foreign area is defined as an area located outside the United States, exclusive of the Commonwealth of Puerto Rico, territories of the United States, and other areas designated by the Secretary of State under E.O. 10903 (reference (s)).

030902. Eligibility

A. The civilian personnel office responsible for the employee shall verify the eligibility for an advance by confirming the travel orders and the appropriate pay grade and step at the foreign post. If confirmation of the foreign pay grade or step is not obtained, the current net base pay at the time of the advance shall be used.

B. An employee may request an advance of pay 3 weeks before the estimated departure date for assignment to a foreign duty post or up to 2 months after arrival.

030903. Counseling. Each employee eligible for an advance shall be counseled by the civilian personnel office concerning authorized purposes of the advance, repayment requirements, expenses that can be anticipated at the foreign assignment, and application procedures.

030904. Application. The employee shall request an advance on DD Form 2274, "Request and Voucher for Advance of Civilian Pay." The form serves as the request, authorization, and voucher document.

030905. Collection of Advance

A. Repayment shall be made by payroll deduction over a maximum of 26 pay periods. Deductions shall begin the first pay period after receipt of the advance or following arrival at the foreign post, whichever is later. A copy of DD Form 2274 must be sent to the gaining civilian payroll office for collection when payment is made by the losing disbursing office.

B. Partial or lump-sum repayments, in addition to payroll deductions, shall be accepted.

C. When an employee separates or transfers, the outstanding balance shall be due in full. Advances of pay are recoverable from the employee or the employee's estate by deduction from accrued pay, amount of retirement credit, other amounts due the employee from the Government, or by other methods as provided in DoD Directive 7045.13 (reference (v)).

D. The Directors of the DFAS Centers may waive, in certain cases, the Government's right of recovery of an erroneous pay advance in accordance with the requirements in DoD Directive 7045.13 (reference (v)) and 5 U.S.C. 5584 (reference (b)).

030906. Other Requirements or Conditions

A. An employee is authorized only one outstanding advance at a time, regardless of the frequency of PCS. If an employee becomes eligible for a second advance, the first shall be liquidated before payment is made for the second advance request.

B. More than one member of a household may be eligible for an advance.

C. Allotments and assignments of advances shall not be authorized.

D. Advances shall be paid to employees of another Federal agency on a reimbursable basis provided there is an agreement between the other agency and DFAS to make similar payments to DoD employees.

E. Submission of statements and documents from the employee establishing the need for, and the use of, an advance may be required.

F. Management controls shall be developed to ensure only authorized employees obtain an advance and complete accountability procedures exist for the disbursement and collection of pay advances. Accounting records shall

include current, accurate, and complete records of obligations, receivables, and collections.

G. On an exception basis, an additional payment on an advance shall be authorized when circumstances warrant and the employee has not received the full amount of the maximum possible advance consistent with the employee's pay grade. Examples of circumstances warranting a second payment, but not an all-inclusive list, are a substantial understatement of the maximum advance authorized; inadequate or inappropriate counseling on the purpose of the advance; and unforeseeable events leading to a significant increase in the cash outlay requirements of an employee at the foreign assignment location.

0310 SPECIAL PAYMENTS

031001. Special salary payments will be made in accordance with paragraph 080102.

0311 AWARDS

031101. General. Chapter 45 of 5 U.S.C. (reference (b)) is the legal basis for the Government-wide incentive awards program. OPM prescribes regulations and instructions under which the awards programs shall be carried out.

031102. Incentive Awards. The head of each department or agency may authorize the payment of cash awards and incur necessary expenses for the honorary recognition of civilian employees. Recognition should be granted for their suggestions, inventions, superior accomplishments, or other personal efforts which contribute to the efficiency, economy, or other improvements of Government operations in connection with or related to their official employment.

A. Regular Awards. These awards are designed to recognize and reward efforts that substantially exceed normal standards or expectations and result in improved Government productivity or services.

B. On-the-Spot Awards. These are "Special Act or Service" awards (5 C.F.R. Part 451) (reference (1)) designed to recognize quickly one-time and short-term efforts by employees

that result in service of an exceptionally high quality or quantity. Normally, these awards do not exceed \$250.

C. Time Off as an Incentive Award.

Authorized by 5 U.S.C. 4502(e) (reference (b)), a time-off award may be granted in lieu of cash (5 C.F.R. 451.301-451.307) (reference (l)).

1. Time off granted as an incentive award must be used within 1 year from the effective date. Sick leave may be granted to an employee who becomes incapacitated for duty during a period of time off. Supervisors and employees are responsible for scheduling the use of this leave within 1 year. The incentive leave is forfeited if not used within the 1 year time frame. There is no provision for restoring time-off awards.

2. The maximum amount of time off which can be granted to a full-time employee for a single achievement is 40 hours. The maximum amount of time off which can be granted to a full-time employee within 1 leave year is 80 hours. Part-time employees and employees with uncommon tours of duty may be granted one-half the average number of hours in the employee's biweekly tour of duty for a single achievement. The maximum amount of time off which can be granted to part-time employees and employees with uncommon tours of duty during any 1 leave year is the average number of hours of work in the employee's biweekly scheduled tour of duty.

3. Unused time off should be transferred when an employee transfers from one activity to another, but remains within the same agency, e.g., Army to Army. If an employee changes his or her agency, any unused time off shall be forfeited.

D. Productivity Gainsharing Programs. These programs use incentive and employee involvement systems to improve productivity and to achieve more efficient, effective use of resources. Gains resulting from these improvements are shared with the employees.

E. Foreign Language Awards. These awards are paid to qualifying law enforcement officers who are proficient in, and use, a foreign language(s) in the performance of their duties.

