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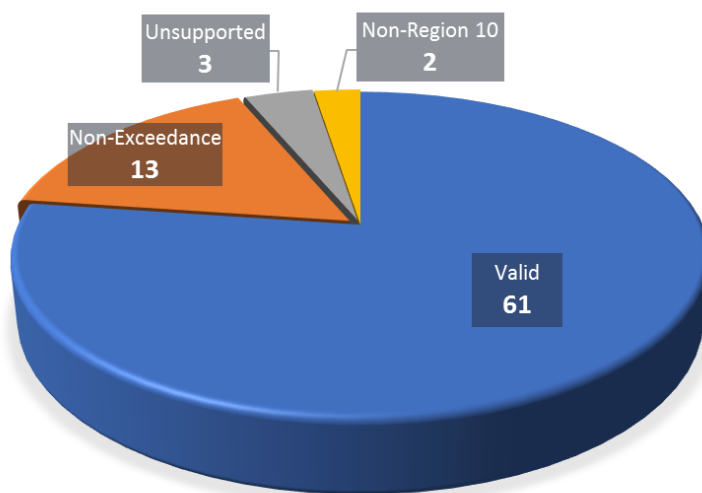


**Hotline Report:**  
**Compliance with the law**  
**Operating efficiently and effectively**

# Inconsistencies With EPA Policy Identified in Region 10's Biweekly Pay Cap Waiver Process

Report No. 18-P-0068

January 12, 2018



Region 10 biweekly pay cap exceedances findings after OIG review

**Report Contributors:**

Angela Bennett  
Darren Schorer

**Abbreviations**

CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
FLSA	Fair Labor Standards Act of 1938
FY	Fiscal Year
GS	General Schedule
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:** The OIG analyzed 79 instances of EPA Region 10’s reported biweekly pay cap exceedances during FYs 2015, 2016 and 2017 (through January 7, 2017). We identified 61 valid exceedances, 13 non-exceedances, two exceedances for non-Region 10 employees, and three unsupported exceedances. (EPA OIG image)

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# At a Glance

## Why We Did This Audit

The U.S. Environmental Protection Agency's (EPA's) Office of Inspector General (OIG) received a hotline complaint alleging that EPA Region 10 mismanaged its biweekly pay cap waiver process. The biweekly pay cap may be waived for General Schedule employees who get premium pay while conducting work designated as emergency. The objective of this audit was to determine whether Region 10's process met federal requirements and complied with established agency policies and procedures.

The EPA was updating its biweekly pay cap policies and procedures during the course of our audit. We published a management alert (Report No. [17-P-0355](#)) so the agency could take issues noted into consideration as it drafted updates.

### This report addresses the following:

- *Compliance with the law.*
- *Operating efficiently and effectively.*

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Listing of [OIG reports](#).

## ***Inconsistencies With EPA Policy Identified in Region 10's Biweekly Pay Cap Waiver Process***

### What We Found

Our audit disclosed that Region 10's process for approving biweekly pay cap waivers was not consistent with agency policy. Of the 61 instances with valid pay cap exceedances noted during fiscal years 2015, 2016 and 2017 (through January 7, 2017), we determined that 25 instances required waivers. We found that some waivers lacked adequate information to determine whether there was an emergency.

However, Region 10 provided supplemental documentation to support the determination that an emergency existed. Further, while all waiver requests were approved by the Region 10 Regional Administrator as required, none of the requests were approved by the Region 10 Human Resources Officer as required by EPA policy.

**We identified issues with documentation and review of biweekly pay cap waivers at Region 10, resulting from a lack of an internal policy or process. Region 10 recently issued a new procedure that addresses our concerns.**

In addition to the 61 instances with valid waivers, we found three instances where Region 10 could not locate waiver requests to support the exceedances. Without a waiver, we were unable to determine whether the overtime incurred pertained to an emergency. The three instances resulted in payments of \$2,355.39, which exceeded the biweekly pay cap.

