

**Guam Fire Department
Non-Productive Pay on Leave and Other
Compensation**

**Performance Audit
October 2006 through September 2010**

**OPA Report No. 11-06
August 2011**



**Guam Fire Department
Non-Productive Pay on Leave and
Other Compensation**

**Performance Audit
October 2006 through September 2010**

**OPA Report No. 11-06
August 2011**

Distribution:

Governor of Guam
Lt. Governor of Guam
Speaker, 31st Guam Legislature
Senators, 31st Guam Legislature
Acting Chief, Guam Fire Department
Director, Department of Administration
Acting Director, Bureau of Budget and Management Research
Guam Media via E-Mail



Table of Contents

	Page
Executive Summary	1
Introduction.....	3
Background.....	3
Results of Audit.....	5
Significant Cost of Non-Productive Pay.....	6
Payment Noncompliance and Need for Improved Internal Controls.....	7
Excessive Firefighter Compensation over Base Salary	10
GIAA Firefighters Work Period	11
Conclusion and Recommendations	13
Management’s Response and OPA Reply	14
Appendices:	
1: Classification of Monetary Impact	15
2: Scope and Methodology	16
3: Prior Audit Coverage	17
4: Top 25 Firefighters Compensated for Non-Productive Pay	18
5: Analysis of GFD’s Non-Productive Pay & Hours.....	19
6: Analysis of GFD Firefighter Earnings.....	20
7: Analysis of GIAA Firefighter Earnings.....	22
8: Attorney General Letter No. 1	24
9: Attorney General Letter No. 2	27
10: Summary of GFD Pay Legislation.....	30
11: GFD Memo Restricting Leave.....	31
12: GFD Memo Rescindment	32
13: ARFF New Work Schedule	33
14: AG Memo on GFD Leave Compensation	35
15: DOL Leave Benefits	38
16: GFD’s Management Response	39



EXECUTIVE SUMMARY
Guam Fire Department Non-Productive Pay on Leave and Other Compensation
OPA Report No. 11-06, August 2011

By law, Guam Fire Department (GFD) uniformed personnel receive pay and leave benefits surpassing those of all other Government of Guam (GovGuam) employees and which appear inequitable. Firefighters work five 24-hour shifts, or 120 hours, over a two-week pay period. While 80 hours is the standard before overtime accrues for most government employees and 86 hours for police and corrections officers, the standard for firefighters is 106 hours. As a result, GFD uniformed personnel automatically get the 14-hour difference between 120 and 106 as overtime *every* pay period. Also by law, firefighters *cannot* be charged more than 45 hours of leave per pay period. Thus, while on leave for two weeks, GFD uniformed personnel are assessed only 45 leave hours and still get paid for 106 hours out of the General Fund. The Department of Administration (DOA) categorizes the 61-hour difference as non-productive pay on leave and the Attorney General (AG) refers to it as “bonus” compensation.

Illustration of GFD Leave Compensation vs. Other GovGuam Employees



Our audit of GFD non-productive pay on leave and other compensation from fiscal years 2007 to 2010 revealed that:

- (1) Non-productive pay on leave cost GovGuam \$6.3 million (M) over the last four fiscal years, an average of \$1.6M annually, and the top 10 recipients received amounts ranging from \$63,000 (K) to \$125K;
- (2) 258 firefighters on leave were paid 62 to 80 non-productive hours beyond the number allowed by law, resulting in questioned costs of \$347K for 19,523 hours due to lack of payroll procedures, management review and oversight, and effective information technology controls; and

- (3) In 2010, 263 firefighters were collectively paid \$20.6M, 71% more than their total base salaries of \$12.1M. Each received an average of \$78K. In 2009, 266 firefighters made \$19.2M, 74% more than their base salaries of \$11.1M, an average of \$73K each.

Excessive Firefighter Compensation over Base Salary

We found that the automatic 14 hours of overtime, their mandated 106-hour pay period, non-productive pay on leave and nine-hour-a-day/five day cap on leave provide firefighters with extraordinary opportunities to take home far more than their base pay.

- In 2010, six firefighters received compensation of between \$102K and \$114K. Additionally, 46 firefighters earned over \$90K, 57 earned over \$80K and 97 earned over \$70K. Three Fire Battalion Chiefs earned an average of \$111K, 43 Fire Captains averaged \$92K, 76 Fire Service Specialists averaged \$82K, 76 Firefighter II's averaged \$76K, and 64 Firefighter I's averaged \$65K.
- In 2009, four firefighters received compensation ranging from \$100K to \$143K. Eight others earned over \$90K, 62 earned over \$80K and 79 earned over \$70K. Three Fire Battalion Chiefs earned an average of \$102K, 43 Fire Captains averaged \$85K, 78 Fire Service Specialists averaged \$75K, 74 Firefighter II's averaged \$71K, and 65 Firefighter I's averaged \$60K.

Recommendations

The AG's April 10, 2011 letter states, "the Legislature should address the effect of the 61 hour bonus paid solely to firefighters on leave, which the rest of the GovGuam employees may find unfair, and taxpayers may find too generous...(4 G.C.A. §6219 of the Guam Code Annotated) has far reaching, possibly unintended effects. However, because it is a duly enacted law, only a legislative act can change it."

With concern over our government's financial condition and in deference to all other government employees, we recommend: (1) the Administration and the Legislature repeal 4 G.C.A. §6219(a) that requires firefighter compensation at 106 hours per pay period, and amend 4 G.C.A. §6219(c) to require leave be assessed hour for hour up to maximum of 80 hours per pay period ; (2) until the law is changed, GFD management comply with 4 G.C.A. §6219 to limit non-productive pay on leave to a maximum of 61 hours and leave not to exceed 106 hours per pay period; (3) GFD explore different avenues to reduce firefighter overtime; (4) DOA implement AS/400 controls to prohibit the processing of non-productive hours in excess of 61 and leave hours in excess of 106, as well as overtime exceeding 25% of base pay, unless otherwise authorized and approved by GFD management and the Bureau of Budget Management and Research.

Doris Flores Brooks, CPA, CGFM
Public Auditor



Introduction

This report presents the results of our audit of the Guam Fire Department's (GFD) non-productive pay on leave from October 1, 2006 to September 30, 2010. The audit was initiated as a follow-up to the Office of Public Accountability (OPA) Report No. 10-05: Government of Guam (GovGuam) Leave Sharing Program.

Our objectives were to determine:

- (1) The cost of GFD's non-productive pay on leave;
- (2) Whether non-productive pay on leave was made in accordance with applicable laws and regulations; and
- (3) Overall compensation to firefighters in relation to base pay.

The scope and methodology are detailed in Appendix 2.

Background

GFD's mission is to provide emergency and non-emergency services to save the lives and property of the people of Guam. GFD accomplishes its mission by responding to fires, medical emergencies and other public safety hazards. Its trained professionals engage in educating the public on life and fire safety awareness, code enforcement and by operating the enhanced E911 communication system. In ranking order, the following firefighters that received non-productive compensation on leave in GFD's operations are: Assistant Fire Chief, Battalion Fire Chief, Fire Captain, Fire Service Specialist, Firefighter II, and Firefighter I.

Firefighters are granted liberal and exclusive pay and leave benefits by law. Title 4 Guam Code Annotated (G.C.A.) §6219 mandates that GFD uniformed personnel, except the Fire Chief, be compensated at a regular rate of pay for 106 hours per pay period and at one-and-a-half times the regular hourly rate for hours worked in excess of 106 hours in a 14-day work period. This requirement mirrors the Fair Labor Standards Act (FLSA) and the Code of Federal Regulations, Title 29. Thus, while the standard two-week work hours before overtime accrues for most regular government employees is 80 hours¹, the two-week standard for GFD uniformed personnel is 106 hours. For uniformed Police and Corrections personnel, the standard is 86 hours.

Typically, firefighters work five 24-hour shifts, inclusive of weekends and holidays, in a two-week work period, for a total of 120 hours (24 x 5 = 120). The 14-hour difference between the 120-hour work period and the 106-hour mandated compensation is automatically paid as overtime. On average, firefighters work ten 24-hour shifts a month, or one hundred twenty 24-hour shifts a year. They are the only 24-hour government employees who have generous leave benefits. All other 24-hour shift employees, including police and corrections officers, are assessed leave on an hour-for-hour basis.

¹ DOA Personnel Rules and Regulations §7.402(b) states that GovGuam established a 40 hour workweek standard.

Application of Law to Firefighter Compensation While on Leave

Local law prohibits firefighters from being assessed more than nine hours of annual or sick leave per day on which such leave is taken. A firefighter typically works five days in a two-week period. Thus, a firefighter on leave for two weeks gets charged only 45 leave hours and still draws pay for 106 hours. DOA characterizes the 61-hour difference as “non-productive” time. In the Attorney General (AG) April 2011 Memorandum, this difference is referred to as “bonus compensation.” Non-productive pay on leave is a component of firefighter salary and retirement contributions are paid based on employee’s total earnings. Therefore, DOA makes retirement contributions on all compensated non-productive hours on leave. The General Fund absorbs the cost of non-productive pay on leave.

Public Law (P.L.) 28-72, which limits leave assessment to 45 hours, provides fire personnel with extraordinary and exclusive opportunities to acquire additional pay beyond their base salary.

Figure 1: Illustration of GFD Leave Compensation vs. Other GovGuam Employees



Results of Audit

From fiscal years (FY) 2007 to 2010, GovGuam spent \$6.3 million (M) in free “non-productive” time for 343,723 hours of non-productive pay on leave to 289 firefighters. The top 10 recipients received between \$63 thousand (K) and \$125K for hours ranging from 2,990 to 4,686 over this period.

According to an April 2011 AG Opinion (Appendix 9), “If it is an intended policy, then the Legislature should address the effect of the 61-hour bonus paid solely to firefighters on leave, which the rest of the GovGuam employees may find unfair and taxpayers may find too generous...the 61-hour bonus paid to firefighters on leave finds its source in section 6219 of the Uniform Position Classification and Salary Administration Act of 1991. This section has far-reaching, possibly unintended, effects. However, because it is a duly enacted law, only a legislative act can change it.”

While on leave, firefighters are authorized to receive pay for a maximum of 106 hours. However, we found that 258 firefighters were paid \$347K in excess of 106 hours, as follows:

- 3 firefighters were paid over 120 hours. This amounted to \$2K in questioned costs;
- 246 firefighters were paid for 120 hours, or up to 80 non-productive hours on leave instead of the authorized 61. This resulted in questioned costs of \$318K over the four year period; and
- 108 firefighters on leave were paid between 107 and 119 hours. This amounted to another \$27K in questioned costs².

With automatic overtime, night differential, non-productive pay on leave, and other pay, GFD uniformed personnel who received non-productive compensation have average earnings of \$78K in 2010 and \$72K in 2009. The 25 highest earners in 2010 averaged \$99K annually, 71% over their base pay. Six uniformed personnel made more than \$100K – three Fire Battalion Chiefs made as much as \$114K, an Assistant Fire Chief made \$106K and two Fire Captains took home \$102K each. Collectively, 263 uniformed personnel were paid \$20.6M, 71% over their base salaries of \$12.1M.

