UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FEDERAL PERSONNEL AND
COMPENSATION DIVISION

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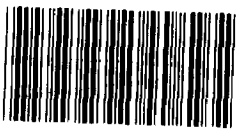

The Honorable David H. Pryor
Ranking Minority Member
Subcommittee on Civil Service,
Post Office, and General Services
Committee on Governmental Affairs
United States Senate

Dear Senator Pryor:

Subject: Agencies Need Controls to Preclude Severance Payments to Certain Ineligible Former Employees (GAO/FPCD-82-44)

Your letter of March 8, 1982, asked that we include in an ongoing review of the Federal severance pay program certain issues that you believed required special attention. Our work on one of those issues--severance payments to former Federal employees who are hired by Federal contractors--indicates some potentially serious problems that need immediate attention by the agencies involved. This report presents our findings on this severance pay issue and contains recommendations to the Director, Office of Personnel Management (OPM). We are continuing our review of severance payments in general and at a later date will be providing more information on the other issues you raised.

Many Federal employees who are involuntarily separated from service through no fault of their own are entitled to receive severance pay under 5 U.S.C. 5595. Severance pay provides income for separated employees during their transition to a new career and extends a measure of compensation for the lost job, lost seniority, and disrupted life. OPM regulations, however, prohibit employees from receiving severance pay when their functions are transferred to a private contractor and the employees (1) are offered comparable employment with the contractor on or before contract conversion or (2) accept any employment with the contractor within 90 days after contract conversion. OPM issued this regulation because it believed the Congress did not intend to authorize severance pay for employees who do not actually lose their jobs but instead start working for a Federal contractor rather than being directly employed by the Government.

(966084)

The Office of Management and Budget (OMB) has taken several actions that should increase the number of agency contracts for commercial or industrial activities that Federal employees now perform. In view of this accelerated contracting out program, we reviewed the effectiveness of the agencies' controls to preclude severance payments to former employees hired by Federal contractors.

We surveyed 10 departments and agencies with the most commercial activities in 1981, and found 8 of the 10 departments and agencies have no controls to preclude severance payments to employees who are offered comparable employment by Federal contractors on or before contract conversion. In addition, we found that 9 of the 10 do not have controls to prevent severance payments to employees hired by Federal contractors during the first 90 days after contract conversion.

Many agency personnel and procurement officials we talked to were not aware of or did not understand OPM's 14 year old regulation. In fact, prior to April 1980, Army policy contradicted the OPM regulation by permitting certain displaced employees hired by contractors to receive severance pay.

The absence of agency controls to enforce this 1967 regulation may have resulted in many former Federal employees' receiving severance pay for which they were not entitled. The Department of Defense (DOD) alone has contracted out functions involving over 11,000 positions during just the last 3 years. Except for limited Army data, DOD officials could not tell us how many involuntarily separated employees were hired by the contractors taking over the commercial activities.

We are not able to estimate precisely the cost associated with not enforcing OPM's regulation. However, based on the best information available, we believe thousands of Federal employees could be involuntarily separated as a result of OMB's accelerated contracting out program and hired by Federal contractors. In the absence of effective agency controls to enforce the OPM regulation, severance payments to these ineligible employees could amount to millions of dollars. (See enclosure I for more details.) We are recommending that the Director, OPM, in coordination with the Director, OMB, act quickly to direct agencies to enforce this regulation.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to evaluate the adequacy of agencies' controls over severance payments to former Federal employees hired by Federal contractors. In performing our work from February through April 1982, we:

--Reviewed (1) the Federal statute that created the Government's severance pay program, (2) OPM regulations that prescribe the conditions under which an employee is entitled to severance pay, and (3) relevant Comptroller General decisions.

--Reviewed OPM correspondence with agencies concerning severance pay entitlements and interviewed several OPM headquarters' officials.

--Interviewed personnel and procurement officials at the 10 departments and agencies that reported the most commercial activities in 1981: Departments of Health and Human Services, Agriculture, Transportation, Treasury, Interior, Army, Navy, Air Force; the Veterans Administration; and the General Services Administration. We also reviewed internal regulations and contracting data at several of these departments and agencies.

Some of the information used during this review was initially collected for our June 19, 1981, report "Civil Servants and Contract Employees: Who Should Do What For the Federal Government?" (FPCD-81-43). OMB officials provided additional information on the status of agencies' implementation of Circular A-76 which contains the executive branch policy on contracting out.

We used the best information available to determine the potential cost of improper severance payments that could be made Government-wide through 1985.

We performed this review in accordance with our Office's current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

THE FEDERAL CIVILIAN SEVERANCE PAY PROGRAM

Section 9 of the Federal Employees Salary Act of 1965, as amended, 5 U.S.C. 5595, and OPM regulations, contained in title 5 of the Code of Federal Regulations, part 550, subpart G, prescribe the conditions under which an employee is entitled to severance pay. The law and regulations also prescribe the method for computing the total amount of severance pay to which an employee is entitled, and the manner in which payment is to be made.