Inconsistencies occurred because Region 10 did not have the needed internal policy or process in place. As a result, Region 10 employees may have been overpaid or paid for work that did not meet the definition of an emergency under 5 U.S.C. § 5547. On September 7, 2017, Region 10 issued a new biweekly pay cap waiver standard operating procedure that addresses the inconsistencies with agency policy that we noted.

We also identified inconsistencies and a lack of accountability over the processing of Region 10's waivers within the EPA headquarters' Office of Administration and Resources Management and Office of the Chief Financial Officer. The agency indicated it is in the process of updating its biweekly pay cap waiver policies and procedures, which should resolve the OIG's concerns.

No recommendations are being made because pertinent policies and procedures were implemented by Region 10 during the audit.

### Agency Response and OIG Comment

Region 10 requested that the dollar amount of the three instances without waivers be included to provide a better perspective on potential payments in excess of the biweekly pay cap. We updated the report to include the total of these payments.



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

THE INSPECTOR GENERAL

January 12, 2018

**MEMORANDUM**

**SUBJECT:** Inconsistencies With EPA Policy Identified in Region 10's  
Biweekly Pay Cap Waiver Process  
Report No. 18-P-0068

**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:** Chris Hladick, Regional Administrator  
Region 10

This is our audit report in response to a hotline complaint received by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency. The project number for this audit was OA-FY17-0135. This audit did not identify any problems requiring corrective actions.

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 the 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](http://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) conducted an audit of EPA Region 10's biweekly pay cap waiver process. The audit objective was to determine whether Region 10's process met federal requirements and complied with established agency policies and procedures.

## Background

The OIG received a hotline complaint alleging that EPA Region 10 mismanaged its biweekly pay cap waiver process. The complaint alleged that there appeared to be an absence of management controls for approving biweekly pay cap waivers, which 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.

### ***Federal 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 in connection with an emergency (including a wildfire emergency) that involves a direct threat to life or property.

The Fair Labor Standards Act of 1938 (FLSA) provides minimum standards for wages and overtime entitlements. The FLSA also "...exempts specified employees or groups of employees from the application of certain of its provisions. ..." Title 5 CFR Part 551, *Pay Administration Under the Fair Labor Standards Act*, contains the regulations, criteria and conditions set forth by the Office of Personnel Management as prescribed by the act.

Title 5 CFR § 551.104 defines FLSA-exempt employees as those not covered by the minimum wage and overtime provisions of the act, and FLSA-nonexempt as those covered by the provisions. Per 5 CFR § 551.201, the employing agency makes the determination on an employee's exemption status.

Title 5 CFR § 551.501(a) states that employees who are not exempt from provisions of the FLSA shall be paid for all hours of work in excess of 8 hours a day or 40 hours in a workweek, at a rate of one-and-one-half times the employee's hourly regular rate of pay.

### ***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

“...EPA may lift the biweekly pay cap for those emergencies deemed to be a natural disaster. ...” The manual defines natural disasters as emergencies which threaten human 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 the Assistant Regional Administrator or Deputy Regional Administrator. The deciding official will notify the local Human Resources Officer of the determination that a disaster exists on a Natural Disaster Emergency Designation form. The form requires information, such as the following:

- Type of natural disaster, locations and beginning date.
- Signature of the approving official.
- Employees for whom an exception to biweekly pay is requested.
- Human Resources Officer approval for lifting the biweekly pay cap.
- Notification of the conclusion of the natural disaster emergency by the approval official.
- Effective date of termination and the signature of the Human Resources Officer.

## Responsible Offices

In accordance with EPA policy, Regional Administrators request biweekly pay cap waivers for emergencies confined to one region. Region 10’s Office of Management Programs, Human Resources and Facilities Unit, is the local human resources office responsible for reviewing and approving waivers. At EPA headquarters, the Office of Administration and Resources Management’s (OARM’s) Office of Human Resources is responsible for providing overall technical guidance and direction for EPA policy on overtime in emergencies, including policies and procedures. The Office of the Chief Financial Officer (OCFO) is responsible for the payroll processing of waivers.

