



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Hotline Report: Spending Taxpayer Dollars

Management Alert:
**Concerns Over Compliance,
Accountability and Consistency
Identified With EPA's Biweekly
Pay Cap Waiver Process**

Report No. 17-P-0355

August 9, 2017



Report Contributors:

Angela Bennett
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Abbreviations

EPA	U.S. Environmental Protection Agency
FY	Fiscal Year
GS	General Schedule
HRO	Human Resources Officer
OARM	Office of Administration and Resources Management
OCFO	Office of the Chief Financial Officer
OIG	Office of Inspector General
U.S.C.	United States Code

Cover image: Image regarding pay cap waiver, prepared by EPA OIG.

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At a Glance

Why We Did This Audit

The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) received a hotline complaint alleging mismanagement by EPA Region 10 of its biweekly pay cap waiver process. The OIG initiated an audit to determine whether Region 10's process meets federal requirements and complies with established agency policies and procedures. The purpose of this report is to alert the agency on issues identified during our work. The issues identified pertain not only to Region 10 but also to EPA headquarters offices involved in the waiver process. Audit work is continuing.

This report addresses the following EPA goal or cross-agency strategy:

- *Embracing EPA as a high-performing organization.*

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Management Alert: Concerns Over Compliance, Accountability and Consistency Identified With EPA's Biweekly Pay Cap Waiver Process

What We Found

The OIG identified concerns over compliance, accountability and consistency with EPA Region 10's and headquarters' biweekly pay cap waiver process.

EPA Region 10 provided waiver requests for some but not most instances where employees exceeded the biweekly pay cap during fiscal years 2015, 2016 and 2017 (through January 7, 2017). In addition, 11 of 15 requests provided by Region 10 lacked adequate information to determine whether there was an emergency with a threat to life and property, or whether that work was critical to the mission of the agency. While all requests were approved by the Region 10 Regional Administrator as required, only one request was approved by the Region 10 Human Resources Officer as required by EPA policy. This occurred because the region did not have an internal policy or process in place to address review by the regional Human Resources Officer, the need for sufficient justification, or the retention of supporting documents. As a result, the potential exists that Region 10 employees could be overpaid or be paid for work that does not meet the intent of premium pay requirements in 5 U.S.C. § 5547.

We identified issues with documentation of biweekly pay cap waivers at Region 10, as well as matters that pertained to EPA headquarters offices. This management alert is for consideration by the agency as it updates policies and procedures.

We also identified inconsistencies and a lack of accountability over the processing of Region 10's waivers within the EPA's Office of Administration and Resources Management (OARM) and Office of the Chief Financial Officer (OCFO). Based on interviews with officials and personnel, we learned that there is no clear line of responsibility to maintain documentation for waiver requests or to track requests and approvals between the region, OARM and OCFO. Neither OARM nor OCFO could provide a list of waivers for the period requested or supporting documentation. Both offices denied responsibility for tracking the waivers and maintaining the supporting documentation.

The agency is updating the biweekly pay cap waiver policies and procedures. We are alerting the EPA to these matters for consideration as it drafts these updates. Due to the potential impact of these matters on the agency's overall biweekly waiver process, the OIG has expanded the scope of this ongoing audit to include other regional and headquarters offices.

Agency Response

We issued a discussion document on June 22, 2017, for the agency's review. The OIG considered suggestions provided by Region 10 and OARM and modified the report accordingly.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

August 9, 2017

MEMORANDUM

SUBJECT: Management Alert: Concerns Over Compliance, Accountability and Consistency Identified With EPA's Biweekly Pay Cap Waiver Process
Report No. 17-P-0355

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Michelle L. Pirzadah, Acting Regional Administrator
Region 10

Donna J. Vizian, Acting Assistant Administrator
Office of Administration and Resources Management

David Bloom, Acting Chief Financial Officer
Office of the Chief Financial Officer

This is our report on the subject audit of a hotline complaint conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this audit was OA-FY17-0135. The purpose of this report is to alert the agency to certain issues identified. Audit work is continuing, and the OIG has expanded the scope of this ongoing audit to include other regional and headquarters offices.

