

For: FFAS Employees

Reserve or National Guard (Reservist) Differential

Approved by: Deputy Administrator, Management



1 Overview

A Background

Under 5 U.S.C. 5538, employing agencies must pay differential payments to eligible Federal civilian employees who are members of the Reserve or National Guard (hereafter referred to as “reservists”) called or ordered to active duty under certain specified provisions of law.

Federal Agencies must provide a payment, a “reservist differential”, equal to the amount by which an employee’s projected civilian “basic pay” for a covered pay period exceeds the employees actual military “pay and allowances” allocable to that pay period.

5 U.S.C. 5538 became effective on the first day of the first pay period beginning on or after March 11, 2009. Guidance was delayed waiting for OPM regulations to be implemented.

B Purpose

This notice informs FFAS employees about reservist differential payments.

2 Regulations and Procedures

A Qualifying Period

A reservist differential under 5 U.S.C. 5538 is payable to an employee during a “qualifying period” during which the employee meets **both** of the following conditions.

- A covered employee is absent from a Federal civilian position in order to perform active duty in the uniformed services pursuant to a call or order to active duty under 10 U.S.C. 331, 332, 333, 688, 12301(a), 12302, 12304, 12305, or 12406, and is serving on such qualifying active duty.
- The employee is entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA) (38 U.S.C. 43) for such active duty.

Disposal Date	Distribution
August 1, 2011	All FAS, RMA, and FSA employees; State Office relay to County Offices

2 Regulations and Procedures (Continued)

B Pay and Leave Status

The receipt of a reservist differential does **not** affect an employee's civilian pay and leave status. While absent from the civilian job, the employee is considered to be on leave without pay (LWOP) unless the employee takes civilian paid leave or other paid time off.

The employee may use paid time off (for example, military leave, annual leave, credit hours, compensatory time off), as available to the employee, subject to the normal conditions governing use of the particular paid time off.

A reservist may **not** receive the reservist differential for periods during which he or she used paid time off, since the reservist is already receiving full civilian pay for these periods. The reservist differential for a pay period will be adjusted to account for any hours of paid time off.

Note: During civilian paid time off, the reservist receives full military pay and full civilian pay, **except** that civilian pay is offset by military pay when an employee uses military leave under 5 U.S.C. 6323(b). During civilian LWOP periods, the reservist receives full military pay and may receive a reservist differential that represents the amount by which civilian basic pay exceeds military pay and allowances.

There are 2 types of military leave that may be used by civilian employees during qualifying military active duty, as follows:

- regular military leave under 5 U.S.C. 6323(a) that provides 15 workdays of leave each fiscal year with **no** military pay offset (that is, full military and civilian pay)
- additional military leave for contingency operations or law enforcement purposes under 5 U.S.C. 6323(b) that provides up to 22 workdays of leave each calendar year, but with civilian pay offset by the amount of military pay allocated to those leave days, as required by 5 U.S.C. 5519.

2 Regulations and Procedures (Continued)

B Pay and Leave Status (Continued)

When considering whether to use additional military leave under 5 U.S.C. 6323(b) or to receive a reservist differential, employees should take into account the following facts.

- When payments for military leave are offset by military pay, only civilian workdays are considered. Thus, an employee on military leave under 5 U.S.C. 6323(b) for a biweekly pay period can receive 10 leave days of paid leave (offset by military pay for those days) plus 4 leave days of military pay for the civilian nonworkdays (that is, for most employees, weekend days). This means the total pay for the period can exceed the regular civilian pay for the period.
- Employees may **not** use regular military leave under 5 U.S.C. 6323(a) until they exhaust any additional military leave under 5 U.S.C. 6323(b) that is available to use.
- The amount of the reservist differential depends solely on the amount of civilian basic pay, while the payment for military leave may reflect additional types of civilian pay.

C Projected Civilian Basic Pay

The servicing Human Resources Office (SHRO) **must**:

- determine the projected gross amount of civilian “basic pay” that would otherwise have been payable to an employee for each pay period within a qualifying period if the employee’s civilian employment had not been interrupted by military active duty
- Note:** Only “basic pay” as defined in OPM guidance is considered.
- adjust an employee’s projected rate of basic pay as it would have been adjusted (with reasonable certainty), but for the interruption of military active duty. This would include general increases, locality pay increases, and within-grade increases (based on longevity and acceptable performance).

Note: Adjustments could also include certain career-ladder promotion increases and performance-based basic pay increases, if the reasonable certainty standard is met.

D Military Pay and Allowances

The employee-reservist **must** provide his or her SHRO with a copy of his monthly military leave and earnings statement (LES) for each affected month. Based on those statements, the SHRO **must** determine the actual paid gross amount of military pay and allowances allocable to each pay period in a qualifying period. A definition of “military pay and allowances” is included in OPM guidance. Military pay and allowances are payable on a monthly basis.

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2 Regulations and Procedures (Continued)

E Computing Differentials

For each civilian pay period, SHRO **must** compare the projected civilian basic pay to the allocated military pay and allowances.