An employee is entitled to severance pay if he/she

--has been employed continuously for at least 12 months before separation and

--is involuntarily separated from employment, not by removal for cause on charges of misconduct, delinquency, or inefficiency.

A fund is established for each employee eligible for severance pay. This fund consists of two elements--a basic allowance and an age adjustment allowance. The basic allowance is computed on the basis of 1 week's basic pay for each of the first 10 years of creditable service and 2 weeks' basic pay for each additional year of service. The age adjustment allowance is computed on the basis of 10 percent of the total basic severance allowance for each year by which the age of the recipient exceeds 40 years. Severance payments are made at regular pay-period intervals at the basic pay rate received immediately before separation until the fund is exhausted or the employee is rehired by the Government. There is a lifetime, 52-week limit on the number of weeks an employee can receive severance pay. Federal, State, and local income taxes are the only deductions made (except social security if the employee was subject to social security at the time of separation).

OPM "90 DAY" REGULATION PROHIBITS SEVERANCE PAY WHEN CONTRACTING OUT

Executive Order 11257, November 17, 1965, gave OPM the authority to issue severance pay regulations under 5 U.S.C. 5595. Effective December 1967, OPM issued a regulation (Section 550.701(b)(6) of title 5, Code of Federal Regulations) that excludes from severance pay entitlement

> "an employee who, as the result of the transfer of the operation and maintenance responsibilities for a Federal project to a private organization, is offered comparable employment with the private organization or within 90 days of the date of transfer accepts any employment with the private organization."

OPM defines "comparable employment" as employment in which pay and benefits are similar enough that the employment offered may be considered substantially equal to the individual's Federal employment. In determining what is comparable employment, there is no requirement that pay rates or any individual benefit be identical or "equivalent" to that offered by Federal employment.

ACCELERATED CONTRACTING OUT PROGRAM

Since 1955, the executive branch's policy has been to rely on contractors to provide the goods and services the Government needs. This policy was expressed in temporary bulletins issued as early as 1955 and was made more permanent when OMB issued Circular A-76, in 1966. The March 29, 1979, revision of A-76

reaffirms the general policy of reliance on the private sector for goods and services and requires agencies to compare costs to determine the most economical source of performance for these commercial activities--contract or in-house.

Despite the executive branch's longstanding policy of reliance on contractors for goods and services, OMB information shows that in 1981, executive departments and agencies used 226,011 full-time equivalent positions to operate in-house commercial activities that contractors could provide under A-76. On April 8, 1981, the Deputy Director of OMB directed executive branch agencies to accelerate implementation of Circular A-76. He stated that through proper and effective implementation of the circular, agencies will be able to achieve economies and efficiencies in operating commercial activities. Agencies were directed to complete A-76 cost comparisons for functions involving over 95,000 Federal positions by the end of fiscal year 1982, and cost comparisons for the remaining functions were to be completed by 1985.

AGENCIES NEED CONTROLS TO PRECLUDE SEVERANCE PAYMENTS TO INELIGIBLE EMPLOYEES

Of the 10 departments and agencies included in our review, 9 did not require contractors to provide the names of employees hired within 90 days so that severance payments could be stopped. Only the Air Force had the necessary controls. In addition, 8 of the 10 agencies did not have controls to stop severance payments to those employees who were offered comparable employment on or before contract conversion. Only the Air Force and the Army had the necessary controls.

Air Force

On July 7, 1980, the Air Force began requiring its contractors to report the names of involuntarily separated employees who were offered comparable employment on or before contract conversion or who were hired within 90 days after contract conversion. The following standard Air Force clause from a contract for aircraft services at McClelland Air Force Base, California, demonstrates how this requirement has been implemented:

> "Following receipt from the Contracting Officer of a list of names of Air Force [AF] employees scheduled to be involuntarily separated, the contractor shall submit not later than (NLT) one week after contract start date, (1) A list of the names of any applicants on the above involuntarily separated list; (2) Identify which former AF employees have been or will be hired; (3) Identify those former AF

employees who rejected offers of employment; (4) Identify the former AF employees who were not offered jobs because they were not qualified; and (5) Those former AF employees who were qualified but not offered a job because there were not enough jobs.

Following receipt from the Contracting Officer of a list of names of involuntarily separated employees, the contractor shall furnish to the Contracting Officer within 5 days after they are hired the names of those employees who have been hired by the contractor within 90 days of the contract start date."

At the four Air Force bases contacted, we were told that it was too soon to test the application of this requirement since only a few employees have been involuntarily separated since it was issued. The Air Force contracted out about 5,500 positions during fiscal years 1979-81.

Navy

The Navy procurement and personnel officials we talked to were not aware of the OPM regulation and said the Navy does not have any controls to enforce it. After we advised them of the regulation, they said they plan to begin requiring contractors to provide the information necessary to stop severance payments to ineligible employees. The Navy (including Marine Corps) contracted out about 1,300 positions during fiscal years 1979-81.