031103. Payroll and Payment Procedures

A. The civilian payroll office accepts the SF 50 or automated systems equivalent from the civilian personnel office as authorization for payment of cash awards or granting of time-off awards. Normally, cash awards will be included in the employee's biweekly pay however, separate checks will be drawn for awards if specifically requested by management.

B. Time-off awards shall be posted to the employee's record and reduced when the time off is taken and or forfeited. Usage reported prior to the receipt of notification of the award shall be reflected as a negative balance in the civilian payroll system. Failure of the civilian personnel office to provide notification of the granting of the award within 2 pay periods of the usage shall be assumed to be a time and attendance error. The usage shall then be converted as shown in Table 5-2.

C. Cash award payments are subject to the withholding provisions of the Federal income tax law, the withholding provisions of State income tax laws, and the provisions of FICA. The payroll system will automatically deduct 28 percent Federal tax on special earnings of this nature. The applicable State/local tax deductions and Social Security/Medicare deductions will be computed based on tax information in the employee's current master record. No State/local taxes are withheld for employees assigned to overseas duty locations unless requested by the employee.

D. Payment to Separated Employees

1. When possible, the employee can be reestablished on the payroll using the last known information on the employee's master account record for applicable deductions and mailing address.

2. If the employee cannot be reestablished, payment can be made by SF 1034,

"Public Voucher for Purchases and Services Other Than Personal."

E. Cash award payments must be included on an employee's LES as well as the Form W-2.

0312 CONTINUATION OF PAY (COP) FOR FEDERAL EMPLOYEES

031201. The Federal Employees' Compensation Act (FECA), codified in pertinent part in 5 U.S.C. Chapter 81 (reference (b)), provides compensation and authorized medical care for all civilian employees of the United States for disability due to personal injury sustained while in the performance of duty. Regulations governing injury compensation are contained in 20 C.F.R. Part 10 (reference (w)).

A. Civilian employees are entitled to medical care and compensation for absences due to traumatic on-the-job injuries and disease sustained while in the performance of duty. Traumatic injury is not the same as disability from occupational disease. Eligible employees are entitled to up to 45 calendar days of COP for traumatic injury.

B. The FECA is administered by the OWCP, U.S. Department of Labor, through district offices. Each civilian personnel office maintains the district address that services its region.

031202. Continuation of Pay - Traumatic Injury.

A. Entitlement to Continuation of Pay. An employee who sustains a disabling job-related traumatic injury is entitled to the continuation of regular pay for a period not to exceed 45 calendar days for each occurrence. The pay is subject to income tax, retirement, Social Security and/or Medicare, and all other normal deductions. The pay for a separated employee who is entitled to COP will be subject to income taxes, Social Security and/or Medicare, if appropriate. No other deductions will be taken. The injured employee's pay must continue unless the claim is controverted by the employing activity.

1. Regular Pay. Regular pay is defined as follows:

a. For a full-time or part-time employee who works the same number of hours per week the weekly pay rate shall be equal to the number of hours regularly worked each week times the hourly pay rate on the date of injury including premium pay, night or shift differential, Sunday and holiday pay, and other extra pay, exclusive of overtime.

b. For a part-time employee who does not work the same number of hours per week the weekly pay rate will be the average weekly earnings for the 1 year period before the date of injury, exclusive of overtime.

c. For an intermittent or part-time employee, either permanent or temporary, who does not work each week of the year (or the period of appointment), the weekly pay rate equals the average of the employee's weekly earnings during the 1 year period before the injury. It is computed on the basis of the total earnings divided by the number of weeks worked (partial weeks worked are counted as whole weeks). The annual earnings used for this computation must not, however, be less than 150 times the average daily wage earned within 1 year before the date of injury (the daily wage is the hourly rate times eight),

2. Standby premium, night or shift differential, Sunday or holiday pay, or other extra pay should be included in regular pay in all instances. Overtime pay, however, must not be made part of COP except in the case of firefighters. If a salary increase (pay raise, step increase, promotion, etc.) occurs during the 45-day period, the new salary rate as of the effective date of the increase will be used for computing the remaining COP.

B. Controversion. Sometimes an agency objects to paying a claim for COP, either for one of the reasons provided by regulation or for some other reason. This action is controversion. The employing activity may controvert a claim by completing the indicated portion of Form CA-1, "Federal Employee Notice of Traumatic Injury and Claim for Continuation of

Pay/Compensation,” and submitting detailed information in support of the controversion to the OWCP.

C. Termination of COP. When pay is continued after the employee stops work because of a disabling injury, it must not be interrupted until the earliest of one of the following occurs:

1. The employee has not provided prima facie medical evidence of injury-related disability within 10 days after the employee claims COP or the disability begins or recurs.
2. The activity receives medical information from the attending physician to the effect that the employee is no longer disabled.
3. The activity receives notification from the OWCP that pay should be terminated.
4. A total of 45 calendar days has elapsed.
5. The employing agency receives evidence that the employee is partially disabled and the employee refuses suitable work.
6. The employee’s scheduled term of employment expires and the date of termination has been established prior to the date of injury.

D. COP Period. The 45 days are calendar days. If the employee has stopped work because of the disabling effects of the injury, the period starts at the beginning of the first full day or first full shift on which the disability begins. The activity will keep the employee in a pay status for any fraction of a day or shift on which the disability begins with no charge to the 45-day period. If the employee stops work for only a portion of a day or shift (other than the day or shift when disability begins), that day or shift will be considered as 1 calendar day. If an employee is not immediately disabled as a result of the injury, the 45 days will begin on the first full day or the first full shift when disability begins. The initial use of COP must begin within 90 days of the date of injury or the employee is only entitled to com-

pensation from OWCP. The employee’s scheduled nonwork days are included in determining the 45 days if medical evidence supports that the employee is disabled; however, there will be no COP paid for those nonwork days.

