FURTHER DOWNSIZING AND REINVENTION, PART II

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CIVIL SERVICE

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

JUNE 11, 1996

Printed for the use of the Committee on Government Reform and Oversight

U.S. GOVERNMENT PRINTING OFFICE

43-838 WASHINGTON : 1997

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-055735-6

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

WILLIAM F. CLINGER, JR., Pennsylvania, *Chairman*

BENJAMIN A. GILMAN, New York
DAN BURTON, Indiana
J. DENNIS HASTERT, Illinois
CONSTANCE A. MORELLA, Maryland
CHRISTOPHER SHAYS, Connecticut
STEVEN SCHIFF, New Mexico
ILEANA ROS-LEHTINEN, Florida
WILLIAM H. ZELIFF, JR., New Hampshire
JOHN M. McHUGH, New York
STEPHEN HORN, California
JOHN L. MICA, Florida
PETER BLUTE, Massachusetts
THOMAS M. DAVIS, Virginia
DAVID M. McINTOSH, Indiana
JON D. FOX, Pennsylvania
RANDY TATE, Washington
DICK CHRYSLER, Michigan
GIL GUTKNECHT, Minnesota
MARK E. SOUDER, Indiana
WILLIAM J. MARTINI, New Jersey
JOE SCARBOROUGH, Florida
JOHN B. SHADEGG, Arizona
MICHAEL PATRICK FLANAGAN, Illinois
CHARLES F. BASS, New Hampshire
STEVEN C. LaTOURETTE, Ohio
MARSHALL "MARK" SANFORD, South Carolina
ROBERT L. EHRLICH, JR., Maryland
CARDISS COLLINS, Illinois
HENRY A. WAXMAN, California
TOM LANTOS, California
ROBERT E. WISE, JR., West Virginia
MAJOR R. OWENS, New York
EDOLPHUS TOWNS, New York
JOHN M. SPRATT, JR., South Carolina
LOUISE McINTOSH SLAUGHTER, New York
PAUL E. KANJORSKI, Pennsylvania
GARY A. CONDIT, California
COLLIN C. PETERSON, Minnesota
KAREN L. THURMAN, Florida
CAROLYN B. MALONEY, New York
THOMAS M. BARRETT, Wisconsin
BARBARA-ROSE COLLINS, Michigan
ELEANOR HOLMES NORTON, District of Columbia
JAMES P. MORAN, Virginia
GENE GREEN, Texas
CARRIE P. MEEK, Florida
CHAKA FATTAH, Pennsylvania
BILL BREWSTER, Oklahoma
TIM HOLDEN, Pennsylvania
ELIJAH E. CUMMINGS, Maryland

BERNARD SANDERS, Vermont (Independent)

JAMES L. CLARKE, *Staff Director*
KEVIN SABO, *General Counsel*
JUDITH McCOY, *Chief Clerk*
BUD MYERS, *Minority Staff Director*

SUBCOMMITTEE ON CIVIL SERVICE

JOHN L. MICA, Florida, *Chairman*

CHARLES F. BASS, New Hampshire
BENJAMIN A. GILMAN, New York
DAN BURTON, Indiana
CONSTANCE A. MORELLA, Maryland
JAMES P. MORAN, Virginia
BERNARD SANDERS, Vermont (Ind.)
TIM HOLDEN, Pennsylvania

EX OFFICIO

WILLIAM F. CLINGER, JR., Pennsylvania
CARDISS COLLINS, Illinois

GEORGE NESTERCZUK, *Staff Director*
NED LYNCH, *Professional Staff Member*
CAROLINE FIEL, *Clerk*
CEDRIC HENDRICKS, *Minority Professional Staff Member*
MICHAEL KIRBY, *Minority Professional Staff Member*

CONTENTS

FURTHER DOWNSIZING AND REINVENTION, PART II

TUESDAY, JUNE 11, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CIVIL SERVICE,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2154, Rayburn House Office Building, Hon. John L. Mica (chairman of the subcommittee) presiding.

Present: Representatives Mica, Bass, Morella, Moran, and Holden.

Staff present: George Nesterczuk, staff director; Caroline Fiel, clerk; Ned Lynch, professional staff member; and Cedric Hendricks and Michael Kirby, minority professional staff members.

Mr. MICA. Good morning. Welcome to the Subcommittee on the Civil Service hearing, and, with the permission of the minority, even though they are on their way, we want to proceed so we can conduct this hearing in a timely fashion. Welcome.

I am going to start with an opening statement, and then will yield to the other members on the panel. This morning we are meeting to continue the subcommittee's oversight of the Clinton administration's efforts to reinvent Government.

Part of the reason that we are here is that at our May 23 hearing, the administration again provided what I consider unsatisfactory or evasive answers to our questions about just what has been reinvented. While the gross numbers of Federal employees have been reduced, the work force reductions are not the result of any efforts to reinvent Government. In fact, the peace dividend and Department of Defense reductions account for more than two-thirds of Federal work force reductions to date. By the end of fiscal year 1997, according to President Clinton's budget, defense downsizing will account for more than 80 percent of all Federal work force reductions. This is not reinventing Government, it is closing bases.

When we look at non-Defense agencies, the Vice President told us that buyouts and other work force restructuring tools were necessary to help the administration reduce the Department's supervisors and administrative personnel. That was the pretense offered. Instead, the General Accounting Office reported that the administration has not, in fact, achieved reductions in these areas, and in some cases the portion of administrative personnel and Federal agencies has actually increased. If we are reinventing Government with this approach, we are creating an even greater top-heavy bureaucracy.

Vice President Gore published an article claiming: "The Clinton administration has proposed eliminating more than 400 obsolete programs. It is in the process of closing more than 2,000 unnecessary field offices." We raised this issue at the last hearing but received no serious response from the administration.

After 3 years of downsizing and so-called reinvention, and after spending billions and billions of taxpayer dollars on buyouts, I think it is time that we do a tough, hard assessment of the real progress that has occurred.

What have our investments in reinvention really brought us to date? That is what we need to look at in this hearing and part of our responsibility as a subcommittee.

When Congress passed the Work Force Restructuring Act of 1994, it included a clear authority for buyout. This was a means of facilitating a request by the President for his reinvention agenda. The subcommittee learned in our last hearing, however, that OMB may have allowed agencies to issue new buyout authority in violation of the act.

We asked GAO to review the legal justification behind OMB's action. The GAO legal opinion leaves no room for doubt. Let me make that clear. It leaves no room for doubt. It doesn't even leave room for reasonable dispute that buyouts offered after March 31, 1995, are inconsistent with the law.

Our first question is: Why can't the Clinton administration comply with the plain language of the law? Unfortunately, the evidence to date indicates that the administration is still rushing to offer as many buyouts as possible, even after Congress, on both sides of the aisle, has clearly said close the door.

For example, on May 23, the very day that we conducted our most recent hearing on this topic, the acting administrative officer at the Department of Commerce sent a memorandum to all, and it was entitled "All Reduction In Force Employees," inviting them to apply for buyouts.

The catch was that the application had to be returned no later than 10 a.m., Friday, May 24, 1996. The application form emphasized in boldface type—let me read it—"Applications for buyouts from employees will be accepted until noon May 24, 1996. Your separation from service must occur no later than May 24, 1996," the same day.

Even when this subcommittee clearly turned on the red stoplight, the Department of Commerce ignored the signal. A June 5 letter that we received from the Secretary of Transportation, Federico Peña, demonstrates that even when the stoplight is bright red—mind you, bright red—some people keep moving. That letter added, "The OMB authorization permitted opening another application window and was not intended to allow a new buyout program."

Let me be crystal clear about what GAO's opinion means. It means that at midnight on March 31, 1995, the Federal buyout window closed for non-Defense agencies. If applications are not approved before that time, there are no additional application windows. That GAO opinion means that neither OMB nor anyone else in the executive branch has the authority to create an additional application window. If another application window is to be established, the only way to create it is to enact legislation.

To date, legislation under the Constitution of the United States can only be passed by the Congress—not by OMB or the executive branch of the Clinton administration. Maybe I need to go back and read it again.

Today, we are not going to adjourn this hearing until we receive a firm commitment on the part of the administration to comply with the law. I don't consider this a trivial matter. The total cost of the buyouts that Mr. Koskinen reported approving for 1996 under the OMB allocation could surpass $72 million. We will spend hours on the floor today debating fractions of that amount and creating legislative authority. These bureaucrats do not have that legislative authority. Some of these buyouts—and this is scary—have already been executed.

The GAO legal opinion today confirms that these expenditures are inconsistent with the law. I ask, who is going to be held accountable for this decision? Are these buyouts and expenditures in fact illegal?

