

GAO

Report to the Honorable
Frank R. Wolf,
House of Representatives

January 1998

FEDERAL DOWNSIZING

Controls Needed to Ensure Compliance With Buyout Repayment Provisions



General Government Division

B-277085

January 26, 1998

The Honorable Frank R. Wolf
House of Representatives

Dear Mr. Wolf:

As part of its downsizing efforts over the last several years, the federal government has offered employees of various federal agencies incentive payments, or buyouts, to leave federal employment through voluntary separations. Employees who accept buyouts are not prohibited from later returning directly to federal employment or working under contract for the government. However, under a provision of the Federal Workforce Restructuring Act (FWRA),¹ unless a waiver is granted, buyout recipients generally must repay the buyout if they return to federal employment or if they are employed under a personal services contract within 5 years of their separation.²

During the period we reviewed, January 1993 through June 1995, two different buyout rules were in effect for the Department of Defense (DOD). From January 1993 to March 29, 1994, DOD employees could receive buyouts, and these buyout recipients were not required to repay the buyouts if they returned to federal employment. However, DOD's policy during this period was that it would not rehire its buyout recipients until 1 year after their separation. As of March 30, 1994, under the FWRA, employees from DOD as well as other federal agencies could receive buyouts, but the buyout recipients generally had to repay the buyout if they returned directly to federal employment within 5 years of their separation.³

¹Public Law 103-226, March 30, 1994.

²Under the Federal Acquisition Regulation (FAR) a personal services contract is one that, by its express terms or as administered, makes the contract personnel in effect, government employees. (See the Background section for the elements of a personal services contract.) Contract personnel who are employed under nonpersonal services contracts are not required to repay the buyout. Under a nonpersonal services contract, personnel providing the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the government and its employees, as is the case in personal services contracts.

³The FWRA amended the DOD buyout authority so that DOD employees who received a buyout on or after March 30, 1994, were subject to the same reemployment provisions as non-DOD employees with the exception that—unlike their non-DOD colleagues—DOD buyout recipients were not required to repay the buyout if they returned to federal employment under a personal services contract.

In an October 1996 letter⁴ to you on compliance with reemployment requirements, we reported that there were 23 cases of buyout recipients (1) who appeared to have violated the FWRA repayment provision or the DOD reemployment policy or (2) about whom we could not determine whether they had returned to federal employment because of inconsistent source data.

As agreed with your office, this report provides information on (1) whether the 23 buyout recipients returned to federal employment and, if so, whether they repaid the buyout or met the DOD reemployment policy and (2) whether the 9 agencies⁵ that were identified as employing these 23 buyout recipients and other selected agencies, which may have buyout recipients under contract, had internal control procedures⁶ in place to help ensure that buyout recipients repay buyouts when required to do so.

Results in Brief

The information provided to us by the appropriate agencies' Office of Inspector General (OIG) and personnel office showed that a violation of the FWRA repayment provision or the DOD reemployment policy occurred in 11 of the 23 cases. The FWRA repayment provision was violated in 9 of the 11 cases, and the DOD reemployment policy was violated in the 2 other cases. The remaining 12 cases were not violations, although they had originally appeared to be questionable to us because of discrepancies between agency reports and data in the Office of Personnel Management's (OPM) Central Personnel Data File (CPDF), which we used as the source of our information. For example, although the CPDF showed that certain buyout recipients were reemployed at federal agencies, subsequent checks found that the agencies had no records of rehiring them.

In addition, while researching 1 of the 23 cases, an agency OIG found that the agency employed an additional buyout recipient who had not repaid the buyout. This brought our total of confirmed violations of the repayment provision to 10. OPM undertook two research efforts in which it found violations of the FWRA repayment provision, but it could not verify

⁴Buyout Recipients' Compliance With Reemployment Provisions (GAO/GGD-97-7R, Oct. 3, 1996).

⁵The 9 agencies that were identified as employing the 23 buyout recipients were the Departments of the Air Force, the Army, the Navy, Defense, Justice, State, the Treasury, Agriculture, and Veterans Affairs. The agencies we selected to understand the experiences agencies have had with buyout recipients' returning as employees under contract were the General Services Administration and the Department of Transportation. For details on how we selected these agencies, see our Scope and Methodology section.

⁶Internal control procedures are the specific steps established by management to provide reasonable assurance that control objectives are met.

the total number of violations because one of the efforts did not collect names and social security numbers, which could have been used to verify the CPDF data used in its other effort and in our review.

Regarding internal control procedures, none of the 9 agencies that we contacted for information on the 23 buyout recipient cases had adequate internal control procedures in place to provide reasonable assurance that the FWRA repayment provision was met. This was the case despite OPM's 1994 and 1996 guidance to agencies on the FWRA repayment provision as well as OPM's list of options explaining steps agencies could take to identify returning buyout recipients, steps that OPM said were inexpensive to implement (see app. III). However, to help ensure compliance with the FWRA repayment provision, one agency created a form for job applicants to complete (and sign and date) indicating whether they had received a buyout within the previous 5 years. By having an applicant certify his or her buyout status in writing, the agency would have documented evidence of the applicant's response to the question of receiving a buyout should a question arise after the applicant was hired. However, according to officials of this agency, if an applicant indicated that he or she were a buyout recipient, the agency had no personnel procedures in place to ensure that the appropriate repayment provision was satisfied. Such certification was not required by the other eight agencies.

Two other agencies notified their personnel officers of the FWRA repayment provision; however, only one component of each agency developed additional procedures to help ensure compliance with the provision. The two components developed these procedures as a result of our inquiry into apparent violations, and one component's procedures were optional. Also, four other agencies, according to their DOD spokesperson, had programs in place that addressed some of OPM's optional procedures, such as to notify agency personnel of the FWRA repayment provision, or had programs in place to periodically detect financial fraud. But none of the nine agencies had procedures to help ensure compliance with the FWRA repayment provision at the time of application for employment.

In addition to buyout recipients who return directly to federal employment, some buyout recipients work under contract for the federal government. Some of these contract personnel are employed under contracts that are expressly identified as personal services contracts and, thus, are subject to the FWRA repayment provision. In addition to these personnel, other contract personnel who are subject to relatively

continuous supervision and control by agency officials are, in effect, working under personal services contracts and are subject to the FWRA repayment provision. However, sometimes it is difficult to determine if a contract is a personal services contract, particularly when it is not identified as such. The OIGs of two agencies—the Department of Transportation (DOT) and the General Services Administration (GSA)—audited their contractor employees and reported their results in February and September, 1996, respectively. They found a combined total of 27 buyout recipients in their agencies who, in effect, were working under personal services contracts and who had not repaid their buyouts. The OIGs concluded that one of DOT's components and GSA had ineffective control procedures concerning buyout recipients who worked under personal services contracts for the government. OPM's 1996 guidance for identifying returning buyout recipients includes steps for ensuring compliance with the FWRA repayment provision when buyout recipients are employed under personal services contracts for the government.

Background

In 1992, DOD was the first federal agency authorized to offer buyouts to its employees, and it has been using buyouts since January 1993 to reduce the size of its workforce.⁷ On March 30, 1994, the FWRA authorized buyouts for other executive agencies and amended DOD's authority. For both DOD and other executive agencies, employees generally were offered a buyout payment that was the lesser of \$25,000 or their severance pay entitlement. According to OPM, in fiscal year 1996, \$24,833 was the average buyout amount for regular optional retirements; \$24,949 was the average for early retirements; and \$14,499 was the average for resignations.

The legislation granting DOD its initial buyout authority in 1992 did not impose any buyout-related conditions or repayment provision on buyout recipients who were reemployed by the federal government. However, DOD's policy was that it would not rehire DOD buyout recipients within 1 year of their separation, unless an exception was approved by a high-level DOD official.

In 1994, the FWRA required buyout recipients from federal agencies that were under the act's authority, including DOD, to repay their buyouts if they returned to federal employment within 5 years of their separation. DOD buyout recipients had to repay their buyouts if they were reemployed as civil servants, but not if they were reemployed under personal services

⁷National Defense Authorization Act for Fiscal Year 1993, October 23, 1992. National Defense Authorization Act for Fiscal Year 1995, October 5, 1994.

contracts. Non-DOD buyout recipients had to repay their buyouts if they returned directly to federal employment or if they were employed under a contract that was expressly identified or administered as a personal services contract. Also, under the FWRA, buyout recipients who were obligated to repay their buyouts could do so after an agency hired them. However, the agency rehiring the buyout recipient could seek a repayment provision waiver for the employee from OPM, in certain situations.⁸

Under new buyout authority enacted in 1996, the repayment provision was changed.⁹ Among other things, employees who accept buyouts under the 1996 authority must repay the entire buyout before their first day of federal reemployment, and there is no authority for waivers. Congress also passed other laws providing specific statutory authority for repaying buyouts for employees in selected agencies. The agency-specific buyout authorizations generally require that recipients repay their buyouts if they rejoin the federal workforce. In addition, under the time frames of the current buyout laws, agencies will need to verify buyout recipients' compliance with repayment provisions through 2006.¹⁰ (See app. I for additional information on selected buyout laws enacted from 1992 to 1997.)

