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Staff Reductions In The Office Of The Solicitor, Department Of The Interior

Because of financial problems, the Office of the Solicitor, Department of the Interior, released 23 temporary employees in March 1981, and abolished 28 permanent positions in April 1981. However, the Office did not use all methods available to mitigate its financial problems.

UNITED STATES GENERAL ACCOUNTING OFFICE

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

B-205541

The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

This report is in response to your March 26, 1981, request that we examine the release of 51 employees in the Office of the Solicitor, Department of the Interior. On March 20, 1981, 23 temporary employees were separated, and on April 24, 1981, 28 permanent positions were abolished. As requested, we examined the reasons for the staff reductions, the consideration given to alternatives, and the procedures followed in conducting the reduction in force (RIF).

During subsequent discussions with your office, we were asked whether the decision to abolish all but one part-time position in the Solicitor's Office violated the Federal Employees Part-Time Career Employment Act of 1978 (Public Law 95-437) and if employees separated because of the RIF were qualified to fill vacancies announced since the RIF.

As summarized below and discussed in detail in appendix I, we determined that the Solicitor's Office might have reduced the number of positions abolished if it had allowed some factor for attrition. Also the Office's reimbursements to the Office of the Secretary for administrative support were legally questionable. If the reimbursements had not been made, these funds could have been used to mitigate the Office's financial problems. We also determined that the Office complied with regulations and procedures for conducting a RIF and that abolishment of the part-time positions did not violate the Part-Time Employment Act.

Fourteen of the separated permanent employees were attorneys who had been recruited to participate in the Honors Program. Ten of them were qualified for vacant positions filled subsequent to the RIF, but none were hired.

Appendix I contains detailed explanations of the objectives, scope, and methodology followed in conducting our review.

ANALYSIS OF SOLICITOR'S OFFICE STAFF REDUCTIONS

During the first quarter of fiscal year 1981, the Office employed more personnel than its authorized end-of-year ceiling. If the Office had maintained that level of employment, it could have violated the Antideficiency Act by spending more funds than were appropriated.

The Office adopted several measures to reduce operating expenses and shift funds to pay for salaries. Nevertheless, the Office's March 1981 financial analysis of expenses and funds available for the fiscal year showed a deficit of $316,000.

The Deputy Solicitor considered several alternatives to reduce the deficit and decided to eliminate nonessential overtime, to deobligate a patent contract, and to reduce the Office staff by 51 employees, which would save a total of $325,563. To avoid future obligations, he also temporarily froze promotions, canceled summer intern hiring plans, and filled urgent vacancies with existing staff.

The financial analysis which resulted in these actions did not include some savings and some costs. The Office considered but rejected savings from personnel attrition because it believed attrition would be small and salary savings would be offset by associated separation costs as well as within-grade salary increases for the Office's other employees.

The Solicitors' Office did not investigate the legality of the reimbursements it was required to make to the Departmental Management Appropriation for administrative support. Careful investigation or a timely request for a Comptroller General's decision could have retained approximately $149,000 for the Solicitor's use.

CONCLUSIONS

The Solicitor's Office followed OPM's guidelines for conducting a RIF, and the Deputy Solicitor's decision to separate all but one part-time employee in the RIF did not violate the Part-Time Employment Act or its congressional intent.

RIFs are costly, inefficient, and disruptive and should only be used as a last resort when normal losses through attrition would not adequately reduce staffing levels.

The Office might have reduced the number of positions abolished if it had included some attrition savings in calculating its financial position. Moreover, questionable reimbursements to the Office of the Secretary resulted in substantial expenditures which, if not made, would have further mitigated the Solicitor's Office financial problems.

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As your office requested, we did not obtain official comments from the Department of the Interior on this report.

Also, as directed by your office, we are sending copies of this report to the Chairman, Subcommittee on Oversight and Investigations, House Committee on Interior and Insular Affairs, and to the Chairwomen, Subcommittees on Civil Service and Human Resources, House Committee on Post Office and Civil Service. As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution until 30 days from the date of this report. At that time, we will send copies to the Secretary of the Interior, other congressional committees having jurisdiction over matters discussed in the report, and other interested persons and will make copies available to others upon request.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States

STAFF REDUCTIONS IN THE OFFICE OF THE SOLICITOR, DEPARTMENT OF THE INTERIOR

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of this review were to (1) identify the reasons for the staff reductions, including possible violations of the Antideficiency Act, 1/ (2) determine alternatives to the staff reductions available to Interior and the consideration given to them, and (3) evaluate Interior's compliance with Office of Personnel Management (OPM) requirements and procedures for conducting a RIF. Our review covered the period April 5 to September 30, 1981.