## Prior Audit Report

During our audit, we identified concerns over compliance, accountability and consistency with EPA Region 10’s and headquarters’ biweekly pay cap waiver process. As a result, we issued a management alert report on August 9, 2017, *Management Alert: Concerns Over Compliance, Accountability and Consistency Identified With EPA’s Biweekly Pay Cap Waiver Process* (Report No. [17-P-0355](#)). Our purpose was to alert the EPA to these matters because the agency was updating its related policies and procedures. At the time, the OIG made no recommendations.

## Scope and Methodology

We conducted 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 provides a reasonable basis for the findings and conclusions presented in this report.

To determine whether Region 10's process met federal requirements and complied 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 officials and personnel in OCFO about the pay cap waiver policy and procedures.
- Obtained biweekly pay cap waiver requests for fiscal years (FYs) 2015, 2016 and 2017 through (January 7, 2017).
- Analyzed waiver requests to determine whether each request:
  - Was approved by the Region 10 Regional Administrator or designee.
  - Was reviewed/approved by Region 10's Human Resources Officer.
  - Met the requirement for approval (we looked for written justification that an emergency existed 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.
- Analyzed Region 10's biweekly pay cap standard operating procedure.



## Results of Audit

Our audit found that Region 10’s process for approving biweekly pay cap waivers was not consistent with agency policy in the EPA’s *Pay Administration Manual*. Region 10 did not always retain documentation supporting waiver requests, include sufficient information to justify the need, and include review by the region’s Human Resources Officer. This occurred because Region 10 did not have an internal policy or process to address these items. As a result, Region 10 employees may have been overpaid or been paid for work that did not meet the definition of an emergency under 5 U.S.C. § 5547.

On September 7, 2017, Region 10 issued a new biweekly pay cap waiver standard operating procedure that resolved the inconsistencies and the OIG’s concerns. During our audit, Region 10 provided additional documentation for all but three of the instances where employees exceeded the biweekly pay cap. The three instances resulted in payments of \$2,355.39, which exceeded the biweekly pay cap.

### ***Retention of Supporting Documentation***

Region 10 provided the OIG with payroll data that identified 79 instances where employees exceeded the biweekly pay cap during FYs 2015, 2016 and 2017 (through January 7, 2017). Further analysis of the 79 instances showed that only 77 instances pertained to Region 10 employees. The non-Region 10 employees were excluded from further analysis. Table 1 shows that of the 77 instances identified in our analysis, 61 had a valid exceedance, 13 had a non-exceedance, and three had exceedances with no waiver. Detailed summaries of the various instances follow Table 1.

**Table 1: Region 10 biweekly pay cap exceedances**

<b>Reason</b>	<b>Valid exceedance</b>	<b>Non-exceedance</b>	<b>No waiver</b>
Exceedance – FLSA nonexempt	36		
Exceedance with waiver – FLSA exempt	25		
Incorrect pay cap		3	
Compensatory and credit hour pay out		5	
Combination of employees with same name		3	
Employee did not incur overtime but exceeded pay cap (immaterial amount)		2	
Employee incurred overtime but no waiver found			3
<b>Totals (77)</b>	<b>61</b>	<b>13</b>	<b>3</b>

Source: OIG summary of data from Region 10 payroll records.

## Valid Exceedances

Our analysis of the 61 instances of valid exceedances showed that 36 instances were for employees whom the agency determined were FLSA nonexempt. Per 5 CFR § 551.501(a), these employees shall be paid for all hours of work. Region 10 provided eight waiver requests that supported the remaining 25 exceedances for the FLSA-exempt employees.

## Non-Exceedances

EPA Region 10's documentation of the 13 instances of non-exceedances showed that three instances used the biweekly pay cap amount from the wrong year, five related to payments for compensatory and/or credits hours (not subject to the biweekly pay cap), two pertained to payroll issues not related to overtime, and three resulted from the base pay for two employees with the same name being incorrectly combined.