Mr. Koskinen's May 23 testimony also indicated that agencies seek to use 3,383 of these buyouts in fiscal year 1997 at a cost of up to $84 million. Those buyouts have not been executed, I believe, to date, and if they were not approved for specific individuals before April 1, 1995—that follows right after 12 midnight the day before—not 1 cent of taxpayers' dollars should be expended.

I want to welcome the ranking member.

You missed the pearls of my wisdom.

Mr. MORAN. Oh, no. Bummer.

Mr. MICA. I understand you share the same concerns. You might want to give the same speech afterwards.

And welcome also to Mr. Holden. I understand you also expressed yourself publicly on this matter, but I will have a chance to yield. Your timing is perfect.

The issue goes beyond the expenditures involved. The Office of Management and Budget was also authorized to manage the previous rounds of buyouts. We have seen numerous instances where agencies bought out employees at the same time they were increasing staff, and that is pretty disturbing.

If you look at the Department of Justice, as a great example, they did 800 buyouts and increased staff by 6,400 positions. We have other examples of the Department of Commerce and other agencies that acted in the same manner.

Again, we have numerous examples of agencies buying out many more employees than they reduced, and as GAO reported at our last hearing, even with the buyouts, the non-Defense administrative work force, that was supposed to be the target of reinvention, is basically largely intact. I can only conclude that this is a program without effective results.

Nonetheless, the administration has submitted legislation to renew buyout authority, the bill which was introduced by the ranking member on request and referred to this subcommittee.

I have only one comment. I will entertain no further discussion of new laws until the Clinton administration demonstrates its compliance with the old law.

Again, I am very concerned about this buyout authority being extended by bureaucratic fiat rather than legislative authority, and we need to get to the bottom of it in this hearing today.

With those comments, I will yield to the ranking member, the gentleman on my right, Mr. Moran.

Mr. MORAN. Thank you, Mr. Chairman.

Well, you are right, this may very well be an area where we have some agreement, and I am terribly sorry I missed your pearls of wisdom.

Mr. MICA. We will have some videotape copies for your office. You will get not only the sound but the fury.

Mr. MORAN. Some would be led to believe that this is an issue of different opinions: On the one hand, an opinion by the legislative branch who wrote the Work Force Restructuring Act and clearly intended to limit the original buyout authority and, on the other, the administrative branch of Government, the executive branch, who think that they had more latitude to extend buyout authority.

It is an important issue because the implementation of this authority sets a precedent, even if it is only one or two cases, as it sets a precedent throughout the Government not just in terms of what the Federal work force—members of the Federal work force can expect, it also sets a precedent in terms of who writes the laws and who carries them out and to what extent they should be obeyed.

The fact is though, this is not a difference of opinion. This is clearly a situation where the executive branch has deliberately acted contrary to not only legislative intent but the language of the law.

The fact is that the language is very clear. Buyouts were not to be offered past March 31, 1995. It did not mean that buyouts had to be taken by that time. That language was clear too. It allowed individuals to take up to 2 years when they had decided to use the buyout authority.

But the fact is—and this has to be emphasized—buyout authority, whether it was accepted or deferred, rested with the individual employee, it did not rest with the agency or even the executive branch who offered the buyout. There is no question about that; the language is just crystal clear, and it makes sense.

Now, there has been some creative interpretation—which is a generous term—that the executive branch had the latitude to extend buyout authority on an organizational basis to people who did not choose it before March 31, 1995. This is not death penalty stuff, but the fact is, it was illegal to do that.

The language in the Work Force Restructuring Act is not even remotely ambiguous. Congressional intent is not unclear. If the administration thought that there was some lack of clarity or some ambiguity, certainly the administration should have made that clear all along and shared with us their interpretation. They did not.

As the Office of Personnel Management will testify, the original guidance to OPM was very clear, and in fact OPM was to be the final and only authority on this matter, and they have from the beginning stated unequivocally that the buyout authority was intended to expire March 31, 1995, and that agencies could not recy-

cle their authority. OPM understood the law, they read the law, they carried it out appropriately. OPM is not the problem, has not been the problem in this case. OMB is the problem.

I do not fault the Energy Department. It wasn't their fault. You would expect they would find every way possible to circumvent, to the extent they could get away with it. But OMB is not supposed to endorse that kind of unauthorized latitude, particularly when it is directly contrary to the law.

Now, the staff here is excellent staff, superb staff. I want to take every opportunity to say that, as I know OPM's staff is as well. I am not so sure about OMB at this point in time, but we saw the September 28, 1995, memo on the DOE buyout reprogramming, which of course had to be sent to the Congress. That is the memo where OMB acknowledges this is a policy issue, not merely a questionable legal interpretation. It is the memo which weighs the negative publicity of RIFs against an arbitrary extension of a limited congressional authority. That is in quotation marks, "arbitrary extension of a limited congressional authority."

In other words, I think OMB knew what they were doing. From the initials on the second page, it is obvious that Mr. Koskinen and the administration decided to go with the arbitrary extension, a deliberate decision.

It undermines the credibility of the administration. You are asking for new buyout authority; that is why you started—that is how this whole hearing got started, but you are abusing the past authority.

On the one hand, the White House is asking for increased agency discretion to make personnel decisions—let me take that back. It is not the White House, it is OMB. I really doubt the White House has gotten into this. OMB is asking for that, for agency discretion to make personnel decisions but the congressional intent is based on the legal opinion that any law student would be embarrassed to submit.

Am I making myself clear on this?

Mr. MICA. Try to hone down where you are trying to get on this issue.

Mr. MORAN. Admittedly, these are not the sexiest issues, they are not the ones that are ever going to make it to the front page of the Post, although they apparently make it once in a while to the Federal page. But the fact is, they affect a work force of 2 million employees who are on edge almost every day for the last few years, trying to figure out what options are available to them, what is going to happen to them, what their future looks like. They directly affect the operations of the entire Federal Government. So this is a very important issue.

We have got an obligation to work this out, to manage the work force, to be clear about our intent, and to carry out that intent. If it is September 1995, you saw that the Department of Energy needed additional buyouts to reduce its work force, you should have asked Congress then to approve additional buyouts so it could have been done so legally. You could have done so with the Department of Transportation and Department of Commerce.

In fact, in the Department of Commerce we have the most egregious situation since the buyouts were offered, the very day of the

subcommittee's last hearing. I couldn't believe that. I was in the elevator after that hearing, and I was told that that very day the Department of Commerce was offered these illegal buyouts.

Can you believe that, John? Oh, you mentioned that. Good for you.

It doesn't make any sense for the administration to extend buyout authority on a piecemeal, ad hoc basis. Every one of these extensions is going to make their way to the front page of the Federal Diary and Federal Post, and everyone will give the retirement-eligible employee the hope, no matter how slim, of getting a buyout. It is going to affect everybody's plans when they see these limited extensions. Every one of these ad hoc buyouts is going to directly influence that employee's behavior and probably will lead to lower attrition, which is just the opposite of the effect we want to achieve.

Now, it is immaterial to ask whether the administration has eliminated all the offices targeted in the NPR report or changed Federal manager to employer ratios. The NPR report was a political document that outlined a series of policy goals. The success or failure of these goals depended to a great extent on the Congress.

We all know Congress has not necessarily agreed with the administration in all the aspects of the NPR report. I don't know why this committee should try to tar the administration for failing to entirely meet the NPR goals.

I know sometimes the Republican leadership tries to create issues and conflicts where none may have existed before, but this is a very legitimate issue. This is not trying to find fault, this is trying to create conflicts where they did not exist.

We have a real issue before us, and that is: Why is the administration violating the restrictions placed on work force restructuring acts and allowing agencies to continue offering buyouts? It seems there is more than enough for the subcommittee to address and our efforts should be focused on these remedies.

I don't think this should be a political hearing. This is clearly an issue between the executive branch and the legislative branch. It has got to be resolved, and it has to be resolved in such a way that it, in itself, sets a precedent so we don't do this again.

Now, I think at this point, Mr. Chairman, we should—we want to hear from Tim. Then we should hear some response. But I guess we have made ourselves fairly clear on this. I probably didn't say much that was inconsistent with your statement either.

So with that, I thank you for your indulgence on the time and for having this hearing.

Mr. MICA. Thank you. It is, in fact, a bad day when both the ranking member and the chairman get on agencies' cases. You reiterated some of the points I brought out in my comments.

Mr. Holden from Pennsylvania, you are recognized.

Mr. HOLDEN. Thank you, Mr. Chairman.

I don't really have an opening statement that I would like to present. I believe the chairman and Mr. Moran have done an excellent job. I would like to say this is a very serious issue and something that is of great concern to all of us and that we do need some explanations on that.

