

HHS FLSA Settlement FAQ

1. *What is the settlement about?*

NTEU filed a national grievance on March 16, 2012, alleging that HHS violated the Fair Labor Standards Act (FLSA) by incorrectly exempting bargaining-unit employees in 17 positions from the overtime provisions of the FLSA and, by extension, failing to pay them at the time-and-a-half rate for overtime hours worked. Over the past few years, NTEU has secured four settlements and one arbitration award resolving the grievance as to some of the positions. And on January 22, 2019, NTEU and HHS reached this settlement covering the remaining positions.

2. *Who is covered by the settlement?*

The settlement covers bargaining-unit employees who have occupied any of the following positions, at the GS-12 grade level or below, between March 16, 2010, and January 22, 2019.

- (1) Budget Analyst, GS-0560
- (2) Financial Management Specialist, GS-0501*
- (3) Financial Operations Specialist, GS-0501*
- (4) Grants Management Specialist, GS-1101
- (5) Health Communications Specialist, GS-1001
- (6) Public Affairs Specialist, GS-1035
- (7) Public Health Advisor, GS-0685
- (8) Public Health Analyst, GS-0685
- (9) Regulatory Information Specialist, GS-301
- (10) Social Science Analyst, GS-101
- (11) Technical Information Specialist, GS-1412

*The settlement covers Financial Management Specialists and Financial Operations Specialists in all operating divisions except the Administration for Children and Families (ACF). Employees in those positions in ACF were covered by a separate settlement.

3. How does the settlement benefit covered employees?

Before all the details were memorialized in the January 22, 2019 settlement agreement, HHS agreed to reclassify covered employees as nonexempt under the FLSA. This means that going forward, they are entitled to payment at time-and-a-half for all overtime hours worked (as opposed to “capped” or “straight” overtime). This also means that covered employees cannot be required to work overtime in exchange for compensatory time; compensatory time can be granted only if the employee voluntarily agrees.

In addition to those prospective benefits, covered employees will receive a retroactive pay adjustment for any compensation due (back pay) under the FLSA, plus the same amount in liquidated damages. The period of time for which an employee may receive a retroactive pay adjustment is from March 16, 2010, until the date of reclassification (recovery period). Reclassification dates for each operating division are listed below:

FDA – 7/22/18

HRSA and SAMHSA – 7/22/18

WHRSC (OS, ACF, ACL) – 10/26/18

CDC – 12/23/18

4. How is back pay calculated?

For each hour of overtime worked (whether or not recorded by HHS), HHS will pay the difference between what the employee received and 1.5 times the employee’s regular hourly rate of pay at the time the overtime hour was worked.

For each hour of compensatory time earned and taken, HHS will pay 0.5 hours of pay at the employee’s regular hourly rate of pay at the time the compensatory time was earned.

For each hour of compensatory time earned and not yet taken, the employee will be given 1.5 times the employee’s regular hourly rate of pay at the time the overtime hour was worked.

5. *How will I know how much back pay and liquidated damages I will receive?*

Covered employees have received a statement that shows the amount of back pay and liquidated damages owed. Statements were sent to current employees by email and to former employees by mail.

6. *What can I do if I disagree with the back pay calculations on my statement?*

The appeals period closed on July 6, 2020. Covered employees who disagreed with the calculations shown on their Notice had the opportunity during the appeals period to submit an appeal requesting additional back pay. To view a copy of your original Notice, click [here](#) to log into the settlement portal and follow the prompts.

7. *When will I receive my payment?*

BrownGreer mailed payments in August 2020.

8. *Who is performing the payment calculations?*

BrownGreer (BG), a firm that specializes in this type of work, was retained to serve as the settlement administrator. BG will calculate payments based on data provided by HHS and its payroll provider, the Defense Finance and Accounting Services (DFAS).

9. *What is the role of the settlement administrator?*

BrownGreer, the settlement administrator, is administering the fund. BrownGreer will be running the website, answering employees' questions, calculating amounts of back pay owed based on data provided by HHS, and distributing payments from funds provided by HHS.

10. *Who is paying the back pay and liquidated damages?*

HHS has paid \$4.5 million into a fund from which all back pay and liquidated damages payments will be made. BrownGreer will

administer the fund and issue the payments. If there are any funds left over after employees have been paid, including after the resolution of any claims, those funds will revert back to HHS.

11. *Will NTEU receive any payment from the back pay/liquidated damages fund?*

No. No part of the \$4.5 million fund for paying back pay and liquidated damages will go to NTEU.

12. *Will my settlement payment be taxed?*

Applicable income taxes will be withheld from the back pay portion of your payment. Federal Insurance Contributions Act (FICA) taxes, including Social Security taxes and Medicare taxes, will also be withheld, except Social Security taxes will not be withheld from payments for employees covered under the Civil Service Retirement System who have continuously performed services since December 31, 1983. No taxes will be withheld from the liquidated damages portion of your payment.

The settlement administrator will send you a W-2 form reporting your back pay and associated withholdings and a 1099 form reporting your liquidated damages.

Note that this general information does not constitute legal advice in connection with your specific tax situation. For information specific to your own situation, you should consult a tax advisor.

13. *How will my settlement payment affect my retirement benefits?*

Payments under this settlement have no effect on any employee's annuity, and they are not subject to deductions for retirement or Thrift Savings Plan (TSP) contributions.

14. *I have more questions. Whom can I contact?*

You can call the settlement administrator toll free at 1-888-905-1370.