



General Government Division

B-271742

June 14 , 1996

The Honorable Frank R. Wolf
House of Representatives

Dear Mr. Wolf:

This letter responds to your request that we review agencies' use of buyout authority and determine whether buyout recipients were subsequently reemployed as civil servants or government contractors. You were concerned about whether agencies' implementation of the reemployment provisions of the buyout legislation was consistent with the intent of the law.

As agreed with your office, our study was limited in scope because of your urgent need for whatever information was available for this year's budget cycle. We therefore focused on the following:

- the number of employees who were eligible to take a buyout and the number who actually did so;
- the extent to which these buyout recipients were subsequently reemployed as (1) civil servants or (2) government contractors; and
- the management controls and procedures, if any, that the Department of Transportation (DOT) and the National Aeronautics and Space Administration (NASA) have in place to prevent reemployment abuses.

As agreed with your office, because of the limitations of available data, to obtain an indication of the number of employees eligible for a buyout, we surveyed DOT and NASA, which were among the largest users of the buyout authority. Together, they were responsible for nearly 20 percent of all buyouts paid by non-Department of Defense (DOD) agencies.¹ We were able to obtain governmentwide data on the

¹We excluded DOT's Federal Aviation Administration (FAA) from our survey because it is currently investigating reemployment violations in response to a DOT Inspector General's (IG) report.

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number of employees who actually took buyouts from the Office of Personnel Management's (OPM) Central Personnel Data File (CPDF).

The extent to which buyout recipients were rehired as civil servants was also addressed using CPDF data. The number of buyout recipients that have returned as contractor employees was more difficult to determine because data on contractor employees are decentralized. However, to get an indication of the extent of this practice at the two agencies included in our study, we included several questions on procurement activities in the survey sent to DOT and NASA. To obtain a governmentwide perspective, we interviewed federal employee union and association representatives who might reasonably be expected to receive complaints from federal employees concerning agencies' contracting activities.

Information on management controls to prevent reemployment abuses was obtained by reviewing applicable laws, regulations, and guidance, as well as through our surveys of DOT and NASA. (Enclosure I contains a more detailed description of our methodology.) Because of the short time available to complete this study, we did not independently verify either the governmentwide personnel data, or the information obtained from the surveys and interviews. We provided OPM, DOT, and NASA a draft of this letter for comments. Their comments are summarized at the end of this letter.

DOD agencies have been making buyouts since January 1993 under P.L. 102-484, which authorized buyouts through September 30, 1997. The DOD buyout authority was subsequently extended through September 30, 1999, by P.L. 103-337. Buyouts in non-DOD agencies were authorized by the Federal Workforce Restructuring Act of 1994 (P.L. 103-226). Enacted March 30, 1994, the act gave non-DOD executive branch agencies the authority to offer buyouts to employees who separated by March 31, 1995, unless the date was extended by the head of the agency, but no later than March 31, 1997. For both DOD and non-DOD agencies, the buyout payment was the lesser of \$25,000 or an employee's severance pay entitlement.

RESULTS IN BRIEF

Our analysis of CPDF data shows that from January 1993 through June 30, 1995 (the period for which we have reemployment data), non-DOD agencies paid 32,567 buyouts and DOD agencies paid 55,176 buyouts, for a total of 87,743 buyouts governmentwide.² However, we were unable to determine the number of employees eligible to receive buyouts because CPDF does not contain data relating to all the DOD and non-DOD

²According to OPM data, as of September 30, 1995, agencies had paid over 112,500 buyouts.

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buyout eligibility requirements, such as DOD's requirement that the position not be defined as "hard to fill." Nevertheless, non-DOD agencies generally placed few, if any, restrictions on who could take a buyout, so long as they satisfied the statutory eligibility requirements. The DOD buyout authority, which resulted from earlier legislation, had similar eligibility requirements, but DOD imposed additional requirements that generally excluded several categories of employees.