E. Light-duty Status. When a determination can be made that an employee is capable of performing light duty after an on-the-job injury, COP is changeable against the 45-day entitlement when a personnel action has been taken to:

1. Assign or detail the employee to an identified position for which a position description exists which is classified at a lower salary level than that earned by the employee when injured;
2. Change the employee to a lower grade, or to a lower rate of basic pay; or
3. Change the employee to a different schedule of work which results in loss of salary or premium pay authorized for the employee’s normal administrative workweek.

An employee placed in light duty status who refuses to work after suitable work is offered is not entitled to COP.

F. Recurrence of Disability. Should an employee suffer a recurrence of the disability, the regular pay can be continued, providing the 45 calendar days were not all “used” during the initial period of disability. This is applicable, however, only during a 90-day period beginning from the date the employee first returned to work following the initial disability. If a recurrence happens after the 90 days have expired, the regular pay should not be continued although some of the 45 days may remain “unused.” In such instance, the employee is entitled only to compensation payable by OWCP.

G. Use of Leave Instead of COP

1. An employee may use annual or sick leave to cover all or part of an absence due to an injury. If an employee elects to use leave, each full or partial day for which leave is taken will be counted against the 45 days of

entitlement. Therefore, when an employee uses COP intermittently along with sick or annual leave, entitlement is not extended beyond 45 days of combined absences.

2. An election of sick or annual leave is not irrevocable. If an employee who has elected leave for the period wishes to elect COP, the employing activity must make such a change on a prospective basis from the date of the employee's request. When the employee wishes to have leave restored retroactively, the employing activity must honor the request, provided the employing activity receives prima facie medical evidence of injury-related disability for the period. A corrected time and attendance report is needed to authorize a change from leave to COP,

3. Leave Status of Employees Eligible for COP

a. These employees must be placed in a leave status for time lost from work due to injury in excess of the 45 days of COP. They may take annual or sick leave, or LWOP, if necessary, until OWCP approves their claims. Employees who are receiving OWCP compensation after the 45-day period must be in a LWOP status.

b. These employees must buy back annual or sick leave taken under subparagraph 031202.G.3.a. when they are awarded compensation by OWCP except under subparagraph 031202.G.3.c. They cannot receive dual compensation for pay and leave and OWCP compensation for that time lost due to injury. The leave will be reinstated when bought back.

c. Employees eligible for COP who take annual or sick leave for time lost due to injury instead of COP are not eligible for OWCP compensation for that leave. Such employees may not buy back that leave and have it reinstated.

4. Employees not eligible for COP must be in a leave status during absence due to injury. They may take annual or sick leave or LWOP while awaiting OWCP'S decision on their claims. They must be in an LWOP

status while receiving OWCP compensation. These employees may buy back, and have reinstated, all annual and sick leave used for time lost from work due to injury if OWCP approves their claims for compensation.

031203. Buy Back of Leave

A. General. When an employee elects to take sick or annual leave, or both, subsequent to the completion of 45 days of COP or in the case of occupational disease, and the claim for compensation is subsequently approved by OWCP, the employee may arrange with the civilian payroll office to buy back the leave used within 1 year of the date the claim was approved and have it reccredited to the leave account. The civilian payroll office shall make arrangements with OWCP to have compensation for the "buy-back" period paid directly to that office. After receipt, the civilian payroll office will notify the employee of the amount to be repaid and the method of repayment. An employee who elects to use sick or annual leave, or both, during the 45-day period of COP may not buy back the leave by claiming compensation for such period.

B. Computation. The gross amount paid for leave used during a period retroactively covered by compensation must be recovered; however, certain deductions may be recovered by payroll adjustment. The amount recovered from the employee and/or OWCP will depend on whether payment for the leave was made in the current year or in a prior year. See Figures 3-1 and 3-2 for examples.

C. Current Year Recovery. The amount to be collected for leave payments made in the current calendar year will be the net pay plus deductions for bonds, savings allotments, alimony and /or child support, rent, indebtedness to the United States, and any other deductions for which the employee received value, but cannot be otherwise collected. Deductions that will be reversed (if applicable and if the monies are recovered) in the payroll system are CSRS/FERS, Social Security/ Medicare, Federal tax, health benefits, (if OWCP payment is for more than 28 days), group life insurance (basic and optional), State tax, city or local tax, union

dues, charitable contributions, military service credit deposits and civilian service credit deposits. Adjustments to earnings to date for other than those items reversed in the payroll system shall be made. Amounts collected from the employee and /or OWCP shall be taken up as a cash refund on a voucher for disbursement and /or collection.

D. Prior Year Recovery. The amount to be collected for leave payments made during a prior year will be the gross amount less CSRS/FERS, Social Security and/or Medicare, and FEGLI. The procedure in subparagraph 031203.C. will be followed for payroll reversals and cash collection. The credit to CSRS/FERS will be posted as a separate credit line item on the fiscal side of the SF 2806/3100 indicating the year for which the adjustment was made with an explanation in the "Remarks" column. Adjustments for Federal, state, and city/local income taxes are not authorized. The Form W-2 prepared for the employee upon separation or at the end of the payroll year, as appropriate, will not include any tax adjustments for a prior year. A certified statement must be prepared to go with the current year's Form W-2. It will state that a refund for prior year _____ was made in the amount of \$_____, but that the gross wages shown on the current year Form W-2 have not been reduced by the amount of the refund.