IF the...	THEN...
allocated military pay and allowances are greater than or equal to the projected civilian basic pay	no reservist differential is payable for that pay period.
projected civilian basic pay is greater than the allocated military pay and allowances	the difference represents the unadjusted reservist differential.

The reservist differential is **not** payable for periods during which the employee is receiving civilian basic pay for performing work, using civilian paid leave, or other paid time off. The unadjusted reservist differential **must** be adjusted (reduced) to take into account any paid hours (paid work or paid time off). SHRO **must** follow the adjustment methodology prescribed by OPM in its guidance.

F Payment

The reservist differential **must** be paid from the same appropriation or fund that would have been used to pay the employee's civilian salary, but for the interruption to perform military active duty. Reservist differentials should be paid at the same frequency as regular civilian salary payments (for example, generally on a biweekly basis).

The reservist differential is **not** basic pay for any purpose. The reservist differential is considered to be pay for the purposes of various other laws governing Federal employee compensation (for example, laws governing salary offset for debt collection, waiver of overpayments, garnishment, and back pay). However, the reservist differential will **not** be counted as part of aggregate compensation in applying the aggregate pay limit in 5 U.S.C. 5307.

2 Regulations and Procedures (Continued)

G Taxability

IRS has given OPM the following guidance about the treatment of reservist differentials paid under 5 U.S.C. 5538 for Federal tax purposes. Reservist differentials are:

- taxable income for Federal income tax purposes
- treated as wages for Federal income tax withholding purposes, regardless of the length of the active duty

Note: Reservist differentials shall be reported as wages in Form W-2, box 1, and in Form 1040, line 7.

- not subject to the Federal Insurance Contributions Act (FICA) (Social Security and Medicare) taxes, if those differential payments are paid for periods of active duty of more than 30 calendar days
- subject to FICA taxes, if those differential payments are paid for periods of active duty of 30 calendar days or less.

3 Implementation for SHRO's

A Identifying Civilian Employees Who Are Reservists

Notify employees who are or may be members of the Reserve or National Guard who **are not currently on active duty** about the reservist differential authority. Request that such employee-reservists provide the appropriate Agency contact point with copies of any pending military orders or notification of future active duty service, if known, as soon as possible after they receive the orders or notification so that the Agency can determine whether the employee is potentially eligible for a reservist differential.

Identify employees **on active duty** by searching Agency human resources or payroll systems. For example, search applicable database systems to identify employees covered by Nature of Action Code (NOAC) 473, "LWOP" that has **not** been cancelled by NOAC 292, "Return to Duty" (RTD), before March 15, 2009. Notify the identified employee-reservists on active duty about their possible eligibility for a reservist differential.

Request the identified employee-reservists to send the appropriate human resources specialist a copy of their military orders for the active duty service period as soon as possible so that the Agency can determine their eligibility for a reservist differential.

3 Implementation for SHRO's (Continued)

B Reviewing Military Orders of Each Affected Employee-Reservist

Review the military orders of each affected employee-reservist to determine whether the active duty call or order meets the applicable eligibility conditions under 5 U.S.C. 5538. The active duty call or order **must** have been made under 1 of the covered provisions under 10 U.S.C. 331, 332, 333, 688, 12301(a), 12302, 12304, 12305, or 12406 and the employee **must** be entitled to reemployment rights under USERRA. Additional information on the eligibility conditions is found in OPM's policy guidance at www.opm.gov/reservist/.

After reviewing the military orders, notify each employee-reservist whether he or she meets the eligibility requirements for coverage under the reservist differential provision. If an employee does not meet the applicable eligibility requirements, he or she is not eligible for a reservist differential and there is no need to gather any further information.

If an Agency has questions about the information on a military order, the Agency must contact the employee-reservist. The employee-reservist may need to contact the military unit that issued the order for additional information.

C Obtaining Military LES's

SHRO shall obtain monthly military LES's for each affected employee-reservist, as follows.

- For employees **not** currently on active duty who have received qualifying military orders or are anticipating receipt of such orders, **before** active duty commences, inform eligible employee-reservists that they will need to be prepared to provide the Agency with a copy of each of their monthly military LES's during the qualifying period of active duty service.

Note: Copies of military LES's should be provided to SHRO as soon as possible after they are issued so as not to delay the Agency determination of the individual's reservist differential entitlement, if any.

- For employees already on active duty **before** Agency initial implementation of the reservist differential program, request eligible employee-reservists to provide the Agency with a copy of each of their monthly military LES's for the time period between March 15, 2009, and the current date.
- Reservists can review their monthly military LES's online at <https://mypay.dfas.mil> and save the file which can be emailed to SHRO.

Note: Employees should follow Agency security procedures to protect PII on LES's (for example, encrypting e-mail).

- If an Agency has questions about the information on a monthly military LES, the Agency must contact the employee-reservist, and the employee-reservist may need to contact the military unit that issued the order for additional information.