CPDF data indicate that of the 87,743 buyout recipients, 394 were rehired by the government as civil servants. Because of the lack of centralized data on contractor employees, we were unable to determine the number of buyout recipients who were subsequently reemployed as federal contractors.

The reemployment of buyout recipients as civil servants or contractors is not prohibited under the DOD and non-DOD buyout authorities. Under certain circumstances, however, buyout recipients are required to take steps to satisfy the reemployment provisions of the DOD or non-DOD buyout authorities. Of the 394 buyout recipients reemployed as civil servants, we identified 68 cases in which these reemployment provisions applied. Given the time constraints for this review, we did not determine whether these 68 buyout recipients were in compliance with the applicable reemployment requirements. We are currently completing a follow-up study on the status of these 68 individuals, and anticipate issuing a report shortly. Data on the reemployment of buyout recipients as federal contractors are very limited, but suggest that such reemployment is not extensive, especially in comparison to the total number of employees who have taken buyouts to date.

With regard to management controls and procedures, most of the NASA and DOT units responding to our survey indicated that they had management controls designed to prevent reemployment abuses. These controls included various methods of informing employees and managers of reemployment restrictions, placing statements defining such restrictions on buyout applications, and verifying any previous federal employment as part of the reemployment process.

BUYOUT ELIGIBILITY AND ACTIVITY

Under the Workforce Restructuring Act, buyout eligibility was extended to non-DOD employees who

- had served under appointments without time limits,
- had 12 months of continuous service,
- were not reemployed annuitants, and
- were not eligible for disability retirement.

Although the statute authorizing DOD buyouts imposed similar eligibility requirements, DOD included additional restrictions in its implementing instructions that generally excluded several categories of employee. Among these were members of the Senior Executive Service (SES), employees filling positions defined as "hard to fill," those receiving special salary rates, and those who had already accepted a position with another federal agency.

Because CPDF does not contain data relating to all of these eligibility requirements, we could not determine the exact number of employees eligible for buyouts governmentwide. However, in our earlier work, we found that non-DOD agencies imposed few, if any, additional eligibility requirements, other than those mandated by the Workforce Restructuring Act.³

Our surveys of NASA and DOT show how these two agencies handled buyout eligibility. NASA initially restricted buyout eligibility, excluding from its 1994 buyouts SES members, astronauts, and attorneys at the Kennedy Space Center and the Marshall Space Flight Center. According to an agency official, even with these restrictions, most NASA employees were eligible for buyouts. (An exact number of buyout-eligibles at NASA was not available.)

NASA offered its buyouts in a four-tiered priority order, considering first those installations exceeding fiscal year 1995 employment ceilings and those employees most affected by the redesign of the space station program. Within each installation, buyouts were offered in the following priority: (1) early retirement eligibles, (2) supervisors/managers GM-14 and above, (3) all other GS/GM-13s and above, and (4) remaining employees.

Because of the need for additional workforce reductions at NASA, a second buyout opportunity was announced for NASA employees in February 1995. In contrast to NASA's first round of buyouts, all employees, including those excluded from the 1994 buyout window, were eligible, so long as they met the statutory requirements imposed by the Workforce Restructuring Act. However, at NASA's field installations, buyouts were offered in priority order, with first consideration going to meeting congressional downsizing goals for NASA and addressing those occupations identified for reduction by the Office of Management and Budget (OMB) and the National Performance Review (NPR)—e.g., "management control" occupations such as budget, accounting/auditing, procurement, and personnel positions. As of June 5, 1995, NASA had paid 2,622 buyouts.

³Federal Employment: The Results to Date of the Fiscal Year 1994 Buyouts at Non-Defense Agencies (GAO/T-GGD-94-214, Sept. 22, 1994), p. 6.