E. Partial Payroll Deductions. If circumstances warrant, the amount due from the employee, after recovery of the amount repaid by OWCP, may be repaid by partial payroll deductions. Adjustment of those deductions to be reversed on the payroll will not be accomplished until the full amount has been repaid.

F. Recrediting of Leave. The full amount of leave used during the "buy-back" period will be recredited to the employee's leave account. However, leave bought back may not be recredited until the total amount has been repaid.

0313 BACKPAY

031301. General. Section 5596 of 5 U.S.C. (reference (b)) and implementing regulations in 5 C.F.R. 550, Subpart H (reference (1)) authorize

the payment of backpay and reasonable attorney fees for the purpose of making an employee financially whole (to the extent possible). Payment of backpay can be made when, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance), an appropriate authority finds that the employee was affected by an unjustified or unwarranted personnel action. Such action must have resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials, otherwise due the employee. Civilian personnel offices will determine entitlement to payment of backpay which will be indicated in the remarks section of the SF 50.

031302. Correcting Unjustified or Unwarranted Personnel Action

A. When an appropriate authority corrects or directs the correction of an unjustified or unwarranted personnel action, the employee shall be deemed to have performed service in the DoD during the period covered by the corrective action and the civilian payroll office shall compute, for the period covered by the corrective action, the pay, allowances, and differentials of the employee as if the improper personnel action had not occurred. In no case, however, will the employee be granted more pay, allowances, and differentials under the backpay law than they would have been entitled to if the improper personnel action had not occurred.

B. When an employee's total interim earnings (including those from other Federal employment) exceed the total amount of backpay, the excess amount may be retained by the employee (Comp. Gen. B-194777, October 30, 1979) (reference (p)).

C. When an employee has been separated, corrective action is completed on the date the DoD has reasonably set, with written notice to the employee, for return to duty. Until that date, the erroneous action is in effect. Failure by the employee to report for duty on the date set by the DoD may result in the employee being charged annual leave, leave without pay, or absence without leave for the period from the date set for return of the employee to

work until the date the employee actually returns to work. However, an employee who resigns instead of returning to duty is still entitled to backpay, since there is no requirement that the employee must return to duty. In such a case, the employee will receive backpay up to the date that the employee is legitimately separated, which may not be the date that the employee is requested to report for duty.

031303. Backpay Computations

A. General. In computing the amount of gross backpay due an employee, the civilian payroll office must include premium pay and any changes which would affect the amount of pay, allowances, and differentials which the employee would have earned if the unjustified or unwarranted personnel action had not occurred. The computation of the net backpay to which an employee is entitled is a three-step process: interim net outside earnings from employment taken to take the place of Government employment must be deducted from the gross backpay due the employee; erroneous payments received from the Government as a result of an unjustified or unwarranted personnel action must be deducted from net backpay due the employee; and other authorized deductions. Authorized deductions which include retirement deductions computed on gross basic pay for the period of separation, Federal and State taxes computed on net backpay after deductions for interim net earnings, and health benefits premiums, if any, may be made from the remaining backpay due the employee.

B. Computation of Gross Backpay

1. Under 5 C.F.R. 550.805(c) (reference (1)), an agency may not pay backpay for any period during which the employee was not ready, willing, and able to perform their duties because of an incapacitating illness. However, the employing agency must grant, upon request of the employee, any sick or annual leave to the employee's credit to cover the period of incapacity by reason of illness or injury. In addition, an agency may not pay backpay for any period during which the employee was unavailable for performance of their

duties for reasons not related to, or caused by, the unjustified or unwarranted personnel action.

2. In computing an employee's pay, it is necessary to include any within-grade increases (WGI) to which the employee became entitled during the period covered by the corrected personnel action. When the grant or denial of a WGI requires an acceptable level of competence determination, under 5 C.F.R. Part 531, Subpart D (reference (1)), the requirements for such a determination, including the right of reconsideration and appeal, must be followed (even though the determination is made retroactively) before the WGI may be included in the computation of the amount of backpay due the employee. It should be noted that the regulations governing WGIs waive the requirement of an acceptable level of competence determination when the employee had less than 60 days of service during the final 52 calendar weeks of the waiting period because of the unjustified and unwarranted personnel action (5 C.F.R. 531.409(d)) (reference (1)).

3. In computing the backpay of an employee who is restored to the rolls after an improper personnel action, any overtime the employee would have earned during the period of the erroneous separation is to be included in the backpay even though the overtime was not actually scheduled. The method of computing overtime incident to a backpay award due an employee may be based on the average number of overtime hours worked by fellow employees occupying similar positions during the same period. (41 Comp. Gen. 273 (1961)) (reference (p)).

4. An employee who should have been selected for overtime work because a regulation or collective bargaining agreement provided for assignment of overtime work in a prescribed manner is entitled to backpay for the overtime not worked if the regulation or nondiscretionary provision of the agreement is violated. The appropriate authority must find that the action taken was unjustified or unwarranted and direct that corrective action be taken. The overtime will be computed on the basis of the number of hours worked by the employee selected to perform the overtime work during the same

period (54 Comp. Gen. 1071 (1975)) (reference (p)).

5. Any allowances or differentials which the employee would have received if the improper personnel action had not occurred are included in the amount due the employee. This is true even though the employee did not physically remain in the location giving rise to entitlement to the allowance or differential (40 Comp. Gen. 479 (1961), 52 id 860 (1973), and 59 id 261 (1980)) (reference (p)).

6. In determining the amount of irregular or intermittent pay for physical hardship or hazard duty to which a GS employee would have been entitled, the civilian payroll office may determine the number of days per week the employee performed each type or irregular or intermittent hardship or hazard duty during the 52 weeks preceding the unjustified or unwarranted separation for which they would have been compensated. The civilian payroll office may use an average of the amounts to make the necessary computations.