This report contains no recommendations and you are not required to provide a written response. Should you choose to provide a final response, we will post your response on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

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Purpose

As a result of a hotline complaint, the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA) is conducting an audit of EPA Region 10's biweekly pay cap waiver process. The objective of the audit is to determine whether Region 10's process meets federal requirements and complies with established agency policies and procedures.

This report alerts the agency on issues identified to date. These issues pertain to Region 10, as well as EPA headquarters offices involved in the waiver process. Our audit work is continuing, and due to the potential impact of these matters we have expanded the scope to include other regional and headquarters offices.

Background

The EPA OIG received a hotline complaint alleging mismanagement by EPA Region 10 of its biweekly pay cap waiver process. The complaint alleged that there appears to be an absence of management control for approving biweekly pay cap waivers that is contrary to agency policy. Examples cited included: approvals for non-emergencies, a lack of review by the human resources office, missing supporting documentation, and inadequate justifications.

Regulatory and Policy Requirements

Title 5 U.S.C. § 5547, *Limitation on Premium Pay*, establishes a biweekly pay cap for General Schedule (GS) employees. The biweekly basic pay cap may be waived for GS employees who are paid premium pay while conducting work designated as emergency or mission-critical.

Title 5 U.S.C. § 5547(a) states that employees may be paid premium pay, but limits basic pay plus premium pay for any pay period to the greater of the maximum rate of pay for a GS-15 employee or the rate payable for Level V of the Executive Schedule. Title 5 U.S.C. § 5547(b)(1) states the limit for basic pay plus premium pay:

... shall not apply to an employee who is paid premium pay by reason of work in connection with an emergency (including a wildfire emergency) that involves a direct threat to life or property, including work performed in the aftermath of such an emergency.

Further, 5 U.S.C. § 5547(b)(3) states that:

... the head of an agency may determine that subsection (a) shall not apply to an employee who is paid premium pay to perform work that is critical to the mission of the agency.

EPA Policy and Procedures

The EPA's *Pay Administration Manual* provides policy and procedures on pay administration for employees in GS positions. Chapter 15, Section 6, states that the biweekly pay cap may be lifted for those emergencies deemed to be a natural or non-natural disaster involving direct threats to life or property. The EPA has delegated the authority to declare disaster emergencies to various management officials in the regions and at headquarters. For an emergency confined to one region, the Regional Administrator will decide whether the emergency is a disaster meriting the lifting of the biweekly cap. The Regional Administrator may redelegate the authority to declare an emergency to the Assistant Regional Administrator or Deputy Regional Administrator. The deciding official will notify the local Human Resources Officer (HRO) on a Natural Disaster Emergency Designation form. The form provides for:

- The type of natural disaster, locations and beginning date.
- Signature of the approving official.
- The HRO approval.
- The notification of the conclusion of the natural disaster emergency by the approval official.
- The effective date of termination and signature of the HRO.

Unlike the relevant Title 5 statutory provision, the EPA policy does not address procedures to waive the biweekly pay cap for work “critical to the mission of the agency.”

Responsible Offices

In accordance with EPA policy, Regional Administrators approve the waivers for emergencies confined to one region. Region 10's Office of Management Programs, Human Resources and Facilities Unit is the local human resource office responsible for reviewing and processing the approved waivers. The Office of Administration and Resources Management's (OARM's) Office of Human Resources is responsible for providing overall technical guidance and direction for the EPA's policy on overtime in emergencies. The Office of Human Resources is also responsible for establishing policy and procedures. The Office of the Chief Financial Officer (OCFO) is responsible for the payroll processing of the waivers.

Scope and Methodology

We are conducting this audit in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and

conclusions based on our audit objective. We believe that the evidence obtained to date provides a reasonable basis for the findings and conclusions presented in this report.