With that, I look forward to hearing your testimony.

Mr. MICA. I thank the gentleman, and we will now turn to our first panel. We have Mr. Timothy Bowling, Associate Director, Federal Workforce Management Issues, for the General Accounting Office; we have Henry R. Wray, associate general counsel of the General Accounting Office; and I think he wrote or helped to write one of the opinions; and Mr. John Koskinen, Deputy Director for management of the Office of Management and Budget; and then, back for a return engagement, Mr. Jim King, Director of the Office of Personnel Management.

As you know, this is an investigation in the oversight subcommittee, and we swear our witnesses in. If you would please stand.

[Witnesses sworn.]

Mr. MICA. Thank you.

I will now ask Mr. Bowling if you would like to lead off. If you have a full statement you would like to be made part of the record, we can do that. If you would like to summarize, we would appreciate that. You are recognized, Mr. Bowling.

STATEMENTS OF TIMOTHY BOWLING, ASSOCIATE DIRECTOR, FEDERAL WORKFORCE MANAGEMENT ISSUES, GENERAL ACCOUNTING OFFICE; HENRY R. WRAY, ASSOCIATE GENERAL COUNSEL, GENERAL ACCOUNTING OFFICE; JOHN KOSKINEN, DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET; AND JAMES B. KING, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

Mr. BOWLING. Thank you, Mr. Chairman.

We have, in fact, reviewed the legality of the Department of Energy's delayed buyout policy, as you requested in our last hearing, and with your permission I will ask Mr. Henry Wray, our senior associate general counsel, to present this legal opinion at this time.

Mr. MICA. Without objection, Mr. Wray, you are recognized.

Mr. WRAY. Thank you, Mr. Chairman and members of the subcommittee.

We are pleased to be here today to discuss the legality of the Department of Energy's delayed buyout policy. On June 6, 1996, our office issued a legal opinion to you, and to the ranking minority member, Mr. Moran, on this subject. A copy of our opinion is attached to my prepared statement. We concluded that DOE's policy is inconsistent with the Federal Work Force Restructuring Act of 1994.

The Federal Work Force Restructuring Act, as you mentioned, authorized civilian agencies to offer voluntary separation incentive payments, or buyouts, to employees who separated from Government service by retirement or resignation. The act generally limited eligibility for buyouts to employees who separated prior to April 1, 1995.

However, the act contained an exception to this general rule. The exception authorized the payment of a buyout to an employee who delayed his or her separation to a date not later than March 31, 1997, if the agency head determined that it was necessary to delay such employee's separation in order to ensure performance of the agency's mission.

In a memorandum dated July 10, 1995, the general counsel of DOE concluded that the act did not preclude DOE from offering

buyouts to employees who had not applied for them prior to April 1, 1995. The general counsel took the position that the act does not specifically require that employees file applications for buyouts, nor does it impose a deadline on an agency's authority to offer buyouts.

The general counsel further stated that a determination by the Secretary of Energy to conditionally approve delayed buyouts for all DOE employees in broad categories of positions who applied before April 1, could later be amended to cover employees who had not filed buyout applications before that date. For the reasons detailed in our June 6 opinion, we disagree with the general counsel's opinion. We believe that the plain language of the act as well as the fundamental logic and context of the statute clearly require that determinations to invoke the exception and permit delayed separations be made in conjunction with approval of the buyouts themselves. We believe that the authority of agencies to approve buyouts terminated on March 31, 1995.

The legislative history of the act supports this view. Although the specifics varied, all versions of the buyout legislation considered by Congress, from the original administration proposal to the final language enacted into law, had several basic features that remained unchanged.

All versions imposed deadlines on the period during which buyouts could be offered and approved. All versions likewise provided for delays in separation beyond the deadline, but only employees who filed applications approved for buyouts and for whom the requisite delayed separation determination had been made by the agency head prior to the deadline. Therefore, we conclude that the Federal Work Force Restructuring Act precludes offering buyouts to employees after March 31, 1995, or making any buyout payments to employees after that date unless the head of the agency had determined by March 31 that a specific employee could delay his or her departure in order to ensure the performance of the agency's mission.

The DOE Secretary's determination to conditionally approve delayed buyout applications for employees in broad categories of positions did not meet this test. This determination was limited by its terms to those employees who actually applied for buyouts by the March 31, 1995, deadline. Finally, our interpretation of the act is entirely consistent with guidance provided by the Office of Personnel Management to Federal agencies in February 1995. The contrary position taken by the DOE general counsel has the basic effect of extending the authority to grant buyouts beyond the limit intended by the act.

Mr. Chairman, this concludes my prepared statement. My colleague and I would be pleased to answer any questions.

[The appendix referred to follows:]

Comptroller General of the United States

Washington, D.C. 20548

B-272150

June 6, 1996

The Honorable John L. Mica
Chairman, Subcommittee on Civil Service
Committee on Government Reform and Oversight
House of Representatives

Dear Mr. Chairman:

This responds to the joint request by you and Representative Moran for our analysis of an opinion by the General Counsel of the Department of Energy (DOE) which concluded that the Department may offer voluntary separation incentive payments, or "buyouts," under the Federal Workforce Restructuring Act to employees who had not been approved for such payments prior to April 1, 1995. For the reasons stated hereafter, we disagree with the General Counsel's opinion. In our view, the Act does not authorize buyout payments to any employee who separates from service after March 31, 1995, unless on or before that date the agency head (1) approved a buyout for that employee and (2) determined that a delayed separation for the employee (until not later than March 31, 1997) was necessary to ensure the performance of the agency's mission.

BACKGROUND

Section 3 of the Federal Workforce Restructuring Act of 1994, Pub. L. No. 103-226, 108 Stat. 112 (March 30, 1994), 5 U.S.C. § 5597 note, authorized a buyout program for federal employees who separated from government service by retirement or resignation. Section 3 generally limited eligibility for buyouts to employees who separated prior to April 1, 1995. However, it included an exception allowing the payment of buyouts to employees who separated on or after April 1, 1995, but not later than March 31, 1997, if the agency head determined that delaying their separation was necessary to ensure performance of the agency's mission.

APPENDIX

The relevant provisions are set forth in section 3(b) of the Act, 108 Stat. 113, as follows:

"(b) AUTHORITY.–

"(1) IN GENERAL.–In order to avoid or minimize the need for involuntary separations due to a reduction in force, reorganization, transfer of function, or other similar action, and subject to paragraph (2), the head of an agency may pay, or authorize the payment of, voluntary separation incentive payments to agency employees–

"(A) in any component of the agency;

"(B) in any occupation;

"(C) in any geographic location; or

"(D) on the basis of any combination of factors under subparagraphs (A) through (C).

"(2) CONDITION.–

"(A) IN GENERAL.–In order to receive an incentive payment, an employee must separate from service with the agency (whether by retirement or resignation) before April 1, 1995.

"(B) EXCEPTION.–An employee who does not separate from service before the date specified in subparagraph (A) shall be ineligible for an incentive payment under this section unless–

"(i) the agency head determines that, in order to ensure the performance of the agency's mission, it is necessary to delay such employee's separation; and

"(ii) the employee separates after completing any additional period of service required (but not later than March 31, 1997)."

On March 7, 1995, the Secretary of Energy issued the Department's buyout policy under the Act. The buyout policy included a determination by the Secretary, dated March 6, 1995, that separations for employees occupying broad categories of positions needed to be delayed in order to ensure performance of DOE's mission. The categories included all DOE managerial and supervisory positions, all positions at grade GS-14 and above, and positions at grade GS-13 and below that met specified criteria. Under the DOE's policy, all employees in these categories could apply for delayed separation buyouts during the period from March 1 through

March 27, 1995. The policy further provided that all such applications would be "conditionally approved" prior to April 1, 1995, subject to the availability of funds to pay for the buyouts, the level of buyouts approved by the Office of Management and Budget (OMB), and other considerations.

Subsequently, in a memorandum dated July 10, 1995, DOE's General Counsel responded to an internal request for a legal opinion on whether DOE's buyout policy could be amended to authorize buyouts for employees in the "targeted positions" identified by the Secretary's March 6 determination who had not filed applications or been approved for buyouts prior to April 1, 1995. According to the memorandum, approval for additional buyouts was sought to the extent that buyout allocations by OMB were "not completely used due to employee decisions not to take delayed buyout separations."

