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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON D.C. 20548

B-203203

November 2, 1981

The Honorable Donald J. Devine  
Director, Office of Personnel  
Management

Dear Mr. Devine:

This is in response to your letter of April 24, 1981, requesting our comments on proposed Federal Personnel Manual (FPM) Letter 630- , Military Leave, Reserves and National Guardsmen. The proposed letter is in the form of questions and answers and is presented to us for comment because of the changes in 5 U.S.C. 6323(a) resulting from the enactment of Public Law 96-431, October 1, 1980, 94 Stat. 1850.

Public Law 96-431 amended the existing law by providing that military leave would accrue on a fiscal year basis at the rate of 15 days per fiscal year and that accrued but unused leave could be carried into the succeeding fiscal year not to exceed 15 days at the beginning of a fiscal year. The legislation also provides that part-time career employees are entitled to accrue leave on a prorated basis.

Rather than comment on each specific question and answer in the proposed letter, we feel that general comments on those aspects of the amendment that are of concern to us will be of more overall benefit. Generally, any matters discussed in the questions and proposed answers which are not referred to in this letter may be viewed as having our agreement.

Section 6323 of title 5, United States Code, as amended, provides as follows:

"(a)(1) Subject to paragraph (2) of this subsection, an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, is entitled to leave without loss in pay, time, or performance or efficiency rating for active duty or engaging in field or coast defense training under sections 502-505 of title 32 as a Reserve of the armed forces or member of the National

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Guard. Leave under this subsection accrues for an employee or individual at the rate of 15 days per fiscal year and, to the extent that it is not used in a fiscal year, accumulates for use in the succeeding fiscal year until it totals 15 days at the beginning of a fiscal year.

"(2) In the case of an employee or individual employed on a part-time career employment basis (as defined in section 3401(2) of this title), the rate at which leave accrues under this subsection shall be a percentage of the rate prescribed under paragraph (1) which is determined by dividing 40 into the number of hours in the regularly scheduled workweek of that employee or individual during that fiscal year."

Prior to the amendment of 5 U.S.C. 6323 by Public Law 96-431, military leave was granted for up to 15 days per calendar year. Furthermore a full-time employee was granted 15 days of military leave at the time of his appointment and there was no carryover provision to the succeeding calendar year of any military leave not used in a calendar year. Congress did not provide for any transition period in changing from the calendar year to a fiscal year. As a result those employees who had not used all 15 days of military leave by October 1, 1980, were not entitled to carry over the unused leave into fiscal year 1981. Under the new law, the first time an employee may carry over unused military leave is from fiscal year 1981 to fiscal year 1982. See 40 Comp. Gen. 231 (1960).

Public Law 96-431 provides that military leave accrues at the rate of 15 days per fiscal year for full-time employees. While some confusion may occur because of the use of the term "accrue," it is our view that the Congress did not intend to change the way in which military leave is credited. A full-time employee is entitled to 15 days' leave at the beginning of the fiscal year or whenever he or she is appointed to a full-time position during the fiscal year. Any military leave not used during the fiscal year may be carried over to the succeeding year, not to

exceed 15 days. Military leave is not prorated for a full-time employee.

At the time Public Law 96-431 was enacted, many agencies were unaware of the passage of the Act. As a result, certain employees who had used military leave in calendar year 1980, prior to October 1, 1980, and were called to military duty between October 1, 1980, and the end of the calendar year, were charged with annual leave or leave without pay. Since these full-time employees should have been credited with 15 days of military leave commencing October 1, 1980, they should not necessarily have been charged annual leave or leave without pay. Thus, employees who were charged with leave should be made aware of their entitlement to military leave and if they request an adjustment in their leave accounts it should be granted. Agencies should take appropriate actions to make these employees aware of this entitlement. See 41 Comp. Gen. 320, 326 (1961).

It should be pointed out that only full-time employees are to be credited with 15 days' military leave as of October 1 of each fiscal year or upon first appointment in the fiscal year. Part-time employees are only eligible to a prorated share of 15 days based on the number of hours in the regularly scheduled workweek.