To determine the reasons for the staff reductions, we reviewed the Office's fiscal year 1981 financial plan (dated Mar. 13, 1981) and its related documents and records that were used to support the decision to reduce the staff. We interviewed Interior officials in the Office of the Solicitor, the Personnel Office, and the Office of the Secretary to discuss available funds, estimated obligations, employment levels, and any alternatives to the staff reductions that were considered.

We estimated attrition for the third and fourth quarters of fiscal year 1981 for full-time employees on the basis of attrition rates for the previous 3 fiscal years and estimated the amount by which expected obligations for salary and benefits could have been reduced had attrition savings been included.

We identified expected within-grade increases for the third and fourth quarters of fiscal year 1981 and determined their cost. We also determined the effect the expected within-grade increases had on the Office's financial plan.

We reviewed laws, regulations, and related documents to determine whether Interior's annual appropriation for departmental management under the Office of the Secretary might have been available to assist the Solicitor's Office. Furthermore, since the Deputy Solicitor abolished all but one part-time position, we determined whether the abolishment violated the Part-Time Employment Act or whether the abolishment was inconsistent with RIF requirements and procedures.

1/The Antideficiency Act, 31 U.S.C. 665, provides that no obligations shall be made in excess of the amount of funds appropriated for a fiscal year or apportioned for each quarter by the Office of Management and Budget.

We reviewed OPM's and Interior's regulations for conducting a RIF and evaluated Interior's compliance with the regulations. We determined the jobs and employees affected by the RIF, reviewed notices sent to the affected employees, and determined the assistance given to the displaced employees to find other jobs.

As requested by your office, we monitored the financial status of the Solicitor's Office and identified contracts or requests for proposals for services in that Office through the end of the fiscal year.

BACKGROUND

During the first 4 months of fiscal year 1981, the Solicitor's Office had an average of 31 employees in excess of its authorized end-of-year ceiling of 433. Contributing to the excess were 14 Honors Program attorneys 1/ who were recruited in the fall of 1979, brought on board in the fall of 1980, and subsequently separated in the April 1981 RIF. Since 1970, the Solicitor's Office has had an annual program to provide the Office with top graduates from law schools throughout the country. Participants are hired as law-clerks and are converted to attorney-advisors as soon as they are admitted to the bar. The attorneys rotate through each of the divisions in the Solicitor's Office and, after completing rotation, select one division in which to remain. The Honors Program has been terminated due to the fiscal year 1981 financial problems. The Solicitor determined that the Honors Program attorneys were exempt from the hiring freeze imposed by President Jimmy Carter because they were recruited before the freeze and that the freeze was directed at aggregate department hirings and not those of an individual bureau or office.

On November 24, 1980, the Solicitor requested from Interior's Assistant Secretary for Policy, Budget, and Administration an exemption from the hiring freeze to fill 18 positions for secretarial and attorney personnel. Although the request was denied, the Solicitor on December 17, 1980, directed that three secretarial positions be filled. Because of this action, the Assistant Secretary, on December 18, 1980, suspended the Solicitor's personnel management authority. Since then, all requests for hiring are submitted to the Office of the Secretary's Personnel Department for approval.

1/These employees will be referred to as attorneys in this report although, as of the date of the RIF, 10 were attorney advisors and 4 were still law clerks.

With the change in the Administration, early in 1981, the Solicitor and other senior officials in his Office resigned. In February, a new Deputy Solicitor was appointed who was the senior official until May when a new Solicitor was appointed.

VIOLATION OF THE ANTIDEFICIENCY ACT AVOIDED

Because of the salary and benefit costs for the excess personnel, the Solicitor's Office was concerned about violating the Antideficiency Act by creating obligations in excess of the amount of appropriated or apportioned resources. To pay these costs, the Office diverted more than 23 percent of the funds available for library, training, equipment, and supply accounts of the regional and headquarters offices. In addition, the Office obtained approval from the Office of Management and Budget to reapportion funds from the fourth to the second quarter, thus avoiding Antideficiency Act violations. Nevertheless, the Solicitor's Office believed that these were insufficient or short-term solutions and developed a financial analysis to determine its financial situation for the remainder of the year.