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Responses from DOT agencies (excluding FAA) indicated 6,170 out of a total of almost 16,000 non-FAA employees were eligible for the buyouts during fiscal years 1994 and 1995, while 440 buyouts were actually granted. Buyout eligibility varied among DOT units. In four units, eligibility was extended to all upper level employees. Two of these units also included management control occupations identified for reduction by NPR among their criteria of eligibility. In another unit, all employees were eligible with the exception of certain categories, such as SES Candidate Development Program participants, those who received recruitment bonuses, and those resigning with special salary rates. Another unit offered buyouts to those in the positions suggested for reduction by NPR and to all employees at GS-13 and below. Finally, in the last unit, one with relatively few employees, buyouts were offered only to the incumbents in nine specific positions.

**THE EXTENT TO WHICH BUYOUT
RECIPIENTS HAVE BEEN REEMPLOYED
AS CIVIL SERVANTS OR CONTRACTORS**

Under section 3(d) of the Workforce Restructuring Act, non-DOD buyout recipients who are rehired by the federal government or perform services under a personal services contract⁴ with the government within 5 years of their separation date must generally repay the full amount of the buyout. (Under the act, "employment" includes employment under a personal services contract. The number of individuals returning under personal service contracts is discussed in the contracting section below.) However, for positions in the executive branch, the Director of OPM may, at the request of an agency head, waive the repayment if the individual involved has unique abilities and is the only qualified applicant available for the position.

In accordance with DOD's implementing instructions, DOD employees taking buyouts initially could not be reemployed by any DOD installation in any capacity for a period of 12 months from the effective date of their separation, unless an exception was approved by a high-level DOD official. However, no restrictions were placed on their ability to return to a non-DOD agency. Later, section 8 of the Workforce Restructuring Act amended DOD's buyout authority so that DOD employees who received a buyout on or after March 30, 1994, were made subject to the same reemployment provisions

⁴A personal services contract is characterized by the employer-employee relationship it creates between the government and the contractor's personnel. According to federal acquisition regulations, six elements should be considered in assessing whether a contract is personal in nature, with the key question being: Will the government exercise relatively continuous supervision and control over the contractor personnel performing the contract?

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as non-DOD employees. The notable exception to this was that, unlike their non-DOD colleagues, DOD buyout recipients would not have to repay the buyout if they returned to federal employment under personal services contracts.

Comparatively Few Buyout Recipients
Have Been Reemployed as Civil Servants

Our analysis of CPDF data shows that, of the 87,743 DOD and non-DOD employees who took buyouts from January 1993 through June 30, 1995, 394 (fewer than one-half of 1 percent) were subsequently rehired by 92 federal agencies or their major subunits. DOD agencies reemployed 205 buyout recipients, and 189 were reemployed by non-DOD agencies. Of these 394 employees, 164 were rehired by the same agency that paid them a buyout. The majority of agencies hired just 1 or 2 buyout recipients, but 7 agencies rehired 10 or more. About a third of the 394 reemployed buyout recipients were rehired into general administrative, clerical, and office services positions. The remainder were more evenly distributed across other occupational groups.

Sixty-three percent of the reemployed buyout recipients were rehired under appointments not to exceed a specific date. We did not determine how many, if any, of these appointments were subsequently renewed, extended, or converted to permanent appointments. Reinstatements to career positions (noncompetitive reemployment based on previous service) was another frequently used appointment authority, accounting for 22 percent of the rehires. Appointments to career positions accounted for about 5 percent of the rehires.

Based on our analysis of CPDF data, of the 394 reemployed buyout recipients, 68 were subject to the reemployment provisions of the DOD or non-DOD buyout authorities. Thirty-one of the 68 reemployed buyout recipients received buyouts from non-DOD agencies, and 21 received their buyouts from a DOD agency on or after March 30, 1994. As noted earlier, such reemployment at executive branch agencies would require the individuals involved to repay the buyout unless they received a waiver from OPM. The remaining 16 individuals received buyouts from a DOD agency before March 30, 1994, and were reemployed by a DOD agency within 12 months of their separation date. Under applicable DOD instructions, these individuals would have needed an exception from the appropriate high level DOD official to be reemployed. The remaining 326 employees not subject to the reemployment provisions of the DOD or non-DOD buyout authorities received buyouts from DOD before March 30, 1994, and either (1) took a job in a non-DOD agency or (2) were reemployed in a DOD agency not less than 12 months after their separation.