In 2009, the 25 highest earners averaged \$93K per annum, 77% over their base pay. Four made over \$100K: three Fire Battalion Chiefs took home between \$100K and \$102K, while an Assistant Fire Chief took home \$143K which was primarily due to lump sum payment of sick leave upon retirement of \$79K. Collectively, 266 GFD uniformed personnel were paid \$19.2M, 74% over their base salaries of \$11.1M.

We found insufficient internal controls in place to ensure that non-productive pay on leave was administered in compliance with applicable laws and regulations. Specifically:

- GFD management allowed compensation for over 106 hours while on leave;
- Absence of payroll policies or procedures for compensating uniformed personnel on leave at 106 hours; and

² Some firefighters received payments more than once.

- Lack of built-in controls in the AS/400 system to automatically prevent non-productive pay on leave in excess of 61 hours and leave in excess of 106 hours.

Significant Cost of Non-Productive Pay

GovGuam spent \$6.3M, an average of \$1.6M annually, for 343,723 hours of “free” non-productive on leave compensation for 289 GFD uniformed personnel on annual, sick, military, shared, administrative, and other leave from fiscal years 2007 through 2010. While non-productive hours on leave decreased by 10% from FY 2007, from 89,464 to 80,198 in FY 2010, the cost per hour rose from \$17.14 to \$20.17 (Table 1). The cost per hour increase is the result of the mandated³ 10% across-the-board pay raise for all uniformed public safety personnel over a four-year period commencing October 1, 2008.

Table 1: Summary of GFD Non-Productive Cost⁴

FY	Employee Count	Non-Productive Hours	Non-Productive Pay	Cost Per Hour
2007	244	89,464	\$ 1,533,383	\$ 17.14
2008	253	87,086	\$ 1,541,156	\$ 17.70
2009	250	86,975	\$ 1,628,858	\$ 18.73
2010	239	80,198	\$ 1,617,934	\$ 20.17
Total	986	343,723	\$ 6,321,331	

The 10 highest accumulators of non-productive time on leave collectively were paid \$750K for 37,257 hours during the four-year period, an average of \$19K for 931 hours per person per year. The top 10 received more than three times the average number of non-productive hours and non-productive pay compared to other firefighters on leave. Of the top 10, six were Fire Service Specialists who were collectively paid \$406K for 20,636 non-productive hours, while an Assistant Fire Chief was paid \$125K for 4,686 hours. See Table 2 for details.

Table 2: Firefighters with the Highest Paid Non-Productive Hours (FY 2007 to FY 2010)

#	Position Title	Total Non-Productive Hours	Total Non-Productive Pay
1	Assistant Fire Chief	4,686	\$ 125,284
2	Fire Service Specialist	4,367	\$ 77,545
3	Firefighter II	4,146	\$ 75,481
4	Firefighter I	4,204	\$ 75,297
5	Fire Service Specialist	3,184	\$ 74,290
6	Firefighter II	3,585	\$ 67,985
7	Fire Service Specialist	3,389	\$ 66,611
8	Fire Service Specialist	3,227	\$ 62,847
9	Fire Service Specialist	3,479	\$ 62,634
10	Fire Service Specialist	2,990	\$ 62,503
Totals		37,257	\$ 750,477

Over the last four years, 10 uniformed personnel were paid between \$63K and \$125K for non-productive time ranging from 2,990 to 4,686 hours. Another 279 received \$5.6M for 306,466

³ 10 G.C.A. §55102.

⁴ The 986 total includes the double count of employees for each fiscal year. A total of 289 firefighters were paid from fiscal years 2007 to 2010.

hours, an average of \$5K and 275 hours per person per year. An expanded analysis of the top 25 non-productive pay recipients is included as Appendix 4.

Comparison of FY 2010 Total Compensation and Base Pay

Non-productive pay on leave is just one component of total firefighter compensation. Automatic overtime and night differential also add significantly to annual base earnings. The top 10 recipients of non-productive pay took home \$134K in FY 2010. While their combined base salaries totaled \$445K, their Wage and Earnings Statements (W-2s) for that year indicated they took home \$713K in total compensation, or 60% over their base salaries. For example:

- A Firefighter II, whose base salary is \$49K, received \$7K in non-productive pay and \$87K in total compensation; and
- A Fire Service Specialist, whose base salary is \$55K, received \$24K in non-productive pay and \$85K in total compensation

Analysis of Non-Productive Pay Distribution

Among the 289 personnel who received non-productive pay on leave, we determined that:

- 194 (67%) were paid under \$25K,
- 70 (24%) were paid between \$25K and \$50K,
- 21 (7%) were paid over \$50K to \$75K, and
- 4 (1%) were paid more than \$75K.

Approximately 236 (82%) were Firefighter I's, II's, and Fire Service Specialists. The remaining 53 (18%) were captains and chiefs. A detailed analysis of the distribution of non-productive pay on leave is included in Appendix 5.

Leave is a benefit provided to all Government of Guam employees, regardless of the nature of work or work schedule. For example, health insurance offered to GovGuam employees does not differ from administrators, policemen, accountants and firefighters. Often the public thinks that FLSA regulates leave benefits. However, FLSA does not regulate a number of employee practices, which include vacation, holiday, severance, or sick pay (Appendix 15). Leave benefits are a matter of agreement between an employer and an employee.

Firefighter non-productive pay on leave costs increased to \$1.6M in FY 2010 and will continue to increase with the implementation of the Hay Study, standard salary increments, and the mandated annual 10% salary increase for public safety and law enforcement personnel until FY 2011. To alleviate our government's financial condition and in deference to all other government employees, we recommend that Administration and the Legislature repeal 4 G.C.A. §6219(a) that establishes the 106-hour work schedule for firefighters. Work schedules should not be defined in law but should be left at management's discretion consistent with comparable standards. We also recommend legislation to eliminate the 61-hour of bonus paid for non-productive hours on leave, and instead require any leave be assessed hour for hour basis at a maximum of 80 hours per pay period.

Payment Noncompliance and Need for Improved Internal Controls

GFD uniformed personnel earn overtime only in the event they work in excess of 106 work hours in a pay period. DOA's Personnel Rules and Regulations state that government employees on leave do not accrue overtime. However, between FY 2007 and FY 2010, we found that 258

firefighters were paid \$347K in excess of 106 hours. Of this, three firefighters were paid over 120 hours, which amounted to \$2K in questioned costs.

DOA also paid 246 firefighters on leave the routine 120 hours. As a result, the firefighters were paid 80 non-productive hours instead of 61 hours. These payments resulted in questioned costs of \$318K. Additionally, 108 personnel were paid from 107 to 119 hours of leave, resulting in additional questioned costs of \$27K. Questioned costs for leave paid in excess of 106 totaled \$347K. See Table 3 and 4 for details.

We found that DOA used the “non-productive” pay code as a variable figure when determining the amount of leave to charge. When there are breaks in a two-week leave period, GFD inappropriately logs the person down for 120 hours instead of the 106 hours. Non-productive hours are used to fill in the difference. We found several instances in which non-productive hours exceeded the 61-hour threshold. For example:

- A Fire Service Specialist used 40 leave hours for military duty in an October 2006 pay period and was still paid as if he worked 120 hours. The extra 80 hours was recorded as non-productive time. As many as 245 firefighters on leave were similarly credited the entire 120 hours, using as much as 80 hours of non-productive time to fill the gap. This practice resulted in questioned costs of \$318K.
- In a June 2008 pay period, a Firefighter I worked took 45 annual leave hours and received 67 non-productive hours to total 112 hours. We found that the same method was used to pay 107 other firefighters, resulting in questioned costs of another \$27K. See Table 4.

Table 3: Summary of Total Hours While on Leave⁵ (120)

Fiscal Year	Employee Count	Frequency	Total Hours While on Leave (120)	Questioned Cost (Non-Productive Over 61)
2007	175	679	10,136	\$ 170,479
2008	145	300	4,493	\$ 80,732
2009	127	229	3,274	\$ 65,486
2010	3	5	75	\$ 1,335
Totals	450⁶	1,204	17,978	\$ 318,033

Table 4: Summary of Total Hours While on Leave (Between 107 and 119)

Fiscal Year	Employee Count	Frequency	Total Hours While on Leave (Between 107 and 119)	Questioned Cost (Non-Productive Over 61)
2007	44	61	440	\$ 7,294
2008	46	56	397	\$ 6,981
2009	39	53	375	\$ 7,505
2010	31	39	262	\$ 5,789
Totals	160⁷	209	1,474	\$ 27,568

⁵ Total hours only include hours for all types of leave, holiday pay and non-productive pay.

⁶ The total employee count for Table 4, 450 uniformed personnel, includes double count of employees for each fiscal year. The number of unique uniformed personnel amounted to only 246.

⁷ The total employee count for Table 3, 160 uniformed personnel, includes double count of employees for each fiscal year. The number of unique uniformed personnel amounted to only 108.

In FY 2010, we saw a reduction in the instances and amounts of inappropriate leave hours due primarily to the former Fire Chief's efforts to curb past abuses. The former Fire Chief amended compensation practices by restricting payments on leave to 106 hours. Prior to June 2009, the common practice was to pay the full 120 hours. See Appendix 11.

Insufficient Controls to Administer the Payment of Non-Productive Hours

Management is responsible for protecting public assets and ensuring the integrity and comprehensiveness of the data collected by the accounting system for them. A comprehensive framework of internal controls to achieve these objectives should: (a) produce a favorable control environment, (b) ensure an ongoing assessment of risk, (c) establish and maintain control policies and procedures, (d) facilitate communication, and (e) monitor the effectiveness of control policies and procedures and resolve problems identified.

We found the following internal control deficiencies in the administration of GFD's non-productive pay on leave:

- **Lack of Management Review and Oversight.** GFD senior management is of the opinion that firefighters should earn up to 120 hours of compensation while on leave. As a result, in January 2011, the acting GFD Fire Chief amended internal policies to revert back to practices in existence prior to June 18, 2009, which allows firefighters full compensation of 120 hours while on leave. See Appendix 12. An AG Memo in August 2011 concludes that "firefighters must actually work overtime hours in order to receive overtime pay. Since firefighters on leave are not on duty and therefore are not actually working, they are not entitled to overtime pay while on leave. As a result, firefighters on leave for an entire pay period should be compensated for 106 hours at their straight (regular) pay rate." See Appendix 14.
- **Compensation practices not in accordance with law.** Prior to 2009, GFD and DOA did not establish appropriate payroll policies to restrict uniformed personnel on two-week leave to only 106 hours pay. Communication between GFD and DOA in the application of non-productive hours was lacking. DOA's payroll procedures do not comply with 4 G.C.A. §6219.
- **Lack of information system controls to prevent excessive non-productive hours on leave.** DOA has no system controls to prevent accounting technicians from processing GFD timesheets with more than 61 non-productive hours or more than 106 leave hours in a two-week period. Built-in computer controls to flag and disallow these excesses would help prevent errors and abuses and should be implemented.