Concerning contract employees, under the FAR, an agency may not award a personal services contract unless specifically authorized to do so by statute. Although each contract arrangement must be judged by its own facts and circumstances, the FAR lists six elements that should be considered when assessing whether a contract is personal in nature. These six elements are as follows:

“(1) performance on site; (2) the principal tools and equipment are furnished by the government; (3) the services are applied directly to the integral effort of agencies or agency components to further their assigned function or mission; (4) the performance of comparable services and the meeting of comparable needs in the same or similar agencies using civil service personnel; (5) the need for the type of service provided can reasonably be expected to last beyond 1 year; (6) the requirement of government direction or supervision of contractor employees because of the inherent nature of the service, or the manner in which it is provided, in order to adequately protect the government’s interest,

⁸Both the FWRA and 5 C.F.R. 576, Waiver of Repayment of Voluntary Separation Incentive Payments, state that OPM may waive repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

⁹The Treasury, Postal Service, and General Government Appropriations Act for Fiscal Year 1997, which was enacted on September 30, 1996 (P.L. 104-208, sec. 663).

¹⁰National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, November 18, 1997.

retain control of the function involved, or retain full personal responsibility for the function supported in a duly authorized federal officer or employee.”¹¹

The FAR also states that the key question to consider in determining whether a personal services contract exists is the following: Will the government exercise relatively continuous supervision and control over the contract personnel performing the contract?¹²

From January 1993 to June 1995, OPM’s CPDF data showed that 87,743 federal employees took buyouts and that federal agencies reemployed 394 of the buyout recipients as civil servants.¹³ However, according to CPDF data as of September 1996, the number of employees who had accepted buyouts grew to 128,467, or an additional 40,724 employees. The number of buyout recipients who are working as contractors to federal agencies or as contractor employees is unknown because no governmentwide data are available.

Scope and Methodology

To gather information concerning the 23 buyout recipients who were discussed in our October 1996 letter, we sent letters on November 8, 1996, to the OIGs of the 9 federal agencies identified in OPM’s CPDF data as employing these individuals. We asked the OIGs whether the buyout recipients had returned to federal employment and, if so, whether they had repaid the buyout or met DOD’s reemployment policy. We limited the scope of our work to the buyout recipients who were reemployed as federal employees between January 1993 and June 1995.

Among other things, our letters to the OIGs identified the buyout recipients by name and social security number and asked specific questions concerning their reemployment. We asked the OIGs to review the 23 buyout recipient cases, provide us with information concerning the clarification of conflicting data and apparent violations, and take any needed action, as appropriate. In cooperation with the OIG offices, we contacted selected federal agencies’ personnel officials about the status of some cases. We also followed up with the OIGs and agency personnel officials by providing them with additional information, such as detailed case information and OPM documentation.

¹¹48 C.F.R. 37.104 (d).

¹²48 C.F.R. 37.104 (c) (2).

¹³Reemployment of Buyout Recipients (GAO/GGD-96-102R, June 14, 1996).

To determine if the 9 federal agencies that were identified in the CPDF data as employing the 23 buyout recipients had internal control procedures in place to provide a reasonable assurance of compliance with buyout reemployment requirements, we asked the agencies to provide us with copies of these procedures. Specifically, we asked the agencies for copies of their internal control procedures on the reemployment of buyout recipients either as members of the civil service or as personal services contract employees.

To determine whether other selected agencies had internal control procedures for the reemployment of buyout recipients under personal services contracts, we first had to decide which agencies to select for the review. To do so, we reviewed OPM's August 1996 interim report to Congress on the reemployment of buyout recipients.¹⁴ In that report, OPM said that none of the agencies in its review reported cases involving buyout recipients' returning to work under personal services contracts, but that several agencies reported having completed or having begun reviews and follow-ups of their contracting arrangements.

In its report, OPM identified DOD and DOT as having conducted reviews of their contracting arrangements and GSA as having a review under way. DOD reported to OPM that it had not reemployed any buyout recipients under personal services contracts. However, OPM asked DOD to provide an updated report because DOD had looked only at DOD buyout recipients and not recipients from other agencies. As a result, we excluded DOD from our review of this matter. We decided to review the OIG audit reports of DOT¹⁵ and GSA to (1) gain an understanding of the experiences agencies have had with buyout recipients' being hired under personal services contracts and (2) learn what kind of internal control procedures may be applicable.

Because governmentwide data on buyout recipients hired under personal services contracts do not exist and because of time constraints, we limited the part of our review concerning internal controls for personal services contracts to the agencies that had the two OIG audits. We also obtained OPM's 1994 and 1996 written guidance as well as OPM's list of possible options that agencies could take to help ensure compliance with the

¹⁴Interim Status Report, OPM, Washington, D.C.: August 1996. In December 1997, OPM issued its final reports to Congress entitled Voluntary Separation Incentive Payments: Buyouts Under the Federal Workforce Restructuring Act of 1994 (WRO 97-103, Dec. 1997) and Voluntary Separation Incentive Payments: A Report on Reemployment and Repayment Activity. Our report was already in final processing at the time that OPM's final reports were issued.

¹⁵The DOT OIG's audit report concerned the Federal Aviation Administration, which was previously identified in our June 1996 letter ([GAO/GGD-96-102R](#)).

buyout repayment provision, and we discussed this guidance with OPM officials.

We did our review in Washington, D.C., from October 1996 to October 1997 in accordance with generally accepted government auditing standards. We provided a draft of this report to the Director of OPM and to the heads of the 9 agencies identified as employing the 23 buyout recipients in our review and requested their comments. These comments are discussed at the end of this report.

Eleven Violations Were Found in the 23 Buyout Cases, and More Violations Were Found by Other Agencies

Of the 23 cases that we asked the OIGs to examine, the agencies confirmed that 9 cases violated FWRA's repayment provision and that 2 cases violated DOD's reemployment policy. The remaining 12 cases were not violations, but they were identified in the CPDF because of inaccurate data. Also, one additional case of reemployment of a buyout recipient without repayment was found by the U.S. Department of Agriculture's (USDA) OIG while researching the case about which we asked. In addition, OPM found FWRA repayment provision violations in two other research efforts it undertook, but it is unclear whether these violations are in addition to the violations that we found.

Selected Agencies Found Nine Cases Violated the Repayment Provision, and Two Cases Violated DOD's Reemployment Policy

The 9 federal agencies identified in the CPDF data as employing the 23 buyout recipients provided information showing that a violation of FWRA's repayment provision or DOD's policy had occurred in 11 of the 23 cases. (See app. II for the employment status of the 23 buyout recipient cases, by federal agency.) The agencies reported that in 9 of the 11 cases, FWRA's repayment provision was violated. These agencies also reported that they hired the nine buyout recipients without seeking repayment of the buyout. The remaining two cases were violations of DOD's reemployment policy, which did not require buyout repayment.

After determining that a violation had occurred, the agencies varied in how they responded. In general, they based their actions on whether they still employed the buyout recipient. For example, of the nine cases with violations of FWRA's repayment provision, six cases involved individuals who were still employed, and the hiring agencies arranged for the buyout recipients to make repayments.¹⁶ In the three cases where the buyout recipients were no longer in their employ, the hiring agencies billed the

¹⁶In one of the six cases where repayment was arranged, the buyout recipient filed for bankruptcy. Bankruptcy status was granted by the court, and the agency was legally barred from recovering the buyout debt.

recipient in one case, and took no action in the other two cases.¹⁷ Although the agencies did not seek repayment in these two cases, the law requires that if a buyout recipient accepts reemployment within 5 years of the separation, he or she is required to repay the buyout unless a waiver is granted by OPM. Therefore, if a buyout recipient is reemployed without repaying the buyout, the hiring agency is to seek recovery of the debt. The hiring agency has this obligation even though any money it recovers must go to the agency that originally paid the buyout, which may not be the agency rehiring the buyout recipient. OPM has instructed agencies that when a buyout recipient is reemployed by another agency, the two agencies should coordinate efforts to collect the buyout amount.