3 Implementation for SHRO's (Continued)

D Obtaining Additional Information

SHRO shall obtain information on the employee-reservist's civilian tour of duty and civilian leave use during the qualifying period of active duty service, as follows:

- determine the employee-reservist's civilian tour of duty established for leave usage purposes from agency payroll records
- gather information on the amount of civilian leave, including military leave, annual leave, or other paid time off the employee-reservist takes, if any, for each civilian biweekly pay period during the qualifying period of active duty.

Note: Civilian leave use information may be obtained from the employee-reservist's civilian payroll records.

E Determining Employee-Reservist's Civilian Basic Pay

Determine the employee-reservist's initial rate of civilian basic pay in effect at the beginning of the qualifying period of active duty service. The initial civilian basic pay may be obtained from the employee-reservist's human resources or payroll records.

For each pay period during the qualifying period of active duty service, determine the employee-reservist's projected civilian basic pay (for example, when the employee-reservist would have been due a within-grade increase or other basic pay increase during the qualifying period, but for the interruption caused by the call to active duty). Information on determining projected basic pay may be obtained from the employee-reservist's human resources or payroll records and Agency policies for determining an employee's rate of basic pay after reemployment under USERRA.

3 Implementation for SHRO's (Continued)

F Processing Guidance

SHRO's shall see NFC Bulletin Title I, 10-7, "Reservist Differential Payments Processed in the Web-Based Special Payroll Processing System (SPPS Web)" available at http://i2i.nfc.usda.gov/Publications/All_Title_1/title1-10-7.pdf for processing instructions.

G Programming Changes

The following changes were been made effective pay period 10:

- a new Authority Code QRD will be available to be used as the 2nd Authority Code with NOAC 473/Q3K and NOAC 292/Q3K
- the literal for NOAC 473 is being updated to reflect "Absent-Uniformed Service"
- a new OPM rule is being incorporated when using NOAC 460, "LWOP-NTE", with Authority Code DAM for uniformed service members, to allow for using Remark Code B66, when the employee does not have USERRA rights
- Remark Code 52M, "free-form remark", shall be used when entering contingency operations when it is used as the 3rd Authority Code.

H Edits

The new NOAC and Authority Code combination of 473/Q3K/QRD will have the same edits as the current NOAC and Authority Code combination of 473/Q3K.

I History Correction (HCUP) Packages

SHRO's are responsible for processing their own HCUP packages from Pay Period 7 through Pay Period 9 to insert the QRD Authority Code for employees eligible for reservist differential.

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3 Implementation for SHRO's (Continued)

J FEHB and FEGLI

The following table reflects the combinations of NOAC, Authority, 2nd Authority, and Remarks Codes that should be used to correctly document employee FEHB and FEGLI payment considerations.

NOAC/Authority	Payment for FEHB	Remarks Codes Used	Current Employee Status (CES) Code Generated
NOAC 473 Authority Code Q3K 2nd Authority QRD	Employees will be billed for their portion of FEHB.	Remarks Code B66, "Continuation of FEHB" Remarks Code B76, "Continuation of FEGLI"	9
	Agency pays the employee portion of FEHB	Remarks Code 52M	1
	Employees will be billed for their portion of FEHB.	Remarks Code MIL, "Military" Remarks Code 52M	9
NOAC 460, "LWOP-NTE " Authority Code DAM	Employees will be billed for their portion of FEHB.	Remarks Code B66, "Continuation of FEHB" Remarks Code B76, "Continuation of FEGLI"	
NOAC 292, "RTD" Authority Code Q3K 2nd Authority QRD			0

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3 Implementation for SHRO's (Continued)

K Contact Information

Employee-reservists should contact their employing Agency SHRO if they have any questions/.

Note: SHRO for FSA State and County Office employees is the State Office, for all other FFAS employees it is HRD.

If there are any questions about this notice, supervisors may contact the appropriate SHRO according to the following. If SHRO has any questions about the policy of this notice, contact Lisa Flores by telephone at 202-401-0516.

IF located in...	THEN contact...
FAS	either of the following: <ul style="list-style-type: none"> • Audrey Armstrong by telephone at 202-401-0167 • Sheila Campbell by telephone at 202-401-0145 <p>Note: 202-205-9057 (TTY).</p>
<ul style="list-style-type: none"> • FSA Kansas City Field Offices • FSA or RMA Kansas City Offices 	any of the following: <ul style="list-style-type: none"> • Vickie Schofield by telephone at 816-823-3006 • Debbie Rogers by telephone at 816-926-6148 • Michael Wheeler by telephone at 816-823-1895 • Jeana Nolan by telephone at 816-926-2829. <p>Note: 202-205-9057 (TTY).</p>
FSA or RMA Washington, DC, Office	either of the following: <ul style="list-style-type: none"> • Jeana Nolan by telephone at 816-926-2829 • Michael Wheeler by telephone at 816-823-1895. <p>Note: 202-205-9057 (TTY).</p>
State or County Office	State Office administrative officer.