We recommend GFD comply immediately with the law limiting non-productive pay on leave to 61 hours and total compensation to no more than 106 hours in any pay period. Further, we recommend DOA implement AS/400 system controls to prevent payment of excessive non-productive and leave hours, and to notify GFD management and BBMR of the red flags.

Excessive Firefighter Compensation over Base Salary

We analyzed GFD personnel earnings who received compensation for non-productive hours: 263 in 2010 and 266 in 2009⁸. In 2010, 263⁹ firefighters were collectively paid \$20.6M, 71% over their base salaries of \$12.1M. The firefighters received an average of \$78K. Of the 263, we found the following:

- 6 earned over \$100K,
- 46 earned over \$90K,
- 57 earned over \$80K,
- 97 earned over \$70K, and
- 57 earned under \$70K.

In other words, 78% of GFD uniformed personnel earned more than \$70K, of which almost 20% earned over \$90K annually. Specifically, the Assistant Fire Chief received \$106K. On average, Fire Battalion Chiefs received \$111K, Fire Captains received \$92K, Fire Service Specialists received \$82K, Firefighter II's received \$76K, and Firefighter I's received \$66K. See Table 5 for details.

Table 5: Summary of GFD Uniformed Personnel Pay Distribution in 2010

Position Title	0 – \$70K	\$70K- \$80K	\$80K- \$90K	\$90K- \$100K	Over \$100K	Count	Average W-2	Common-Size Ratio (count)
Assistant Fire Chief					1	1	\$ 105,744	0%
Fire Battalion Chief					3	3	\$ 111,010	1%
Fire Captain			13	28	2	43	\$ 91,968	16%
Fire Service Specialist	4	33	25	14		76	\$ 81,645	29%
Firefighter II	13	44	15	4		76	\$ 76,135	29%
Firefighter I	40	20	4			64	\$ 65,529	24%
Totals	57	97	57	46	6	263		100%
Common-Size Ratio (dollar range)	22%	37%	22%	17%	2%	100%		

The top 25 earners for 2010 received on average 71% over base pay or \$99K annually. Of the 25, six were paid over \$100K: three Fire Battalion Chiefs starting from \$109K to \$114K, an Assistant Fire Chief at \$105K, and two Fire Captains at \$102K. See Appendix 6 for details.

In 2009, 266¹⁰ personnel were collectively paid \$19.2M, 74% or \$8.2M over their base salaries of \$11.1M. and averaged \$72K each. Four earned over \$100K, eight earned over \$90K, 62 earned over \$80K, 79 earned over \$70K, and 113 earned under \$70K. In other words, 58% of GFD uniformed personnel earned more than \$70K, of which 5% earned over \$90K annually.

In 2009, on average, Assistant Fire Chiefs received \$98K, Fire Battalion Chiefs received \$102K, Fire Captains received \$85K, Fire Service Specialists received \$75K, Firefighter II's received \$71K, and Firefighter I's received \$60K. See Table 6 for details.

⁸ We based our review of W-2 information provided by DOA for GFD uniformed personnel on the 289 employees who received non-productive compensation from FY 2007 to FY 2010.

⁹ In 2010, we analyzed 263 firefighters and the 26 firefighters were omitted because of missing 2010 W-2 and/or budget information, and negative variances (budget vs. W-2).

¹⁰ In 2009, we analyzed 266 firefighters and the 23 firefighters were omitted because of missing 2009 W-2 and/or budget information, and negative variances (budget vs. W-2).

Table 6: Summary of GFD Uniformed Personnel Pay Distribution in 2009

Position Title	0 – \$70K	\$70K- \$80K	\$80K- \$90K	\$90K- \$100K	Over \$100K	Count	Average W-2	Common-Size Ratio (count)
Assistant Fire Chief	1 ¹¹			1	1	3	\$ 98,452	1%
Fire Battalion Chief					3	3	\$ 101,581	1%
Fire Captain		5	33	5		43	\$ 84,965	16%
Fire Service Specialist	22	31	23	2		78	\$ 74,503	29%
Firefighter II	33	36	5			74	\$ 70,780	28%
Firefighter I	57	7	1			65	\$ 60,283	24%
Totals	113	79	62	8	4	266		100%
Common-Size Ratio (dollar range)	42%	30%	23%	3%	2%	100%		

The top 25 earners for 2009 received on average 76% over base pay or \$93K annually. Of the top 25, four fire personnel received over \$100K: an Assistant Fire Chief at \$143K and three Fire Battalion Chiefs starting from \$100K to \$102K. See Appendix 6 for details.

GFD is the only 24-hour GovGuam operation that compensates its uniformed employees for five 24-hour shifts over two weeks. Uniformed employees of the Guam Police Department (GPD) and the Department of Corrections (DOC), which also operate 24 hours, work standard shifts and receive pay for 86 hours in a two-week period. GFD firefighters receive night differential pay of 10% over their regular hourly rate for hours worked between 6:00 PM to 6:00 AM.

GIAA Firefighters Work Period

The Guam International Airport Authority (GIAA) employs separate uniformed law enforcement and firefighting divisions on a 24/seven basis. In April 2009, GIAA management issued a memorandum limiting the Aircraft Rescue and Fire Fighting (ARFF) division to a 106-hour/14-day work schedule (Appendix 13). Currently, ARFF personnel work 24-hour shifts for four days and a 10-hour shift on the fifth day and are compensated at 106 hours, in compliance with the FLSA. GIAA informed us that the 14 hours of overtime is a benefit at management’s discretion and not an entitlement.

We reviewed ARFF personnel earnings for 2010 and 2009. In 2010, 29 ARFF personnel were collectively paid \$2M, 52% over their base salaries of \$1.3M. Of the 29, two earned over \$90K, three earned over \$80K, nine earned over \$70K, and 15 earned under \$70K. In 2009, 29 personnel were paid \$1.9M, 75% over their base salaries of \$1.1M. Of the 29, two earned over \$90K, 10 earned over \$70K, and 17 earned under \$70K. See Appendix 7 for more details.

GIAA’s ARFF personnel, on average, earned \$8K less than GFD personnel’s average of \$78K in 2010. We estimate that if the suspension of overtime resulted in the average ARFF personnel earning \$70K, this could result in annual savings of \$8K for 263 firefighters or \$2M for GFD firefighters. GFD, like GIAA, should explore different avenues to reduce overtime for firefighters during a two week work period. Overtime is a significant cost and should not be

¹¹ Based on the data provided by DOA, the Assistant Fire Chief’s last payment for non-productive hours was dated August 2009. The last W-2 received by this Assistant Fire Chief was also in 2009.

received as an entitlement. GFD's management should conduct a review to determine ways to reduce overtime costs.

Because overtime is very costly, we recommend constant review and monitoring by involved entities will ensure better control. A system control in the AS/400 is needed for monitoring overtime. Red flags should be established to alert DOA and the Bureau of Budget Management and Research (BBMR) when overtime exceeds 25% of base pay and when overtime exceeds 40% of base pay.

Conclusion and Recommendations

Over the last four years, GovGuam paid a total of \$6.3M for GFD's non-productive pay on leave, a unique benefit no other government employee enjoys. Firefighters also benefit from legislation that provides leave compensation surpassing all other government employees. Firefighter non-productive pay on leave costs increased to \$1.6M in FY 2010 and will continue to climb with the implementation of the Hay Study, standard salary increments and the mandated annual 10% salary increase for public safety and law enforcement personnel until FY 2011.

Leave is a benefit provided to all GovGuam employees. Regardless of the nature of work or work schedule, every GovGuam employee receives the same type of benefit. FLSA does not regulate a number of employee practices, which include vacation, holiday, severance, or sick pay. Leave benefits is a matter of agreement between an employer and an employee.

The April 2011 AG Opinion points out that the 61-hour bonus paid to firefighters may have unwanted repercussions, but since it is law, only the Legislature can ameliorate this. To this end, we make the following recommendations:

The Administration and Legislature:

1. Repeal 4 G.C.A. §6219(a) that establishes the 106-hour work schedule for firefighters, and to eliminate the 61-hour of bonus paid for non-productive hours on leave and instead require any leave be assessed hour for hour basis at a maximum of 80 hours per pay period.

The Guam Fire Department:

1. Explore different avenues to reduce overtime for uniformed personnel during a two week work period; and
2. Comply immediately with the law limiting non-productive pay to 61 hours and hours paid while on leave to not more than 106 hours per pay period.

The Department of Administration:

1. Implement information system (AS/400) controls to prevent non-productive hours in excess of 61 and leave in excess of 106 from being processed as well as system controls for overtime exceeding 25% of base pay. For instances exceeding allowable non-productive hours and overtime thresholds, notification should be provided to GFD management and BBMR.

Management's Response and OPA Reply

A draft report was transmitted to GFD and DOA on August 1, 2011 for their official response. A draft report was also provided to the Governor's Chief Financial Advisor, the Governor's Chief of Staff, and Legislative Oversight Chair of GFD. In August 2011, we met individually with officials from these agencies, as well as the Governor, the Governor's fiscal committee, and the Lieutenant Governor and his Chief of Staff to discuss the findings and recommendations.

The Acting GFD Fire Chief agreed with one of the audit recommendation and orally disagreed with the other recommendation as follows:

1. GFD agreed with the recommendation to limit non-productive pay to 61 hours and leave not to exceed 106 hours in a two-week pay period. However, GFD management orally disagreed with the recommendation for leave hours to be assessed hour for hour, at a maximum of 80 hours per pay period ending.
2. GFD recognizes that the recommendation to reduce overtime hours will result in the implementation of a new work schedule. However, GFD states that it requires additional manpower to meet minimum manning requirements as set by the National Fire Protection Association. GFD will continue to explore ways to reduce overtime without compromising the safety of firefighters and, most importantly, be able to provide its mandated responsibility.

See Appendix 16 for GFD's management response.

DOA requested for an extension to respond to the draft audit report on August 12, 2011. OPA granted an extension until August 16, 2011; however, DOA failed to submit the formal response as of the issue date of this report.

The legislation creating OPA requires agencies to prepare a corrective action plan to implement audit recommendations, to document the progress of the implementation of the recommendations, and to endeavor to have implementation completed no later than the beginning of the next fiscal year. Accordingly, our office will be contacting GFD and DOA to establish target dates and titles of officials responsible for implementing the recommendations.

We appreciate the cooperation and assistance shown by the Acting Fire Chief and staff of GFD, the Director and staff of DOA, the Executive Manager and staff of GIAA, the Governor and staff of the Office of the Governor, the Lieutenant Governor and staff of the Office of the Lieutenant Governor, and the Legislative Oversight Chair of GFD.