7. Payment of environmental differentials on an actual exposure basis or on the basis of hours in a pay status must be computed in accordance with OPM'S regulations and instructions. The DoD determines entitlement to such differentials on the basis of the 52 weeks preceding the unjustified or unwarranted separation for which the FWS employee would have been compensated.

8. When DoD is not able to determine with certainty the number of hours which the intermittent employee would have worked during the period covered by the corrected personnel action, the civilian payroll office may estimate the amount of backpay. This estimate is determined by taking an average of the number of hours worked by other employees of DoD under the same type of appointment and performing the same kind of work to which the employee in question would have been assigned during this period. Or the civilian payroll office may determine the average number of hours a week the employee actually worked for a representative period preceding the unjustified or unwarranted personnel action (such as 26 or 52

weeks, whichever would represent a fairer approximation of the employee's earnings if he or she had actually worked) and use these average weekly hours to make the necessary computations.

C. Computation of Net Backpay

1. Under 5 C.F.R. 550.805(e) (reference (1)), the civilian payroll office must deduct any amounts earned by an employee from other employment during the period covered by the corrective action. The amount of entitlement is the difference between the amount of compensation the employee would have earned, including all premium pay, and the amount actually earned in employment during the period covered by the corrected personnel action. The amount earned in employment obtained to take the place of Federal employment means net earnings, that is, gross earnings less losses and certain expenses incurred in connection with the interim employment or business (34 Comp. Gen. 382 (1955)) (reference (p)). However, losses sustained in a venture unrelated to that separation are not allowable for deductions (35 Comp. Gen. 268 (1955)) (reference (p)).

2. The only earnings from other employment that may not be deducted from backpay are earnings from outside employment the employee already had before the unjustified suspension or separation. For example, if an employee worked 20 hours on an outside part-time job prior to separation from Government employment, and during the period of separation worked 40 hours, the amount representing the 20 hours additional time worked would be offset against the backpay computation. To clearly establish whether the pay for outside employment increased substantially during the period of separation, the DoD should obtain a statement or affidavits from the employee covering his or her outside earnings.

D. Computation of Interest on Backpay Awards

1. The statute provides for payment of interest on all back pay awards under 5 U.S.C. 5596 (reference (b)) that became

final on or after December 22, 1987. In most cases, the actual date of the award or decision is not the date the decision becomes final, i.e., no longer subject to reconsideration or higher level review or appeal. Interest begins to accrue on the effective date of the withdrawal of pay, allowances, and differentials. As a result, most computations will involve a series of effective dates—one for each date (usually a pay date) on which the employee failed to receive an amount of pay, allowances, and differentials because of the unjustified or unwarranted personnel action. FPM Letter 550-78 (reference (q)) sets out specific procedures for the calculation of back pay and 5 C.F.R. 550.806 (reference (1)) addresses the computation of interest.

2. The DoD must issue the interest within 30 calendar days of the date on which accrual of interest ends. If issuance of the interest payment is delayed more than 30 calendar days after the date on which accrual of interest ends, interest must be recomputed based on a new ending date meeting the 30-day requirement.

3. The applicable interest rate is the “overpayment rate” adjusted quarterly by the Secretary of the Treasury and published in an IRS Bulletin issued before the beginning of each quarter.

4. Interest is computed in accordance with the formula or computer software provided to civilian payroll offices by OPM. Taxes will not be withheld from interest payments on backpay awards. The civilian payroll office will provide employees with a Form 1099-MISC for all interest payments. According to FPM Letter 550-78 (reference (q)), OPM has requested a formal opinion from IRS regarding the tax status of interest on backpay.

E. Erroneous Payments. The following deductions are mandatory and necessary to achieve the “make whole” purpose of the backpay statute:

1. Retirement Annuity Payments. Any employee who, as a result of separation that is subsequently determined by an appropriate authority to have been erroneous,

has been in receipt of retirement annuity payments (either special payments or regular annuity payments) is indebted to the Government for the gross amount of retirement annuity payments authorized for the period covered by the corrective action. Because the gross amount of annuity payments had already been reduced by required health benefits and life insurance premiums, the civilian payroll office recovers an amount of annuity from the backpay award equal to the gross annuity less health benefits and life insurance premiums, and transfers that amount to the retirement system. CSRS and FERS then recover the amounts paid from the gross annuity for health benefits and life insurance from the respective carriers for those programs, and the retired employee’s account is satisfied. The civilian payroll office then must collect from the backpay due the employee the required amount for health benefits coverage during the period following restoration and transfer that amount, plus the agency’s share, to OPM on the SF 2812.

a. As an example of the above instruction, consider that the retired employee was entitled to a gross annuity of \$500 per month less \$50 per month for health benefits coverage and \$50 per month for unreduced basic life insurance coverage after age 65, and optional insurance. The net amount payable to the annuitant in this example was \$400 per month. If the period of erroneous annuity payment was for only one month, the gross indebtedness was \$500. However, the net amount of indebtedness to be withheld from the backpay award is \$400 (the amount the annuitant actually received).

b. Erroneous separations resulting in indebtedness to the retirement fund may occur in a number of circumstances, including: an erroneous separation resulting from removal for misconduct or poor performance that is subsequently overturned on appeal; a reduction-in-force action that is subsequently overturned on appeal; separation for retirement that is subsequently determined to have been coerced; and erroneous separation for retirement because of incorrect counseling about eligibility for retirement. The civilian payroll office must deduct the amount of the net erroneous retirement payments from the backpay award and

submit a check for the appropriate amount (payable to the U.S. Office of Personnel Management) to the U.S. Office of Personnel Management, Funds Control Branch, Room 1312, 1900 E Street, N.W., Washington, D.C. 20415.