In the two cases that violated DOD's reemployment policy, DOD's OIG reported that the Department had rehired both buyout recipients in violation of its policy not to rehire such individuals within 1 year of their separation unless a high-level DOD official grants an exception. DOD subsequently waived its policy for one buyout recipient; the other recipient resigned. Both of the buyout recipients received their buyouts before FWRA was enacted; therefore, the repayment provision did not apply.

Agencies Found That the 12 Remaining Cases Involved Inaccurate Data

Agency officials told us that 12 of the cases we identified were not repayment violations. In 6 of the 12 cases, the federal agencies said that they mistakenly had submitted inaccurate data to OPM's CPDF, which we used in our previous review to identify potential violators. The data that the agencies submitted to the CPDF showed that they had reemployed six buyout recipients. However, the agencies reported that, in a follow-up review of their records, they discovered that they had not reemployed these recipients. For example, DOD said that three buyout recipient cases it reported involved individuals who had retired after receiving the buyouts but that the recipients were identified in Department data as employees, even though they were never rehired. DOD explained that the positions the three individuals once held were part of a large transfer of positions within the Department and that an error was made in recording the transfer.

For the remaining 6 of the 12 cases, the agency officials said that they had no record of ever employing the buyout recipients. At the time of our previous review, the CPDF erroneously listed these agencies as the recipients' employers.

¹⁷The two individuals had resigned from the agency, and it decided not to pursue the individuals to repay their buyouts.

USDA Found Another Violation of the FWRA Repayment Provision

While researching the case we inquired about, USDA's OIG reported finding another buyout recipient that USDA had employed who was required to repay the buyout as a condition of reemployment but who had not done so. According to the OIG, USDA planned to bill the buyout recipient to recover the buyout debt. USDA had hired this buyout recipient after the review period covered in our October 1996 letter (i.e., Jan. 1993 through June 1995).

OPM Found FWRA Repayment Provision Violations in Two Other Research Efforts

OPM conducted two research efforts on reemployed buyout recipients; one collected data using a survey, and the other used an analysis of CPDF data. The results of the two research efforts are summarized in OPM's 1996 interim report.¹⁸ OPM's survey, which was conducted from March 30, 1994, through May 20, 1996, and included the heads of all of the cabinet-level agencies and most smaller independent agencies, reported that 46 of the 80 buyout recipients whom the agencies reemployed had possibly not repaid their buyouts. According to OPM's survey, 40 of the possible 46 violations were in Defense agencies (see app. IV for details), and the remaining 6 possible violations were in non-Defense agencies. OPM said that 34 of the 80 cases were in compliance with the FWRA repayment provision. Although 58 agencies responded to the survey, according to OPM, 10 agencies that had used buyouts did not respond in time for OPM to include them in the interim report.

OPM also did a study of possible buyout recipients who may have been reemployed during March 30, 1994, through June 30, 1995. This study, which used CPDF data, found a possible 49 reemployed buyout recipients, 9 of whom had violated the FWRA's repayment provision.¹⁹ For the remaining 40 cases, OPM determined that 38 cases had complied with the provision, and that 2 cases needed further resolution.

As of October 1997, OPM officials said that they were still verifying the number of possible buyout violations in both of its research efforts, and that there was no way to be certain of the differences between the number of reemployed buyout recipients identified under OPM's two research efforts or with our review. This uncertainty is because the OPM survey effort did not collect names and social security numbers, which could have been compared with the CPDF data in either OPM's effort or our review

¹⁸Interim Status Report, OPM.

¹⁹In its study as well as in its written comments on our draft report, OPM identified nine violations of the FWRA repayment provision. However, in subsequent documentation, OPM identified an additional violation, which increased the total of CPDF-based violations for this period to 10.

for verification. Our review and OPM's study both were based on CPDF data, and the time frame of OPM's study was encompassed in our review. However, the methodologies used to extract the data were not the same, which provided different results. For instance, although OPM's study confirmed 10 FWRA repayment provision violations and we confirmed 9, only 5 of the violations we confirmed were also confirmed by OPM; consequently, 5 of the violations OPM confirmed were not confirmed by our review.

Selected Agencies Lacked Adequate Internal Control Procedures to Help Ensure Compliance With the FWRA Repayment Provision

Federal agencies have an obligation to ensure that the FWRA repayment provision is met when buyout recipients are reemployed as civil servants, or when they work under contract expressly identified or administered as personal services contracts for the government. Agency management is responsible for establishing effective internal controls to help ensure compliance with laws and regulations. Internal controls consist of policies and procedures used to provide reasonable assurance that (1) goals and objectives are met; (2) resources are adequately safeguarded, efficiently used, and reliably accounted for; and (3) laws and regulations are being followed. However, none of the 9 agencies that we asked to provide the status of the 23 buyout recipient cases had adequate internal control procedures in place to provide reasonable assurance that the FWRA repayment provision was met. This was the case despite OPM's 1994 and 1996 guidance to agencies on the FWRA repayment provision as well as OPM's list of options explaining steps agencies could take to identify returning buyout recipients, steps that OPM said were inexpensive to implement.

In GSA and DOT, which entered into contracts involving buyout recipients, the OIGs reported that GSA and DOT's Federal Aviation Administration (FAA) did not have adequate procedures to prevent violations of the FWRA repayment provision. According to both OIGs, the internal control procedures of those agencies could not be used to determine whether contracts were administered as personal services contracts and, therefore, whether the contract personnel who were buyout recipients were subject to the FWRA repayment provision.

The Department of State Created a Form Requiring Certification of Buyout Status, and OPM Believes That Identifying Buyout Recipients Is Important

To help ensure compliance with the FWRA repayment provision, the Department of State created a form for job applicants to complete (and sign and date) indicating whether they had received a buyout within the previous 5 years. By having an applicant certify his or her buyout status in writing, the State Department would have documented evidence of the applicant's response to the question of receiving a buyout should a question arise after the applicant was hired. However, according to a State Department official, if an applicant indicated that he or she were a buyout recipient, the agency had no personnel procedures in place to ensure that the appropriate buyout repayment provision was satisfied. Such certification was not required by the other 8 agencies from which we requested information on the 23 buyout recipient cases.

According to OPM, a fundamental step for agencies to help ensure compliance with the repayment provisions of the various buyout authorities is for the agencies to identify whether job applicants are former federal employees and, if so, whether they had received a buyout. OPM's instructional pamphlet for job applicants, which is entitled Applying for a Federal Job, states that individuals may apply for federal employment using either of two documents. Applicants may use a résumé or the Optional Application for Federal Employment - Optional Form 612,²⁰ which asks individuals to provide information about their work history, including dates of employment, and to certify if they had ever been a civilian employee with the federal government. According to OPM, when applicants indicate on any of these applications for employment that they have prior federal service, hiring officials are to ask the applicant whether he or she received a buyout.

Job applicants who submit résumés are to provide the same information that is requested on the Optional Application For Employment—that is, work history and whether they had ever been federal employees. Of course, federal agencies must depend on job applicants' truthfully reporting such information. However, the Optional Application For Employment and the instructional pamphlet for résumés state that providing false information is grounds for not hiring the applicant, for firing the applicant after he or she is employed, and for imposing a fine or prison sentence on the applicant.

In our discussions with OPM officials, they said that having job applicants complete a certification form, like the one developed by the State

²⁰OPM abolished the Application for Federal Employment - Standard Form 171; however, applicants can use it until the supply is exhausted.

Department, would help agencies identify applicants who were buyout recipients. The officials explained that information on whether an applicant had received a buyout may not be readily available to the hiring agency. For example, the information may be in the individual's official personnel folder, which the hiring agency may not receive for several weeks, or in a computer system that is located at the agency that paid the buyout. In addition, such certification would assist agencies that were hiring individuals who had received buyouts from other agencies, especially those agencies that do not participate in the CPDF, such as those in the judicial and legislative branches of government. For agencies covered by 5 C.F.R. 7.2, it is mandatory that they provide OPM with personnel information for use in the CPDF, among other things, unless specifically exempted by statute.

The need for hiring officials to readily know whether a job applicant is a former federal employee who took a buyout was made even more important by the enactment of the 1996 legislation. As previously mentioned, this legislation requires buyout recipients under its authority to repay the full buyout amount before the employee's first day of work.