OFFICE OF PUBLIC ACCOUNTABILITY



Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1: Classification of Monetary Impact

Findings	Questioned Costs ¹	Other Financial Impact ²
1. Basis of GFD's Non-Productive Pay Title 4 §6219 allows firefighters on leave to be compensated at 106 hours, but are only assessed annual or sick leave of 9 hours per day.	\$ -	\$ -
2. Significant Cost of Non-Productive Pay Between FY 2007 and 2010, GovGuam spent \$6.3M for 343,772 non-productive hours provided to 289 firefighters on leave.	\$ -	\$ 6,321,331
3. Payment Non-Compliance and Need for Improved Internal Controls We found that 258 firefighters received \$347K for 19,523 non-productive hours over the 61-hour threshold established by DOA's interpretation of the law.	\$ 347,164	\$ -
4. Excessive Firefighter Compensation over Base Salary In 2009 and 2010, firefighters received 71% to 74% over their base salaries because of specialty pay such as overtime, night differential and non-productive time.	\$ -	
Totals	\$ 347,164	\$ 6,321,331

- 1 Questioned Costs are the costs questioned because of:
 - (a) An alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds;
 - (b) A finding that, at the time of the audit, such cost is not supported by adequate documentation; or
 - (c) A finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.
- 2 Other Financial Impact is the cost incurred by the GovGuam due to payment of non-productive pay. The costs represent the amount of potential savings for the government.

Appendix 2:
Scope and Methodology

The audit scope included a review of laws, rules and regulations, policies, prior audit findings, firefighter payroll costs (employee work hours, leave cost, non-productive pay, and other special pay), and other information pertinent to GFD's firefighter compensation in the 48-month period between October 1, 2006 and September 30, 2010.

Scope limitation: We based our review of W-2 information provided by DOA for GFD personnel on the 289 firefighters who received non-productive compensation from FY 2007 to FY 2010. Of the 289 firefighters, we examined the W-2 information of 263 in 2010 and 266 in 2009. The remaining firefighters were omitted because of missing W-2 and/or budget information and negative variances (budget vs. W-2).

To accomplish our objectives, we performed the following:

- Identified prior audits and OPA hotline tips relevant to the objectives of this engagement
- Gained an understanding of the policies, procedures, applicable laws and regulations pertaining to firefighter's pay
- Interviewed key officials from DOA, GFD, and GIAA
- Analyzed payroll data obtained from DOA to:
 - Calculate the cost of non-productive pay on leave
 - Identify firefighters with the highest non-productive pay
 - Assess which firefighter positions received the most non-productive pay
 - Determine whether firefighters received non-productive pay in accordance with established rules and regulations
 - Verify the accuracy of our list of exceptions with DOA
- Obtained legal clarification from the AG's Office relative to the application and payment of the 61-hours of bonus pay for firefighters
- Calculated the cost of firefighter earnings from calendar years 2009 and 2010
 - Extracted base salary information from GFD first quarter staffing pattern
 - Obtained W-2 information from DOA for GFD uniformed personnel
 - Obtained base salary and W-2 information from GIAA for ARFF personnel
 - Calculated firefighter earnings based on the base salary and W-2 information provided by DOA and GIAA

We conducted this audit in accordance with the standards for performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America. These standards require that we plan our audit objectives and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix 3:
Prior Audit Coverage

OPA Report No. 10-05

GovGuam's Leave Sharing Program allows classified employees to donate their accumulated annual or sick leave to another employee who needs extra leave hours for medical, military, or personal reasons. The cost of donated leave is borne by the recipient employee's agency. Our September 2010 performance audit of the program revealed that \$4.5M was expended to cover 252,263 shared leave hours from FY 2007 to FY 2009. Of these, 24,359 hours (10%) were donated to GFD employees.

Twenty-eight GFD firefighters used 7,594 of the 24,359 leave sharing hours for military deployment. They were paid \$118K for leave hours and \$160K for 10,294 hours of non-productive hours. If deployed for more than 30 days, the firefighters also start receiving military pay. The appealing financial incentive to be on military deployment encourages government employees, such as the firefighters, to continually volunteer rather than wait for the military call. We found that many firefighters volunteered for deployment and took advantage of annual, sick, military and shared leave and their unique 61 non-productive hours per pay period. We sought clarification on GFD leave and the AG responded on March 2011 with a legal memorandum (Appendix 8).

Our audit report had eight recommendations, including one for the legislature to amend 4 G.C.A. §6219 and bring it in line with the hour-for-hour basis to ensure equality among all GovGuam employees. The legislature has yet to address this recommendation.

FY 2009 Government-wide Financial Statement

In FY 2009, net expenses for public protection increased by \$17.7M (or 23.9%) over the previous fiscal year due to increased expenditures for the Department of Corrections' off-island detention program and salary costs for 305 GFD employees. GFD exceeded its \$26M budget by \$11,520. GFD's Fire Suppression Bureau's increased expenditures caused the most variance between the budgeted and actual amounts.

Appendix 4:**Top 25 Firefighters Compensated for Non-Productive Pay**

#	Position Title	Total Non-Productive Hours	Total Non-Productive Pay	Average Non-Productive Pay
1	Assistant Fire Chief	4,686	\$ 125,284	\$ 41,761
2	Fire Service Specialist	4,367	\$ 77,545	\$ 19,386
3	Firefighter II	4,146	\$ 75,481	\$ 18,870
4	Firefighter I	4,204	\$ 75,297	\$ 18,824
5	Fire Service Specialist	3,184	\$ 74,290	\$ 18,572
6	Firefighter II	3,585	\$ 67,985	\$ 16,996
7	Fire Service Specialist	3,389	\$ 66,611	\$ 16,652
8	Fire Service Specialist	3,227	\$ 62,847	\$ 15,711
9	Fire Service Specialist	3,479	\$ 62,634	\$ 15,659
10	Fire Service Specialist	2,990	\$ 62,503	\$ 15,626
Top 10 Subtotals		37,257	\$ 750,477	\$ 187,619
11	Firefighter II	3,359	\$ 62,355	\$ 15,589
12	Firefighter I	3,506	\$ 61,161	\$ 15,290
13	Fire Service Specialist	3,699	\$ 60,610	\$ 15,153
14	Fire Service Specialist	3,412	\$ 60,305	\$ 15,076
15	Fire Captain	2,741	\$ 56,905	\$ 14,226
16	Firefighter I	4,209	\$ 56,565	\$ 14,141
17	Fire Service Specialist	3,077	\$ 55,633	\$ 13,908
18	Firefighter I	3,323	\$ 55,376	\$ 13,844
19	Fire Service Specialist	2,561	\$ 55,333	\$ 13,833
20	Firefighter II	2,996	\$ 55,039	\$ 13,760
21	Fire Service Specialist	2,437	\$ 54,321	\$ 13,580
22	Firefighter II	2,958	\$ 53,159	\$ 13,290
23	Firefighter II	2,530	\$ 52,518	\$ 13,130
24	Fire Service Specialist	3,025	\$ 52,096	\$ 13,024
25	Firefighter II	2,530	\$ 50,220	\$ 12,555
Other 15 Subtotals		46,363	\$ 841,598	\$ 210,400
Top 25 Subtotals		83,619	\$ 1,592,075	\$ 398,019

Appendix 5:
Analysis of GFD's Non-Productive Pay & Hours

GFD Non-productive Pay Distribution (FY 2007 – FY 2010)

Position Title	\$0 - \$25,000	\$25,001 - \$50,000	\$50,001 - \$75,000	Over \$75K	Count	Common-Size Ratio
Assistant Fire Chief		3		1	4	1%
Fire Battalion Chief	5				5	2%
Fire Captain	33	10	1		44	15%
Fire Service Specialist	51	18	11	1	81	28%
Firefighter II	49	21	6	1	77	27%
Firefighter I	56	18	3	1	78	27%
Totals	194	70	21	4	289	100%
Common-Size Ratio	67%	24%	7%	1%	100%	

GFD Non-productive Hours Distribution (FY 2007 – FY 2010)

Position Title	0 – 1,000	1,001 – 2,000	2,001 – 3,000	3,001 – 4,000	4,001 – 5,000	Count	Common-Size Ratio
Assistant Fire Chief		3			1	4	1%
Fire Battalion Chief	5					5	2%
Fire Captain	29	13	2			44	15%
Fire Service Specialist	39	21	11	9	1	81	28%
Firefighter II	43	20	11	2	1	77	27%
Firefighter I	42	22	7	5	2	78	27%
Totals	158	79	31	16	5	289	100%
Common-Size Ratio	54%	27%	11%	6%	2%	100%	

**Appendix 6:
Analysis of GFD Firefighter Earnings**

2010 W-2 Earnings of Top 25 GFD Firefighter Earnings

Employee Information		Base Salary	W-2	(W-2 - Base Salary)	(Difference / Base Salary)
#	POSITION TITLE	2010 Budget	2010	Difference	Percentage
1	Fire Battalion Chief	\$ 65,195	\$ 114,320	\$ 49,126	75.4%
2	Fire Battalion Chief	\$ 65,195	\$ 109,902	\$ 44,707	68.6%
3	Fire Battalion Chief	\$ 65,195	\$ 108,809	\$ 43,614	66.9%
4	Assistant Fire Chief	\$ 71,053	\$ 105,744	\$ 34,691	48.8%
5	Fire Captain	\$ 61,310	\$ 102,476	\$ 41,165	67.1%
6	Fire Captain	\$ 59,237	\$ 101,779	\$ 42,542	71.8%
7	Fire Captain	\$ 59,237	\$ 99,939	\$ 40,703	68.7%
8	Fire Captain	\$ 59,237	\$ 99,317	\$ 40,081	67.7%
9	Fire Captain	\$ 57,234	\$ 98,938	\$ 41,704	72.9%
10	Fire Service Specialist	\$ 56,695	\$ 98,579	\$ 41,884	73.9%
Top 10 Subtotals		\$ 619,588	\$ 1,039,803	\$ 420,216	67.8%
11	Fire Service Specialist	\$ 56,695	\$ 98,349	\$ 41,654	73.5%
12	Fire Captain	\$ 55,298	\$ 97,182	\$ 41,883	75.7%
13	Fire Captain	\$ 55,298	\$ 96,209	\$ 40,911	74.0%
14	Fire Service Specialist	\$ 56,695	\$ 95,986	\$ 39,291	69.3%
15	Fire Captain	\$ 57,234	\$ 95,965	\$ 38,731	67.7%
16	Fire Captain	\$ 55,298	\$ 95,930	\$ 40,632	73.5%
17	Fire Captain	\$ 55,298	\$ 95,066	\$ 39,768	71.9%
18	Fire Service Specialist	\$ 54,778	\$ 95,038	\$ 40,261	73.5%
19	Fire Captain	\$ 53,429	\$ 94,844	\$ 41,415	77.5%
20	Firefighter II	\$ 49,048	\$ 94,843	\$ 45,796	93.4%
21	Fire Service Specialist	\$ 54,778	\$ 94,795	\$ 40,017	73.1%
22	Fire Service Specialist	\$ 54,778	\$ 94,722	\$ 39,944	72.9%
23	Fire Captain	\$ 55,298	\$ 94,707	\$ 39,408	71.3%
24	Fire Service Specialist	\$ 54,778	\$ 94,679	\$ 39,901	72.8%
25	Fire Captain	\$ 55,298	\$ 94,511	\$ 39,212	70.9%
Other 15 Subtotals		\$ 824,002	\$ 1,432,826	\$ 608,824	73.9%
Top 25 Subtotals		\$ 1,443,589	\$ 2,472,629	\$ 1,029,040	71.3%
\$90K - \$94K	Various Firefighters (27)	\$ 1,441,195	\$ 2,498,575	\$ 1,057,380	73.4%
\$80K - \$90K	Various Firefighters (57)	\$ 2,807,393	\$ 4,827,387	\$ 2,019,994	72.0%
\$70K - \$80K	Various Firefighters (97)	\$ 4,233,433	\$ 7,301,096	\$ 3,067,663	72.5%
Under \$70K	Various Firefighters (57)	\$ 2,130,954	\$ 3,478,832	\$ 1,347,878	63.3%
263 Grand Totals		\$ 12,056,564	\$ 20,578,519	\$ 8,521,955	70.7%