To determine whether Region 10's process meets federal requirements and complies with established agency policies and procedures, we performed the following:

- Interviewed officials and personnel in OARM's Office of Human Resources (including its Shared Service Center in Las Vegas, Nevada) and OCFO on the pay cap waiver policy and procedures.
- Obtained biweekly pay cap waiver requests for fiscal years (FYs) 2015, 2016 and 2017 through December 31, 2016.
- Reviewed waiver requests to determine whether each request:
 - Was approved by the Region 10 Regional Administrator or designee.
 - Was reviewed/approved by Region 10's HRO.
 - Meets the requirement for approval (we looked for written justification that an emergency exists and the nature and extent of the threat to life and property, or why the response was considered mission-critical).
- Obtained Region 10's internal review report on biweekly exceedances.
- Obtained payroll data that identified Region 10 employees exceeding the biweekly pay cap for FYs 2015, 2016 and 2017 through January 7, 2017.
- Reconciled the pay cap waiver requests with the payroll data to determine whether all instances of exceedance were documented.

Results of Audit

Our audit disclosed concerns over compliance, accountability and consistency with EPA Region 10's and headquarters' overall biweekly pay cap waiver process.

For Region 10, we identified 79 instances where employees exceeded the biweekly pay cap during FYs 2015, 2016 and 2017 (through January 7, 2017). Most of the 79 exceedances lacked a supporting waiver request; Region 10 provided 15 waiver requests that covered only 21 of the 79 instances. The OIG's review of the 15 waiver requests showed that requests cited both emergencies and work that was critical to the mission of the agency as justification. The OIG review also showed that requests were approved by the Region 10 Regional Administrator as required, but only one request also showed approval by the Region 10 HRO. In addition, 11 of 15 requests lacked adequate information to determine whether there was an emergency with a threat to life and property, or whether that the work was critical to the mission of the agency. This occurred because the region did not have an internal policy or process in place to address review by the regional HRO, the need for sufficient justification, or the retention

of supporting documents. As a result, the potential exists that Region 10 employees could be overpaid or be paid for work that does not meet the intent of premium pay requirements in 5 U.S.C. § 5547.

In addition, we disclosed inconsistencies and a lack of accountability over the processing of Region 10's biweekly pay cap waivers within OARM and OCFO. Based on interviews with officials and personnel in these offices, we learned that there is no clear line of responsibility to maintain documentation for waiver requests or to track waiver requests and approvals between the region, OARM and OCFO. Neither OARM nor OCFO could provide a list of waivers processed for the period requested or supporting documentation. Both offices denied responsibility for tracking the waivers and maintaining the supporting documentation.

Also, the Shared Service Centers are not consistent in their review and processing of waiver requests. One service center stated it reviews the waiver requests to ensure requests are valid and meet policy requirements before forwarding to OCFO for payroll processing. Another service center stated it does not review the waiver request before forwarding to OCFO—it only checks for the Regional Administrator's approval.

The OIG discussed the issue of inconsistent review practices by the Shared Service Centers and the responsibility for maintaining supporting documentation with OARM. OARM confirmed the inconsistent review practices of the Shared Service Centers and suggested we contact individual Regional Administrators' offices to obtain a listing of waivers and the supporting documents. It is still undetermined as to who is responsible for official records retention.

We learned from Region 10 that OARM was in the process of updating the biweekly pay cap waiver policies and procedures at a national level. However, we do not know whether the updated policies and procedures will address the issues presented in this report.

Conclusion

The OIG has identified numerous instances of noncompliance with Region 10's biweekly pay cap waiver process, as well as inconsistencies and the lack of accountability in the processing of waiver requests by OARM and OCFO. We are alerting the EPA to these matters for consideration as the agency drafts updated policies and procedures. Due to the potential impact of these matters on the agency's overall biweekly waiver process, the OIG plans to expand the ongoing audit to include other regions as well as OARM and OCFO. No recommendations are being made at this time, but our audit work is ongoing and recommendations may be made in a subsequent report on the EPA's overall biweekly waiver process.