Temporary indefinite employees (who are entitled to military leave) include employees with temporary appointments of 1 year or more. Your response explains that employees with temporary appointments of 1 year or more are entitled to military leave, but employees with temporary appointments of less than 1 year are not. No mention is made of employees with temporary appointments not to exceed 1 year. The response should be clarified to include employees with temporary appointments not to exceed 1 year in the category of those employees who are not entitled to military leave.

A temporary indefinite employee's entitlement to military leave was added to military leave laws by section 4 of the Act of July 1, 1947, 61 Stat. 239. In explaining the purpose of this provision Congress said:

"In the past, temporary indefinite employees, who might work for many years for the Government, were not entitled to

such leave. This bill permits permanent and temporary indefinite employees to receive military leave. It excludes, however, the purely temporary employees, who are those employed for a definite tour of duty for periods of less than 1 year \* \* \*."

S. Rept. No. 327, p. 2, 80th Congress, to accompany H.R. 1845, which became the Act of July 1, 1947.

In light of this provision our decisions have held that employees given temporary appointments limited to 1 year or less are not entitled to military leave. See 46 Comp. Gen. 72 (1966), B-173997, June 19, 1972, and B-128761, August 9, 1956.

The legislative history of the provision which gives military leave to part-time employees explains that the provision was intended to bring the regular benefits for part-time Federal employees in line with the benefits of full-time personnel, and is consistent with the intent of the Federal Employees Part-Time Career Employment Act of 1978 (Pub. Law 95-437, October 10, 1978, 92 Stat. 1056). This Act extended to part-time career employees the benefits of the Civil Service Retirement System, Federal Employees Group Life Insurance, and the health benefits program. However, in light of the fact that military leave is charged on a calendar day basis, the intent to provide the same benefits as are provided for employees who work a full schedule is not fully realized. Under the new provision an employee who works 20 hours per week is entitled to 7-1/2 days of military leave. That employee may serve 2 weeks on active duty during the year, yet must charge annual leave or leave without pay for every day he or she is on active duty in excess of 7 days. We do not believe this is consistent with the purpose for which military leave is authorized. Comparable benefits for part-time employees would permit a part-time employee to serve on active duty training for the full 15-day period without loss of pay or time from his civilian employment.

Regarding the formula for computing military leave for part-time employees the number of hours in the regularly scheduled workweek of the employee is divided by 40. The resulting fraction is applied to 15 days. This sometimes results in entitlement to a fraction of a day of military leave, even though military leave is charged only in

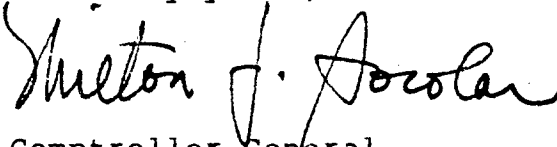
increments of 1 full day. We have no objection to OPM's position that the accrual of military leave by part-time employees can be accomplished in fractions of less than 1 day since the carryover provision would permit an employee to accrue a full day's leave through adding fractional days over a period of years.

A question has arisen as to how military leave should be computed when a part-time employee changes the tour of duty within a fiscal year. OPM proposes to calculate the entitlement at the time the employee is called to duty based on the number of hours in the regularly scheduled workweek at that time. Any days of military leave already used during the fiscal year are subtracted from the days authorized under the current tour of duty to determine the number of days remaining for use. Although other ways of calculating the leave entitlement are possible, the method suggested by OPM appears reasonable. However, in light of existing rules with regard to military leave, existing legislation creates an extremely cumbersome process for the accrual and granting of military leave to part-time employees. Further, that legislation does not appear to result in equal treatment for part-time employees. It is our understanding that OPM believes a legislative change is essential to correct this situation and intends to work towards suggesting such change to Congress.

The proposed letter indicates that when a part-time employee works varied hours each week for several weeks and then repeats the cycle, the number of hours worked in the cycle should be averaged to provide the hours in the regularly scheduled workweek. Then the military leave entitlement can be calculated. It also states that expressing fractions of days as a result of applying the formula for part-time employees is an optional procedure. We feel that the letter should indicate that in computing the military leave entitlement for part-time employees, expressing fractions of days is a mandatory, not optional, procedure.

Subject to the above we have no objections to issuing the FPM Letter as guidance for agencies in administering Public Law 96-431.

Sincerely yours,

*for*   
Comptroller General  
of the United States