## No Waiver

In three instances, employees incurred overtime but Region 10 was not able to locate waivers to support the exceedances. Without a waiver, we were unable to determine whether the overtime incurred pertained to an emergency. As a result, the employees may have been overpaid or been paid for work that did not meet the definition of an emergency under 5 U.S.C. § 5547. The costs related to the three instances totaled \$2,355.39. The EPA's *Pay Administration Manual*, Appendix 1.f., requires the Human Resources Officer to maintain files of waiver requests.

## ***Sufficient Information to Justify Need***

Our analysis of the eight waivers provided by Region 10 for the 25 instances with valid exceedances showed that some waivers did not include sufficient information to justify the need (whether there was an emergency with a threat to life and property). As a result, employees may have been overpaid or been paid for work that did not meet the definition of an emergency under 5 U.S.C. § 5547. The EPA's *Pay Administration Manual*, Appendices 3 and 4, requires information on the type of disaster and the nature and extent of the threat to life or property.

We determined that five of the eight waivers included sufficient information to support the need for 15 instances. Region 10 provided supplemental documentation for the remaining three waivers, covering 10 instances (such as an action memorandum, Administrator order or pollution/situation reports) to support the determination that an emergency existed. Based on our analysis of supplemental documentation, the OIG agrees that the needs were justified, and we take no exception to the remaining 10 instances. However, future waiver requests

must contain sufficient information to justify the need as required by agency policy.

### ***No Approval by Human Resources Officer***

The eight waivers that Region 10 provided covering the 25 instances with valid exceedances showed the requests were approved by the Regional Administrator as required, but none of the requests showed approval by the Region 10 Human Resources Officer. The EPA's *Pay Administration Manual*, Chapter 15, requires local Human Resources Officers to authorize lifting the biweekly pay cap after a determination by the Regional Administrator that an emergency exists.

### ***Region 10 Issues Standard Operating Procedure***

On September 7, 2017, Region 10 issued a new standard operating procedure for biweekly pay cap waivers. The new procedure addressed the OIG's concerns related to the EPA's biweekly pay cap waiver process, as noted in the prior management alert report. The procedure requires the following:

- The Regional Human Capital Officer (formerly Human Resources Officer) must keep all documentation related to Region 10 waiver requests, including copies of waivers for Region 10 employees responding to emergencies in other regions.
- Documentation must include the reason for the waiver and the anticipated response period.
- Waivers must go through a review by the Human Capital Officer before and after being sent to the Regional Administrator for signature.
- Signature approval by the Director of the Las Vegas Shared Service Center must be included.

The OIG analyzed the standard operating procedure and concluded that the procedure addresses and resolves the OIG's concerns about the inconsistencies with agency policy presented in this report.

## **Conclusion**

Region 10 has taken action to address the OIG's concerns about the biweekly pay cap waiver process. The OIG believes that the standard operating procedure implemented by Region 10 will address the OIG's concerns presented in this report. Further, the agency is in the process of updating its biweekly pay cap waiver policies and procedures at a national level. Region 10 informed us that the national policy will mirror the regional policy. As such, agency policy should resolve the OIG's concerns about the waiver process.

No recommendations are being made because pertinent policies and procedures were implemented by Region 10.

## **Agency Response and OIG Comment**

EPA Region 10's email response expressed concerns with the OIG's statement that employees may have been overpaid or paid for work that was not an emergency. Region 10 believed that it would be more accurate to say the OIG was unable to determine whether the pay related to those three waivers was justified, and cite the total dollar amount in question.

The OIG revised the report to state that we were unable to determine whether the overtime incurred pertained to an emergency, and to include the amount of payments in excess of the biweekly pay cap resulting from the undocumented waivers.

Region 10 agreed with our proposed changes and stated it had no other concerns.

## ***Distribution***

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