2. Refund of Retirement Contributions. The retirement law (5 U.S.C. 8342(a)) (reference (b)) authorized refund of an employee's retirement contributions only upon absolute separation from the service or transfer to a position not subject to the law. An employee must be separated or transferred for at least 31 consecutive days to be eligible for this refund. Therefore, a refund of retirement contributions paid to an employee based on a separation which is subsequently found erroneous and canceled by restoring the employee to duty retroactively so that there was no break in service removes the legal basis for the refund. A refund which was paid in error represents a debt due the retirement fund which must be deducted from any backpay entitlement. If the restored employee is entitled to backpay, the civilian payroll office should contact the OPM to determine the amount of refund, if any, to be offset against the backpay entitlement. A check for the appropriate amount should be submitted to OPM, at the address shown in subparagraph 031303.E.1.b.

3. Severance Pay. The severance pay paid to an erroneously separated employee at the time of his or her removal must be deducted from the backpay award upon restoration to duty.

4. Lump-sum Payment for Annual Leave. The lump-sum payment that an erroneously separated employee received upon his or her removal must be refunded by the employee upon cancellation of the separation action. This is because the lump-sum payment for annual leave is authorized under 5 U.S.C. 5551(a) (reference (b)) only upon separation from the service. Therefore, when a separation is canceled and the employee is restored to duty as of the date of separation, the lump-sum payment is considered erroneous. Any lump-sum received by the employee must be offset against the employee's backpay award, and the leave must be recredited to the employee's leave

account. There is no authority to permit an employee to elect to retain payment or receive credit for the leave. The procedures for collecting leave payments are in subparagraphs 031203.C. and 031203.D.

5. The order of precedence for deducting erroneous payments from backpay awards when the net amount of backpay is insufficient to cover all the deductions is as follows: retirement annuity payments or refunds of retirement contributions, severance pay, and lump-sum payment for accrued annual leave.

a. Employees may request that OPM waive recovery of erroneous payments of any amount from the Civil Service Retirement and Disability Fund. Requests for waiver should be submitted to U.S. Office of Personnel Management, Office of Retirement Programs, Reconsideration and Debt Collection Division, Room 3457, 1900 E Street, N.W., Washington, D.C. 20415. (Employees also may submit requests to this address to repay debts owed to the Civil Service Retirement and Disability Fund by installment deductions from salary.)

b. For severance pay and lump-sum annual leave payments, any net indebtedness remaining after liquidation of backpay is subject to waiver (by GAO or DFAS, as applicable) under the authority of 5 U.S.C. 5584 (reference (b)).

F. Other Authorized Deductions

1. The retirement contribution is computed on the employee's gross backpay subject to retirement and deducted after subtracting the earnings from outside employment. Even if no amount of backpay is due the employee, because of excessive outside earnings, the employee must remit the appropriate amount of retirement fund contributions to the DoD in order to receive full retirement credit for the period of the unjustified or unwarranted separation (Comp. Gen. Decision B-235638, December 4, 1990) (reference (p)) and (5 U.S.C. 8334(c) (reference (b))).

2. Income tax withholdings are not computed on gross backpay before deduc-

tions from outside employment. Rather, interim net earnings (i.e., gross earnings less losses and certain expenses incurred in connection with the interim employment or business, but before income tax withholdings), if any, must be deducted from the gross amount of backpay and income tax withheld on the remainder (unpublished Comp. Gen. Decision B125762, November 19, 1957) (reference (p)).

3. Health benefits premiums for an employee restored to duty following an erroneous separation for retirement must be deducted if coverage under the health benefits program continued without interruption during the erroneous retirement.

G. Examples of Backpay Computations. The following examples are set forth as an aid to computing back pay (figures are not actual but illustrative only).

Example 1

An employee's gross backpay computation (based on basic pay only) amounts to \$10,000. During the period covered by the corrective action the employee earned \$7,000 from outside employment (interim earnings).

Gross backpay	\$10,000
Less interim earning	\$7,000
Net backpay	\$3,000
Less authorized deductions	
Retirement deductions computed	
on gross backpay (\$10,000).....	\$700
Federal tax computed on net back-	
pay (\$3,000).....	\$ 325
State tax computed on net back-	
pay (\$3,000)	\$ 97
Total deductions	\$ 1,122
Net Backpay	\$ 1,878

Example 2

An employee's gross backpay computation amounts to \$32,420, broken down by:

Basic pay	\$31,000
Overtime pay	\$ 300
Holiday pay	\$ 120
On-call pay	\$1,000

The employee received lump-sum payments amounting to \$1,000, and net retirement pay-

ments (gross retirement less the amount withheld for health benefits and the amount withheld for post retirement basic life insurance) amounting to \$10,000. During the period covered by the corrective action the employee earned \$11,000 from outside employment (interim earnings).