Given the time constraints for this study, we did not determine whether the 68 buyout recipients complied with the applicable reemployment provisions of either the DOD or

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non-DOD buyout authorities. We are currently doing so as part of a follow-up study that we expect to issue shortly.

For its part, OPM has approved only two requests to waive the requirement that buyout recipients repay the full amount of the buyout if they return to federal employment within 5 years. According to an OPM official, agencies have contacted OPM about requesting reemployment waivers for over 100 buyout takers. However, according to OPM, because of the probability that the requests would not be approved, most of the agencies did not pursue them further. About eight requests were formally made in writing, of which two were approved by OPM. One was a blanket approval that enabled buyout recipients who had fire fighting skills to be rehired by the U.S. Forest Service and not have to repay the buyout. The agency said these individuals were needed to combat the forest fires that had flared up in the Northwest that year. Our follow-up with Forest Service officials and review of CPDF data indicate that no buyout recipients were hired under this waiver. The other approved case involved a buyout recipient in Oklahoma City who was reemployed by the Federal Highway Administration to handle matters related to last year's bombing.

Based upon their responses to our survey, NASA reemployed two buyout takers as civil servants, each of whom repaid the buyout. DOT rehired one buyout recipient as a civil servant, the Federal Highway Administration employee who was granted a waiver as indicated above.

Buyout Recipients Can Return
to Government as Contractor Employees,
But Agencies' Ability to Increase Their
Procurement of Service Contractors to
Fill Bought-out Positions is Subject to
a Cost Comparison Requirement

There is nothing in the DOD and non-DOD buyout authorities that restricts buyout recipients from returning to government as employees of service contractors, or requires them to repay the buyout in such circumstances.⁵ However, the Workforce Restructuring Act required all agencies to perform cost comparisons before filling vacated positions with service contractors, regardless of whether such backfilling involved buyout recipients. Further, section 5(g) of the act provided that the

⁵As noted earlier, non-DOD buyout recipients who perform services under a personal services contract with the government within 5 years of their separation date must repay the full amount of the buyout or obtain a waiver from an appropriate official. This provision does not apply to DOD buyout recipients.

President shall take appropriate action to ensure that there was no increase in the procurement of service contracts as a result of the act, unless a cost comparison indicated that such contracts were financially advantageous to the government.

The significance of this provision was reinforced by OMB. In a 1994 memorandum to the heads of departments and agencies, OMB's Acting Director stated that the administration did not expect agencies to simply contract out the work of employees who left the government as a result of downsizing, and asked for "vigilance" in complying with the provisions of section 5(g).

In our ongoing work on federal downsizing and buyouts being done at the request of the Chairman, Subcommittee on Civil Service, House Committee on Government Reform and Oversight, we address the implementation of the Workforce Restructuring Act's contracting-out provisions in greater detail. We anticipate issuing this report soon.

Data on the Reemployment
of Buyout Recipients as Federal
Contractors Are Very Limited, But
Suggest Such Reemployment
Is Not Extensive

We were unable to determine the number of buyout recipients returning under service and personal services contracts because the lack of centralized data on contractor employees prevented us from matching the two groups of individuals. Nevertheless, based on our analysis of the limited information that was available, we found no evidence indicating that the reemployment of buyout recipients as contractors was extensive, especially when considered in light of the total number of buyouts that have been made to date.