EPA Response and OIG Comments

The OIG provided a discussion document to the agency for comment on June 22, 2017. We discussed our audit findings with Region 10, OARM and OCFO on June 29, 2017. Region 10 provided the OIG with comments on the discussion document via email on July 7, 2017. OARM responded via a memorandum dated July 21, 2017. OCFO provided no response.

Region 10 commented that it would be helpful if we, up front, defined “emergencies” as natural and non-natural disasters, and then used those terms consistently throughout the report. The region also commented that it does not deny responsibility for maintaining its own records. We made revisions to address the region’s consistency concern, but we believe our wording referencing “emergencies” is consistent with the manual and documentation provided by the agency. We also made revisions to clarify the offices that deny responsibility for maintaining records.

Region 10 and OARM commented that the 79 instances where employees exceeded the biweekly pay cap may include instances that would not require a waiver. As part of our ongoing audit, we intend to work with Region 10 to identify which of the 79 instances do not require a waiver. We also intend to work with OARM and OCFO to determine whether the agency can identify total waiver requests and authorizations through agency systems.

OARM stated that the Office of Human Resources does not have the responsibility “for reviewing and processing the approved waivers”; rather, it is responsible for “providing overall technical guidance and direction for the EPA’s policy on overtime for emergencies.” OARM also said that the responsibility for maintaining documentation rests with the regional HROs, and the SSCs role is to serve as a pass-through to OCFO. We made revisions to the “Responsible Offices” section to address OARM’s concerns. However, based on our discussions with the agency and as noted in the report, the SSCs are not consistent in their review and processing of waiver requests passed through to OCFO.

Both Region 10 and OARM said that the region and EPA headquarters are working to update the biweekly pay cap waiver policies and procedures. The OIG will discuss these revisions as part of the ongoing audit, and understands that the updated policies and procedures may address the issues identified in this report (e.g., the role of the SSCs).

OARM’s memorandum response is included in Appendix A. Region 10’s email response is not included.

OARM Response to Discussion Document



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 21 2017

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

MEMORANDUM

SUBJECT: Management Response to Office of Inspector General Management Alert: Concerns Over Compliance, Accountability and Consistency Identified with EPA's Biweekly Pay Cap Waiver Process (Project OA-FY17-0135)

FROM: Donna J. Vizian, Acting Assistant Administrator

TO: Arthur A. Elkins, Jr. Inspector General

Thank you for the opportunity to review and comment on the Office of the Inspector General's report titled *Management Alert: Concerns Over Compliance, Accountability and Consistency Identified With EPA Biweekly Pay Cap Waiver Process*, Project No. OA-FY17-0135. We are pleased to provide our attached comments that supplement those already provided by EPA's Region 10 Office on July 7, 2017. The focus of our comments is to ensure the accuracy of the OIG's discussion document as well as provide updated information on the EPA's Pay Cap Waiver Process.

If you have any questions, please contact Linda Gray, director, Office of Human Resources, at (202) 564-4606 or Gray.Linda@epa.gov.

Attachment

cc: John Showman
Howard Osborne
Quentin Jones
Dan Opalski
Nancy Lindsay
Joyce Kelly
Robert Hill
Jeanne Conklin

Linda Gray
Wesley Carpenter
Lynnann Hitchens
Marian Cooper
Matthew Bell
Janice Jablonski
Lauren Lemley
Bobbie Trent
Benita Deane
Angela Bennett
Darren Schorer
Debbi Hart
Cheri Hembrey