Appendix 6:
Analysis of GFD Firefighter Earnings

2009 W-2 Earnings of Top 25 GFD Firefighter Earnings

Employee Information		Base Salary	W-2	(W-2 - Base Salary)	(Difference / Base Salary)
#	POSITION TITLE	2009 Budget	2009	Difference	Percentage
1	Assistant Fire Chief	\$ 67,411	\$ 143,305 ¹²	\$ 75,894	112.6%
2	Fire Battalion Chief	\$ 59,762	\$ 102,444	\$ 42,682	71.4%
3	Fire Battalion Chief	\$ 59,762	\$ 102,128	\$ 42,366	70.9%
4	Fire Battalion Chief	\$ 59,762	\$ 100,171	\$ 40,409	67.6%
5	Fire Captain	\$ 52,465	\$ 94,987	\$ 42,523	81.1%
6	Fire Captain	\$ 52,465	\$ 94,586	\$ 42,121	80.3%
7	Fire Captain	\$ 52,465	\$ 93,982	\$ 41,518	79.1%
8	Fire Captain	\$ 52,465	\$ 93,516	\$ 41,052	78.2%
9	Fire Captain	\$ 54,300	\$ 92,410	\$ 38,110	70.2%
10	Fire Service Specialist	\$ 51,971	\$ 91,344	\$ 39,374	75.8%
Top 10 Subtotals		\$ 562,826	\$ 1,008,874	\$ 446,048	79.3%
11	Assistant Fire Chief	\$ 65,132	\$ 91,223	\$ 26,090	40.1%
12	Fire Service Specialist	\$ 51,971	\$ 90,208	\$ 38,237	73.6%
13	Fire Service Specialist	\$ 50,213	\$ 89,626	\$ 39,414	78.5%
14	Firefighter II	\$ 43,440	\$ 89,542	\$ 46,101	106.1%
15	Fire Captain	\$ 50,690	\$ 88,840	\$ 38,149	75.3%
16	Fire Captain	\$ 48,976	\$ 87,980	\$ 39,004	79.6%
17	Fire Captain	\$ 48,976	\$ 87,726	\$ 38,749	79.1%
18	Fire Captain	\$ 50,690	\$ 87,616	\$ 36,926	72.8%
19	Fire Service Specialist	\$ 50,213	\$ 87,490	\$ 37,277	74.2%
20	Fire Service Specialist	\$ 50,213	\$ 87,422	\$ 37,209	74.1%
21	Fire Captain	\$ 52,465	\$ 87,377	\$ 34,913	66.5%
22	Fire Captain	\$ 48,976	\$ 87,321	\$ 38,345	78.3%
23	Fire Captain	\$ 48,976	\$ 87,294	\$ 38,318	78.2%
24	Fire Captain	\$ 48,976	\$ 86,995	\$ 38,019	77.6%
25	Fire Captain	\$ 50,690	\$ 86,736	\$ 36,046	71.1%
Other 15 Subtotals		\$ 760,598	\$ 1,323,394	\$ 562,796	74.0%
Top 25 Subtotals		\$ 1,323,424	\$ 2,332,269	\$ 1,008,844	76.2%
\$80K - \$86K	Various Firefighters (49)	\$ 2,357,244	\$ 4,095,024	\$ 1,737,780	73.7%
\$70K - \$80K	Various Firefighters (79)	\$ 3,321,997	\$ 5,851,277	\$ 2,529,280	76.1%
Under \$70K	Various Firefighters (113)	\$ 4,066,354	\$ 6,942,359	\$ 2,876,005	70.7%
266 Grand Totals		\$ 11,069,019	\$ 19,220,929	\$ 8,151,910	73.6%

¹² The Assistant Fire Chief received lump sum payment of sick leave upon retirement of \$79K.

Appendix 7:
Analysis of GIAA Firefighter Earnings

2010 W-2 Earnings of Top 25 GIAA Firefighter Earnings

Employee Information		Base Salary	W-2	(W-2 - Base Salary)	(Difference / Base Salary)
#	POSITION TITLE	2010 Budget	2010	Difference	Percentage
1	Assistant Fire Chief	\$ 63,515	\$ 93,916	\$ 30,401	47.9%
2	Assistant Fire Chief	\$ 63,515	\$ 93,540	\$ 30,025	47.3%
3	Fire Captain	\$ 53,874	\$ 85,688	\$ 31,814	59.1%
4	Fire Captain	\$ 53,874	\$ 81,443	\$ 27,569	51.2%
5	Fire Captain	\$ 53,874	\$ 81,443	\$ 27,569	51.2%
6	Fire Captain	\$ 53,874	\$ 78,582	\$ 24,708	45.9%
7	Driver Operator	\$ 49,818	\$ 78,415	\$ 28,597	57.4%
8	Fire Captain	\$ 53,874	\$ 78,100	\$ 24,226	45.0%
9	Driver Operator	\$ 49,818	\$ 77,695	\$ 27,877	56.0%
10	Driver Operator	\$ 49,818	\$ 75,825	\$ 26,007	52.2%
Top 10 Subtotals		\$ 545,855	\$ 824,647	\$ 278,792	51.1%
11	Fire Captain	\$ 53,874	\$ 75,536	\$ 21,662	40.2%
12	Driver Operator	\$ 49,818	\$ 74,386	\$ 24,568	49.3%
13	Driver Operator	\$ 49,818	\$ 72,234	\$ 22,416	45.0%
14	Firefighter II	\$ 43,098	\$ 71,380	\$ 28,282	65.6%
15	Driver Operator	\$ 48,134	\$ 68,997	\$ 20,864	43.3%
16	Firefighter II	\$ 43,098	\$ 68,524	\$ 25,426	59.0%
17	Firefighter II	\$ 43,098	\$ 68,304	\$ 25,206	58.5%
18	Driver Operator	\$ 46,529	\$ 67,997	\$ 21,468	46.1%
19	Firefighter II	\$ 41,641	\$ 67,904	\$ 26,263	63.1%
20	Firefighter II	\$ 43,098	\$ 67,143	\$ 24,046	55.8%
21	Firefighter II	\$ 43,098	\$ 66,967	\$ 23,869	55.4%
22	Firefighter II	\$ 43,098	\$ 66,212	\$ 23,114	53.6%
23	Firefighter II	\$ 43,098	\$ 63,278	\$ 20,181	46.8%
24	Firefighter I	\$ 34,939	\$ 58,769	\$ 23,830	68.2%
25	Firefighter I	\$ 34,939	\$ 57,564	\$ 22,625	64.8%
Other 15 Subtotals		\$ 661,376	\$ 1,015,195	\$ 353,818	53.5%
Top 25 Subtotals		\$ 1,207,232	\$ 1,839,842	\$ 632,610	52.4%
Other 4 Subtotals		\$ 141,048	\$ 208,322	\$ 67,274	47.7%
29 Grand Totals		\$ 1,348,279	\$ 2,048,164	\$ 699,884	51.9%

**Appendix 7:
Analysis of GIAA Firefighter Earnings**

2009 W-2 Earnings of Top 25 GIAA Firefighter Earnings

Employee Information		Base Salary	W-2	(W-2 - Base Salary)	(Difference / Base Salary)
#	POSITION TITLE	2009 Budget	2009	Difference	Percentage
1	Assistant Fire Chief	\$ 52,492	\$ 93,274	\$ 40,782	77.7%
2	Assistant Fire Chief	\$ 52,492	\$ 90,463	\$ 37,971	72.3%
3	Fire Captain	\$ 44,524	\$ 79,885	\$ 35,361	79.4%
4	Fire Captain	\$ 44,524	\$ 78,579	\$ 34,055	76.5%
5	Fire Captain	\$ 44,524	\$ 77,591	\$ 33,067	74.3%
6	Fire Captain	\$ 44,524	\$ 77,463	\$ 32,939	74.0%
7	Fire Captain	\$ 44,524	\$ 76,582	\$ 32,058	72.0%
8	Fire Captain	\$ 44,524	\$ 75,107	\$ 30,583	68.7%
9	Driver Operator	\$ 41,172	\$ 74,196	\$ 33,024	80.2%
10	Driver Operator	\$ 41,172	\$ 70,930	\$ 29,758	72.3%
Top 10 Subtotals		\$ 454,472	\$ 794,069	\$ 339,597	74.7%
11	Driver Operator	\$ 41,172	\$ 70,416	\$ 29,244	71.0%
12	Driver Operator	\$ 41,172	\$ 70,382	\$ 29,210	70.9%
13	Driver Operator	\$ 38,454	\$ 67,847	\$ 29,393	76.4%
14	Driver Operator	\$ 37,128	\$ 66,440	\$ 29,312	78.9%
15	Driver Operator	\$ 41,172	\$ 66,305	\$ 25,133	61.0%
16	Firefighter II	\$ 35,618	\$ 65,423	\$ 29,805	83.7%
17	Firefighter II	\$ 35,618	\$ 61,872	\$ 26,254	73.7%
18	Firefighter II	\$ 35,618	\$ 61,850	\$ 26,232	73.6%
19	Firefighter II	\$ 35,618	\$ 61,531	\$ 25,913	72.8%
20	Firefighter II	\$ 35,618	\$ 61,326	\$ 25,708	72.2%
21	Firefighter II	\$ 35,618	\$ 61,274	\$ 25,656	72.0%
22	Firefighter II	\$ 34,414	\$ 60,574	\$ 26,160	76.0%
23	Firefighter II	\$ 35,618	\$ 60,292	\$ 24,674	69.3%
24	Firefighter I	\$ 27,805	\$ 53,387	\$ 25,582	92.0%
25	Firefighter I	\$ 27,805	\$ 52,659	\$ 24,854	89.4%
Other 15 Subtotals		\$ 538,448	\$ 941,578	\$ 403,130	74.9%
Top 25 Subtotals		\$ 992,920	\$ 1,735,647	\$ 742,727	74.8%
Other 4 Subtotals		\$ 113,359	\$ 201,822	\$ 88,463	78.0%
29 Grand Totals		\$ 1,106,279	\$ 1,937,469	\$ 831,190	75.1%

Leonardo M. Rapadas
Attorney General



Phillip J. Tydingco
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

March 31, 2011

Ref: OPA 10-0749

VIA HAND-DELIVERY

Doris Flores Brooks, Public Auditor
Office of Public Accountability
Suite 401, DNA Building
238 Archbishop Flores Street
Hagåtña, Guam 96910

RECEIVED	
OFFICE OF PUBLIC ACCOUNTABILITY	
DATE:	3-31-11
TIME:	3:59
BY:	Phru

Re: Leave Sharing Program – Government of Guam Employees

Dear Ms. Brooks:

This is in regard to your letter of August 11, 2010, requesting clarification of our prior opinions regarding the employee leave sharing program. Specifically, you request clarification of the meaning of “per occasion” as applied to the leave sharing program.