USDA and the Department of the Treasury Issued FWRA Notification Guidance to Its Components, but Only One in Each Agency Developed Internal Control Procedures

Of the nine agencies, our review showed that only USDA and the Department of the Treasury had issued guidance notifying component heads of the FWRA repayment provision. In addition, as a result of our inquiry into apparent FWRA buyout repayment violations at these components, one component in each of these agencies—USDA's Animal and Plant Health Inspection Service (APHIS) and Treasury's Internal Revenue Service (IRS)—developed and issued procedures that could be used to help prevent future buyout violations, according to agency officials.

USDA issued notification of the FWRA repayment provision on July 18, 1996, and Treasury issued its notification on February 10, 1997. Each agency's notification primarily consisted of OPM's guidance entitled Reemployment, Personal Services Contracts, and the Repayment of Voluntary Separation Incentives, which was dated March 1996. In addition, Treasury's procedures included OPM's list of possible options for agencies but did not establish procedures to implement the options.

According to its officials, APHIS developed internal control procedures, which were adopted on November 21, 1996, that require its personnel officials to screen job applicants and check new employees to help ensure that APHIS and its employees are in compliance with FWRA's and other

buyout authorities' repayment provisions. However, although the procedures APHIS officials provided to us require personnel officials to review job applications to identify whether individuals had previous federal service and, if so, took voluntary buyouts, APHIS did not have procedures that personnel officials should follow if they identified such service or receipt of a buyout. In addition, APHIS did not have the applicants certify their buyout status.

IRS issued optional procedures on December 24, 1996, to help ensure that rehired buyout recipients comply with the repayment provision under a particular buyout authority. These procedures were based, in part, on OPM's list of options. However, IRS' procedures are not required and, therefore, cannot ensure that the IRS is in compliance with FWRA's and other buyout authorities' repayment provision.

DOD Had Programs in Place to Address Some of OPM's Optional Procedures

According to a DOD spokesperson, who also represented the Departments of the Army, Navy, and Air Force, DOD had programs in place that addressed some of OPM's optional procedures to help ensure compliance with the FWRA repayment provision. One of these programs was "Operation Mongoose," which was created to prevent and detect financial fraud in DOD. The program, which was implemented in June 1994, compares DOD's automated data with those of other agencies to point out probable fraud and ensure that erroneous payments are not being made. In March 1995, DOD first used the program to detect DOD buyout takers who had returned to work in the federal government. In addition, DOD mailed two publications to its personnel directors, which are also available via the Internet and E-mail, to notify them of various personnel matters, including their responsibilities for buyout repayment provisions. Although DOD's efforts to identify financial fraud and to notify personnel directors are useful steps, DOD did not have procedures in place during the employment application process to (1) identify whether job applicants were buyout recipients and (2) help ensure buyout repayment as required by the FWRA repayment provision and the more recent buyout authorities.

The Department of Justice and Treasury Did Not Have Internal Control Procedures

Neither the Department of Justice nor Treasury had internal control procedures to help ensure that buyout recipients who return to federal employment comply with the FWRA repayment provision. A Department of Veterans Affairs (VA) official said that the Department had no written guidance that focused on buyout recipients, and that the only way that VA determines whether an individual is a buyout recipient is to review the

individual's Notification of Personnel Action (Standard Form 50) form, which was generated from his or her personnel office. A Justice official also said that the Department had no written procedures concerning buyout recipients who return to federal reemployment.

DOT's FAA and GSA Had Ineffective Internal Control Procedures to Determine If Buyout Recipients Were Employed Under Personnel Services Contracts

At DOT, several former FAA employees who had received buyouts returned to work at FAA as employees of DOT contractors. Because of telephone "hot line" complaints relating to the legality of those employees' return, the DOT OIG examined and reported on whether FAA and the rest of DOT were complying with the FWRA repayment provision.²¹ Partly as a result of the DOT OIG's report, GSA's OIG examined and reported on whether any former GSA employees who had received buyouts had returned to GSA as employees of contractors.²² The two audits found that (1) 27 former DOT and GSA employees were working under contracts that, although not identified as personal services contracts, were being administered as such and (2) these employees had not repaid or arranged to repay their buyouts, as required by the FWRA.²³

The DOT OIG examined 260 cases of buyout recipients—20 former FAA employees and 240 former employees of other DOT agencies—who had returned to work for DOT contractors.²⁴ The OIG reported violations in some of the FAA cases but did not find any problems with the other DOT cases. According to the OIG's 1996 report, FAA allowed 17 of the 20 former employees to return to work under contracts, which were administered as personal services contracts, without meeting the FWRA buyout repayment provision. The OIG's report attributed these 17 violations to inadequate internal control procedures at FAA and inadequate enforcement of FAA's

²¹Voluntary Separation Incentive Payments, Department of Transportation, R6-FA-6-009, Washington, D.C.: February 9, 1996.

²²GSA Needs To Take Additional Actions to Implement the Federal Workforce Restructuring Act of 1994, A63317/O/H/F96026, Washington, D.C.: September 30, 1996.

²³Section 5 (g) of the FWRA also states that "appropriate action [shall be taken] to ensure that there is no increase in the procurement of service contracts by reason of the enactment of the act, except in cases in which a cost comparison demonstrates such contracts would be to the financial advantage of the federal government." However, both the DOT and GSA OIG audits found that few, if any, cost comparisons were done and those that were done understated the cost of the contract to the federal government and did not follow the Office of Management and Budget's guidance in this matter. The DOT audit determined that an annual increase in the government's cost exceeded \$1 million in reemploying buyout recipients who returned as employees of FAA contractors compared with the cost of federal employees.

²⁴The scope of the DOT OIG's audit was limited to (1) the 20 former FAA employees who had taken buyouts in fiscal year 1994 and (2) the 240 other former DOT employees who had taken buyouts in fiscal year 1994 and through March of fiscal year 1995.

guidance by its contracting officers. The report also stated that buyout payments totaling \$425,000 for the 17 employees should be recouped, and that the OIG had referred these violations to DOT's Office of Investigations for coordination with the United States Attorneys to begin the process of seeking buyout repayments.

The GSA OIG reviewed the cases of 39 former GSA employees who had received buyouts and were employed by contractors working for GSA.²⁵ Of the 39 cases, the OIG determined that 10 employees were, in effect, working under personal services contracts without meeting the FWRA buyout repayment provision. As in the case of the 17 employees at FAA, these 10 employees were hired under contracts that were actually being administered as personal services contracts. The OIG attributed these violations to GSA's lack of adequate policy guidance for defining a personal services contract. The OIG said that program managers, buyout recipients, and contracting officers did not fully understand what a personal services contract was or under what conditions a buyout recipient could return to federal employment without repaying the buyout.

The GSA OIG also said the risk was increasing that more GSA buyout recipients may return to work for GSA under personal services contracts without repaying their buyouts. The OIG said that a number of additional buyout recipients had already returned to work under various contracts, some of which were being administered as personal services contracts. The OIG explained that GSA staffing had decreased 21 percent overall from its 1993 level, which would require GSA program offices to reduce program services, contract out work to maintain workload, or do both.

Increased contracting, according to the GSA OIG, heightens the risk of buyout recipients' returning under personal services contracts. However, the OIG did not believe that action should be taken against the 10 buyout recipients it found in violation because the OIG did not find that any of the instances appeared to be willful or deliberate attempts to circumvent the FWRA repayment provision. In fact, the OIG added, the buyout recipients took specific steps to try to comply with the FWRA, such as not performing the same functions, not working in their former offices, and not working as a contractor directly for the government. Although we did not attempt to determine whether any of the GSA contracts were, in effect, personal services contracts, if in fact they were, then the FWRA repayment provision

²⁵The scope of the GSA OIG's audit was limited to the 39 employees who had accepted buyouts from GSA between March 1994 and February 1996.

would have been violated and the buyout debt would have to be recovered.

The DOT and GSA OIG audits determined that violations of the FWRA repayment provision have occurred under agency contracts. However, the audits might have uncovered more violations if they had looked for all buyout recipients that were employed at the two agencies under service contracts and had not limited their search to their agency's buyout recipients.

