

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-221651**DATE:** *May 27, 1986***MATTER OF:** Health and Human Services Employees -
Change in Pay Computation Factor**DIGEST:**

Statutory authority to use 2,087 divisor instead of 2,080 divisor for Federal employee pay computation expired September 30, 1985, but several Federal agencies did not convert their payroll systems in anticipation that the 2,087 divisor would be reinstated. Employees of those agencies whose pay was computed based on 2,087 divisor since October 1, 1985, are entitled to backpay for the applicable pay periods from October 1, 1985, to March 1, 1986, when the 2,087 divisor was reimposed by statute.

ISSUE

The issue in this decision involves the failure of the Department of Health and Human Services (HHS) and other agencies to convert their payroll systems to the 2,080 pay computation divisor after the authority to use a 2,087 divisor expired on October 1, 1985. We hold that the employees of HHS and other agencies are entitled to have their pay computed on the basis of the 2,080 divisor from October 1, 1985, until March 1, 1986, when the 2,087 divisor was reimposed by statute. These employees are, therefore, entitled to backpay for this period under authority of the Back Pay Act, 5 U.S.C. § 5596 (1982).

BACKGROUND

This decision is in response to a request from the American Federation of Government Employees, SSA General Committee, concerning the continued use by HHS of the 2,087 pay computation divisor after October 1, 1985, when the statutory authority for such use expired. The union argues such action is without statutory authority. We have subsequently learned that several other Federal agencies failed to convert to the 2,080 divisor after October 1, 1985.

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We requested comments on this matter from HHS. Mr. Thomas S. McFee, Assistant Secretary for Personnel Administration, HHS, responded that, in anticipation that the 2,087 divisor would be restored shortly after October 1, 1985, and perhaps retroactively, HHS decided to delay conversion to the 2,080 divisor. The agency further advises that since the Congress did not soon act on the issue of the divisor, HHS has made preparations to convert to the 2,080 divisor and to pay the employees retroactively for the period from the expiration of the 2,087 divisor.

OPINION

Most Federal employees are paid on a biweekly pay period basis under the provisions of 5 U.S.C. § 5504 which set forth certain pay computation rules. Under section 5504, an employee's annual rate of pay is divided by a number (divisor) to derive an hourly rate, and that hourly rate is then multiplied by 40 or 80 to derive a weekly or biweekly rate. See 5 U.S.C. § 5504(b). For fiscal years 1984 and 1985, a divisor of 2,087 was substituted for the 2,080 divisor set forth in subsection 5504(b), resulting in a slight reduction in the employee's rate of pay. See 5 U.S.C. § 5504 note.


However, effective October 1, 1985, the beginning of fiscal year 1986, the authority to use 2,087 as a divisor expired. Most agencies were advised by the Office of Personnel Management (OPM) to prepare to resume use of the 2,080 divisor on or after October 1, 1985, but to anticipate conversion back to the 2,087 divisor when the necessary legislation was enacted by Congress. See Memorandum to Directors of Personnel signed by James W. Morrison, Jr., September 24, 1985.

When OPM learned that some Federal agencies had failed to convert their payroll systems to the 2,080 divisor, OPM advised agencies that there was no legal authority for continued use of the 2,087 divisor and that the agencies still using the 2,087 divisor should change to the 2,080 divisor as soon as possible. See Memorandum to Directors of Personnel signed by James W. Morrison, Jr., dated February 13, 1986. This latest OPM Memorandum also advised that those agencies which had not converted from the 2,087 divisor should issue lump-sum payments to their employees.

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Use of 2,087 divisor has resumed by virtue of the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, April 7, 1986, which amended section 5504(b) to substitute the 2,087 divisor for the 2,080 divisor, effective for pay periods commencing on or after March 1, 1986. See section 15203 of Public Law 99-272, reprinted in 132 Cong. Rec. S3799, S3874 (daily ed. Apr. 8, 1986). However, there was no legal authority for agencies to use the 2,087 divisor during the period from October 1, 1985, to March 1, 1986. To the extent that agencies paid their employees on the basis of the 2,087 divisor during this period, those employees are entitled to backpay for the difference in their pay between the 2,087 divisor and the 2,080 divisor. See the Back Pay Act, 5 U.S.C. § 5596 (1982), and 5 C.F.R. Part 550, Subpart H (1986).

Accordingly, we conclude that these HHS employees and other employees similarly situated are entitled to backpay for any period their agencies improperly used the 2,087 divisor.

for 
Comptroller General
of the United States