FINANCIAL PLAN SHOWED DEFICIT

A financial plan prepared in mid-March 1981 by the Solicitor's Office was used by the Deputy Solicitor to support the decision to release 51 employees. The financial plan showed estimated fiscal year 1981 available funds of $18,046,000 and expected obligations of $18,362,000, thus a deficit of $316,000 was expected.

Estimates of available funds and expected obligations are shown on the following page:

Funds available	Amount	
FY 1981 Appropriation Act	$16,313,000	
Supplemental appropriation for pay increases (note a)	1,032,000	
Funds transfer due to Legal Services Review (note b)	501,000	
Estimated reimbursements (note c)	200,000	$18,046,000
Expected obligations		
Personnel compensation and benefits	15,192,000	
Other	3,170,000	18,362,000
Deficit		$ 316,000

a/This amount represents 100 percent of a pending pay supplemental which subsequently was approved on June 5, 1981, as part of the 1981 Supplemental Appropriations and Recission Act.

b/In 1978, the Secretary of the Interior established the Legal Services Review Committee to consolidate legal services within the Department. As a result, most legal functions were transferred to the Solicitor's Office. Applicable funds transferred were $225,000 in fiscal year 1980 and $501,000 in fiscal year 1981.

c/Under the Economy Act, 31 U.S.C. 686, the Solicitor's Office entered into agreements with other offices and bureaus within the Department as well as other agencies to provide some services on a reimbursable basis.

ALTERNATIVES FOR SAVINGS CONSIDERED

The Office took several actions to reduce expected obligations. The Office decided to release 51 employees, which was expected to save $313,563; eliminated all but essential overtime, at a savings of $6,000; and deobligated a patent contract, at a savings of $6,000, for a total savings of $325,563. Other actions taken to avoid future obligations included temporarily freezing promotions, canceling hiring plans for summer interns, and using existing staff to fill urgent vacancies, except for the Solicitor, Deputy Solicitor, and Associate Solicitor positions.

Other actions which were considered and rejected as being unrealistic follow:

1. Eliminate word processors--The normal day-to-day operations of the Office would not function efficiently if any of the word processors were eliminated.

2. Reduce space--General Services Administration regulations require that an agency provide a 120-day notice before terminating space agreements. Also, another agency would have to be located to occupy and pay for vacated space.

3. Increase reimbursable agreements--Any revenue received by the Office under a new reimbursable agreement would only offset the expenses (salaries, benefits, and travel) associated with each agreement. No extra revenue would be generated for other expenditures of the Office.

4. Early retirements--The number of employees eligible to retire early, either voluntarily or involuntarily, was not sufficient to significantly reduce expected obligations. Furthermore, Office officials believed it would take too much time to obtain the necessary approval from OPM for an early retirement authorization.

ATTRITION SAVINGS CONSIDERED BUT NOT USED IN FINANCIAL ANALYSIS

Interior's Departmental Manual, part 370, states that, before formal RIF procedures are initiated, consideration be given to achieving personnel reductions through a temporary freeze on appointments or planned staff attrition. The Office did temporarily freeze appointments and considered attrition but chose not to rely on it as a means to reduce staff.

The Office had originally estimated attrition savings in salaries and benefits of $242,000 (excluding costs for lump-sum leave payments) assuming a freeze on hiring and a 9-percent attrition rate. Interior officials stated that they dismissed using estimated savings from attrition because they assumed future attrition would be small in view of the state of the economy and the freeze on Government hiring that was in effect. They stated also that leave costs payable upon retirement or separation from Government service as well as costs for within-grade increases for the third and fourth quarters of fiscal year 1981 were expected to offset any savings realized from attrition.

Interior officials dismissed attrition savings even though, at the time the Solicitor's Office prepared its financial analysis, available information showed that, despite a partial hiring freeze lasting until January 20, 1981, and a full hiring freeze from then until March 24, 1981, employee attrition continued at a near-normal rate. 1/ Furthermore, before the RIF occurred, at least four other employees had announced plans to leave shortly after the RIF.

To illustrate the effect of the Office's exclusion of attrition savings, we estimated that, if the Office in March 1981 had adjusted third- and fourth-quarter obligations to account for attrition of only full-time employees, it could have expected available funds of $258,670. On the basis of actual attrition for the prior 3 years, the Office could have expected 11 full-time employees to leave in the third quarter of the fiscal year and 20 to leave in the fourth quarter. (Actual attrition during the third and fourth quarters was 18 and 19, respectively.) It would have been reasonable for the Solicitor's Office to include some attrition savings. However, considering prudence and conservatism, something less than historical rates may have been appropriate.

