



**SECRETARY OF DEFENSE
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OCT 5 2013

MEMORANDUM FOR THE DEPUTY SECRETARY OF DEFENSE
SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
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DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Guidance for Implementation of Pay Our Military Act

Appropriations provided under the Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6) expired at midnight on Monday, September 30, 2013. Hours before that occurred, the Congress passed and the President signed the Pay Our Military Act. That Act provides appropriations for specified purposes while interim or full-year appropriations for fiscal year 2014 are not in effect, as is currently the case.

First, the Act appropriated such sums as are necessary to provide pay and allowances to members of the Armed Forces, "including reserve components thereof, who perform active service during such period[.]" This provision provides the Department with the funds necessary to pay our military members (including Reserve Component members) on active duty or full-time National Guard duty under Title 32, U.S. Code.

Second, the Act appropriated such sums as are necessary to provide pay and allowances to contractors of DoD who the Secretary determines are providing support to members of the Armed Forces in active service. The Department's lawyers are analyzing what authority is provided by this provision.

Third, the Act appropriated such sums as are necessary to provide pay and allowances to the civilian personnel of the Department of Defense "whom the Secretary ... determines are providing

support to members of the Armed Forces" performing active service during such period. The term "pay and allowances" includes annual leave and sick leave.

This Memorandum provides instructions for identifying those civilian personnel within the Department who "are providing support to members of the Armed Forces" within the meaning of the Act. The responsibility for determining which employees fall within the scope of this statute resides with the Military Department Secretaries and Heads of other DoD Components, who may delegate this authority in writing. This guidance must be used in identifying these employees. The guidance does not identify every activity performed by DoD's large civilian workforce, but rather it provides overarching direction and general principles for making these determinations. It should be applied prudently, and in a manner that promotes consistency across the Department.

The Department of Defense consulted closely with the Department of Justice, which expressed its view that the law does not permit a blanket recall of all civilians. Under our current reading of the law, the standard of "support to members of the Armed Forces" requires a focus on those employees whose responsibilities contribute to the morale, well-being, capabilities, and readiness of covered military members during the lapse of appropriations. I have determined that this standard includes all those who are performing activities deemed "excepted" pursuant to the "CONTINGENCY PLAN GUIDANCE FOR CONTINUATION OF ESSENTIAL OPERATIONS IN THE ABSENCE OF AVAILABLE APPROPRIATIONS, SEPTEMBER 2013" because these support activities are felt directly by covered members of the Armed Forces. I want to make it clear that every DoD employee makes an essential contribution to the Department's ability to carry out its mission of defending the Nation. However, under this Act, we must determine who provides support to the *members* of the Armed Forces in active service, in a way that respects Congress's specific appropriation.

There are two distinct categories of civilian employees who fall within the scope of this statutory provision, in addition to those performing excepted activities. The first category includes those employees whose responsibilities provide support to service members performing active service and their families on an ongoing basis. The second category consists of those employees whose responsibilities contribute to sustaining capabilities and Force Readiness and which, if interrupted by the lapse in appropriations, will impact service members' ability to conduct assigned missions in the future. To fall within this second category, there must be a causal connection between the failure to perform the activity during the duration of an appropriations lapse and a negative impact on military members in the future. In other words, if the activity is not performed over the duration of an appropriations lapse, would it be possible to identify a negative impact that will be felt by military members at some time in the future? In undertaking this analysis, it should be assumed that regular appropriations will be restored within the near term.

Examples of activities that provide support to service members on an ongoing basis are:

- i) Health Care Activities and Providers;
- ii) SAPRO, Behavioral Health, and Suicide Prevention Programs;
- iii) Transition Assistance Programs for Military Members in active service;
- iv) Family Support Programs and Activities;

- v) Activities related to the repair and maintenance of weapons systems and platforms at the Operational and Intermediate level;
- vi) Training Activities associated with military readiness;
- vii) Supply Chain Management activities in support of near term Force Readiness;
- viii) Human Resource Activities associated with organizing, equipping, manning and training functions;
- ix) Installation Support and Facilities maintenance;
- x) Commissary operations;
- xi) Payroll activities;
- xii) The provision of guidance or advice to military members when such guidance or advice is necessary for the military members to execute their functions (*e.g.*, legal advice); and
- xiii) Necessary support for all activities listed above, including legal, human resources, engineering, and administrative support.

Examples of activities that contribute to capabilities and sustaining force readiness and that, if interrupted, would affect service members' ability to conduct assigned missions in the future include:

- i) Acquisition Program oversight and management (including inspections and acceptance), financial management, contract, logistics, and engineering activities, which support long term readiness;
- ii) Activities related to the repair and maintenance of weapons systems and platforms at the Depot level;
- iii) Supply chain management activities in support of long-term force readiness;
- iv) Intelligence functions;
- v) Information Technology functions; and
- vi) Necessary support for all activities listed above determined to be within the scope of the Act, including legal, human resources, engineering, and administrative support.

Employees performing these activities are within the scope of the Act only if a delay in the performance of these activities over the duration of a lapse in appropriations would have a negative impact on members of the Armed Forces in the future. Delays in the availability of new or repaired equipment would be one such impact.

Those employees of the Department who do not fall within the scope of the Act (unless they have been determined to be "excepted" and unless engaged in activities that support service members) include:

- i) CIO functions;
- ii) DCMO functions, at the OSD and Component level;
- iii) Legislative Affairs and Public Affairs functions not previously excepted or required in support of internal communications to members of the Armed Forces in active service;
- iv) Auditor and related functions, not previously excepted, and DFAS functions that otherwise would not be determined to be "excepted" upon exhaustion of its working capital fund budgetary resources, and not required to process payrolls;

- v) Work done in support of non-DoD activities and Agencies (except the U.S. Coast Guard); and
- vi) Civil works functions of the Department of Army.

As I stated above, all DoD employees perform work that is critical to the long-term strength of our Armed Forces, and our Nation. ■ fervently hope that the time will be short until I can recall all employees of the Department of Defense back to the vital work that they do helping to defend this Nation and secure our future. I will continue to explore all possibilities to this end. Those falling outside the scope of the Act include men and women who have devoted their lives to service of this country, and whose work on our behalf and on behalf of the Nation is enormously valuable and critical to the maintenance of our military superiority over the long term.

The Act provides appropriations for personnel; it does not provide appropriations for equipment, supplies, materiel, and all the other things that the Department needs to keep operating efficiently. While the Act permits the Department to bring many of its civilian employees back to work, and to pay them, if the lapse of appropriations continues, many of these workers will cease to be able to do their jobs. Critical parts, or supplies, will run out, and there will be limited authority for the Department to purchase more. If there comes a time that workers are unable to do their work, I will be forced once again to send them home.

Within the Office of the Secretary of Defense, the Under Secretary of Defense (Comptroller) will take the lead in overseeing the implementation of this guidance, assisted by other offices as necessary. Thank you all for your strong leadership at a very difficult time. The President, the country and I are all grateful for and depend on your leadership, courage, and commitment to our troops, their families and our country.

Thank you!

*Asok
Hess*

cc:
Director of National Intelligence