Gross backpay	\$32,420
Less interim earnings.....	\$11,000
Net backpay	\$21,420
Less erroneous payments	
Erroneous retirement payments	
(not including FEHB and FEGLI	
Premiums).....	\$10,000
Erroneous lump-sum payments	
for annual leave	\$ 1,000
Total.....	\$11,000
Net backpay	\$10,420

Less other authorized deductions

Retirement deductions computed on	
gross basic pay (\$31,000).....	\$2,170
Federal tax computed on net	
backpay (\$21,420).....	\$3,026
State tax computed on net back-	
pay (\$21,420)	\$1,200
Health Benefits Premiums	\$1,116
Total	\$7,512

Net backpay\$2,908

031304. Restoration of Leave. Under 5 C.F.R 550.805(g) (reference (1)), annual leave that is restored to an employee as a result of the correction of an unjustified or unwarranted personnel action and that is in excess of the maximum leave accumulation authorized by law must be credited to a separate leave account for use by the employee. Annual leave in such a separate leave account must be scheduled and used as follows:

A. For a full-time employee, excess annual leave of 416 hours or less must be scheduled and used by the end of the leave year in progress 2 years after the date on which the annual leave is credited to the separate account. This period is extended by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof. Note: For both part-time and full-time employees, the ending date of the

time limit for use of excess annual leave is not necessarily exactly 2 years, or the additional years, as appropriate, from the restoration date. Rather, the time limit ends at the end of the appropriate leave year.

B. A part-time employee shall schedule and use excess annual leave in an amount equal to or less than 20 percent of the employee's scheduled tour of duty over a period of 52 calendar weeks by the end of the leave year in progress 2 years after the date on which the annual leave is credited to the separate account. The agency shall extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the employee's scheduled tour of duty over a period of 52 calendar weeks.

C. To determine the time limitations for use of restored leave, see paragraph 050403.

031305. Health Benefits and Life Insurance

A. Health Insurance. Title 5 U.S.C. 8908 (reference (b)) provides that if the enrollment of an employee who was removed or suspended without pay was terminated, and the employee is ordered restored to duty on the grounds that the removal or suspension was unjustified or unwarranted, he or she may elect to (1) have the prior enrollment reinstated retroactive to the date it was terminated, with appropriate adjustments made in contributions and claims, to the same extent and effect as though the removal or suspension had not taken place, or (2) enroll the same as a new employee. Note: the statutory provisions of 5 U.S.C. 8908 (reference (b)) do not apply when an employee was erroneously separated for retirement under conditions which entitle him or her to continued enrollment. In such cases, there is no need to restore health benefits coverage; it was transferred to the retirement system and automatically continued.

B. Life Insurance

1. If an employee is retroactively restored to duty with pay after an erroneous suspension or removal, any insurance coverage the employee had before the improper action

will continue as though the erroneous action never occurred. However, retroactive salary deductions for life insurance shall not be withheld from any back pay awarded for the period of separation or suspension. If death or accidental dismemberment occurs during the period between the employee's removal and the finding that the separation was erroneous, insurance proceeds will be paid and premiums will be withheld from the back pay award for the period of separation or suspension (5 U.S.C. 8706(d) (reference (b)) and (Federal Employees Group Life Insurance Handbook for Personnel and Payroll Offices) (reference (x))).

2. An employee who had no insurance coverage prior to an erroneous suspension or removal and who is restored to duty after the closing date of an open season for life insurance which occurred during the period between the employee's suspension or removal and restoration is entitled upon restoration to elect life insurance coverage, as permitted during the open season. Since coverage for basic life insurance is automatic, the effective date is the first day in a pay and duty status. For options A, B, and C, the effective date is the first day in a pay and duty status on or after the date the SF 2817 "Life Insurance Election" is received by the employing office. An employee who had life insurance coverage prior to an erroneous suspension or removal and who is restored to duty after the closing date of an open season for life insurance which occurred during the period between the employee's suspension or removal and restoration, is entitled upon restoration to elect additional life insurance coverage, as permitted during the open season. The effective date is the first day in a pay and duty status on or after the date the SF 2817 is received by the employing office.

031306. Payment of Reasonable Attorney Fees. Section 55969(b) (1)(A)(ii) of 5 U.S.C.(reference (b)) provides for payment of reasonable attorney fees in accordance with the standards established under 5 U.S.C. 7701(g) (reference (b)), under certain conditions. Under 5 C.F.R. 550.807 (reference (1)), such payment is available in all backpay cases, without regard to the nature of the case or the appropriate authority in the case. Civilian personnel offices will determine entitle-

ment to payment of attorney fees and indicate the amount in the remarks on the SF 50.

031307. Reporting Backpay to State Agencies. If an employee is awarded backpay, see subparagraph 060105. regarding notification of the State agency.

0314 EMERGENCY EVACUATION PAYMENTS

031401. Purpose. This section prescribes the responsibilities of the civilian payroll offices in the event of evacuation of civilian employees or their dependents under the provisions of the DSSR, Chapter 600 (reference (t)). Civilian payroll offices will use these procedures when evacuation for military or other reasons of national interest or because of imminent danger to their lives has been ordered by the proper authority. The place these persons are evacuated from may be within or outside the United States.

A. Forms. DD Form 2461, "Authorization for Emergency Evacuation Advance and Allotment Payments for DoD Civilian Employees," is used to authorize and record emergency payments to employees and dependents. This record is kept by the civilian payroll office to record these payments on the permanent records. Information on this form may, in appropriate cases, be disclosed to other Federal agencies (IRS, SSA, OPM) to State and local taxing/welfare authorities, and to certain private organizations for crediting the payments to the employee's account. Before payment can be made to the employee or his dependents, an application for payment of amounts due the evacuated civilian employees or family members is required.

B. Determining entitlement and payee. Determine specific rates of entitlement, duration of evacuation/departure payments, and eligible allottees as follows:

1. For employees at foreign installations, use the DSSR, Chapter 600 (reference (t)).

2. For all other employees, use FPM Supplement 990-2, Chapter 550, Appendix A (reference (k)).

C. Payments. Payments at the rate to which the employee was entitled immediately before the order of evacuation/departure may be made to the employee, or payments in the form of allotments may be made to an adult family member or designated representative.