According to your findings, the Department of Administration has been interpreting “per occasion” to mean that each time an employee returns to work, even if only for a day, and submits a new leave request, even if for the same reason that precipitated the employee’s prior absence, a new 90-day occasion arises. The Department of Education, on the other hand, has been interpreting “per occasion” to mean that the 90-day limit applies if the employee is taking leave for the same reason or condition, no matter how much time has passed between leave requests.

The Leave Sharing Program is codified at 4 G.C.A. § 4109.2 and provides that an employee who has exhausted all his accrued annual and sick leave and compensatory time and who requires additional leave “for the purposes of a medical emergency or for personal reasons” may receive leave transferred from donor employees. 4 G.C.A. § 4109.2(b). The law also provides:

Participation in the leave sharing program shall not exceed ninety (90) working days, shall require a certification from the attending medical doctor that the recipient of the leave needs additional time for medical treatment or recovery from a medical illness and is physically unable to return to work due to the medical illness. An additional ninety (90) working days may be granted upon similar certification from the attending medical doctor made within two (2) weeks of the first ninety (90) day period. A final period of thirty (30) working days may

Letter to Public Auditor
Re: Leave Sharing Program – Government of Guam Employees
March 31, 2011
Page 2

be granted upon an additional certification from the attending medical doctor that additional time is needed for recovery.

Id.

In our prior opinion, we stated that “ninety days of leave may be transferred per occasion.” Attorney General Memo Ref. DOA 03-0846 (Oct. 6, 2004), 5; see also Attorney General Memo Ref. DOA 02-0742 (Dec. 30, 2002), 3 (stating that an employee cannot receive donated leave “beyond 90 days for the same occasion”). We also stated that “an employee who has ‘back-to-back’ situations, even if there is no time whatsoever between the situations, is able to take advantage of the Program so long as the occasions [are] distinct and separate.” Attorney General Memo Ref. 03-0846 (Oct. 6, 2004), 6.

If an employee submits a new leave request for the same reason or condition that precipitated the prior leave request, the occasion is not “distinct and separate”. Thus, the Department of Education’s interpretation of the law appears to be more consistent with our prior opinions than the interpretation of the Department of Administration. The experience of other jurisdictions that also administer employee leave sharing programs bears this out.

For example, in Mississippi, state government employees who have exhausted their leave and are certified by a physician as suffering from a catastrophic injury or illness may receive up to 90 work days of donated leave from leave donors. Miss. Code Ann. § 25-3-95(8). The 90-day limit applies to each catastrophic illness or injury, defined as:

a life-threatening injury or illness of an employee or a member of an employee’s immediate family which totally incapacitates the employee from work, as verified by a licensed physician, and forces the employee to exhaust all leave time earned by that employee, resulting in the loss of compensation from the state for the employee. Conditions that are short-term in nature, including, but not limited to, common illnesses such as influenza and the measles, and common injuries, are not catastrophic. Chronic illnesses or injuries, such as cancer or major surgery, which result in intermittent absences from work and which are long-term in nature and require long recuperation periods may be considered catastrophic.

Miss. Code Ann. § 25-3-91(b).

Under the United States government’s Voluntary Leave Transfer Program, an employee who has a personal or family medical emergency and who has exhausted his available paid leave may receive donated leave from leave donors. 5 U.S.C. § 6333. The law defines a medical emergency as “a medical condition of an employee or a family member of such employee that is likely to require the prolonged absence of such employee from duty and to result in a substantial loss of income to such employee because of the unavailability of paid leave (disregarding any advanced leave).” 5 U.S.C. § 6331(4). Although it does not impose a limit, under the federal program’s provisions, a leave recipient may use donated annual leave only for purposes related to the medical emergency for which the leave recipient was approved. See 5 U.S.C. § 6335

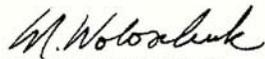
Letter to Public Auditor
Re: Leave Sharing Program -- Government of Guam Employees
March 31, 2011
Page 3

(governing termination of medical emergency). Thus, even the federal program would require a "distinct and separate" reason to approve a new block of leave.

We therefore conclude that the "per occasion" language requires an employee in need of donated leave to have a "distinct and separate" reason each time he or she wishes to take advantage of the Leave Sharing Program. We hope this sufficiently clarifies the matter for you.

This letter is informational only and is not issued as an opinion of the Attorney General. For further information concerning this matter, please use the reference number shown above.

Sincerely,



Marianne Woloschuk
Assistant Attorney General

INFORMATION & GUIDANCE

Leonardo M. Rapadas
Attorney General



Phillip J. Tydingco
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

April 10, 2011

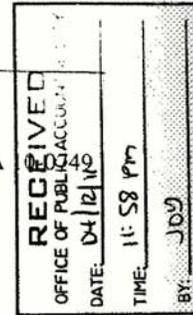
LEGAL MEMORANDUM

Ref.: OPA

TO: Doris Flores Brooks, Public Auditor
Office of Public Accountability

FROM: Attorney General 

SUBJECT: **Leave Sharing Program – Guam Fire Department Employees**



Dear Ms. Brooks:

This is in regard to your letter of August 4, 2010, requesting clarification of our prior memorandum concerning the leave sharing program as applied to employees of the Guam Fire Department. Specifically, you seek clarification regarding the source of the 61-hour “non-productive” bonus paid to GFD uniformed personnel while on leave. The source can be found in section 6219 of the Uniform Position Classification and Salary Administration Act of 1991, 4 G.C.A. § 6219.

I. FACTS

According to your findings, Guam firefighters who use 45 hours of leave in a two-week pay period—whether that leave is annual leave, sick leave, or donated leave—are compensated for 106 hours. Regular GovGuam employees, on the other hand, are charged hour-for-hour for the leave they use, up to a maximum of 80 hours per pay period. This results in a 61-hour bonus paid to firefighters on leave (106 – 45 = 61).

II. ANALYSIS

I. Applicable Law

Section 6219 of the Uniform Position Classification and Salary Administration Act of 1991 governs the compensation of firefighters and provides in pertinent part:

(a) Notwithstanding any other law, rule, or regulation, firefighters within the Guam Fire Department, except the Fire Chief, shall be compensated at the regular hourly rate of pay at one hundred six (106) hours . . . per pay period. Firefighters who are working administrative duty shall work eighty (80) hours per pay period

Legal Memorandum re Leave Sharing Program – GFD Employees
To Doris Flores Brooks, Public Auditor
Page 2 of 3

at their regular rate of pay in the same manner as other government of Guam employees

. . . .

(c) Firefighters shall be charged no more than nine (9) hours annual leave or sick leave for any given day on which such leave is taken.

(d) All other laws, rules, regulations applicable to firefighters not consistent with this Section shall remain in full force and effect.

4 G.C.A. § 6219.

Thus, firefighters on non-administrative duty are compensated for a 106-hour 2-week pay period. During the pay period, they are actually on duty for five 24-hour days (i.e., 120 hours). In contrast, regular GovGuam employees are compensated for an 80-hour 2-week pay period and are actually on duty for ten 8-hour days (i.e., 80 hours) during the pay period.

2. Effect of Section 6219 on Regular Pay

When a regular GovGuam employee takes an entire workday off, he is charged 8 hours of leave of the type appropriate to the absence, i.e., sick leave in the case of a sick day, and annual leave (otherwise referred to as personal leave in the Department of Education) in the case of other types of absence. When a regular GovGuam employee is off work for an entire 2-week pay period, he is charged 80 hours of leave for the ten days off work and receives a paycheck that reflects an 80-hour 2-week pay period.

When a firefighter takes an entire workday off, due to section 6219, he can only be charged 9 hours of leave of the type appropriate to the absence. When a firefighter is off work for an entire 2-week pay period, he is charged 45 hours of leave for the five days off work and receives a paycheck that reflects a 106-hour 2-week pay period. Thus, Guam law is the source of the 61-hour bonus paid to firefighters on leave. See 4 G.C.A. § 6219(c) (“Firefighters shall be charged no more than nine (9) hours annual leave or sick leave for any given day on which such leave is taken.”).

3. Effect of Section 6219 on Donated Leave under Leave Sharing Program

Under GovGuam’s Leave Sharing Program, an employee who has exhausted all of his accrued annual and sick leave and compensatory time may use leave donated by other employees in order to avoid taking leave without pay for the purposes of a medical emergency or for personal reasons, including military duty. 4 G.C.A. § 4109.2(a). The law allows the recipient employee to use donated leave for up to 90 working days per occasion, with the possibility of an extension for an additional 90 days under certain circumstances, and again for an additional 30 days. 4 G.C.A. § 4109.2(b). As a result, an employee participating in the Leave Sharing Program may be absent for up to 210 working days per occasion.

In the case of a regular GovGuam employee who works ten days per pay period, a 90-day absence translates to 9 pay periods or 18 weeks (approximately 4.2 months); a 180-day absence

Legal Memorandum re Leave Sharing Program – GFD Employees
To Doris Flores Brooks, Public Auditor
Page 3 of 3

translates to 18 pay periods or 36 weeks (approximately 8.4 months); and a 210-day absence translates to 21 pay periods or 42 weeks (approximately 9.8 months).

In comparison, in the case of a firefighter who works five days per pay period, a 90-day absence translates to 18 pay periods or 36 weeks (approximately 8.4 months); a 180-day absence translates to 36 pay periods or 72 weeks (approximately 16.8 months); and a 210-day absence translates to 42 pay periods or 84 weeks (approximately 19.6 months). Thus, the current law grants firefighters on donated leave an extraordinary amount of leave time: They receive their GovGuam salary for twice as long as similarly situated regular GovGuam employees on donated leave.

4. Effect of Section 6219 on Recipient Employee's Agency

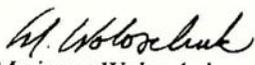
Because the agency that employs the recipient employee bears the cost of paying for the donated leave, the Leave Sharing Program has the potential to affect that agency's operations. According to information provided by the Department of Administration, during Fiscal Year 2010, 132 firefighters took advantage of the ability to use 90-day blocks of donated leave for purposes of military leave under the Leave Sharing Program. This cost the Guam Fire Department a total of \$122,692.21, comprised of \$41,242.46 for salary (45 hours per pay period per person) plus \$81,449.75 for non-productive pay (61 hours per pay period per person).

