



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

Memorandum

To: Bureau Human Capital Officers
Bureau Human Resources Directors
Bureau Servicing Human Resources Offices

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Subject: Implementation of Bipartisan Infrastructure Law (Infrastructure Investment and Jobs Act) Section 40803(d)(4) compensation payments for wildland firefighters

The following memorandum outlines payment processing of wildland firefighter compensation as part of the “\$20k/50% provision” in the Bipartisan Infrastructure Law (BIL) at the U.S. Department of the Interior (DOI). Additional pay considerations are also addressed.

For compensation payments, the definition of “wildland firefighter” has been coordinated with the U.S. Department of Agriculture - Forest Service, U.S. Office of Personnel Management, and Office of Management and Budget as the following:

“Wildland fire employees that have status (primary or secondary) as firefighters under the retirement laws (5 U.S.C. 8331(21) and 8401(14)), or who would have such status but for exclusion from coverage under the retirement system based on a temporary appointment or intermittent work schedule”.

Payment Processing

For expediency, BIL pay actions will be coded as incentives, but *not* treated as incentives in the traditional sense (employee required to meet performance expectations, sign service agreements, etc.).

Determination of Affected Employees

Step 1 – DOI’s Office of Wildland Fire (OWF) will work with DOI’s Office of Human Capital to identify an initial list of employees receiving compensation as part of the \$20k/50% provision in the BIL.

Step 2 – DOI’s four fire bureaus (BIA, BLM, FWS, and NPS) will review and validate the accuracy of list of employees receiving compensation as part of the \$20k/50% provision in the BIL. Review and validation must be based on the criteria specified in the definition above. Employees not meeting the criteria from this definition cannot receive compensation as part of the \$20k/50% provision in the BIL.

Step 3 – The finalized list of affected employees by each bureau will be returned to OWF for confirmation and tracking. Bureaus will then process the retroactive and biweekly payments to employees utilizing payroll instructions provided by the Interior Business Center.

Implementation Process

The BIL wildland fire compensation will be treated as a special pay supplement provided under a temporary statutory authority that will be paid out until funding is exhausted.

Eligible firefighters will receive both retroactive pay and start biweekly supplemental pay with the July 26, 2022, paycheck. Retroactive pay will be calculated from October 1, 2021, through July 2, 2022. Biweekly payments will begin as of July 3, 2022. All retroactive corrections and establishment of biweekly payments will occur during Pay Period 15 (July 3, 2022 – July 16, 2022), with the intent to get all eligible DOI firefighters’ pay corrected and on track at the same time to minimize on-going disruption to pay.

SHROs will enter two personnel actions for each eligible firefighter, using nature of action codes: NOAC 849 for retro payments; NOAC 827 for biweekly payments with legal authority code: ZBB and narrative reference to IIJA. Specific processing instructions will be provided to SHROs in the coming weeks.

USDA and DOI agree that the pay outcome must be the same for firefighters across both Departments, regardless of the systemic solutions used to make the payments happen. The USDA and DOI automated payroll systems have different functionality, thus requiring different processes for payment. This may also impact the timing of payments from USDA and DOI to affected employees.

Categorization of Pay and Considerations FAQs:

What is the pay increase from the Infrastructure Investment and Jobs Act (IIJA)?

Section 40803 of the IIJA provides a base salary increase of \$20,000 per year, or 50% of base salary (whichever is less), if the Secretary of the Interior, in coordination with the Office of Personnel Management (OPM), determines the wildland firefighter is located in an area where it is difficult to recruit or retain wildland firefighters.

Does the authority to make payments under the \$20k/50% provision expire when the \$600 million special appropriation has been fully expended?

Yes, the authority to make payments under the \$20k/50% provision cease when funds made available under (c)(2) run out – for Interior this is \$120 million of the \$600 million. This is because the Congress’s conferral of the new authority to the Secretary to increase the base salary is contingent on “using the amounts made available in subsection (c)(2).” When the amounts made available under subsection (c)(2) run out, so does this authority to increase the base salary.

May application of the \$20k/50% provision be prospectively revoked when a long-term solution is put in place (e.g., special rates under 5 U.S.C. 5305)?

The increase in supplementary pay may be revoked if the Secretary makes a determination that it is no longer difficult to recruit or retain a wildland firefighter in a specified geographic area. For example, if a special rate under 5 U.S.C. 5305 was established, it could be tailored to address recruitment/retention difficulties in a targeted way (e.g., different increases by grade level). If those tailored special rates are able to get recruitment/retention difficulties under control, there no longer would be a basis for making a determination that would trigger section 40803(d)(4)(B) base salary increases.

Can the special \$600 million appropriation be used to support payments under any existing pay authorities (e.g., retention incentives, special rates, awards)? Can the \$20k/50% provision be implemented by the using of any existing pay authorities or is it simply a new stand-alone payment authority?

No, DOI Solicitors have advised that there are limitations under the BIL that do not permit payments incentives or awards (which are tied to performance), and DOI is limited to \$120 million for salary compensation payments. The \$20k/50% authority is a stand-alone pay authority.

Who qualifies as a covered Federal wildland firefighter under the \$20k/50% provision? Does it apply only to permanent employees?

For purposes of the \$20k/50% provision, wildland fire employees are those that have status (primary or secondary) as firefighters under the retirement laws (5 U.S.C. 8331(21) and 8401(14)) or who would have such status but for exclusion from coverage under the retirement system based on a temporary appointment or intermittent work schedule.

Will the retroactive payment from 2021 cause a corrected W-2 to be generated?

