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

IN REPLY REFER TO: B-195402 (RCP)

November 7, 1979

Ms. Janice K. Mendenhall
Assistant Administrator for Management,
Policy, and Budget
General Services Administration
Washington, D.C. 20405

AGC00017

Dear Ms. Mendenhall:

[Requirement]

Further reference is made to your letter of July 6, 1979, concerning whether current law requires that pay periods of heads of agencies be monthly rather than biweekly.

Your letter frames the inquiry against the following background information:

"Currently, the General Services Administration (GSA) administers its own payroll system as well as the systems of thirty other agencies under Economy Act agreements, 31 U.S.C. § 686. The Administrator of General Services and the heads of six of the thirty commissions serviced by GSA are paid semimonthly, an approved derivation of monthly pay periods, 47 Comp. Gen. 485 (1968). GSA processes biweekly pay checks by computer and prepares semimonthly pay checks by hand. The Federal Maritime Commission, one of the six commissions whose commissioners are paid semimonthly by GSA, has requested that its commissioners be paid biweekly. If GSA can pay heads of agencies biweekly, GSA will eliminate manual preparation of checks and oblige the Federal Maritime Commission. GSA, however, is reluctant to begin paying all employees biweekly without your express approval. Although the reason that heads of agencies are paid monthly or semimonthly is obscure, it may still be valid."

However, we believe the substance of your inquiry specifically addresses the applicable statutory standards for pay

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computation rather than the function of pay disbursement. In this regard your letter states as follows:

"The significance of whether an individual is paid monthly or biweekly is that the statutes establishing the two pay periods have different rules for converting a year's or month's pay to a fraction with the effect that an individual who takes leave or separates from the civil services in mid-month and who is paid monthly can receive less compensation for service performed than an individual paid biweekly."

Section 5504 of title 5, United States Code, prescribes the method of computing pay for an "employee" as defined therein and provides that any individual who is excluded from the definition of "employee" under 5 U.S.C. 5541(2) likewise is excluded under section 5504. Pursuant to 5 U.S.C. 5541(2)(ii) the "head of an agency other than the government of the District of Columbia," is not deemed to be an "employee" for purposes of that statute. The operative result is that the head of an agency other than the government of the District of Columbia is excluded from coverage under 5 U.S.C. 5504. Also, because heads of agencies are excluded from the provisions of 5 U.S.C. 5504, we have long held that 5 U.S.C. 5505 governs the computation, of their salaries. B-120604, August 30, 1976, citing, 47 Comp. Gen. 485 (1968).

Section 5505, which prescribes the pay computation rules for those individuals whose compensation is not governed by the provisions of section 5504, reads as follows:

"The pay period for an individual in the service of the United States whose pay is monthly or annual covers one calendar month, and the following rules for division of time and computation of pay for services performed govern:

"(1) A month's pay is one-twelfth of a year's pay.

"(2) A day's pay is one-thirtieth of a month's pay.

"(3) The 31st day of a calendar month is ignored in computing pay, except that one day's pay is forfeited for one day's unauthorized absence on the 31st day of a calendar month.

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"(4) For each day of the month elapsing before entering the service, one day's pay is deducted from the first month's pay of the individual.

"This section does not apply to an employee whose pay is computed under section 5504(b) of this title."

In 47 Comp. Gen. 485, supra, we stated that the law as codified (5 U.S.C. 5505) specifies that the pay period for heads of departments and agencies shall be one calendar month and the codification is to be accepted as a correct statement of the law for determining compensation payments. However, we further stated that while an individual paid under 5 U.S.C. 5505 should ordinarily be paid on a monthly basis, an agency may pay him on a semi-monthly basis as long as the actual rate is calculated on the monthly basis. Under this reasoning we have held that there is no legal authority to pay heads of departments and agencies in accordance with the biweekly formula. B-120604, August 30, 1976, supra.

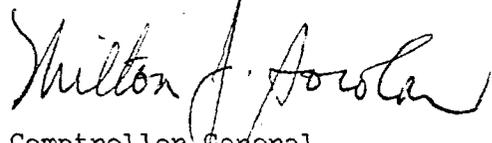
The reasoning above controls the computation of pay in the case of the Federal Maritime Commission. The word "agency" is defined in 5 U.S.C. 5541(1) to mean an "Executive agency" and "Executive agency" is defined in section 105 of title 5 as "an Executive Department, a Government corporation, and an independent establishment." Section 104 of title 5, in turn, defines "independent establishment" as (1) an establishment in the executive branch which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment; and (2) the General Accounting Office.

The Federal Maritime Commission is an independent establishment in the Executive Branch under the direction of five Commissioners appointed by the President by and with the advice of the Senate. An analysis of Reorganization Plan No. 7 of 1961 and Reorganization Plan No. 6 of 1949 indicates that each of the Commissioners is to be regarded as the head of an agency and thus excluded from the application of 5 U.S.C. 5504. See 46 U.S.C. 1111 notes and 36 Comp. Gen. 580 (1957). Therefore the pay of the Commissioners, like the pay of other heads of agencies, is to be computed in accordance with the provisions set forth in 5 U.S.C. 5505; however, administrative payment may continue to be made on a semi-monthly basis in accordance with our decision in 47 Comp. Gen. 485, supra. See B-51218-O.M., April 8, 1974.

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Over the years questions similar to yours have been raised but the Congress has not seen fit to merge or otherwise modify the clearly prescribed methods of pay computation represented by sections 5504 and 5505 of title 5, United States Code. In view of these clearly prescribed statutory requirements this Office has no authority to waive their express provisions nor may we make any exceptions to their application. Therefore, we conclude that there is no legal authority to compute the pay of heads of agencies in accordance with the biweekly scheme contained in 5 U.S.C. 5504, and this Office may not approve any proposed action on the part of the General Services Administration to begin paying all employees on a biweekly basis.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Milton J. Fowler".

For the Comptroller General
of the United States