In his July 10 memorandum, the General Counsel concluded that the Act did not preclude DOE from offering additional buyouts to employees who did not file applications prior to April 1, 1995. He reasoned that the Secretary's March 6 determination satisfied the exception in section 3(b)(2)(B) of the Act permitting buyouts for employees who did not separate prior to April 1, 1995, even with respect to DOE employees who had not applied for buyouts before that date. In this regard, the General Counsel observed that the portions of the Secretary's original policy requiring that all applications be received before April 1 "were not necessary to meet the Act's substantive requirements for delaying the separation date beyond March 31, 1995." Rather, he stated:

> "The Act does not require that employees file applications. The Act does not require that employees formally 'agree' to separate prior to March 31, 1995. The Act does not specifically state that a separation has to be authorized by any particular date."

The General Counsel noted that the issue had been discussed with an Assistant General Counsel of the Office of Personnel Management (OPM), "who indicated that OPM would take a very constraining view of the law." Specifically, the OPM Assistant General Counsel expressed the view that in order to receive a buyout for a separation occurring on or after April 1, 1995, an individual employee must have been approved for a buyout and been subject to a delayed separation determination made before that date. The DOE General Counsel responded that OPM had not issued regulations interpreting section 3(b) of the Act,[1] and that:

> "The absence of procedural mandates from the Act or regulations, and the broad purpose of the Act 'to avoid or minimize the need for

---

[1]Section 3(e) of the Act authorizes the Director of OPM to prescribe regulations necessary for the administration of subsections (a) through (d).

involuntary separations due to a reduction in force, reorganization, transfer of function, or other similar action," remain persuasive to us that the Secretary was given broad discretion to fashion agency procedures that will achieve the stated congressional objective."

ANALYSIS

While OPM had not prescribed regulations interpreting section 3(b), OPM's Associate Director for Employment Service issued a memorandum dated February 14, 1995, to personnel directors in civilian agencies setting forth guidance agencies should follow when they delay the separation of employees who accept buyouts under the Act. The guidance was provided in the form of a series of questions and answers, one of which specifically addressed the issue here as follows:

"Q. What actions have to be taken by the agency in order to delay the separation of an employee receiving a buyout past March 31, 1995?

"A. The buyout has to be offered by the agency and accepted by the employee prior to April 1, 1995.

"The agency has to commit to pay the buyout to the employee prior to April 1, 1995, either as part of a general offer letter in which it agrees to pay buyouts to all who apply, or on an individual basis after the employee applies. [and]

"The agency has to determine, prior to April 1, 1995, that a delay in the separation of designated employees receiving buyouts (either individually or collectively) is necessary to ensure performance of the agency's mission."

In our view, the interpretation set forth by the OPM Assistant General Counsel and the above-quoted OPM guidance is correct. This interpretation follows from the plain terms of section 3(b) of the Act, as well as from the fundamental logic and context of the statute.

Subparagraph 3(b)(2)(A) states the general rule that in order to receive a buyout, an employee must separate before April 1, 1995. Subparagraph (B) states, as an exception to the general rule, that "[a]n employee who does not separate from service before the date specified in subparagraph (A) shall be ineligible for an incentive payment . . . unless . . . the agency head determines that in order to ensure the performance of an agency's mission it is necessary to delay such employee's separation . . .." (Emphasis supplied) This language clearly contemplates that determinations to invoke the exception and permit delayed

separations be made in conjunction with the approval of the buyouts themselves. Therefore, such determinations must be made prior to April 1, 1995. Moreover, use of the term 'such employee' in subparagraph (B) clearly requires that exceptions be made with reference to those employees being designated and approved for buyouts.

The DOE Secretary's determination of March 6 that it was necessary to conditionally approve the delayed separation of employees in broad categories of positions cannot now be invoked on behalf of employees who did not apply or receive even conditional approval for buyouts prior to April 1, 1995. The March 6 determination only listed the categories of employees who would be eligible for a deferred separation buyout should they apply for one. However, as the determination itself stated, employees who wanted a deferred buyout still needed to apply for one by the March 31 deadline. This is entirely consistent with OPM's guidance of February 14 that buyouts had to be offered by the agency and accepted by the employee prior to April 1, 1995.

Accordingly, employees who were not approved for buyouts prior to April 1, 1995, cannot thereafter satisfy the eligibility requirements in section 3(b)(2) for payments based on delayed separation. More fundamentally, we disagree with the DOE General Counsel's premise that authority to approve buyouts under the Act continued after March 31, 1995. The legislative history of the Act confirms that the authority to approve buyouts was intended to terminate on March 31, 1995, and that buyouts based on delayed separations were limited to specific employees approved for such delayed separations on or before that date on the basis of a determination of need under section 3(b)(2)(B).

The original version of the buyout legislation was drafted by the Administration and introduced (by request) as H.R. 3218, 103d Cong., on October 5, 1993. The Administration bill provided a limited 90-day period during which buyouts could be authorized. The 90-day period could vary by agency, but could not extend beyond September 30, 1994. The bill also required employees receiving buyouts to separate by the close of the applicable 90-day period unless the agency head determined that delayed separation was necessary to ensure performance of the agency's mission.

Specifically, section 3(b) of the bill provided as follows with respect to the basic authority for the proposed buyout program:

> "(b) ESTABLISHMENT OF PROGRAM.–
>
> "(1) IN GENERAL.–In order to assist in the restructuring of the Federal workforce while minimizing involuntary separations, the head of an agency may pay, or authorize the payment of, a voluntary separation incentive to employees in any component of the agency, employees in any occupation or geographic location, or any

combination thereof, who agree, during a continuous 90-day period designated by the agency head for the agency or a component thereof, beginning no earlier than the date of enactment of this Act and ending no later than September 30, 1994, to separate from service with the agency, whether by retirement or resignation.

"(2) REQUIREMENTS RELATING TO SEPARATION DATE.–In order to receive a voluntary separation incentive, an employee shall separate from service no later than the last day of the 90-day period designated by the agency head under paragraph (1), unless the agency head determines that, in order to ensure the performance of the agency's mission, the employee must agree to continue in service until a later date, but not later than 2 years after such last day of the 90-day period."

During hearings on the H.R. 3218, OPM witnesses described these features of the bill and the rationale for them. The OPM Deputy Director stated:

"The 90-day window during which employees would be able to elect to leave and receive their incentive would be designated by each agency head and may occur at any time between the date of the enactment of this legislation and September 30, 1994 . . ..

"Agencies would have the authority to delay separations of particular employees for whom separation incentives have been authorized for up to two years after the end of the 90-day window, where necessary, to ensure that performance of the agency's mission is not impaired."

Joint Hearings before the Subcommittee on Compensation and Employee Benefits and the Subcommittee on Civil Service of the Committee on Post Office and Civil Service, House of Representatives, 103d Cong. 1st Sess., October 1993. Serial No. 103-25, at 6.

The OPM Associate Director for Career Entry later elaborated as follows:

"[I]f they signed up during the 30-day [sic] window, they could leave at periods during that following two years as long as they sign up. We have to get them signed up during that window.

"If they made that commitment, they could leave later on during a two-year window if they were in a critical occupation where we had to keep them on board to get the job done and collect taxes or process claims or what have you.

* * * * *

> '[T]hey could at that time retire if they signed up during the 90-day window.
>
> 'That is critical for us, to have people commit so they are not waiting and hoping for a more expensive buyout.'

Id. at 23.

On November 19, 1993, the House Committee on Post Office and Civil Service reported out a new bill--H.R. 3345, 103d Cong. Section 3 of this bill was similar in substance to section 3 of H.R. 3218. It retained the agency-specific 90-day buyout authorization 'window' while extending the termination date for any such window to December 31, 1994. The Committee report reiterated the intent that buyouts could only be offered during the applicable 90-day window, but noted that some witnesses at the hearing had expressed concern 'that the 90-day period for offering separation incentives would provide insufficient time for employees to adequately and comfortably consider the offers.' H.R. Rep. No. 103-386, 103d Cong., 1st Sess. at 5 (1993).

On February 10, 1994, H.R. 3345 passed the House in the form of an amendment in the nature of a substitute to the bill reported by the Committee. The amendment omitted the 90-day limit on offering buyouts but retained the condition that buyout recipients separate by the end of 1994 unless the agency head determined that a delay was necessary. See section 2(b)(2) of H.R. 3345, printed at 140 Cong. Rec. H452 (daily ed., Feb. 10, 1994).

While the House floor amendment eliminated the more restrictive 90-day period, the overall time limit on buyout offers was retained. Thus, Representative Clay, floor manager of the bill, stated that "the authority to offer voluntary separation incentives, pursuant to this legislation, expires at the end of this calendar year." Id. at H446. Except for further extensions of the deadlines made in conference, the House-passed language was identical to the language enacted as section 3(b)(2) of the Act.