If such an impact was not its intent, the Guam Legislature should close this loophole by specifying that, notwithstanding the provisions of 4 G.C.A. § 6129(c), donated leave used by a recipient employee will be charged at the rate of 8 hours per day, 10 days per pay period. If it is an intended policy, then the Legislature should address the effect of the 61-hour bonus paid solely to firefighters on leave, which the rest of the GovGuam employees may find unfair, and taxpayers may find too generous. Alternatively or additionally, the Legislature could make the donor employee's agency responsible for bearing the cost of paying for donated leave taken by the recipient employee. This would alleviate some of the burden on the recipient employee's agency, in this case, the Guam Fire Department.

III. CONCLUSION

In summary, the 61-hour bonus paid to firefighters on leave finds its source in section 6219 of the Uniform Position Classification and Salary Administration Act of 1991. This section has far-reaching, possibly unintended, effects. However, because it is a duly enacted law, only a legislative act can change it.

We hope this sufficiently clarifies the matter for you. For further information concerning this matter, please use the reference number shown above.


Marianne Woloschuk
Assistant Attorney General

Appendix 10:
Summary of GFD Pay Legislation

On October 26, 1974, GFD firefighter compensation was established in the Government Code of Guam §4111.1 by Public Law (P.L.) 12-183. Section 4111.1 stated that:

- (a) All firemen within the Department of Public Safety, except fire inspectors and deputy chief, shall be compensated at the regular hourly rate of pay for up to 90 hours worked during any pay period, and at 1.5 times the regular hourly rate for hours worked in excess of 120 hours per pay period;
- (b) All hours of work performed by firemen during a legal holiday shall be compensated at double the regular hourly rate, however, that work performed on such a holiday in excess of 9 hours shall be compensated at the regular hourly rate;
- (c) Firemen shall be charged no more than 9 hours annual or sick leave for any given day on which such leave is taken;
- (d) All other laws, rules, regulations applicable to firemen not inconsistent with this section shall remain in full force and effect;
- (e) This section shall not be construed to limit the authority of the Civil Service Commission to adjust the rate of compensation for firemen so long as the regular hourly rate of compensation is not adjusted to an amount less than that in effect on September 1, 1974.

On December 12, 1984, P.L. 17-78 amended §4111.1(a) of the Government Code (4 G.C.A. §6219(a)) to include the following language: “The Civil Service Commission shall adjust the pay schedule for firemen to that schedule which pays, based on a standard pay period of 90 hours, nearest to the hourly amount being paid firemen on September 1, 1974.”

On May 17, 1990, P.L. 20-172 repealed and reenacted 4 G.C.A. §6219(a) to state that: “all firefighters within [GFD] except the Fire Chief shall be compensated at the regular hourly rate of pay for 106 hours per pay period and shall be compensated at 1.5 times the regular hourly rate for hours worked in excess of 106 hours per pay period.”

On September 28, 2001, P.L. 26-35 amended 4 G.C.A. §6219(a) to add the Deputy Fire Chief to the exception from the 106 hour pay period schedule.

On October 1, 2001, P.L. 26-36 repealed Section 11 of P.L. 26-35, resulting in all firefighters within GFD (except the Fire Chief) being paid at the base rate for 80 hours per pay period and at 1.5 times the base rate for work in excess of 80 hours.

On October 12, 2001, P.L. 26-49 repealed P.L. 26-36, restoring the language of 4 G.C.A. §6219(a) to require compensation to GFD firefighters (except the Fire Chief) at a base rate for 106 hours per pay period and at 1.5 times the base rate for hours worked in excess of 106 hours.

On September 30, 2005, P.L. 28-68 amended 4 G.C.A. §6219(a) to add that firefighters performing administrative duty shall work 80 hours per pay period at their regular rate of pay and at 1.5 times their regular hourly rate only in the event that they work in excess of 106 hours.

On November 14, 2005, P.L. 28-72 amended 4 G.C.A. §6219 to add subsections (b), (c), and (d) using the same language taken from P.L. 12-183.

Appendix 11:
GFD Memo Restricting Leave



Felix P. Camacho
Governor

Michael W. Cruz, MD
Lt. Governor

GUAM FIRE DEPARTMENT
DIPATTAMENTON GUAFI GUAHAN



David Q. Peredo
Fire Chief

June 18, 2009

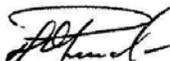
MEMORANDUM

To: All Personnel
From: Fire Chief
Subject: **Leave/ Compensation Policy**
Ref: **Austerity Measures**

Please be informed, effective **July 5, 2009**, any approved leave for a pay period or more by a GFD uniform personnel shall be compensated at 106 hours bi-weekly.

In addition, any leave cancellation will not be permitted once it is in effect, specifically on the last day of the pay period.

This policy rescinds any and all previous policies regarding this matter.


DAVID Q. PEREDO



Suite 807 DNA Building, 238 Archbishop Flores Street Hagatna, Guam 96910
Phone: (671) 472-3311 • Fax: (671) 472-3360
Mailing Address: P.O. Box 2950 Hagatna, Guam 96910

Appendix 12:
GFD Memo Rescindment



GUAM FIRE DEPARTMENT
DEPATMENTON GUAFI GUAHAN



Edward Baza Calvo
Governor

John C. Salas
Acting Fire Chief

Ray Tenorio
Lt. Governor

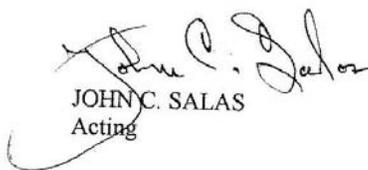
January 10, 2011

To: All Fire Personnel
From: Fire Chief
Subject: Rescindment
Re: Leave Compensation Policy Memo
Dated June 18, 2009

Effective payperiod ending January 15, 2011, the above mentioned Fire Chief's memorandum relative to Leave/Compensation Policy is rescinded.

All matters relating to the compensation of firefighters shall revert back to the policies in existent prior to June 18, 2009.

For your information and compliance.


JOHN C. SALAS
Acting

Cc: Mr. Gil Galang, Chief Payroll Officer
Payroll Division, Dept. of Administration

Suite 307 B DNA Building Arch Bishop Flores Street, Hagatna, Guam 96910 • Phone: (671) 472-3311 • Fax: (671) 472-3360
Mailing Address: P.O. Box 2950, Hagatna, Guam 96932

**Appendix 13:
ARFF New Work Schedule**



GOVERNMENT OF GUAM
HAGATNA, GUAM 96910

09-724 W A

April 22, 2009 BY

GUAM INTERNATIONAL
AIRPORT AUTHORITY

RECEIPT ACKNOWLEDGED

MEMORANDUM

TO: All Aircraft Rescue and Fire Fighting (ARFF) Personnel

FROM: Carlos H. Salas
Executive Manager

SUBJECT: **Implementation of New Work Schedule**

SIGNATURE _____
PRINT NAME _____
(COMPANY DEPARTMENT) _____
DATE _____ TIME _____

As discussed at our April 3rd meeting, GIAA is implementing a new work schedule for ARFF that will now become effective on Sunday, May 24, 2009 instead of April 26, 2009. We hope this delay helps our fire fighters with a more reasonable transition period. The new work schedule allows only up to 106 work hours per pay period and applies to all Aircraft Rescue and Fire Fighting (ARFF) Uniformed Personnel. As mentioned, the new work schedule is part of the Board of Directors' recently approved cost cutting initiatives which includes reduction and/or elimination of overtime costs "across the board" along with cutting of expenses in other areas to improve the airport's financial standing.

Please be advised that the new work schedule of 106 hours is in compliance with federal standards for a pay period of 14 days. Currently ARFF personnel's pay period is 14 days and the work schedule consists of 120 hours per pay period. 106 of those hours are regular hours and 14 of those hours are overtime hours. As stipulated under the federal Fair Labor Standards Act (FLSA), 29 CFR §553.230(a), the work period for fire protection personnel is at least 7 days but less than 28 consecutive days. While there is no set number of days or hours a firefighter must be scheduled to work during this time period, overtime compensation must be paid only when the ratio of the number of hours worked to the number of days in the work period exceeds the ratio of 212 hours to 28 days. Based on this standard, overtime must be paid to fire fighters as follows:

WORK PERIODS (DAYS)	MAXIMUM HOURS
28	212
27	204
26	197
25	189
24	182
23	174
22	167
21	159
20	151
19	144
18	136
17	129
16	121
15	114
14	106

We want to assure that GIAA board and management is sensitive to your situation and decided to adopt the least financial impact on you where other options, ie., 80 hours or 96 hour work schedules, were not



Appendix 13:
ARFF New Work Schedule

Page 2 of 2

considered at this time. We believe that a work schedule of 106 hours for the current work period of 14 days for ARFF personnel is much less drastic under the circumstances and minimal impact on your total compensation. While the 106 hour work schedule eliminates overtime cost, any actual hours worked in excess of 106 hours will be compensated at the overtime rate of pay. However, any overtime hours require advance approval and shall be emergency related time and attendance.

It is with deep regret that the Authority must take this course of action. We want to assure you that at this time, the new work schedule will not affect regularly scheduled annual salary increments and the next 10% increases for the next 3 fiscal years as mandated by the Legislature.

Thank you for your cooperation and understanding. Please feel free to contact the Personnel Office at 642-4647, if you have any questions or comments.

Attachment
New Work Schedule effective May 24, 2009

cc:  GIAA Board of Directors
Comptroller
Gerard Bautista
Pedro Lizama
Personnel

Leonardo M. Rapadas
Attorney General



1030
8/3/11
Phillip J. Tydingco
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

August 2, 2011

INFORMATION AND GUIDANCE

Ref.: GFD 11-0371

TO: Acting Fire Chief, Guam Fire Department
FROM: Assistant Attorney General
SUBJECT: **Guam Fire Department Firefighters – Leave Compensation**

This is in regard to your memorandum of April 15, 2011, requesting an opinion regarding firefighters' leave compensation. Specifically, you would like to know whether firefighters on annual, sick, or other type of leave for an entire pay period should be compensated for 106 hours or for 120 hours.

I. FACTS

According to the information you have provided, a firefighter's work schedule consists of five 24-hour days, amounting to a total of 120 hours on duty, during the two-week pay period. A firefighter who works the entire 120-hour pay period is compensated for 106 hours at the straight (regular) pay rate and 14 hours at the overtime pay rate.

II. ANALYSIS

I. Applicable Law – Firefighter Compensation

Section 6219 of the Uniform Position Classification and Salary Administration Act of 1991 governs the compensation of firefighters and provides in pertinent part:

(a) Notwithstanding any other law, rule, or regulation, firefighters within the Guam Fire Department, except the Fire Chief, shall be compensated at the regular hourly rate of pay at one hundred six (106) hours, and shall be compensated at one and one-half (1½) times the regular hourly rate for hours worked in excess of one hundred six (106) hours per pay period. Firefighters who are working administrative duty shall work eighty (80) hours per pay period at their regular rate of pay in the same manner as other government of Guam employees and at one and one-half (1½) times their regular hourly rate only in the event that they work in excess of one hundred six (106) hours in a pay period.

