

D.C. DEPARTMENT OF HUMAN RESOURCES**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director, D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title XI of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-611.01 *et seq.*) (2001), as amended on an emergency basis by the Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Congressional Review Emergency Amendment Act of 2007, effective January 16, 2007 (D.C. Act 17-02, 54 DCR 1436, February 16, 2007), and any similar succeeding legislation (jointly referred to as the "Act"), hereby gives notice of the adoption of the following emergency rules. The Act continues the authorization for the pay differential to District government employees called to active duty from reserve units of the United States Armed Forces as a result of Operation Enduring Freedom, or in preparation for or as a result of Operation Iraqi Freedom; and requires that rules be issued to implement its provisions. Because the emergency rules on the pay differential effective November 20, 2006 and published in the *D.C. Register* at 54 DCR 736 (January 26, 2007) have expired; to ensure the welfare of the public; and communicate the provisions of the Act to the public and affected employees, action was taken on April 3, 2007 to adopt the following rules on an emergency basis effective April 3, 2007, to add a new section 1155 to Chapter 11, Classification and Compensation, of Title 6 of the District of Columbia Municipal Regulations, implementing the provisions of the Act. These rules will remain in effect for up to one hundred twenty (120) days from April 3, 2007, unless earlier superseded by another rulemaking notice.

The Director, D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title XI of the CMPA, as amended on an emergency basis by the Act, hereby gives notice of the intent to adopt the following rules in not less than thirty (30) days from the publication of this notice in the *D.C. Register*. The Act continues authorization for the pay differential to District government employees called to active duty from reserve units of the United States Armed Forces as a result of Operation Enduring Freedom, or in preparation for or as a result of Operation Iraqi Freedom; and requires that rules be issued to implement its provisions. These rules would amend Chapter 11, Classification and Compensation, of Title 6 of the District of Columbia Municipal Regulations, to add a new section 1155 implementing the provisions of the Act. Upon adoption, these rules will amend Chapter 11, Classification and Compensation, of Title 6 of the DCMR, published at 28 DCR 2318 (May 22, 1981), and amended at 29 DCR 1225 (March 19, 1982), 37 DCR 6361 (October 5, 1990), 39 DCR 2072 (March 27, 1992), 47 DCR 2421 (April 7, 2000), 48 DCR 4179 (May 11, 2001), 48 DCR 5004 (June 1, 2001), 52 DCR 934 (February 4, 2005), and 52 DCR 2729 (March 18, 2005).

CHAPTER 11**CLASSIFICATION AND COMPENSATION**

A new section 1155 is added to read as follows:

**1155 OPERATION ENDURING FREEDOM AND OPERATION IRAQI FREEDOM
PAY DIFFERENTIAL**

- 1155.1 (a) Any full-time permanent employee, term employee, or an employee on a Temporary Appointment Pending Establishment of a Register (TAPER) who serves in a reserve component of the armed forces and who has been ordered to active duty, or was retained for duty as a result of Operation Enduring Freedom, or in preparation for a potential conflict with Iraq, or as a result of Operation Iraqi Freedom, shall be entitled to apply for and receive, or continue to receive, as applicable, a pay differential to compensate the employee for any difference between the employee's District government basic pay and basic military pay.
- (b) For the purposes of this section, the phrase "any full-time permanent employee, term employee, or an employee on a Temporary Appointment Pending Establishment of a Register (TAPER)" in section 1151.1 (a) of this section, shall include at-will employees.
- 1155.2 An employee as described in section 1155.1 of this section shall not be required to be released from active duty before making application for and receiving the pay differential. However, if the employee has not been released from active duty when he or she makes application for the pay differential, the employee shall provide all documentation required in section 1155.9 of this section, except that in lieu of providing a copy of the military orders releasing the employee from active duty, the employee shall provide a letter from his or her commanding officer attesting to the fact that the employee, as of the date of application for the pay differential, is still in an active duty status.
- 1155.3 A pay differential received pursuant to this section shall not be considered basic pay for any purpose.
- 1155.4 Any eligible employee, upon making application for the pay differential and upon approval of the application by his or her department or agency head, shall receive a pay differential that equals the difference between the employee's District government basic pay reduced by the employee's basic military pay.
- 1155.5 The estate of any eligible employee who has been killed while in active duty or who is missing in action as a result of active duty shall be eligible to collect any pay differential to which the employee would have been entitled upon making application on behalf of the employee and upon approval of the application by the employee's department or agency head.
- 1155.6 The period of entitlement to the pay differential shall not exceed:
- (a) The period following the formal inception of Operation Enduring Freedom through the date the employee is released from active duty occasioned by Operation Enduring Freedom; or

- (b) The period following the formal inception of the preparations for a potential conflict with Iraq and the period following the formal inception of Operation Iraqi Freedom through the date the employee is released from active duty occasioned by, the preparation for, or, Operation Iraqi Freedom.

- 1155.7 The pay differential shall not be payable for any period following the employee's release from active duty and the employee's return to his or her District government position.
- 1155.8 The pay differential shall not be payable for any days for which the employee received pay by reason of any annual leave, military leave, compensatory time, or any other form of paid leave taken by the employee.
- 1155.9 In making application for the pay differential, the employee shall:
- (a) Provide a copy of the military orders activating the employee for full-time active military service for the Operation Enduring Freedom conflict, or, in preparation for, or, as a result of, the Operation Iraqi Freedom conflict;
 - (b) Provide a copy of the military orders releasing the employee from full-time active military service for the Operation Enduring Freedom conflict, or, for the preparation for, or, the Operation Iraqi Freedom conflict; and
 - (c) Provide all military pay documentation required to calculate the differential amount.
- 1155.10 A pay differential under this section shall be paid by the agency that last employed the eligible employee before the employee was ordered to active duty as specified in section 1155.1 of this section, out of the agency's funds or appropriations then currently available for salaries and expenses.

1155.99 DEFINITIONS

Active duty – full-time duty in the active military service of the United States for the Operation Enduring Freedom conflict, or, in preparation for, or, for the Operation Iraqi Freedom conflict.

Armed forces – has the meaning prescribed in 10 U.S.C. § 101 (a)(4).

Basic military pay – the basic pay under 37 U.S.C. § 204.

Basic pay – the employee's scheduled rate of pay plus any additional pay that is defined as basic pay for annuity computation purposes in the retirement system in which the employee is a participant.

Employee – any full-time permanent employee, term employee, or an employee on a TAPER appointment who serves in a reserve component of the United States Armed Forces and who has

been called to active duty as a result of the Operation Enduring Freedom conflict, or in preparation for, or as a result of the Operation Iraqi Freedom conflict.

Operation Enduring Freedom – the period encompassed within Executive Order 13223 Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, effective September 14, 2001, and amended by Amendment to Executive Order 13223, effective January 16, 2002 and ending on the date the employee is released from active duty occasioned by Operation Enduring Freedom.

Operation Iraqi Freedom – the period encompassed within the Joint Resolution entitled Authorization for Use of Military Force Against Iraq Resolution of 2002, approved October 16, 2002 (P.L. 107-243) and ending on the date the employee is released from active duty occasioned by Operation Iraqi Freedom.

Reserve component – has the meaning prescribed in 37 U.S.C. § 101 (24).

Comments on these proposed regulations should be submitted, in writing, to Ms. Brender L. Gregory, Director, D.C. Department of Human Resources, 441 4th Street, N.W., Suite 300S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed regulations are available from the above address.