Because of the limited amount of data available, we interviewed officials representing three federal employee unions; three union locals; and the Federal Managers Association (FMA), an organization that represents the interests of federal managers.⁶ Because these organizations represent thousands of federal employees, we thought it likely that they would know whether large numbers of buyout recipients were

⁶The unions we contacted were the American Federation of Government Employees (AFGE); National Treasury Employees Union; National Federation of Federal Employees; as well as local representatives of AFGE, the National Association of Agriculture Employees, and the International Federation of Professional and Technical Engineers.

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returning as contractors. Specifically, we asked whether they were aware of, or had received complaints about, buyout recipients who returned to the government under personal services contracts, or as employees of a service contractor.

Two national union officials and one representative of a union local stated that they were unaware of any instances or complaints concerning buyout recipients returning as contractors. A second local representative reported that about a dozen individuals had returned under service contracts in 1994, but was unaware of any additional cases of buyout recipients returning.⁷ A third union official said that there were complaints but that he did not have any documentation to substantiate the allegations. The third local union representative was aware of three instances where buyout recipients returned to the government as consultants or service contractors. According to the local representative, these three individuals were reemployed because they were knowledgeable in the area where help was needed. Given the time limitations for this study, we were unable to verify his claim.

Further, FMA queried its approximately 150 national officers to see whether they were aware of any cases where buyout recipients had returned under personal services contracts or as employees of service contractors. None responded with any examples.

Because of the lack of centralized data, we included questions on contracting activities in our surveys of DOT and NASA. Both agencies reported a small number of buyout recipients had returned as service contractors. NASA reported that three of its field installations had identified a total of 31 former NASA employees who were employed by support services contractors. NASA also reported that some of these individuals were no longer employed by the contractor at the time of our study. Overall, NASA has reduced the number of support service contracts by about 22 percent since fiscal year 1994.

DOT reported that, among its subunits (excluding FAA), two buyout recipients had returned as employees of service contractors. According to DOT, both individuals were doing work that was different from the work they did as civil servants. Six of the seven DOT subunits said that they had not experienced an increase in the procurement of service contracts. One subunit did not respond to the question.

At FAA, the DOT IG found a number of reemployment problems involving personal service contracts. In its February 1996 report, the IG found that, of the 20 former FAA

⁷We discussed this incident in greater detail in our May 17, 1995, testimony entitled Federal Downsizing: Observations on Agencies' Implementation of the Buyout Authority (GAO/T-GGD-95-164).

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employees it audited who had returned as contract employees, 17 contracts were essentially administered as personal services contracts in violation of the act. The IG's report recommended that the buyout amounts paid to these 17 employees should be recouped. Moreover, cost comparisons were done in just three cases. The DOT IG found that all three cost comparisons understated the federal government's cost. In fact, when the IG made its own cost comparisons of the 20 employees included in the audit, it found in every case that it cost the government more to hire them as contractors than to keep them on as federal employees.

MANAGEMENT CONTROLS USED TO PREVENT REEMPLOYMENT ABUSES

Four of the seven DOT agencies we contacted indicated that they had management controls to prevent buyout recipients from abusing the reemployment provisions. These controls included various methods of informing employees and managers of the reemployment restrictions. At one of these agencies, we were told that reemployment restrictions were included in all buyout announcements and on buyout applications signed by buyout takers. In addition, three of the four agencies indicated that any previous federal employment was verified as part of the reemployment process. One of the units indicating that it had no management controls reported that they were not needed since the unit was relatively small and any buyout recipients would be well-known to the personnel officials involved in the hiring process.

Officials at NASA responding to our survey indicated that they had similar management controls in place to prevent abuse of the reemployment provisions. They said that these efforts included placing statements concerning the restrictions in agency buyout guidance, employee buyout letters and applications, briefings, newsletters, and exit interviews. In addition, NASA officials also indicated that the reemployment process included verification of any former government employment through official personnel records, housed at the National Records Center, that would indicate whether a buyout had previously been received.