We also estimated lump-sum leave costs of $66,333 for the employees expected to separate in the third and fourth quarters which would reduce the savings. Thus, the Office could have estimated a net increase in available funds of $192,337 if it had similarly computed attrition savings.

COSTS NOT INCLUDED IN FINANCIAL ANALYSIS

The Office did not include the cost of expected within-grade increases in its estimated obligations for the third and fourth quarters of fiscal year 1981. We estimated these increases would have amounted to $15,134.

At the beginning of fiscal year 1981, the Office was required to pay the Department of Labor $50,000 for employee disability and injury claims. At the time the Office developed its financial analysis, $8,000 remained to be paid but was inadvertently omitted from the analysis.

REIMBURSEMENTS TO OFFICE OF THE SECRETARY WERE QUESTIONABLE

The Office of the Secretary received a lump sum appropriation of $37,619,000 for departmental management in fiscal year 1981. This appropriation was specifically available for expenses of certain operations that provide department-wide

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1/On the basis of attrition of full-time permanent staff during the first half of the previous 3 years, 27 full-time employees could have been expected to leave through March 1981. Actual attrition to that date was 23, which amounted to about 85 percent of historical attrition rates.

services (examples are personnel, budget, payroll and some other types of administrative support). Despite the fact that the departmental management appropriation was specifically available for administrative support, the Secretary's Office billed the Solicitor for these services. We determined that the reimbursements by the Solicitor for administrative support totalled about $149,000 in fiscal year 1981. These reimbursements are in addition to the amounts reimbursed for the so-called central services (stationery, office supplies, reproduction, etc.,) which are required by law to be provided on a break even cost basis through the Interior Department's working capital fund. (43 U.S.C. 1467).

Our preliminary legal opinion on the practice of reimbursements for administrative support is that it violates one of the basic principles of appropriations law. An appropriation which is available in specific terms for a stated purpose must be used for that purpose in preference to another, more general appropriation available for the same or similar purposes. In this case, the departmental management appropriation is available for "department-wide services" and to charge the Solicitor for those services thus appears to be improper. The $149,000 in savings could have been devoted to Solicitor's Office salaries.

Notwithstanding our tentative legal judgment that the reimbursements for administrative support should not have been sought both the Secretary and the Solicitor were acting in accord with a long established Department practice. Fiscal year 1981 budget justifications reflected this anticipated transaction and the respective congressional committees had this information before them when they considered the Department's appropriations. Moreover, we were requested not to allow Interior to comment on this report and therefore we were never able to obtain official legal justification of this practice. Therefore, we are not prepared to decide conclusively at this time that the $149,000 paid to the Secretary should have remained available in the Solicitor's account.

INTERIOR COMPLIED WITH OPM'S REGULATIONS FOR CONDUCTING A RIF

OPM's requirements and procedures for conducting a RIF are found in 5 C.F.R. 351. Generally, Federal agencies subject to OPM's RIF regulations must follow them when separating certain employees because of lack of funds, decrease in work, reorganization, reclassification due to change of duties, or the need to place a returning person with reemployment rights. We determined that the Solicitor's Office complied with the regulations and procedures for conducting a RIF.

How Interior conducted its RIF

According to OPM's regulations, when an agency determines a RIF is necessary, the agency must (1) decide the positions to be abolished, (2) determine which employees will lose or change jobs, (3) determine whether employees who lose their jobs have rights to other positions, (4) issue notices to the affected employees at least 30 days before the reduction is scheduled to take place, and (5) assist career and career-conditional employees to find other jobs. The regulations also provide that the agency's decision to abolish one kind of job instead of another is not subject to OPM's review.

The Deputy Solicitor decided that all law clerk and attorney-advisor positions at the GS-11 level in Washington, D.C., and all part-time positions (with the exception of the position of correspondence clerk, Administrative Office) would be abolished. As shown below, this affected a total of 28 employees--21 in excepted 1/ and 7 in competitive positions.

Excepted positions	Competitive positions
10 full-time attorney-advisors	7 part-time secretaries
4 full-time law clerks	
5 part-time attorney-advisors	
2 part-time legal interns	

Interior notified the 28 employees of the impending separation on March 19, 1981, more than 30 days before the actual RIF.

In deciding which employees lose or change jobs, an agency must establish competitive areas, competitive levels, and retention registers. Competitive areas are geographical and/or organizational limits within which employees compete for retention. Accordingly, the Personnel Office established 28 separate competitive areas--27 field locations and the headquarters in metropolitan Washington, D.C. Within each competitive area, positions were grouped into competitive levels by type and grade of work. This was to insure that support staff would not compete with attorneys, since each could not do the other's job.