031402. Transmission of Data to Safe-Haven Post

A. To the extent possible and practical, pay, leave, and other significant data will be sent from the evacuated installation to the safe-haven post as soon as possible after the evacuation order has been issued so that they will be available to support further payments. Some of the possible methods of communicating such data to the safe-haven post are shipping a machine or manual listing of the data; shipping the last complete payroll together with appropriate notations and changes transmitting the essential data over available telephone, telegraph, or radio facilities; shipping the actual payroll, leave, and other appropriate records; providing the evacuated employees and dependents at the time that the evacuation is ordered with a statement of essential data in a locally reproduced format.

B. For the most part, the conditions and circumstances existing at the evacuation installation will determine the method and timing to be followed in transmitting the data. The safeguarding and preservation of the payroll, leave, and travel records are matters of primary concern from a fiscal point of view because of the continuing need of the records after the conditions which gave rise to the emergency evacuation have been resolved. Accordingly, steps as necessary to safeguard and preserve the records should take precedence over the immediate need for them at the safe-haven post.

031403. Action Upon and During Evacuation.

To the extent possible and practicable, employees and dependents remaining at the evacuated installation will continue to be paid in accordance with the normal fiscal procedures of that installation. If advance payments are authorized to be made to persons being evacuated, a special advance payroll will be prepared in accordance with normal payroll procedures and charged

against the appropriate funds available to the installation.

031404. Action Upon Assignment of an Evacuated Employee

A. Return to Former Place of Employment

1. The disbursing officer (in his or her official capacity) will obtain a record of payments made to the employee and dependents from the safe-haven post and immediately request the appropriate DFAS Center to furnish from its records the total amounts paid to each employee and dependents during the time of evacuation.

2. Upon receipt of the payment information from the DFAS Center, the disbursing officer (in his or her official capacity) will reconcile all amounts paid and determine the amounts due the employee. A final payroll will be prepared to settle the employee's pay account subsequent to the last normal payment. This payroll will include all deductions which were suspended during the period of evacuation.

B. Assignment to an Installation Other Than One from Which Evacuated. The fiscal officer will take all action required in subparagraphs 031404.A.1. and 2. In addition, the disbursing officer (in his or her official capacity) will initiate a request to the former employing activity for the date of the last normal payment and all other pertinent information which normally would be furnished by a releasing activity. A new pay record will be established on the basis of the information obtained. When the required information cannot be obtained from the employee's last permanent station because of destruction of the records, it will be assumed that the employee drew all amounts due the employee as of the last day prior to evacuation.

0315 MISCELLANEOUS

031501. Uniform Allowance. Uniform allowance is not paid through the civilian payroll system. It is paid through commercial accounts.

<u>PP#</u>	<u>HRS</u>	<u>GROSS</u>	<u>CSRS</u>	<u>FICA/</u>		<u>FEHB</u>	<u>FEGLI</u>	<u>OPT</u>	<u>CHARITY</u>	<u>UNION</u>		<u>NET</u>
				<u>MED</u>	<u>TAX</u>					<u>DUES</u>	<u>ALLOT</u>	
21	80	\$680.80	47.66	9.19	120.57	31.50	5.50	16.00	2.00	1.75	50.00	\$396.63

Current Year Recovery:

Net pay	\$396.63
Allotment	50.00
Charity	2.00
Health Benefits	31.50
Union dues	<u>1.75</u>
Amount of repayment	481.88
Amount of OWCP check (75% X 680.80)	<u>510.60</u>
Amount due employee	\$ 28.72

Prior Year Recovery:

Net pay	\$396.63
Allotment	50.00
Tax	120.57
Charity	2.00
Health Benefits	31.50
Union dues	<u>1.75</u>
Amount of repayment	602.45
Amount of OWCP check (75% X 680.80)	<u>510.60</u>
Amount due from employee	\$ 91.85

Figure 3-1, Example of Buy Back of Leave Computation for Employee Who Used Sick Leave for a Full Pay Period

<u>PP#</u>	<u>HRS</u>	<u>GROSS</u>	<u>CSRS</u>	<u>FICA/</u>		<u>FEHB</u>	<u>FEGLI</u>	<u>OPT</u>	<u>CHARITY</u>	<u>UNION</u>		<u>NET</u>
				<u>MED</u>	<u>TAX</u>			<u>FEGLI</u>		<u>DUES</u>	<u>ALLOT</u>	
20	80	\$680.80	47.66	9.19	120.57	31.50	5.50	16.00	2.00	1.75	50.00	\$396.63
Worked	47	\$399.97	28.00	5.40	71.14	31.50	5.50	16.00	2.00	1.75	50.00	\$188.68
Sick Lv	33	\$280.83	19.66	3.79	49.43	-	-	-	-	-	-	\$207.95
21	80	\$680.80	47.66	9.19	120.57	31.50	5.50	16.00	2.00	1.75	50.00	\$396.63
Worked	12	\$102.12	7.15	1.38	18.09	31.50	5.50	16.00	2.00	1.75	-	\$ 18.75
Sick Lv	68	\$578.68	40.51	7.81	102.48	-	-	-	-	-	50.00	\$377.88

Current Year Recovery:

Net Pay	\$585.83
Allotment	<u>50.00</u>
Amount of repayment	\$635.83
Amount of OWCP check (75% x \$859.51)	<u>644.63</u>
Amount due employee	\$ 8.80

Prior Year Recovery:

Net Pay	\$585.83
Allotment	50.00
Tax	<u>151.91</u>
Amount of repayment	\$787.74
Amount of OWCP check (75% X 859.51)	<u>644.63</u>
Amount due from employee	\$143.11

Figure 3-2, Example of Buy Back of Leave Computation for Employee Who Used Sick Leave for Less Than a Full Pay Period

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