Army

Although the Army has controls to determine if offers of comparable employment are made to separated employees on or before contract conversion, it has no requirement for contractors to report the names of employees hired within 90 days after contract conversion. In fact, prior to April 1980, Army policy permitted a displaced employee hired by the contractor to receive severance pay if the contractors' job was not "comparable" to the Federal job. This internal guidance contradicted the Code of Federal Regulations' provision that any employment with the contractor within 90 days after contract conversion excludes the employee from severance pay entitlement. At one Army installation--Schofield Barracks, Hawaii--Army officials confirmed that separated employees hired by a laundry contractor received severance pay. In April 1980, the Army recognized this problem, corrected the earlier policy, and subsequently drafted a new regulation that recognizes any employment with the contractor during the first 90 days will preclude severance payments. However, the draft regulation does not require Army contractors to report the names of employees hired within 90 days of contract conversion. The Army contracted out 4,800 positions during fiscal years 1979-81.

Civilian Agencies

According to the officials we contacted at the 7 civilian departments and agencies, there are no requirements for contractors to report the names of agency employees who are offered jobs on or before contract conversion or who are hired within 90 days after contract conversion. Even though these 7 organizations have over 80 percent of all civilian commercial activities, only the General Services Administration and the Department of Agriculture were planning to establish the necessary controls to enforce the OPM regulation and stop severance payments to ineligible employees.

When we asked agency contracting officials if they had controls to enforce the OPM regulation, we were frequently told to contact the agency's personnel office because determining what happens to an involuntarily separated employee "is a personnel problem." When we subsequently asked agency personnel officials if they had established controls to enforce the OPM regulation, we were frequently referred back to the contracting officials since determining which employees the contractor hired "is a contracting problem."

CONCLUSIONS

Many former Federal employees may have received severance pay to which they were not entitled because departments and agencies failed to enforce OPM's regulation. The amount, however, of any improper payments is not known since Federal contractors have generally not been required to notify agencies when they offer employees comparable employment on or before contract conversion or when they hire separated Federal employees within 90 days after contract conversion. In effect, a Federal regulation based on congressional intent to limit the improper expenditure of Federal funds has generally been ignored for 14 years.

While precise savings estimates are not possible, we believe agencies can save millions of dollars by enforcing this regulation. These savings will not be realized, however, unless the Director, OPM, acts quickly to assure that agencies have the necessary controls to enforce the regulation.

RECOMMENDATIONS

We recommend that the Director, OPM, in coordination with the Director, OMB:

--Develop uniform Government-wide procedures requiring contractors to provide the information necessary for agencies to enforce the OPM regulation, (e.g., the names of involuntarily separated employees who are

offered comparable employment on or before contract conversion or who are hired within 90 days after contract conversion). The Air Force's contractual controls appear reasonable and should be considered for inclusion in the procurement regulations as requirements for all agencies to follow.

--Alert all executive departments and agencies to the need to enforce the regulation.

As you requested, we did not obtain written agency comments on this report. We did discuss, however, a draft of this report with OPM officials and they agreed with our findings and recommendations. Also, as arranged with your office, we are sending copies of this report to the Director, OPM, and the Director, OMB. Copies will also be made available to other interested parties who request them.

Sincerely yours,

for W. J. McCormick, Jr.
Clifford I. Gould
Director

Enclosure

POTENTIAL COST OF AGENCIES NOT ENFORCING OPM's REGULATION

While we are not able to estimate precisely the cost associated with not enforcing OPM's regulation, we used the best information available to determine the potential cost of improper severance payments that could be made Government-wide through 1985. These estimates could vary greatly if (1) the actual percentage of cost comparisons resulting in contracting out decisions by 1985 is different from DOD's 60 percent, or (2) the actual number of displaced employees hired by Federal contractors is different from the Army's 15 percent.

We combined data from several different sources to estimate the cost of agencies not enforcing OPM's regulation on severance pay for Federal employees hired by contractors taking over Federal activities through 1985. OMB data indicates that 226,011 Federal positions should be subjected to A-76 reviews by 1985. In the past, such reviews by DOD, which has conducted more reviews than any other agency, have resulted in contracting out decisions in 60 percent of the cases. If civilian agencies contract out about the same percentage as DOD, functions involving about 135,000 employees would be contracted out Government-wide. Multiplying this number by the percentage of Army employees hired by Army contractors as a result of 1979 contracting out decisions (15 percent), 1/ results in an estimate of about 20,000 separated employees who would be hired by Federal contractors and ineligible for severance pay under OPM's regulation. We used Army 1979 data because it was the best information available at the time of our review.

To estimate the amount of improper severance payments that could be made Government-wide by 1985, in the absence of agency controls, we multiplied the estimated 20,000 separated employees to be hired by contractors by the estimated average severance payment of $6,160 made to displaced employees as reported in the Congressional Budget Office's July 1981 report "Cost of Potential Layoffs Under the Administration's Federal Employment Reduction Program." This totaled approximately $125 million.

1/Does not include employees who retired. However, this percentage may include some persons not eligible for severance pay because they had less than 12 months' continuous service. Army officials could not provide this data.