After assigning employees to the appropriate competitive levels, Interior established separate retention registers for each competitive level affected by the RIF. The retention

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1/Excepted positions consist of jobs for which OPM does not conduct open competitive examinations. Employees in excepted positions do not have reassignment rights, nor do they compete with those in competitive positions.

standing of employees on the register is mandated by type of appointment (tenure), veterans preference, length of service, and current performance rating. The affected competitive service employees were ranked in three groups according to type of appointment.

Group I - Career employees not serving probationary period

Group II - Career employees serving probation and career-conditional employees

Group III - Indefinite, term, status quo, and some temporary employees

The affected excepted employees were separately ranked into similar groups. Each group was divided into three subgroups--AD for veterans with 30 percent or more disability, A for other veterans, and B for nonveterans. Within each subgroup, employees were ranked by "service computation dates" which reflect total Federal service, including creditable military service. Employees were then to be separated in the inverse order of retention standing.

Assistance for displaced employees

Interior has two programs to provide employment assistance to displaced career (group I) and career-conditional (group II) employees displaced from competitive positions. These programs are the Departmental Career Placement Assistance Program and the Reemployment Priority Referral Program. There are no similar programs for aiding employees in excepted positions.

Under the Assistance Program, displaced employees are given priority consideration (2 years for career employees and 1 year for career-conditional employees) for positions in their local commuting areas and for positions Department-wide for which the separated employees may qualify. Employee participation in this program is voluntary.

The Referral Program provides automatic assistance for employees separated under a RIF. Referrals are made by placing employees names on the Reemployment Priority Referral Lists which are circulated within agencies. Of the seven part-time competitive employees that were to be separated, four transferred to other positions before the expected separation date (one in another agency and three within Interior). The remaining three employees were placed on the Office's reemployment priority list. Since then, two were removed because they refused offers of appointment to positions similar to those they previously held.

PART-TIME EMPLOYMENT ACT NOT VIOLATED

In addition to reviewing the actual procedures followed to conduct the RIF, we reviewed the Federal Employees Part-Time Career Employment Act of 1978 to determine if the Deputy Solicitor's decision to separate part-time employees 1/ violated the act or its congressional intent.

The purpose of the act is to increase part-time employment opportunities throughout the Federal Government. The act requires that departments and agencies establish and maintain part-time career employment programs. The act allows departments and agencies a very broad degree of administrative discretion to carry out the mission of an agency. It does not mandate any part-time quotas but, rather, relies on goals which an agency should try to achieve on a timely basis within the context of the merit system of employment. It does not deal with the effect of a RIF on an agency's part-time career employment program.

Interior officials said that, although the Solicitor's Office retained only one part-time employee, Interior has a part-time program and continues to hire part-time employees. In our opinion, the Deputy Solicitor's decision to abolish all but one part-time position did not violate the Part-Time Employment Act, or its congressional intent.

SOLICITOR'S OFFICE HIRING PRACTICES AFTER THE RIF

Immediately after the RIF, the Office had 392 employees. Since then, 37 employees left through normal attrition. By the end of fiscal year 1981, 16 new employees had been hired, bringing the employment level to 371. The Office was able to fund the replacements and new positions as a result of attrition that occurred after the RIF. Office officials told us that, because of expected fiscal year 1982 budget reductions, the Office employment level would be maintained at about 371.

Since about June 15, 1981, 11 vacant attorney-advisor positions have been advertised. Of the 11 positions, 7 had been filled by the end of the fiscal year. An Office official told us that at least 10 of the 14 separated attorneys were qualified to fill 6 of the vacant positions. The official said he personally advised four of the separated attorneys of the vacancies. The official said further that he did not contact the other

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1/The Solicitor's Office abolished all but one part-time position. This action was appealed to MSPB on several grounds. Based on the information submitted at the hearings, MSPB affirmed the RIF action.

attorneys because he believed they already had obtained other jobs. Two separated attorney-advisors and a law clerk requested and were considered for reemployment but were not hired. Only the two attorney-advisors were qualified for announced positions.

The Office's financial analysis included expected salaries and benefits associated with the then-vacant positions for the Solicitor and five Senior Executive Service (SES) employees. After the RIF, the Office created three new SES positions and eliminated three non-SES positions. All SES positions, except one, had been filled by the end of September.

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