As illustrated by the DOT and GSA audits, violations of the FWRA repayment provision may occur not only under contracts expressly identified as personal services contracts but also in connection with contracts that are administered as personal services contracts. As previously mentioned, OPM provided optional guidance to agencies on ways to help ensure compliance with the buyout repayment provision, and some of these suggestions pertained specifically to contracting. In its guidance, OPM suggested that agencies

- issue their own guidance to personnel involved in the oversight and management of contracts (e.g., contracting officers) and have them monitor compliance with the buyout repayment provisions,
- require contractors to identify and certify that contract employees who have received buyouts are not working in violation of the law, and
- require periodic spot checks of contracting personnel to help ensure compliance.

These OPM suggestions were also recommended to some extent by the DOT and GSA OIGs in their reports. For example, the DOT OIG recommended that (1) FAA identify all of its employees who took buyouts and returned to work for FAA as employees of contractors and (2) the circumstances of each case be evaluated to determine whether FAA and the employees who took buyouts complied with the FWRA. The GSA OIG said that GSA's policies and procedures for implementing the FWRA should be clarified, and that the clarification should include information explaining how a contract that is not intended to be a personal services contract can become one and what key actions to take if that happens. According to the GSA OIG, the clarified policies and procedures should be distributed to all employees who are scheduled to leave under the buyout program, all program managers, and all contracting officers.

Conclusions

Our review found violations of the FWRA repayment provision and DOD's reemployment policy as well as a lack of internal controls to help prevent such violations. OPM's list of possible options that agencies could take to help ensure compliance with buyout repayment provisions generally was not implemented by the agencies we studied, even though OPM officials believe that doing so would not be costly to agencies. Because agency management is responsible for ensuring its compliance with laws and regulations, it is also responsible for establishing effective internal controls to avoid violations of such laws and regulations, including the FWRA repayment provision. Under the time frames of the current buyout laws, every federal agency will need to verify buyout recipients' compliance with repayment provisions of the various buyout authorities through 2006.

According to OPM, a fundamental step for agencies to help ensure compliance with the repayment provisions of the various buyout authorities is for the agencies to identify whether job applicants are former federal employees and, if so, whether they had received a buyout. Identifying buyout recipients who work under contracts with the government that are not expressly identified as personal services contracts, but are administered as such, appears to be more difficult than identifying buyout recipients who return directly to federal service. In the cases of DOT and GSA, their OIGs found that the agencies' controls did not adequately identify contracts administered as personal services contracts. Thus, DOT and GSA found it difficult to identify buyout recipients who had returned under personal services contracts. For an agency to determine that a contract employee must comply with a repayment provision, it must first determine that the employee's contract is expressly identified as, or is being administered as, a personal services contract.

The need for agencies to be able to better recognize the administration of contracts as personal services contracts was pointed out by the audit report of GSA's OIG. The audit report said that, as downsizing occurs, agencies are turning to contractors to accomplish tasks, and that some employees who leave agencies because of downsizing are working for those contractors. As a result, the DOT and GSA OIGs made recommendations in their reports to help ensure that their employees and contractors know what constitutes a personal services contract and how the identification of buyout recipients under such contracts could help prevent future repayment provision violations.

Recommendations to the Director of OPM

To help ensure that agencies establish procedures to comply with the buyout repayment provisions of the FWRA and other buyout authorities, we recommend that the Director of the Office of Personnel Management (OPM) take the following actions to establish steps to identify potential violations of the provisions.

- Promulgate regulations requiring agencies to identify buyout recipients who (1) are applying to return or have returned directly to federal employment or (2) are applying to work for or already work for the federal government under a contract that is, by its terms, a personal services contract, or administered as such, and require them to repay their buyouts. In doing so, the Director may want to consider OPM's list of possible options (see app. III) that agencies could take to help ensure compliance with the buyout repayment provisions.
- Create a form that job applicants would be required to complete to certify whether they were buyout recipients and, if so, from which agency they received the buyout. The Director may want to consider requiring that the form (1) be attached to employment résumés or to the Optional Application for Employment²⁶ or (2) be completed only by those applicants to which agencies are considering making job offers.

Agency Comments and Our Evaluation

We provided a draft of this report for review and comment to the Director of OPM and the heads of the 9 agencies from which we had requested information on the 23 buyout recipient cases.

In a letter dated August 15, 1997, the Director of OPM said that OPM does not oppose our recommendations but that it does question the need for these actions, because of the extent of the cooperation it has with the federal agencies. The Director said agencies have been extremely cooperative in responding to OPM's requests for information regarding reemployed buyout recipients, regardless of whether the recipient is in violation of the FWRA repayment provision. The Director also said that we overestimated the scale of the FWRA repayment provision problem because we double-counted the number of violations by adding the number of violations we identified to those of OPM's research efforts, although both of us very likely identified the same violations.

We also received cooperation from agencies in tracking down the status of the 23 cases we reviewed. However, we contacted these agencies after the

²⁶Some applicants may use the Standard Form 171 because it is still an accepted form of application and may be used until the supply of the form is exhausted.

buyout recipients were rehired. Although the information the agencies provided may serve to assist in identifying violations after they have occurred, it does not prevent violations from occurring. Preventing violations is especially important for the more recent buyout laws, which require buyout recipients to repay their buyouts before their first day of reemployment with the federal government or employment under a personal services contract. Therefore, we continue to believe that agencies are obligated to have internal controls that are adequate to reasonably ensure compliance with the buyout provisions. In addition, we agree that our draft report included some instances of apparent double-counting, and we have made the appropriate changes in this report. Our review and one of OPM's studies in its interim report were based on CPDF data, and the time frame of OPM's study was encompassed in the period we reviewed. However, the methodologies used to extract the data were not the same, which provided different results. For instance, although OPM's CPDF-based study confirmed 10 FWRA repayment provision violations²⁷ and we confirmed 9, only 5 of the violations we confirmed were the same as those confirmed by OPM. Consequently, five of the violations that OPM confirmed were not confirmed by our review.

In addition, the Director made a number of technical comments regarding accuracy or context in the draft report; we made these changes in this report where appropriate. See appendix V for a reprint of the OPM letter and our additional comments.

On August 7, 1997, we met with the Director of Staffing and Career Development, Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy), who provided oral comments on a draft of this report for the Department of Defense (DOD) and the Departments of the Army, Navy, and Air Force. The Director believed it would not be cost effective to comply with OPM's suggested option to contact the approximately 95,000 buyout recipients who had left DOD and to remind them of the FWRA repayment provision, given the very small numbers of detected violations. However, she agreed that before prospective employees are hired, they should be required to certify whether they have received a buyout from a previous federal employer.

Although we believe OPM's suggested options are useful indicators of the steps that can be taken to help ensure compliance with buyout repayment provisions, we do not suggest that all of OPM's options should be

²⁷Nine violations were identified by OPM in its study and in its comments on our draft report. One additional violation was subsequently identified by OPM staff.

implemented by every agency. We believe that documenting whether prospective employees have received buyouts is a sound step to help ensure compliance, but it must be linked to procedures to help ensure that those who have received such payments repay them to satisfy the appropriate buyout provision.

We received written comments on a draft of this report from the U.S. Department of Agriculture (USDA) in a letter dated August 8, 1997, from the Director of its Office of Human Resources Management. The Director provided no specific comments on our recommendations. However, he did express concern regarding what he perceived as an overemphasis on USDA in the draft report and an underemphasis on difficulties that the Department faced. Changes were made to this report to address these concerns as appropriate. See appendix VI for a reprint of USDA's letter and our response to specific comments.

We met with the Associate Deputy Assistant Secretary for Human Resources Management of the Department of Veterans Affairs (VA) on August 14, 1997, to obtain oral comments on the draft report. She said that VA was not against regulations as long as they are not prescriptive and inflexible. VA also agreed that a certification form could be useful.

The Department of Justice's Assistant Attorney General for Administration said, in a letter dated August 7, 1997, that Justice agreed with the recommendations in the draft report. The Assistant Attorney General added that Justice will continue to provide guidance to its organizational components on the need to exercise caution in rehiring buyout recipients. He said that Justice also intends to work closely with the Department's Justice Management Division's Procurement Services Staff to provide components with clear guidance on the definition of a "personal services contract." See appendix VII for a reprint of Justice's letter.

In a letter dated August 13, 1997, the Department of the Treasury's Assistant Director of the Office of Personnel Policy said that Treasury had no comment on the draft report. See appendix VIII for a reprint of the Treasury letter.

We spoke with the Department of State's GAO Liaison on August 22, 1997, to obtain oral comments on the draft report. She said that the State Department wanted us to define the "certain situations" we referred to when agencies could seek a waiver of repayment from OPM. We resolved

this comment by providing additional information. She said that the State Department had no other comments.