AGENCY COMMENTS AND OUR EVALUATION

OPM and NASA provided written comments on a draft of this letter. Both agencies generally agreed with our results. OPM indicated that it has been reviewing the reemployment of buyout recipients and said its preliminary findings were quite similar to our results. NASA suggested some minor technical revisions that were

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incorporated where appropriate. DOT's audit liaison provided oral comments on a draft of this letter on April 23, 1996. DOT said that it had queried all of its subunits covered in our letter and that none had responded with any comments.

We are sending copies of this letter to the Secretary of DOT, the Director of OPM, the Administrator of NASA, and interested congressional committees. Copies will also be made available to others upon request.

The major contributors to this study are listed in enclosure II. I trust this information has been helpful. Please call me on (202) 512-8676 if you have any questions.

Sincerely yours,



L. Nye Stevens
Director
Federal Management and Workforce
Issues

Enclosures - 2

SCOPE AND METHODOLOGY

As agreed with your office, we obtained information on buyout eligibility through surveys of two agencies: the Department of Transportation (DOT) and the National Aeronautics and Space Administration (NASA). (Given the short time available for our study and data limitations, a governmentwide review was infeasible). Both agencies were among the largest users of the buyout authority, accounting for nearly one-fifth of all non-Department of Defense (DOD) buyouts paid in 1994 and 1995. We excluded the Federal Aviation Administration (FAA) from the surveys because it is currently investigating reemployment issues.

Specifically, we received responses to surveys representing 7 DOT (excluding FAA) and 10 NASA subunits. The surveys requested data on the categories of employees eligible for buyouts, and whether agencies specifically excluded any positions. We obtained governmentwide data on the number of employees who took buyouts from the Office of Personnel Management's (OPM) Central Personnel Data File (CPDF). The file includes information on federal workers in most agencies, the major exclusions being Members and employees of Congress, the Judicial Branch, and the Postal Service. The timeframe we examined was January 1993 (when DOD buyouts first began) through June 30, 1995 (the most recent date for which data on buyouts were available from the CPDF).

The extent to which buyout recipients were rehired as civil servants was addressed by using governmentwide data from the CPDF. We used the CPDF to identify those individuals who received a buyout and were subsequently rehired under an appointment or conversion action. We excluded from our analysis 250 individuals with post-buyout personnel actions in the CPDF because the CPDF indicated that they were realignment and reassignment actions. Because these personnel actions are normally used for current federal employees and not to hire individuals, they appeared to be anomalies. This was confirmed in an interview with a personnel official at an agency where 164 of these actions took place. We were informed by this official that those individuals were not rehired.

Determining the extent to which buyout recipients have returned as contractors was considerably more difficult because our preliminary research indicated that contractor records are decentralized, vary from agency to agency, and may not be readily accessible or usable. However, we included a series of questions on procurement activities in our surveys sent to DOT and NASA units.

Because of the limitations of this approach, we surveyed federal union and employee association officials to determine whether they had received complaints from their members concerning revolving door abuses. Specifically, we contacted officials from

three of the largest unions, three local representatives who were recommended by their national organizations as possibly being aware of buyout recipients returning as contractors, and the Federal Managers Association.

We did not verify the CPDF data, nor the information provided to us by agency and union representatives in their survey responses and interviews.

Information on management controls was obtained as part of our surveys sent to DOT and NASA, which included questions on the policies, procedures, and guidance that they had in place to prevent reemployment abuses. We also reviewed applicable laws and guidance to determine what management controls applied on a governmentwide basis.

Where appropriate, we also included data from our prior work on downsizing and buyouts.⁸ Our work was performed in Washington, D.C., and Denver, CO, in March and April 1996 in accordance with generally accepted government auditing standards.

⁸Federal Employment: The Results to Date of the Fiscal Year 1994 Buyouts at Non-Defense Agencies (GAO/T-GGD-94-214, Sept. 22, 1994); Federal Downsizing: Observations on Agencies' Implementation of the Buyout Authority (GAO/T-GGD-95-164, May 27, 1995).

ENCLOSURE II

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