The Senate version of the buyout legislation also imposed time limits on buyout authority, using the 90-day agency-specific window originally proposed by the Administration and followed in the early version of the House bill. See 140 Cong. Rec. S1526-27 (daily ed., Feb. 11, 1994). In this regard, the report on S. 1535 by the Senate Committee on Governmental Affairs observed:

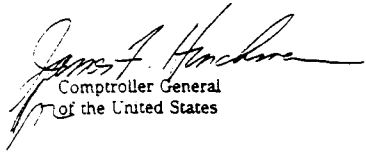
> "Subsection (b) of section 3 provides the basic parameters governing the voluntary separation incentive program. Paragraph (1) authorizes . . . voluntary separation incentives to employees in any component of the agency, in any occupation, in any geographic location, or in any combination thereof. In exchange, the employees

> must agree to resign or retire during the continuous 90-day period designated by the agency head for the agency or component. That period may not begin before the date of enactment of the Act or end later than September 30, 1994. Paragraph (2) provides that, in order to ensure the performance of the agency's mission, the agency head may make exceptions to the requirement of separation by the last day of the 90-day period, and grant voluntary separation incentives to employees who agree to continue in service but not longer than two years after the last day of the 90-day period." S. Rep. No. 103-223, 103d Cong., 2d Sess. at 5-6 (1994).

In sum, while their specific provisions varied, all versions of the buyout legislation--from the original Administration bill, through the various House and Senate versions, to the version enacted as Public Law 103-226--had several basic features that remained unchanged. All versions imposed deadlines on the period during which buyouts could be offered and approved, the deadline eventually enacted being March 31, 1995. All versions likewise provided for delays in separation beyond the deadline, but only for employees who had been approved for buyouts and for whom the requisite delayed separation determination had been made by the agency head prior to the deadline.

For the foregoing reasons, we conclude that the Federal Workforce Restructuring Act precludes offering buyouts to employees after March 31, 1995, or making buyout payments to employees after that date unless the head of the agency had determined by March 31 that the specific employee could delay his or her departure in order to ensure the performance of the agency's mission.

Sincerely yours,



Comptroller General
of the United States

(410061)

Mr. MICA. Mr. Bowling, did you have anything further to add?

Mr. BOWLING. No; Mr. Wray spoke for me.

Mr. MICA. All right. We will come back to you all.

Now we will hear from Mr. Koskinen, Deputy Director of the Office of Management and Budget.

Mr. KOSKINEN. Mr. Chairman, I am here this morning, at your request, to provide whatever additional information you need to continue your evaluation of the role that reinventing Government has played in executive branch work force reduction, and to further your understanding of OMB's action to allow certain agencies to reoffer unused deferred buyouts authorized by the Federal Workforce Restructuring Act of 1994.

Attached to my testimony of May 23, 1996, was a list of each agency's civilian FTE levels and overall personnel reductions that have occurred from 1993 through 1995. In your invitation letter to this hearing, you asked me to categorize these decreases based on the many ways the administration has worked to reinvent Government as part of our efforts to provide a Government that is more customer oriented, more focused on results, and that works better and costs less.

The administration, through the National Performance Review, has proposed a series of strategies to improve the operation of the Government, including privatization, devolution, discontinuance, or consolidation of programs and agencies. The hundreds of programs targeted for termination or consolidation were listed on pages 187 through 199 of the President's fiscal year 1996 budget and reflected throughout the President's fiscal year 1997 budget.

The major goal of these initiatives was to improve the Government's effectiveness. No one has tracked FTE declines for each of these activities, and there is no efficient way to obtain that information at this time.

In addition, as I said at the hearing on May 23, limited discretionary dollars are now the driving force behind work force reductions. The FTE reductions called for in the Federal Work Force Restructuring Act have been and will be met ahead of the act's schedule. FTE reductions have resulted from some agencies being abolished—such as the ICC and some small agencies such as the Administrative Conference of the United States—privatization that has occurred—OPM's interagency training operations—and consolidations that are under way.

In the main, however, agencies used regular turnover supplemented with voluntary separation incentives—buyouts—to achieve lower spending levels necessary to meet resource limitations, thereby cutting their FTE employment levels.

You asked for clarification of the use by certain agencies of deferred buyouts. Three agencies requested approval to offer buyouts to the same positions to which they were originally offered where the agency determined the separations in those positions had to be deferred. OMB approved those requests. We are aware that the General Accounting Office has advised you that they disagree with agencies using buyout authority in this manner. We will be consulting with the agencies involved about their views on the matter.

When you noted the potential cost of the deferred buyouts, your staff has not served you well. The deferred buyouts for 1996 and

1997 were all the buyouts that were deferred under the GAO interpretation. Only 1,400 deferred buyouts have been offered since March 31, 1995, which would be a cost range of $156 million, if they were all used—there is no indication that they necessarily will be—to approximately $30 million.

Second, the minority has talked about a deliberate attempt to circumvent the law. I would like to submit at this point in my testimony, a memorandum in response from me. The memorandum presented to me made clear that we had reviewed the Department of Energy's legal counsel's view.

Our legal counsel had determined that the DOE's legal interpretation is valid and legally they can reprogram the buyout signatories but a policy decision should be made. That is not the background of a deliberate circumvention of the law, it is the background of a legal interpretation that said it is legal.

The end of that memorandum says we believe it is more prudent to offer voluntary buyouts to employees than to needlessly demoralize employees with RIFs, which are much more costly or force buyouts that lead to legal battles that are costly and could cause unwarranted negative publicity.

The following memorandum of October 4, from me to several OMB executives notes:

> I have signed the approval for DOE to reprogram its buyouts. None of these issues are simple, but it seems hard to justify forcing them to engage in any more RIFs than they have to use. Thanks.

It is clear, Mr. Chairman, that we may be in disagreement. We did not have GAO's legal opinion in Thursday afternoon. We will be pleased to have it.

The agencies made their legal determination. Our determination was that that was a reasonable interpretation of the law. GAO now has a different interpretation of the law. But no one was operating deliberately in contravention of the law. We do not believe it is fair to characterize these as illegal buyouts.

With regard to the interpretation of the law, I am not practicing as a lawyer, I actually haven't been a practicing lawyer for 30 years, but, as GAO opinion notes, this Congress knows how to write a statute that says the individual employee has to agree personally to defer his buyout. Earlier versions of the legislation included that requirement.

The final version of the legislation enacted into law deleted the requirement that an individual had to agree to the delay and simply gave to the agency the ability to defer buyouts when it was in the agency head's determination the delay would be a result of the question of legal interpretation, is whether the reference to such employee requires reference to an individual employee who signed up on an employee in the class deferred by the agency head.

GAO has read the statute in a way they deem appropriate; the Department of Energy read the statute; the lawyers read it differently. Our counsel reviewed it and thought their interpretation of it is reasonable. The fact that we have a disagreement is an important matter, but it doesn't further the dialog to maintain we have acted illegally or that we are the source of the problem.

Regarding your request for information on OMB's allocation of buyouts to the departments and agencies, attached to my testimony

is a listing showing all allocations covering fiscal years 1994 through 1997 with information showing the actual number of buyout payments made in fiscal years 1994–95.

Several days ago we provided this committee a large number of documents that you requested with the additional items that you requested in your invitation, Mr. Chairman.

That concludes my statement. I will be pleased to answer any questions that you or other members of the subcommittee may have.

Thank you.

[The prepared statement of Mr. Koskinen follows:]

TESTIMONY OF
JOHN A. KOSKINEN
DEPUTY DIRECTOR FOR MANAGEMENT
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

JUNE 11, 1996

Mr. Chairman, I am here this morning, at your request, to provide whatever additional information you need to continue your evaluation of the role that "reinventing government" has played in Executive Branch workforce reduction, and to further your understanding of OMB's action to allow certain agencies to reoffer unused deferred buyouts authorized by the Federal Workforce Restructuring Act of 1994.

Attached to my testimony of May 23, 1996, was a list of each agency's civilian FTE levels and overall personnel reductions (with a few increases) that have occurred, 1993 through 1995. In your invitation letter to this hearing, you asked me to categorize these decreases based on the many ways the Administration has worked to reinvent Government, as part of our efforts to provide a government that is more customer oriented, more focused on results and that works better and costs less. The Administration, through the National Performance Review, has proposed a series of strategies to improve the operation of the government including privatization, devolution, discontinuance, or consolidation of programs and agencies. (The hundreds of programs targeted for termination or consolidation were listed on pages 187 through 199 of the President's Fiscal Year 1996 Budget and reflected throughout the President's Fiscal Year 1997 Budget.) The major goal of these initiatives was to improve the government's effectiveness. No one has tracked FTE declines for each of these activities and there is no efficient way to obtain that information at this time.