As arranged with your office, unless you announce the contents of this report earlier, we plan no further distribution until 15 days after its issue date. At that time, we will send copies of this report to the Chairmen and Ranking Minority Members of interested congressional committees, the Director of OPM, the heads of the nine agencies included in our review, and other interested parties. Upon request, we will also make copies available to others.

The major contributors to this report are listed in appendix IX. Please call me on (202) 512-8676 if you have any questions.

Sincerely yours,



Michael Brostek
Associate Director,
Federal Management
and Workforce Issues

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Abbreviations

APHIS	Animal and Plant Health Inspection Service
CPDF	Central Personnel Data File
DOD	Department of Defense
DOT	Department of Transportation
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulation
FWRA	Federal Workforce Restructuring Act
GSA	General Services Administration
IRS	Internal Revenue Service
OIG	Office of Inspector General
OPM	Office of Personnel Management
USDA	U.S. Department of Agriculture
VA	Department of Veterans Affairs

Comparison of Selected Buyout Laws

Statutory authority	Buyout payment	Duration	Federal reemployment requirements
Department of Defense (P.L. 102-484, Oct. 23, 1992; P.L. 103-337, Oct. 5, 1994, and implementing instructions; P.L. 105-85, Nov. 18, 1997)	The lesser of severance pay or \$25,000.	Separations must be made by September 30, 2001.	DOD's initial buyout legislation contained no reemployment requirements. However, it was DOD policy that employees could not be reemployed by any DOD installation in any capacity for 12 months following their separation. No restrictions were placed on their ability to return to non-DOD agencies. FWRA amended DOD's buyout authority so that DOD employees who received a buyout on or after March 30, 1994, must repay the buyout or obtain a waiver from OPM, when they return to federal employment within 5 years. DOD employees do not have to repay the buyout if they return to federal employment under personal services contracts.
Federal Workforce Restructuring Act (P.L. 103-226, Mar. 30, 1994)	The lesser of severance pay or \$25,000.	March 30, 1994, through March 31, 1995. Delayed buyouts were permitted through March 31, 1997.	Employees who received buyouts must repay the buyout or obtain a waiver from OPM when they return to federal employment (including employment under personal services contracts) within 5 years.
Treasury, Postal Service, and General Govt. Appropriations Act for FY 1997, Sec. 663 (P.L. 104-208, Sept. 30, 1996)	The lesser of severance pay or an amount determined by the agency head, not to exceed \$25,000.	October 1, 1996, through December 30, 1997.	Employees who received buyouts must repay the buyout prior to the first day of federal government reemployment (including employment under personal services contracts) when they return to federal employment within 5 years.
National Aeronautics and Space Administration (P.L. 104-204, Sept. 26, 1996)	The lesser of severance pay or \$25,000.	September 26, 1996, through September 30, 2000.	Employees who received buyouts must repay the buyout prior to the first day of federal government reemployment (including employment under personal services contracts) when they return within 5 years. Repayment may be waived if the individual possesses unique abilities and is the only qualified applicant available for the position.
U.S. Department of Agriculture, FY 1997 Appropriation (P.L. 104-180, Aug. 6, 1996)	The lesser of severance pay or (1) \$25,000 from enactment through FY 1997, (2) \$20,000 in FY 1998, (3) \$15,000 in FY 1999, or (4) \$10,000 in FY 2000.	October 1, 1996, through September 30, 2000.	Employees who received buyouts must repay the buyout prior to the first day of federal government reemployment (including employment under personal services contracts) when they return within 5 years. No provision to waive repayment is provided.
Agency for International Development (P.L. 104-190, Aug. 20, 1996)	The lesser of severance pay or an amount determined by the agency head, not to exceed \$25,000.	August 20, 1996, through January 31, 1997.	Employees who received buyouts must repay the buyout prior to the first day of federal government reemployment (including employment under personal services contracts) when they return within 5 years.

(continued)

Appendix I
Comparison of Selected Buyout Laws

Statutory authority	Buyout payment	Duration	Federal reemployment requirements
Smithsonian Institution (P.L. 104-134, Apr. 26, 1996)	Determination to be made by the Secretary, but shall not exceed \$25,000.	April 26, 1996, through October 1, 1996.	Employees who received buyouts must repay the buyout upon reemployment with the federal government within 5 years. Repayment may be waived by the Secretary of the Smithsonian. Repayment is not required if employee returns under a personal services contract.

Source: GAO.

Employment Status of the 23 Buyout Recipient Cases, by Federal Agency

Hiring agency	Status of buyout recipient cases			Total
	Individual employed in violation of legislative or DOD policy provisions	Individual mistakenly coded as reemployed	Agency had no record of ever employing the individual	
Department of the Air Force	1 ^a	0	2	3
Department of the Army	1	1	1	3
Department of the Navy	0	0	3	3
Department of Defense	1 ^a	3	0	4
Department of Justice	1	0	0	1
Department of State	0	2	0	2
Department of the Treasury	4	0	0	4
Department of Agriculture	1	0	0	1
Department of Veterans Affairs	2	0	0	2
Total	11	6	6	23

Note: This table does not include the additional violation that the Department of Agriculture identified because it was outside the scope of our initial review.

^aDOD policy violations.

Sources: Selected federal agencies.

OPM's List of Possible Options Agencies Could Take to Ensure Compliance With Buyout Repayment Provisions

Listed below are the possible options that the Office of Personnel Management (OPM) developed and encouraged agencies to use to help them comply with buyout repayment provisions. We have reordered and categorized the options on the basis of their application; however, the text of each option is quoted directly from OPM's original list.

For Buyout Recipients Returning Directly to Federal Service

"Alert agency hiring officials. Some existing buyout authorities (i.e., Agriculture and NASA) provide for the payment of buyouts through as late as September 30, 2000. Thus, some buyout takers will be covered under the repayment requirement through at least September 30, 2005. Agency hiring officials are advised to judiciously review applicants for Federal jobs at least through September 30, 2005, to insure that employees covered by the repayment requirements are repaying the entire amount of the incentive or that they are not being reemployed.²⁸

"Scrub agency payroll and/or personnel records. Agencies may conduct periodic checks to identify employees who have received buyouts and who are now reemployed by a Federal agency. The Nature of Action Code (NOAC) for separation incentives is 825. OPM is also conducting these checks through the Central Personnel Data File."

For Buyout Recipients Returning as Contract Employees

"Review agency's contract agreements. Structure contractual agreements involving personal services contracting to address contractors' use of former Federal employees who have received buyouts. Additional options include requiring contractors to identify and certify that contract employees who have received buyouts are not working in violation of the law.

"Alert agency contract management personnel. Issue guidance to personnel involved in contracting oversight and management for use in monitoring compliance.

"Require periodic spot checks of contracting personnel to ensure compliance."

For Buyout Recipients Returning as Either Federal or Contract Employees

"Remind each agency manager and/or supervisor of the repayment requirement and provide guidelines for identifying violations.

"Post reminders in agency benefits or retirement office. This is a good location to reach employees who have retired with incentives.

²⁸This option does not reflect the effect of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, November 18, 1997, which extends DOD's buyout authority to September 30, 2001, which would require hiring officials to judiciously review applicants for federal jobs at least through September 30, 2006, to ensure that employees covered by the repayment requirements are repaying the entire amount of the incentive or that they are not being reemployed.

**Appendix III
OPM's List of Possible Options Agencies
Could Take to Ensure Compliance With
Buyout Repayment Provisions**

“Contact buyout recipients and remind them of repayment requirements. Agencies may opt to send informational mailers to employees to remind them of applicable repayment rules.”

Status of the 40 Open Department of Defense Cases of Possible Violations

According to the Department of Defense (DOD), the Office of Personnel Management (OPM) identified potential DOD violations of the Federal Workforce Restructuring Act (FWRA) repayment provision in two lists. The March 15, 1996, list identified 51 possible violations that were based on a survey completed by DOD for OPM, and its January 3, 1997, list, which was based on OPM's Central Personnel Data File research effort, identified 11.

Of the 51 potential violations in the March 1996 list, OPM and DOD determined that 11 had either repaid their buyouts or were inappropriately identified as DOD personnel subject to the FWRA repayment provision. Table IV.1 shows the results of DOD's investigation of the 40 remaining cases. Some of these cases were violations of the repayment provision, but it is not clear exactly how many were violations. For instance, to the extent that the 17 "collections in progress" were initiated at the time the individual applied for the job, they may not represent violations.