No. Corrected W-2s for the 2021 tax year will not be required for retroactive payments issued in 2022. Retroactive payments that pay out in tax year 2022 count as income on your 2022 wages and will be reflected in 2022 W-2s. However, employees should be advised to consult with their income tax professional on all personal income tax related questions or concerns.

How should the term “base salary” be interpreted? (The \$20k/50% provision uses the language “increase the base salary” and “50 percent of the base salary.”)

The \$20k/50% temporary supplement is not “basic pay” for any purpose.

Is the \$20k/50% supplement “basic pay” in applying various pay and benefit laws?

The supplemental compensation provided per the BIL is not to be considered as “basic pay” for any purpose. It is a temporary increase in compensation above “base salary” that is calculated as either \$20k or 50% of base salary. Therefore, the \$20k/50% supplemental pay is not to be considered “basic pay” in the application of the various pay and benefit laws listed below. For example, the supplemental pay would not be included as part of basic pay in applying the premium pay cap, so there would be no need to change past premium

payments provided to employees in 2021.

- Retirement and life insurance;
- GS pay administration (e.g., promotion rule);
- Premium pay and premium pay caps;
- Aggregate pay limit;
- Recruitment, relocation, and retention (3Rs) incentives;
- Severance pay under 5 U.S.C. 5595 and 5 CFR part 550, subpart G;
- Advances in pay under 5 U.S.C. 5524a and 5 CFR part 550, subpart B;
- Adverse actions under 5 U.S.C. 7512; or
- Percentage-based awards under 5 U.S.C. 4505a and 5 CFR part 451, subpart A

Will the base salary increase count towards the pay caps?

No. The additional pay received from the base salary increase is a different type of payment that is outside of regular Title 5 pay and does not count towards the biweekly premium pay cap; the annual premium pay cap; or the aggregate pay cap.

May payments cover retroactive periods of time before the Secretaries make required written determinations regarding recruitment/retention difficulties (as early as October 1, 2021)?

Yes, the authority to increase pay under the \$20k/50% provision rests with the Secretary of Interior and Secretary of Agriculture. The pay increase is triggered when the Secretary involved makes a written determination that the position in question is located within a specified geographic area in which it is difficult to recruit or retain a Federal wildland firefighter. This determination must be coordinated with the Director of the Office of Personnel Management (OPM). The pay increases will be provided retroactive to October 1, 2021, and continued until funding is no longer available, or until a determination is made that there is no longer difficulty recruiting or retaining federal wildland firefighters in the specified geographic location.

What geographic areas should be used in making determinations regarding recruitment/retention difficulties?

Geographic areas used in making determinations regarding recruitment/retention difficulties will be defined by the National Wildfire Coordinating Group (NWCG) Geographic Area Coordination Center (GACC) boundaries. GACC boundaries serve as another common geographic reference among DOI and the USDA Forest Service. These areas encompass sufficient geographic areas to provide a smoothing effect of data to allow for practical implementation. Use of larger geographic areas is anticipated to reduce the probability of shifting recruitment and retention issues from one area to another.

Is the \$20k/50% supplement used in the following:

a. Computation of FLSA overtime pay (via inclusion in total remuneration)?

The \$20k/50% supplement would be used in computing a firefighter's FLSA "straight time rate" and FLSA "hourly regular rate."

b. Computation of workers' computation benefits?

The Department of Labor would make final determination regarding workers' compensation benefits.

c. Computation of pay provided during paid leave or included in a lump-sum annual leave payment?

The \$20k/50% supplement would be used in determining pay during periods of paid leave or other paid time off. It is a regular salary-like pay entitlement tied to period of time (unlike an award).

The \$20k/50% supplement would not be used in computing an annual leave lump-sum payment. See 5 CFR 550.1205(c). Since the supplement is a temporary payment linked to reducing separations, it is similar to a retention incentive, which is not included in computing an annual leave lump-sum payment triggered by a separation.

Is 50% multiplied by a firefighter's GS base rate or locality rate? If 50% is multiplied by the locality rate, is it also multiplied by a special rate?

DOI will use a wildland firefighter's locality rate in computing the 50% amount. Section 5305 special rate applies. The only special rates now in effect that apply to wildland firefighters are the Table 001M nationwide special rates for grades 1-4 designed to achieve a \$15 minimum rate.

Does entitlement to the \$20k/50% supplement for covered wildland firefighters accrue on an hourly basis? When must payments be paid?

Yes, since the supplement is characterized as a salary-like pay entitlement, it should accrue on an hourly basis like other salary payments. The "\$20,000 per year" must be converted to an hourly supplement; also the 50% of annual base salary must be converted to an hourly supplement.

Is an hourly supplement derived by dividing the applicable annual amount by 2087 hours (just like other salary payments)?

The hourly supplement is derived by dividing the annual amount by 2087 hours. See 5 U.S.C. 5504.

Is the hourly supplement paid for regular tour of duty hours (i.e., hours in the tour of duty established for leave-charging purposes, which excludes overtime hours—e.g., 80 biweekly tour of duty for full-time employees)?

The hourly supplement is paid for hours in the firefighter's regular tour of duty (i.e., 80 biweekly hours for full-time employees). That approach will produce the desired annual amount. However, the hourly supplement is not paid for leave without pay or other periods of nonpay status, such as off-season periods.

Do the \$20k/50% supplement payments need to be paid on a biweekly basis or can the agencies provide payments for affected pay periods on some other frequency?

DOI will make biweekly payments.

How will BIL funding for the special pay supplement be tracked?

The Departments will use the legal authority (e.g., IIJA) to track who is receiving this pay, then each Department's wildland fire program will track the funding using each Department's financial system data.