In addition, as I said at the hearing on May 23rd, limited discretionary dollars are now the driving force behind workforce reductions. The FTE reductions called for in the Federal Workforce Restructuring Act have been and will be met, ahead of the Act's schedule. FTE reductions have resulted from some agencies being abolished (such as the ICC and some small agencies such as the Administrative Conference of the U.S.), privatization that has occurred (OPM's interagency training operations), and consolidations that are underway. In the main, however, agencies used regular turnover supplemented with voluntary separation incentives -- buyouts -- to achieve lower spending levels necessary to meet resource limitations, thereby cutting their FTE employment levels.

You asked for clarification of the use by certain agencies of deferred buyouts. Three agencies requested approval to offer buyouts to the same positions to which they were originally offered where the agency determined that separations in those positions had to be deferred. OMB approved those requests. We are aware that the General Accounting Office has advised you that they disagree with agencies using buyout authority in this manner. We will be consulting with the agencies involved about their views on the matter.

Regarding your request for information on OMB's allocations of buyouts to the departments and agencies, attached to my testimony is a listing showing all allocations covering fiscal years 1994 through 1997, with information showing the actual number of buyout payments made in fiscal years 1994 and 1995.

Several days ago we provided the Subcommittee a large number of documents that you and Congressman Moran requested. Within that collection are the additional items you requested in your invitation to this hearing.

Mr. Chairman, that concludes my statement. I will be pleased to answer any questions that you or other Members of the Subcommittee may have.

Attachment

6/10/96
15.21.09
(MAX-FTEMS29)

PAG.

OFFICE OF MANAGEMENT AND BUDGET
BUYOUTS IN EXECUTIVE BRANCH AGENCIES
EXCLUDING DEFENSE, FY 1994-97

Agency	FY 1994 Allocation	FY 1994 Actual	FY 1995 Allocation	FY 1995 Actual	FY 1996 Allocation	FY 1997 Allocation
Department of Agriculture	3,356	3,070	2,973	2,380	211	55
Department of Commerce	523	186	1,098	1,061	55	208
Department of Education	367	367	125	118		
Department of Energy	636	547	980	736	900	700
Department of Health and Human Services	646	106	2,345	2,345		
Department of Housing and Urban Development	260	151	1,111	867		
Department of the Interior	3,086	2,951	2,525	2,525		
Department of Justice	585	435	448	416		
Department of Labor	114	92	373	301		
Department of State	158	147	387	309	573	
Department of Transportation	2,635	2,635	1,130	921	439	1,614
Department of the Treasury	96	92	795	420		
Department of Veterans Affairs	1,618	1,611	770	593		
Environmental Protection Agency			640	496		
General Services Administration	192	192	2,305	1,944	600	745
National Aeronautics and Space Administration	1,178	1,178	1,500	1,470		
Office of Personnel Management	153	144	262	262		
Small Business Administration			395	342		
Social Security Administration			1,200	1,150		
Office of Management & Budget			25	8		
Agy for International Develop			7			
Inter-American Foundation			2	2		
Board for Int'l Broadcasting	2					
Consumer Product Safety Commis	17	17				
Corp for Nat'l & Commun Service			40	39		
Export-Import Bank of the US	14		14	14		
Farm Credit Administration	16	16	25	15		
Fed Mediation & Conciliation			9	7		
Federal Communications Comm	6	6	200	130	100	50
Federal Labor Relations Author	3	1	9	4		
Federal Trade Commission	53	52	20	15		
Interstate Commerce Commission	46	46	48	48		
Merit Systems Protection Board	6	6	6	6	4	8
National Credit Union Administ	11	2	6	6		
National Labor Relations Board	6	6	20	20		
National Mediation Board			3			
Nat'l Archives & Records Admin	16	16	158	158		
Nat'l Endowment for the Arts	7	7	8	8	10	
Nuclear Regulatory Commission	14	14	33	31		
Office of Government Ethics	2	2	1	1	3	3
Office of Special Counsel			4	1		
Railroad Retirement Board	41	30	74	51		
Selective Service System	10	10	6	6		
Smithsonian Institution	25	20	208	189		
United States Information Agy	265	265	156	156		
** Report Total **	16,163	14,420	22,444	19,571	2,895	3,383

Note: The original allocations for FY 1994 and FY 1995 have been adjusted upward 2% and 6%, respectively, to reflect updated information.

Mr. MICA. Now, for a third opinion, we will turn to Mr. Jim King, the Director of the Office of Personnel Management.

Mr. KING. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, thank you for this opportunity to continue our discussion of the administration's successful program of voluntary separation incentives, or buyouts, that has been carried out under the Federal Work Force Restructuring Act of 1994. When Congress passed that act, which mandated the reduction of 272,900 jobs over a 5-year period, it was clear that attrition alone would not meet the goal.

The buyouts have helped us move steadily toward our downsizing goal with a maximum of compassion for individual workers and a minimum of disruption and lowered morale in the workplace.

I think it might be useful at this time, Mr. Chairman, to point out that Federal agencies beyond defense have experienced reductions in their work force. The majority of the work force reductions—two-thirds, as you know, Mr. Chairman—occurred at DOD. DOD has reduced its work force by 16 percent over the last 3 years by closing DOD facilities outright and realigning activities.

However, a significant number of non-Defense agencies have also borne substantial cuts: The Department of Agriculture, 13.4 percent cut; Housing and Urban Development, 12.7 percent; Interior, 13.5 percent; Labor, 11.9 percent; Transportation, 10.5 percent; Agency for International Development, 17.5 percent; General Services Administration, 23.6 percent; NASA, 15.2 percent; Nuclear Regulatory Commission, 10.6 percent; the Office of Personnel Management, 38.5 percent; Small Business Administration, 13 percent; and USIA, 12.2 percent.

I hope, Mr. Chairman, that these figures will help the committee to appreciate that it hasn't been a singular effort in any one location, and, Mr. Chairman, it would be disingenuous of this witness not to acknowledge your help and the help of the subcommittee and the work we have been doing in downsizing.

And, Mr. Chairman, because buyouts are less expensive than involuntary separations, they have also saved the taxpayers a great deal of money. We are talking millions of dollars of taxpayers' money. And we have used the GAO's methodology and numbers, consistent with the report that they made, I believe, to this committee in May of this year.

Since January 1993, the Federal work force has been reduced by about 240,000 employees. During that period, agencies paid about 110,000 buyouts. About 21,000 career employees were involuntarily separated between fiscal years 1993 through 1995.

We believe that the downsizing of the Federal work force by about 11 percent in 3 years, with less than a tenth of the reduction coming from involuntary separations, is a major achievement. We at OPM are proud of our role in developing and implementing this legislation and in helping meet the downsizing goals that Congress

and the President have set. We fully support the newer, more targeted buyout program embodied in the Federal Employee Reduction Assistance Act of 1996. And I will be glad to respond to any questions about these programs.

Thank you, Mr. Chairman.

[The prepared statement of Mr. King follows:]

STATEMENT OF
HONORABLE JAMES B. KING
DIRECTOR
OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

at a hearing on

FEDERAL GOVERNMENT DOWNSIZING

JUNE 11, 1996

Mr. Chairman and Members of the Subcommittee.

Thank you for this opportunity to continue our discussion of the Administration's successful program of voluntary separation incentives--or buyouts--that has been carried out under the Federal Workforce Restructuring Act of 1994.

When Congress passed that Act, which mandated the reduction of 272,900 jobs over a five year period, it was clear that attrition alone would not meet that goal.

The buyouts have helped us move steadily toward our downsizing goal with a maximum of compassion for individual workers and a minimum of disruption and lowered morale in the workplace.

Because buyouts are less expensive than involuntary separations, they have also saved the taxpayers a great deal of money.

Since January 1993, the Federal workforce has been reduced by about 240,000 employees.

During that period, agencies paid about 110,000 buyouts.

Only about 21,000 career employees were involuntarily separated during Fiscal Years 1993-95.

We believe that to have downsized the Federal workforce by about 11 percent in three years, with less than a tenth of the reduction coming from involuntary separations, was a major achievement.

We at OPM are proud of our role in developing and implementing this legislation, and in helping meet the downsizing goals that Congress and the President have set.

We fully support the new, more targeted buyout program embodied in the Federal Employment Reduction Assistance Act of 1996.

I will be glad to answer your questions about any aspect of these programs.

Thank you.