**ATTACHMENT
OIG PROJECT NO. OA-FY17-0135**

Page Number	Section & Text	OARM Comments
2	<p>Responsible Offices – The Office of Administration and Resources Management’s (OARM’s) Office of Human Resources, through its regional human resources offices and Shared Service Centers, is responsible for reviewing and processing the approved waivers.</p>	<p>This statement is factually incorrect on three separate points:</p> <ol style="list-style-type: none"> 1. The regional HROs report through their assistant regional administrators to the regional administrator for their respective region. They do not report to OHR or to OARM. 2. The three shared service centers report to OARM but do not report to OHR. The RTP SSC reports to the director of the Office of Administration and Resources Management– RTP, while the Cincinnati and Las Vegas SSCs report to the director of the Office of Administration and Resources Management– Cincinnati. 3. The “Responsibilities” portion of this section of the Pay Manual states that OHR is responsible for “providing overall technical guidance and direction for the EPA’s policy on overtime for emergencies.” <p>Consequently, OHR does not have the responsibility “for reviewing and processing the approved waivers” as asserted in the report.</p>

3	<p>Scope and Methodology – The text in the sixth bullet of the document states: “obtained payroll data that identified Region 10 employees exceeding the biweekly pay cap for FYs 2015, 2016 and 2017 through January 7, 2017.”</p>	<p>During an OIG conference call on June 29, 2017, OARM asked the question of whether that data included information which indicated how those employees were coded with respect to their coverage under the Fair Labor Standards Act. The reply did not provide a definitive answer. This is an important point to raise because employees who are covered by the FLSA are paid overtime authorized under that act and are not subject to the biweekly pay limitation found in Title 5 of the U.S. Code. If FLSA-covered employees are included in this audit report, then the scope of the problem could appear to be greater than it is and if included as part of a corrective action, could potentially lead to an effort to recoup funds from employees who legitimately earned them.</p>
4	<p>Results of Audit – The document raises the following concerns:</p> <ol style="list-style-type: none"> 1. “Based on interviews with officials and personnel in these offices, we learned that there is no clear line of responsibility to maintain documentation for waiver requests or to track waiver requests and approvals between the region, OARM and OCFO.” 2. “Also, the Shared Service Centers are not consistent in their review and processing of waiver requests.” 3. “We learned from Region 10 staff that OARM was in the process of updating the biweekly pay cap waiver 	<ol style="list-style-type: none"> 1. The responsibility for maintaining the documentation rests with the regional HROs. This is documented in paragraph <i>f</i> in the “Responsibilities” portion of this section of the Pay Manual: <p>“HROs are responsible for providing guidance to managers and supervisors on overtime in emergencies; for ensuring that requests are properly prepared; for processing requests for waivers; for ensuring that natural disasters overtime is not subject to the biweekly maximum earning limitation; and for maintaining files of requests for waivers of the biweekly maximum earning limitations.”</p> 2. The SSCs no longer have a substantive role in the review or processing of waiver requests. In the past, the list of names of employees for whom the pay cap was lifted was entered into

	<p>policies and procedures at a national level. However, we do not know whether the updated policies and procedures will address the issues presented in this report.”</p>	<p>the agency’s personnel and payroll system through a Request for Personnel Action (SF-52.), which is no longer the case. Consequently, the SSCs do not “process” any actions nor do any other data entry to effect the lifting of the pay cap; the SSCs serve as a pass-through to the Office of the Chief Financial Officer who “flip a switch” in the computer system that provides our payroll support to lift the pay cap for the employees listed in the document approved in the region.</p> <p>3. OHR has been working with staff in Region 10 to update the biweekly pay cap waiver policies and procedures. OHR has revised the forms used to request and terminate the lifting of the biweekly pay cap and has revised the text in paragraph f of this chapter of the pay manual. OHR can share and discuss the revised form and text with the OIG if needed.</p> <p>The revised procedures allow for the entire process to remain within a region. The RA or their designee still states that an emergency has been declared and requests the pay cap be lifted. The regional HRO still reviews and signs off on the request. However, under the proposed new approach, the ability to “flip the switch” to lift the pay cap will shift from OCFO to the region (most likely the regional comptroller’s office) and enable the PeoplePlus coordinator to lift and restore the biweekly pay cap. Currently, Region 10 is working on developing local standard operating procedures and the associated training.</p>
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Distribution

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