Information and Guidance - GFD Firefighters Leave Compensation
To Raymond A. Perez, Acting Fire Chief
Page 2 of 3

(d) All other laws, rules, regulations applicable to firefighters not consistent with this Section shall remain in full force and effect.

4 G.C.A. § 6219.

Thus, the law provides that firefighters are compensated for a 106-hour 2-week pay period and that, for hours worked in excess of 106 hours, they receive overtime pay. All other personnel laws, rules and regulations remain in effect.

2. Applicable Law – Hours Worked and Overtime

The regulation governing hours worked states in pertinent part: "All time during which an employee is suffered, or permitted to work and required to be on government of Guam's premises on duty or at a prescribed work place, is considered as hours worked." Personnel R. & Reg. § 7.200.A. The regulation further provides:

As a general rule, hours worked will include:

1. All time during which an employee is required to be on the government of Guam's premises or at a prescribed work place.
2. All time during which an employee is suffered or permitted to work, whether or not required to do so. . . .

Personnel R. & Reg. § 7.200.B.

The regulation governing overtime states in pertinent part: "In determining the number of hours worked by an employee within a given workweek or work period, time spent off on annual, administrative, sick, compensatory time-off, other leave (with or without pay), or holidays will *not be counted as time worked*." Personnel R. & Reg. § 7.401.B (emphasis added).

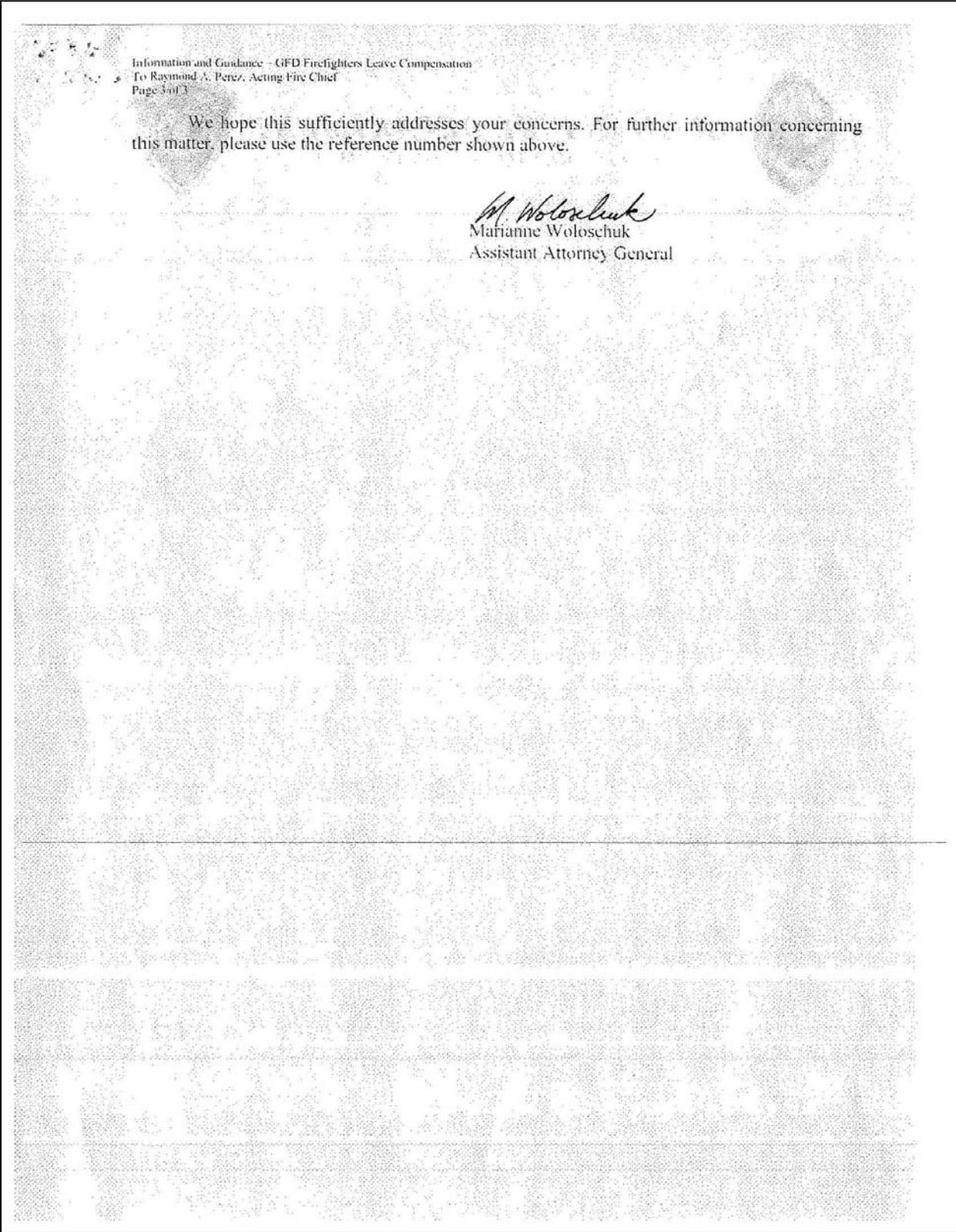
3. Firefighters on Leave are not Entitled to Overtime Pay

The laws and regulations set forth above interact as follows. Firefighters have a 106-hour 2-week pay period and, when on duty, work 120 hours per pay period. For this, firefighters receive regular pay for 106 of the hours worked and overtime pay for 14 of the hours worked. When on leave, firefighters' time off duty does not count as time worked. Thus, they do not receive overtime pay when on leave, but receive regular pay for 106 hours.

III. CONCLUSION

In summary, firefighters must actually work overtime hours in order to receive overtime pay. Since firefighters on leave are not on duty and therefore are not actually working, they are not entitled to overtime pay while on leave. As a result, firefighters on leave for an entire pay period should be compensated for 106 hours at their straight (regular) pay rate.

Appendix 14:
AG Memo on GFD Leave Compensation



Appendix 15: DOL Leave Benefits



**UNITED STATES
DEPARTMENT OF LABOR**

[Subscribe to E-mail Updates](#)

[Advanced Search](#)

[A to Z](#) | [Site Map](#) | [FAQs](#) | [Forms](#) | [About DOL](#) | [Contact Us](#) | [Español](#)

Secretary of Labor Hilda L. Solis

[DOL Home](#) > [Find It! By Topic](#) > [Leave Benefits](#)

By Topic

- Wages
- Unemployment Insurance (UI)
- Health Plans & Benefits - Continuation of Health Coverage
- View All Topics

By Audience

- Job Seekers / Unemployed
- Employers
- Workers
- View All Audiences

By Location

Laws and Regulations

Budget & Performance

Leave Benefits

Leave benefits allow employees to take time off from work. The extent of the leave and whether it is paid in whole, in part, or not at all is generally a matter of agreement between an employer and an employee (or the employee's representative). Certain types of leave are required by law, whereas other types are voluntary incentives provided by employers. See the list of subtopics to the right to narrow your browsing.

The Department of Labor enforces the [Fair Labor Standards Act \(FLSA\)](#). Often the public thinks that the FLSA regulates "leave benefits." In fact, there are a number of employment practices which FLSA does not regulate. For example, it does not require:

- Vacation, holiday, severance, or sick pay.
- Meal or rest periods, holidays off, or vacations.
- Premium pay for weekend or holiday work.
- Pay raises or fringe benefits.
- Discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

[The Employee Benefits Survey \(EBS\)](#) of the [Bureau of Labor Statistics \(BLS\)](#) covers the incidence and characteristics of employee benefits.

The Office of Compliance Assistance policy offers additional information on [leave benefits and compliance assistance](#).

Subtopics

- [Family & Medical Leave](#)
- [Funeral Leave](#)
- [Government Contracts](#)
- [Holidays](#)
- [Jury Duty](#)
- [Personal Leave](#)
- [Sick Leave](#)
- [Vacations](#)



Eddie Baza Calvo
Governor

Ray Tenorio
Lt. Governor

August 15, 2011

Doris Flores Brooks, CPA, CGFM
Public Auditor
Office of the Public Accountability
Suite 401, DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910

GUAM FIRE DEPARTMENT
DIPATTAMENTON GUAFI GUAHAN



Raymond A. Perez
Acting Fire Chief

Don - LPT/PCU - Alvarez

RECEIVED	
OFFICE OF PUBLIC ACCOUNTABILITY	
DATE:	<i>8/15/11</i>
TIME:	<i>3:07</i>
BY:	<i>max</i>

Subject: Guam Fire Department's Response
Re: Draft Audit Report – Guam Fire Department's Non-Productive Pay and Compensation over Base Salary

Hafa Adai Ms. Brooks,

First of all, I would like to apologize for the delay in submitting this response, due to issues dealing with the emergency services GFD is mandated to provide, that needed immediate action.

Relative to the Guam Fire Department's response to the above subject matter, GFD concurs with the recommendations provided on the Draft Audit Report.

GFD hereby provides the following responses to recommendations made towards the department.

- (2) Until legislations is changed, GFD management comply with 4GCA §6219 to limit non-productive pay to a maximum of 61 hours leave not to exceed 106 hours in a two-week pay period.

GFD is in agreement with this recommendation and at the present time is currently ensuring compliance/implementation.

- (3) GFD explore different avenues to reduce overtime for uniformed personnel during a two-week pay period.

Reduction of overtime hours will essentially mean the reduction of work hours by implementing a new work schedule. Previous analysis has been conducted on various work schedules, however, requires additional manpower to meet minimum manning requirements as set by National Fire Protection Association (NFPA) standards, or the merger of fire-substations. GFD has been and will continue to

OPA Response
Draft Audit Report
Page 2 of 2

explore ways to reduce overtime, without compromising the safety of the firefighters, and, most importantly to be able to provide its mandated responsibility of providing the best possible protection to the citizens of our island.

- (5) GFD work with DOA to establish payroll procedures that provide for familiarizing payroll technicians with the requisites of non-productive pay according to 4 GCA §6219.

GFD and DOA, Payroll Section are currently in communications and working to ensure full compliance of 4 GCA §6219.

Should you or your staff require additional information and/or clarification relative to this response, I may be contacted at 472-3424 or Assistant Fire Chief Michael F. Uncangco can be contacted at 649-8805.

Sincerely,



RAYMOND A. PEREZ
Acting



Guam Fire Department's Non-Productive Pay on Leave and Other Compensation Report No. 11-06, August 2011

MISSION STATEMENT

**To improve the public trust,
we audit, assess, analyze, and make recommendations
for accountability, transparency,
effectiveness, efficiency, and economy of the government of Guam
independently, impartially, and with integrity.**

VISION

Guam is the model for good governance in the Pacific.

CORE VALUES

Integrity	Independence	Impartiality
Accountability	Transparency	

REPORTING FRAUD, WASTE, AND ABUSE

- **Call our HOTLINE at 47AUDIT (472-8348)**
- **Visit our website at www.guamopa.org**
- **Call our office at 475-0390**
- **Fax our office at 472-7951**
- **Or visit us at Suite 401, DNA Building in Hagåtña.**

All information will be held in strict confidence.