SPECIAL AGENCY EDITION - FEBRUARY 22, 1995
INCLUDES ADDITIONAL QUESTIONS AND ANSWERS

"All the News That's New"

The Daily Buyout

P.L. 103-226 March 30, 1994

February 9, 1995
Number 61

Current Developments in Downsizing-Prepared by OPM's Federal Workforce Restructuring Office

DELAYING THE SEPARATION OF EMPLOYEES UNDER THE FEDERAL WORKFORCE RESTRUCTURING ACT

Public Law 103-226, the Federal Workforce Restructuring Act of 1994, authorizes the head of each Executive agency to offer separation incentives to employees during times of major reorganizations or downsizing. Section 3 of the Act provides that, "in order to receive an incentive payment, an employee must separate from service with the agency before April 1, 1995...unless the agency head determines that in order to ensure the performance of the agency's mission, it is necessary to delay such employee's separation." These delayed separations can occur no later than March 31, 1997.

This issue provides some commonly asked questions and answers about the delayed separation provisions of the buyout law.

Q. WHAT IS THE AGENCY'S AUTHORITY TO DELAY THE SEPARATION OF AN EMPLOYEE RECEIVING A BUYOUT PAST MARCH 31, 1995?

A. Section 3(b) of Public Law 103-226, the Federal Workforce Restructuring Act of 1994, allows the head of a non-Defense agency to authorize the payment of voluntary separation incentives to employees who voluntarily retire or resign during periods of major downsizing. In general, these separations must occur before April 1, 1995. An employee who does not separate before April 1, 1995, is "ineligible for an incentive payment...unless the agency head determines that, in order to ensure the performance of the agency's mission, it is necessary to delay such employee's separation." These delayed separations can occur no later than March 31, 1997.

Q. WHAT CRITERIA DETERMINES WHICH EMPLOYEES WILL HAVE THEIR SEPARATION DELAYED?

A. The agency head has the sole discretion to determine which employees or categories of employees are considered critical to ensure the performance of the agency's mission and will be delayed. Such criteria will depend on the agency's budget, FTE allocations, downsizing plans, mission changes, etc.

Q. WHO CAN BE DELAYED?

A. Agencies may delay separation beyond March 31, 1995, for individual positions or by categories of positions. Whenever possible, a letter offering buyouts to employees should state which positions or categories may be subject to delayed separation.

Q. CAN I REQUEST TO HAVE MY SEPARATION DELAYED PAST THE MARCH 31, 1995, DATE?

A. No. The law leaves the authority to delay separations with the agency head. Only the agency head or delegated authority can authorize these delays and the delay must be for employees needed to ensure performance of agency mission. Delays cannot be authorized for the convenience of the employee.

Q. CAN I TURN DOWN MY AGENCY'S REQUEST THAT I STAY ON FOR AN ADDITIONAL PERIOD AND LEAVE NOW AND STILL GET THE INCENTIVE PAYMENT?

A. Agencies approve the delayed incentive payment for certain employees or categories of employees contingent on their staying to finish essential activities. If you are such an employee, you could still resign at any time, or take early retirement during the early retirement window, or take regular retirement if you are eligible, but the agency is not obligated to pay you an incentive if your separation occurs before the date set by the agency.

Q. WILL MY AGENCY OFFER DELAYED SEPARATIONS?

A. Each agency will make decisions regarding delayed buyout separations. Check with your servicing personnel office for details.

Q. **DOES OPM'S DECISION TO WAIVE THE REQUIREMENT REGARDING 5-YEAR ENROLLMENT IN THE FEDERAL EMPLOYEE'S HEALTH BENEFITS PROGRAM APPLY TO DELAYED SEPARATIONS ALSO?**

A. Yes. Employees who retire with buyouts under the Federal Workforce Restructuring Act of 1994, and other similar legislation, can continue their health insurance into retirement even if they have not been enrolled for a full 5-year period prior to retirement. OPM has authority under the law to waive this requirement, if it determines that, due to exceptional circumstances, it would be against equity and good conscience not to allow an employee to continue their health insurance coverage.

Congress instructed OPM to consider that the widespread use of voluntary early retirement authorizations and voluntary separation incentive payments authorized by the law constitutes the sort of exceptional circumstance warranting the use of OPM waiver authority. OPM is therefore granting waivers to Executive agency employees who receive a voluntary incentive payment under P.L. 103-226 if the employee retires during the period beginning March 30, 1994, and ending March 31, 1995, (or, if the agency retains the employee due to the agency's need, not later than March 31, 1997). To qualify for this waiver, employees must have been enrolled in FEHB by March 30, 1994.

Q. **IF MY SEPARATION IS DELAYED, AM I STILL ENTITLED TO A BUYOUT?**

A. Generally, there are no "guarantees" on the payment of a buyout. Employees are not "entitled" to a buyout until they separate on the date determined by the agency.

Q. **AM I ELIGIBLE FOR DELAYED SEPARATION IF I AM NOT CURRENTLY ELIGIBLE FOR REGULAR OR OPTIONAL RETIREMENT?**

A. Each agency has the authority to decide whether to offer buyouts to employees eligible for early or optional retirement, or to employees who quit. Your eligibility for retirement, and the basis for computing your retirement annuity, are determined at the time that you actually separate from Federal employment. Thus, employees who are not eligible for retirement at the time they apply for a buyout could still take early or optional retirement as long as they meet the eligibility requirements by their separation date.

Agency's MAY NOT delay the separation of the employee of an employee receiving a buyout simply to allow the employee to reach title for any form of retirement.

Q. IF MY SEPARATION IS DELAYED, CAN THE AGENCY STILL REACH ME FOR AN INTERVENING REDUCTION IN FORCE (RIF) ACTION?

A. Yes. An employee who is retained for a delayed buyout is still subject to actions such as RIF, performance based actions, and other actions.

Printed: Mon Jun 10, 1996 4:46pm

163 TUESDAY, JUNE 11, 1996			ASSIGNMENT SHEET
.	COMMITTEE	REPORTER	TIME
2123 308 ordinary IF163000 1&6	Commerce, FULL, Re: H.R. 3507, the Personal Responsibility and Work Opportunity Act of 1996	STEIN ✓	10:00
2123 309 expedited ~~IF163002p~~ 1&2	Commerce, FULL, Re: M/U of H.R. 3431 and H.R._____, Safe Drinking Water Act		3:30
2154 310 ordinary GO16309 1&5 2-3 hrs.	Government Reform and Oversight, Sub. on Civil Service, Re: Further Downsizing and Reinvention, Part II	STEWART	10:00
H-405 311 DAILY IG16304p 1& 2 hrs.	Permanent Select Committee on Intelligence, Sub. on Human Intelligence Analysis and Counterintelligence, Re: Politicization of Intelligence Collection Regarding Haiti	BRYAN	10:00
334 312 ordinary VR16303 1&8 2-3 hrs.	Veterans' Affairs, Sub. on Hospitals and Health Care, Re: Department of Veterans Affairs Pharmacy Program with Emphasis on OTC Drugs, Medical Supplies and Dietary Supplements	COLCHICO	10:00
~~H-219~~ 313 DAILY CL16300p 1&	Majority Leader Armey Press Conference	BOYUM	11:00

Mr. MICA. I thank you, Mr. King.

We have been joined by the gentlelady from Maryland, Mrs. Morella.

You haven't had an opportunity for an opening statement. If you wanted to do that at this time before we get into questions, you are more than welcome.

The gentlelady is recognized.

Mrs. MORELLA. I am probably going to be picking up on the point of this hearing, Mr. Chairman, and in response to the statements that we have heard.

I think it is very important that you hold this hearing, and I appreciate it, to examine the way in which the administration has pursued its downsizing goals, managing the reduction of 272,200 FTEs mandated by Congress in the administration, we know no simple task.

As I repeatedly stated over the past 2 years, I think the Congress has the responsibility to help Federal employees and agencies affected by downsizing, and, as you know, I am a sponsor of a number of bills for the soft landing and to make sure it is fair and equitable. I won't go into all of that.

But today's hearing is set up to establish further insight into the administration's management of the last round of buyouts and the legitimacy of the Office of Management and Budget's approval of several agencies' plans to reoffer unused buyouts.

I just want to give thanks for the opportunity for letting me clarify this feeling about this. I do support buyouts if they are done strategically in the alignment with the agency's mission and if they are done quickly and for a limited time period.

We know we will be looking at Mr. Wolf's buyout legislation, that I have cosponsored too, that would authorize another round of buyouts.

I am concerned by the circumstances that are surrounding the current extension of the unused buyouts in several agencies; first of all, OMB—and I know this has probably been repeated before I even got here—that OMB didn't even consult buyouts before extending the buyouts.