Table IV.1: DOD's 40 Open Cases of Possible Violations

Type of action	Number of cases
Operation Mongoose:	
No debt owed	3
Collection initiated	13
Repaid	3
Collection in progress	17
Under investigation	4
Total	40

Source: DOD.

Of the 11 potential violations that DOD said OPM identified in its January 1997 list, DOD reemployed two buyout recipients. One had made the repayment; the other was making repayment.

Comments From the Office of Personnel Management

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



OFFICE OF THE DIRECTOR

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

AUG 15 1997

Mr. Michael Brostek
Associate Director
Federal Management and Workforce Issues
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Brostek:

Thank you for the opportunity to comment on the General Accounting Office (GAO) draft report entitled Federal Downsizing: Regulations Needed to Ensure Compliance With Buyout Reemployment Requirements.

We are pleased that most agencies are serious about ensuring the repayment of buyouts when required. It appears that your major findings regarding the number of confirmed violations are quite consistent with our work. OPM continues to evaluate successes and failures in all aspects of human resource management, especially in the area of downsizing. As always, we value your work in this area and will use your findings to help improve our results. We look forward to a continuing cooperative relationship with you and your staff.

Our comments and concerns about the draft report are attached.

Please let me or my staff know if we may be of any other assistance.

Sincerely

A handwritten signature in black ink, appearing to read "James B. King".

James B. King
Director

Enclosure

**Appendix V
Comments From the Office of Personnel
Management**

**OPM COMMENTS ON GENERAL ACCOUNTING OFFICE DRAFT REPORT
Federal Downsizing: Regulations Needed to Ensure Compliance With Buyout
Reemployment Requirements**

THE NEED FOR MORE REGULATIONS

See p. 19.

The draft title suggests a need for regulations governing buyout repayments. Specifically, it suggests that the Office of Personnel Management (OPM) issue regulations requiring agencies to identify buyout recipients who have returned to Federal service and who are required to repay the incentive. While OPM does not oppose this recommendation, we question its need. Agencies have been extremely cooperative in response to OPM's requests for information regarding reemployed buyout recipients -- regardless of whether the recipient is in violation of the repayment requirement.

See comment 1.

There is no reference to OPM's regulations published November 9, 1994, (5 CFR 576) on buyouts, repayments, and waivers of repayment. We recommend the draft be revised to include references to the existing regulations and to clarify how additional regulations could be structured to prevent employees from violating the law.

**THE REPORT DOES NOT INCLUDE ALL THE RESULTS OF SIMILAR BUYOUT REPAYMENT
INVESTIGATIONS CONDUCTED BY OPM**

See comment 2.

The report needs to more accurately and adequately reflect OPM's analysis and findings regarding buyout recipients who were reemployed in violation of the repayment requirement. In particular, the report does not differentiate between two different analyses conducted by OPM and does not contain the most current data available from OPM. We recommend the General Accounting Office (GAO) revise the report to reflect the following:

"OPM looked at the repayment issue along two fronts, collecting data by two different methods to ensure the broadest possible review of the problem.

Analysis One

- OPM asked each agency to report on how many buyout takers were reemployed and to complete an individual report on each reemployment, providing detailed information on the status of repayment, if required. OPM believes these reports likely included more reemployments than the Central Personnel Data File (CPDF) could identify since agencies have access to more current data than CPDF because of the lag time required to update CPDF.
- These reports to OPM yielded 80 instances in which a buyout recipient was reemployed in the Federal Government.
- Of these 80, there were 46 cases in which an employee accepted a buyout, separated, accepted reemployment with the Government within five years, and failed to repay the buyout or receive the proper waiver of repayment (six were in non-Defense agencies and 40 in the Department of Defense (DOD)).

**Appendix V
Comments From the Office of Personnel
Management**

- OPM contacted DOD on several occasions to update the status of the 40 employees that DOD reported were in violation, but the agency has not been able to resolve them at this time. (Part of the problem is that as many as 17 of the DOD reemployments were with non-appropriated fund activities for which there is no database to utilize for information).
- As of today, OPM is not aware of any repayments among the 46 cases reported to us by agencies.

Analysis Two

- OPM also used a methodology similar to GAO's, using CPDF records to match buyout recipients with personnel actions occurring to the same person at a date after the buyout separation. This helps identify possible instances involving the reemployment of buyout takers.
- That sweep covered actions occurring between March 30, 1994, and June 30, 1995, and provided 49 "hits" (possible reemployment of a buyout taker).
- OPM followed up each of these instances with the reemploying agency to determine whether the "hit" represented a violation of the law.
- OPM confirmed nine cases involving violations of the repayment requirement. It is likely that these may be the same nine found by GAO.
- Thirty-eight other instances involved buyouts which were repaid, coding irregularities (i.e., buyout actions canceled but the paperwork somehow stayed in the system, performance awards issued after the employee separated, etc.), waivers of repayment, etc. All of these 38 complied with the law.
- Two remaining cases need further resolution. In short, through CPDF, OPM's findings appear to be identical to GAO's findings.

OPM did not investigate reemployment subject to the Department of Defense's one-year reemployment ban which was in effect prior to the enactment of Governmentwide repayment requirements. Likewise, OPM did not seek information regarding buyouts paid under other laws which did not include a repayment requirement (FDIC's authority, for example)."

THE SCALE OF THE PROBLEM

OPM's greatest concern is that throughout the draft, the report adds numeric results from its investigation to numeric results from OPM's investigation, as noted in the examples below. This could overestimate the scale of the problem.

See p. 19
and comment 2.

**Appendix V
Comments From the Office of Personnel
Management**

Example One

- The report says that OPM found "39 additional violations" of the buyout repayment requirement.
- GAO added these 39 "additional" violations to the nine violations confirmed by GAO (eight from GAO's work and one reported by the Department of Agriculture) for a total of 48 "actual or apparent violations."
- OPM does not believe that it found 39 "additional" violations. The nine confirmed violations found by OPM were consistent with GAO's confirmed violations. Moreover, OPM viewed the initial instances it found only as potential violations which required further analysis. As noted above, most of these instances were found to be in complete compliance with the law. It is very likely, then, that OPM identified the same violations found by GAO, not an additional number.

Example Two

- Footnote number 14 says that GAO "identified the number of buyout recipients returning to the civil service as 394 between January 1993 and June 1995. Adding that number to the one recipient identified by the USDA OIG and the 80 identified by OPM totals 475 buyout recipients returning to the civil service as of March 31, 1996."
- OPM does not believe that the original 80 instances reported to OPM from agencies were in excess of the 395 mentioned by GAO. It is much more likely that the vast majority of the 80 we identified were indeed among the 395 GAO identified and that these 80 included most of the 49 that we retrieved from CPDF.

DIFFERENCES IN THE PERIODS COVERED BY GAO AND OPM IN THEIR REVIEWS

OPM's and GAO's reviews of buyout reemployments and repayments, while conducted simultaneously, were not identical and did not cover the same data or time periods. The report would benefit from a separation of the two agencies' data review efforts. OPM recommends a clearer analysis and distinctions regarding time periods covered by the two agencies. OPM's report included no data covering January 1993 through March 1994 (a period covered in GAO's review). Additionally, GAO's report did not include data covering July 1995 through July 1996 (a period covered in OPM's review).

See comment 2.

The following are GAO's comments on the Office of Personnel Management's letter dated August 15, 1997.

GAO Comments

1. OPM said that we should refer to 5 C.F.R. 576 in our report. This regulation on buyouts, repayments, and waivers of repayment was published on November 9, 1994. We had not specifically referred to OPM's regulation 5 C.F.R. 576 in our draft report because it was not pertinent to our focus on agencies' internal controls. Section 576.101 of the regulation provides guidance on who is covered by the buyout conditions, what is covered, what is required (the buyout recipient must repay the entire amount of the buyout to the agency that gave the buyout), and exceptions under the repayment provisions. However, the section is stated generally and does not address what agencies should do to help ensure that returning buyout recipients comply with the law. Section 576.102 deals with buyout recipients' requests for OPM's approval for waivers of the repayment provision, and, while it does not deal with what agencies should do to help ensure compliance with the provision, this section is an example of the instructional approach OPM could use in regulations requiring agencies to adopt internal control procedures. We have added a reference to 5 C.F.R. 576 to the report to provide additional information on waivers of the repayment provision in accordance with OPM's and another agency's suggestion.

