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DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT

HUMAN REOURCSES (HR) BULLETIN #067, FY 07, (5 CFR Part 550)

SUBJECT: Timeframes for Use of Compensatory Time Off Earned in Lieu of Irregular or Occasional Overtime Worked

EFFECTIVE DATE: Effective immediately upon issuance of this HR Bulletin and retroactive to May 14, 2007

EXPIRATION DATE: Effective until canceled or superseded

REVISES/SUPERCEDES: Revises Title 5 Code of Federal Regulations (CFR) § 550.114(d), § 550.114(f), § 551.531(d), § 551.531(e) and § 551.531(f). Supercedes Departmental policy guidance[1] issued on the earning and use of compensatory time in lieu of overtime for Schedule C employees above the General Schedule (GS) grade 12 level.

BACKGROUND: In January 2005, the Office of Personnel Management (OPM) proposed revisions to a number of pay and leave policies to support the consolidation of agency human resources and payroll/personnel processing systems. This effort will standardize the Government-wide retention period for accrued and accumulated compensatory time off for all agencies covered under Title 5.

PURPOSE: The purpose of this HR Bulletin is to provide updated policy guidance on the timeframes for use of accrued and accumulated compensatory time off earned in lieu of irregular or occasional overtime worked.

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[1] In accordance with a memorandum issued to all Department of Commerce Operating Units (by the Secretary's Chief of Staff on October 20, 2003), Schedule C employees above the GS 12 grade level may not earn overtime or compensatory time off in lieu of irregular or occasional overtime. Schedule C employees at the GS 12 grade level may only earn compensatory time for hours worked in excess of the basic work week; they may not be paid for overtime. Schedule C employees at the GS 11 grade level and below may be paid for overtime hours worked or, at the employee's request, may earn compensatory time in lieu of overtime.

COVERAGE: The provisions of this HR Bulletin apply to all employees, whether exempt or nonexempt from the Fair Labor Standards Act (FLSA), who are covered by the definition of "employee" at 5 U.S.C. 5541(2) and "prevailing rate employees," as defined at 5 U.S.C. 5342(2).

DELEGATION OF AUTHORITY: In accordance with current delegated authority, Heads of Operating Units have the discretionary authority to determine whether accrued and accumulated compensatory time off in lieu of overtime balances that are unused after the required timeframe(s) will be paid to a *FLSA-exempt* employee as a lump-sum payment or forfeited. Also, since each accrual of compensatory time off creates an operating unit liability, Heads of Operating Units that have not already done so may want to establish an upper limit or cap on the number of compensatory time off hours that may be accrued to further limit their financial liability. Heads of Operating Units are to communicate their final policy decision on the payment or forfeiture of any unused compensatory time balances for FLSA-*exempt* employees and maximum caps on compensatory time off hours that may be accrued to the Department's Program Manager (see below).

POLICY: The following applies to all compensatory time off earned in lieu of irregular or occasional overtime worked.

1. An employee who earns compensatory time off in lieu of irregular or occasional overtime effective May 14, 2007, or later, must use the compensatory time off no later than 26 pay periods *after the pay period* in which it was earned and reported on the time and attendance (T&A) report.

2. An employee who has compensatory time off earned prior to May 14, 2007, must use the compensatory time off by the end of the pay period ending three years after May 14, 2007, unless excepted (see number 5 below) due to an exigency of the public service.

3. An employee who is *FLSA-exempt* and who: (a) fails to use accrued and accumulated compensatory time off within the required 26 pay period or the 3-year timeframes; or (b) transfers to another agency or separates from federal service before the expiration of the 26 pay period or the 3-year timeframes must:

   (a) Receive payment for the unused compensatory time in an amount equal to the amount of overtime pay the employee would otherwise have received for hours of the pay period during which compensatory time off was earned by performing overtime work; or
   (b) Forfeit the unused compensatory time off.

   A *FLSA-exempt* employee with unused compensatory time off who separates from the federal service or is placed in leave without pay (LWOP) under the following circumstances, must be paid for the unused compensatory time at the dollar value prescribed in paragraph 3(a) above:

(a) To perform service in the uniformed services (as defined under 38 U.S.C. 4303 and § 353.102); or
(b) Due to an on-the-job injury with entitlement to injury compensation (under 5 U.S.C. Chapter 81).

4. An employee who is *FLSA-nonexempt* and who: (a) fails to use the compensatory time off within the required 26 pay period or the 3-year timeframes; (b) transfers to another agency or separates from federal service before the expiration of the 26 pay period or the 3-year timeframes; or (c) separates from the federal service or is placed in LWOP to perform service in the uniformed services (as defined under 38 U.S.C. 4303 and § 353.102) or due to an on-the-job injury with entitlement to injury compensation (under 5 U.S.C. Chapter 81) must receive payment for the unused compensatory time off.

   Payment for the unused compensatory time must be in an amount equal to the amount of overtime pay the employee would otherwise have received for hours of the pay period during which compensatory time off was earned by performing overtime work. Servicing human resources offices (SHROs) are responsible for processing all payments for expired compensatory time via a lump-sum payment.

5. If failure to use the compensatory time off is due to an exigency of the service beyond the employee's control, the employee must receive payment for the unused compensatory time off.

6. Schedule C employees who are eligible to earn compensatory time off in lieu of overtime must adhere to the timeframes indicated in number 3 above or forfeit the unused compensatory time.

PROCESSING PROCEDURES: Information on the processing and treatment of compensatory time off earned in lieu of irregular or occasional overtime is available via the National Finance Center's (NFC) Bulletin TRAINST 07-01, Office of Personnel Management Changes, issued on May 29, 2007 (available on NFC's Home Page, under Pubs & Forms, at http://www.nfc.usda.gov/).

In accordance with the above referenced NFC bulletin, compensatory time off used in pay period 10, 2007, or later will automatically be subtracted from the oldest balance (or rate record) in the NFC database. Thus, if a bureau elects to have compensatory time off applied to the newest balance, the NFC database will have to be adjusted via TINQ. Specifically, SHROs will have to subtract compensatory time off from the applicable current year's rate record and add to the grandfathered (or oldest) rate record. For this reason and since the NFC will not notify bureaus or employees when the forfeiture of compensatory time balances will occur, SHROs must closely monitor the NFC database compensatory time balances. To assist in this effort, FOCUS report LOOPCOMP

(available in the NOAA FOCUS Library) may be run for one or more pay periods to track the compensatory time and is set-up to download into Excel.

WebTA will be modified to provide e-mail and task notification to employees and supervisors when the forfeiture of compensatory time off has occurred. Separate detailed processing guidance and notification of the webTA update will be issued to bureau counterparts under separate cover.

REFERENCES: Revises 5 CFR § 550.114(d), § 550.114(f), § 551.531 (d), § 551.531(e) and § 551.531(f), and Federal Register, Volume 72, No. 5072 (dated March 15, 12007).

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