2. OPM said that the draft report needed to more accurately reflect its analysis and findings regarding buyout recipients who were reemployed in violation of the repayment requirement, particularly the differences in the methodologies used in the two analyses OPM conducted and the most current data available from OPM. We had not distinguished between OPM's two research methodologies because it did not make that distinction in its interim report, which we cited in the draft. On the basis of information OPM provided in its comments, we made changes to make that distinction clear in the final report. In addition, our draft report had contained the most current data OPM had said was available prior to providing us its comments. OPM provided, subsequent to our receiving its comments on our draft report, a more current list of confirmed repayment provision violators, which we used in the final report. On the basis of clarifying information OPM provided in, and subsequent to, its comments, we also made changes to the report to recognize that the repayment violations found by OPM could overlap with those we found.

Appendix V
Comments From the Office of Personnel
Management

In addition, we clarified in the report the time frames for our effort and OPM's two research efforts. Although the time frames overlapped, they were not identical.

Comments From the U.S. Department of Agriculture

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



**United States
Department of
Agriculture**

AUG * 8

Office of the
Assistant Secretary
for Administration

Policy Analysis &
Coordination Center

Human Resources
Management

1400 Independence
Avenue SW

Washington, DC
20250-9600

Mr. Michael Brostek
Associate Director
Federal Management and
Workforce Issues
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Brostek:

Thank you for the opportunity to review and comment on your draft report Regulations Needed to Ensure Compliance with Buyout Reemployment Requirements.

We think there are issues that contribute to violations of the repayment provisions which are not addressed in your report. On page 2 of your draft report, you have correctly indicated that there were cases of “buyout recipients (1) who appeared to have violated the repayment requirement...” The report then ignores the responsibilities of those recipients and concentrates on agency deficiencies. Of particular concern to us are those recipients who depart one agency and are reemployed by another without repaying the buyout payment. In all probability, the buyout recipient is aware of their repayment obligation. The Department of Agriculture (USDA) informs all buyout applicants of these obligations and the media has informed the public many times. Yet, should a reemployed recipient choose to conceal their obligation from the gaining agency, it may take some time to identify this violation. No mention is made in your report of the recipient’s contribution to the difficulty that an agency may have in complying with the repayment provisions.

On page 3 of your draft report, you indicate that there were discrepancies between agency reports and data in the Office of Personnel Management’s Central Personnel Data File (CPDF) which contributed to your incorrect identification of buyout recipients who may have violated the repayment requirements. We think it is important to note that discrepancies in CPDF data contribute to the difficulty that an agency may have in identifying violations.

We are also concerned with the emphasis you have placed on USDA violations at the beginning of this report. On page 3 of the draft report, you have specifically referred to USDA, noting that “the Department of Agriculture’s (USDA) Office of the Inspector General (OIG) found that an additional buyout recipient who was employed by USDA had not repaid his buyout”. By emphasizing this issue and identifying USDA at the beginning of your report, it is implied that USDA is the first and most significant violator of the repayment provisions. This is hardly the case. If USDA had 2 violations, one self

AN EQUAL OPPORTUNITY EMPLOYER

See comment 1.

See comment 2.

See comment 3.

**Appendix VI
Comments From the U.S. Department of
Agriculture**

Mr. Michael Brostek

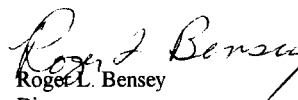
2

identified, out of 475 buyout recipients who returned to federal service between January 1993, and March 1996, as your report indicates, the percentage of violations is extremely small by comparison to agencies who may have reemployed less and had more violations. We recognize the importance of complete compliance with all of the repayment requirements and every case identified by our personnel specialists, regardless of the difficulty in identifying it, is pursued to its appropriate conclusion. However, we feel that beginning your report by emphasizing 2 USDA violations, both of which are being resolved, sets a tone which fails to recognize the statistically small number of USDA violations, ignores the fact that we are one of the largest users of the buyout management tool, does not fully recognize the corrective actions we have taken, and misplaces the focus of your review. Your report begins on page 20 to identify individual agency violations. If it is necessary to address the 2 USDA violations, we suggest this may be a more appropriate location.

On page 18 of your report, you indicate that "USDA's Animal and Plant Health Inspection Service (APHIS) developed procedures that were adopted on November 21, 1996." In fact USDA, of which APHIS is a part, issued repayment procedures (copy enclosed) for the entire Department on July 18, 1996.

Again, thank you for the opportunity to provide these comment. If you have any questions concerning this issue, please contact John Robertson, of my staff, at (202) 720-8385.

Sincerely,



Roger L. Bensey
Director
Office of Human Resources Management

Enclosure

See comment 4.

The following are GAO's comments on the U.S. Department of Agriculture's letter dated August 8, 1997.

GAO Comments

1. USDA did not believe that our draft report sufficiently recognized the difficulty agencies face in enforcing the buyout repayment requirements in cases where buyout recipients do not reveal that they have received buyout payments. We believe that our draft report did recognize the responsibility of buyout recipients to reveal their buyout status; our recommendation that a form be created on which job applicants would certify their buyout status explicitly recognizes this responsibility of buyout recipients. However, although any failure of buyout recipients to acknowledge their status when reapplying for federal employment can make enforcing the law more difficult, agencies nevertheless retain responsibility for ensuring compliance. We recommended that OPM promulgate regulations requiring that agencies take steps to identify buyout recipients who need to repay their buyout because the agencies we reviewed had not established procedures that provided a reasonable assurance of compliance with the repayment requirement.

2. USDA said it was important to note that discrepancies in OPM's CPDF data compared with data in agency reports can contribute to the difficulty that agencies may have in identifying repayment violations and observed that such discrepancies explained some of the possible violations we had found. We agree that discrepancies between the CPDF and agency reports can make use of the CPDF an imperfect mechanism for identifying possible buyout repayment violations. However, we did not recommend that agencies rely on the CPDF to identify possible violations. Use of the CPDF could be but one of several options for identifying possible violations. To the extent that the CPDF is used, discrepancies in CPDF data can, at least in part, be reduced by the agencies themselves—many of the inconsistencies between CPDF data and agency reports were due to agencies' not having provided updated, accurate data to OPM.

3. USDA was concerned that the description and placement of references to USDA violations at the beginning of the draft report implied that USDA was the first and most significant violator. Our use of the USDA example was intended to show the proactive response of this agency to the situation, which distinguished it from the other agencies, and to show its recognition of the importance of compliance with the law. However, due to USDA's concerns, we modified the report to lessen the emphasis on USDA's experiences.

4. USDA expressed concern about us not mentioning that it had issued repayment provision procedures to the entire Department on July 18, 1996. Although we requested that agencies provide us with copies of their procedures, we only received a copy of APHIS' procedures from USDA officials and were told that they were not aware of any other USDA procedures. We have changed the report to reflect that USDA had issued notification of the FWRA repayment provision to its components and that APHIS subsequently developed internal control procedures.

Comments From the Department of Justice



U.S. Department of Justice

Washington, D.C. 20530

AUG - 7 1997

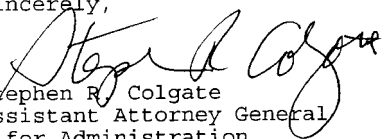
Mr. Michael Brostek
Associate Director
Federal Management and
Workforce Issues
General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Brostek:

The Department of Justice agrees with the recommendations in the Draft Report--Federal Downsizing: Regulations Needed to Ensure Compliance with Buyout Reemployment Requirements. The Department will continue to provide guidance to Department Components on the need to exercise caution in rehiring buyout recipients. We will work closely with our Justice Management Division's Procurement Services Staff to provide components with clear guidance on the definition of a "personal services contract."

If you need additional information, please contact Henry Romero, Director of Personnel, at (202) 514-6778.

Sincerely,


Stephen R. Colgate
Assistant Attorney General
for Administration

Comments From the Department of the Treasury



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

AUG 18 1997

Mr. Michael Brostek
Associate Director
Federal Management and Workforce Issues
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Brostek:

This is in response to your letter of July 31, 1997 to Secretary Rubin regarding your draft report entitled Regulations Needed to Ensure Compliance With Buyout Reemployment Requirements. Our office has been asked to respond to you on behalf of the Secretary. We have reviewed the draft and have no comments.

Thank you for the opportunity to comment. Should you have any questions regarding this matter, please contact Monica Doyle of my staff on 622-0473.

Sincerely,

A handwritten signature in cursive script that reads "Roena B. Markley".

Roena B. Markley
Assistant Director
Office of Personnel Policy

Major Contributors to This Report

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