The first I heard about it was in a May 2 column by Mike Causey, the Federal Diary article, and I have before me an OPM memo written in February 1995 requesting a legal opinion on allowing agencies to use buyout authority past its expiration, and this memo was in response to an opinion by the general counsel of the Department of Energy which concluded that DOE may offer buyouts to employees who had not been approved prior to April 1, 1995. This means there was an awareness in OPM that differing legal opinions existed.

[The memorandum referred to follows:]

United States
Office of Personnel Management Washington, DC 20415-0001

MEMORANDUM FOR LORRAINE LEWIS
GENERAL COUNSEL

FEB - 6 1995

FROM: EDWARD P. McHUGH, DIRECTOR
WORKFORCE RESTRUCTURING OFFICE

THRU: LEONARD R. KLEIN
ASSOCIATE DIRECTOR
FOR CAREER ENTRY

Subject: Request for Legal Opinion

We think we may have found a way, without any further legislative authorization, to allow agencies to continue to use buyout authority to meet the accelerated downsizing they are facing over the next two years. We would like your opinion on the legality of this option as soon as possible.

The approach was suggested by the Department of Energy which needs to cut thousands of jobs in FY 96 and 97 and wants to use buyouts to help do it. The problem is that the Department will not know the specific number of outs to be made and the employees likely to be affected before the general buyout authority ends March 31, 1995.

The new approach would work like this:

- By March 31, 1995, an agency would identify specific occupations, grades and components where it is necessary to delay employee separations under buyouts in order to ensure the performance of the agency's critical missions during the period of a workforce restructuring study and the follow-on time frame for implementing the results of the study (e.g., downsizing in specific areas, abolishment of functions and positions, redeployment of resources, etc.)

- As more specific reduction plans are developed between then and March 31, 1997, the agency would offer buyouts to the employees in the pre-designated units or occupations as needed to meet those reductions, with all separations to occur by March 31, 1997 - the final end of the buyout authority

o Employees in the designated positions/ units would not be guaranteed buyouts but would simply be eligible for buyout offers subject to the availability of funds, the magnitude of workforce reductions, and other appropriate criteria, as a result of the agency's declaration before April 1, 1995.

The Energy plan is based on the fact that the Federal Workforce Restructuring Act of 1994 (PL 103-226) does not specifically state that a buyout has to be authorized before April 1, 1995. It simply says (in Section 3) that:

> "In order to receive an incentive payment, an employee must separate from service with the agency before April 1, 1996. ....unless the agency head determines that in order to ensure the performance of the agency's mission, it is necessary to delay such employee's separation ... (not later than March 31, 1997)

Moreover, Energy has noted that the final version of the Act deleted a requirement of the Act's predecessor bill which would have required each employee seeking a buyout to "agree" to separate prior to the March 31, 1995 deadline. The absence of such a requirement from the final wording of the Act, coupled with the discretion granted to agency heads to make determinations relative to delayed separations, appear to make Energy's approach feasible.

Buyouts have proven to be an effective and less costly alternative to reductions in force (RIF). If this approach is determined to be legal and consistent with Administration policy, it would enable many agencies to better meet the accelerated workforce cuts on the horizon with fewer RIF separations.

Energy is very anxious to move forward with further consideration of this approach given the short time frame between now and March 31. Therefore we seek your reaction at the earliest possible time.

Mrs. MORELLA. Mr. Koskinen indicates that he signed an approval for these buyouts on October 4, 1995, and again, as I know has been mentioned, Congress was not consulted, and the problem seems to be that OPM and OMB don't appear to be communicating very well.

I notice that Mr. King did not really mention what this hearing was about but, rather, gave us the statistics in terms of what was happening.

And OPM's associate director for employment service issued a memorandum dedicated on February 14 of last year. A buyout has to be offered by the agency and accepted by the employee prior to April 1, 1995. So the legality of this issue raises serious questions.

Congressional intent was clear. I re-examined the 1994 Federal Work Force Restructuring Act. The language states that in order to receive an incentive payment, the employee must separate from service with an agency before April 1, 1995, and an employee that doesn't separate before April 1, 1995, shall be ineligible for an incentive payment unless the agency determines that in order to assure the performance of the agency's mission it is necessary to delay such employee's separation.

I have before me the analysis by the comptroller general that clearly states he disagrees with the opinion by the general counsel of the Department of Energy which concluded that the Department may offer buyouts to employees who had been approved for such payments prior to April 1.

Federal employees continue to face difficult times, and this inconsistent reauthorization of buyouts is unfair. I just want to point out, from the opening statement of the chairman here, it said today we are not going to adjourn this hearing until we receive a firm commitment on the part of the administration to comply with the law. I think that is a very good finale and good objective of this particular hearing.

So I would ask unanimous consent that my entire statement be placed in the record, and I thank you for the opportunity to allow me to question the equity of what has been going on.

[The prepared statement of Hon. Constance A. Morella follows:]

Statement of the Honorable Constance A. Morella
June 11, 1996

Mr. Chairman, I want to thank you for holding today's hearing to examine the way in which the Administration has pursued its downsizing goals. Managing the reduction of 272,900 FTEs mandated by Congress and the Administration is no simple task. As I have repeatedly stated over the past two years, I believe that Congress has the responsibility to help federal employees and agencies affected by downsizing. Our federal employees are dedicated and hard working, and loyalty must be repaid with loyalty. I am the sponsor of several bills to provide retirement incentives and retraining opportunities to separated federal employees. The Administration also has a responsibility -- to manage the downsizing of our federal workforce in the most fair, strategic, efficient and humane way possible. That responsibility, however, includes complying with laws passed by Congress and signed by the President, and communicating with the Congress. I fear that by extending the buyout authority provided in the Federal Workforce Restructuring Act of 1994, the Office of Management and Budget is not living up to this responsibility.

Today's hearing will provide further insight into the Administration's management of the last round of buyouts and the legitimacy of the Office of Management and Budget's approval of several agencies' plans to reoffer unused buyouts.

I want my own views of buyouts to be clear; I support buyouts if they are done strategically, in alignment with the agency's mission, and if they are done quickly and for a limited time period. I am an original cosponsor of Mr. Wolf's buyout legislation -- legislation that closely mirrors the Administration's plan -- that would authorize another round of buyouts.

I am deeply concerned, however, by circumstances surrounding the current extension of "unused buyouts" in several agencies. First of all, the Office of Management and Budget did not consult Congress before extending these buyouts. The first I heard of it

was in a May 2, 1996 Federal Diary article by Mike Causey! I have before me an OPM memo written in February 1995 requesting a legal opinion on allowing agencies to use buyout authority past its expiration. This memo was in response to an opinion by the General Counsel at the Department of Energy which concluded that the Department of Energy may offer buyouts to employees who had not been approved prior to April 1, 1995. This means that there was an awareness within OPM that differing legal opinions existed as early as February 1995! Furthermore, a memo from John Koskinen indicates that he signed an approval for these buyouts on October 4, 1995. Again, Congress was not consulted.

OPM and OMB don't appear to be communicating very well either. OPM's Associate Director for Employment Service issued a memorandum dated February 14, 1995 that states: "the buyout has to be offered by the agency and accepted by the employee prior to April 1, 1995."

The legality of this action raises serious questions. The Congressional intent was clear. I have re-examined the 1994 Federal Workforce Restructuring Act, and the language states that:

"In order to receive an incentive payment, an employee must separate from service with an agency before April 1, 1995... An employee who does not separate from service before April 1, 1995 shall be ineligible for an incentive payment unless the agency head determines that, in order to ensure the performance of the agency's mission, it is necessary to delay such employee's (that's apostrophe s) separation..."

I have before me the analysis by the Comptroller General of the United States that clearly states that he disagrees with the opinion by the General Counsel of the Department of Energy which concluded that the Department may offer buyouts to employees who had not been approved for such payments prior to April 1.

Federal employees continue to face difficult times, and this inconsistent reauthorization of buyouts is unfair. Federal employees are receiving mixed signals and

do not know what to expect. Worse, they are making plans based on ungrounded expectations of buyouts based on this extension of buyout authority. I hope that the agencies who seek to extend their buyouts in this manner are doing this with the best intentions for their employees. But I fear that these buyouts are not being done strategically. In the face of many legal questions, the results could be highly problematic for the agencies and employees. I hope that today's hearing will both clarify the situation and mark the beginning of a renewed effort of communication between Congress and the Administration to put the needs and goals of our federal employees and agencies first.

Mr. MICA. I thank the gentlelady. And that is indeed, my commitment. That is a unique approach, but I thought we might want to have our Federal agencies comply with the law.

Let me start out, if I may: Mr. Koskinen and OMB, you testified today—now you said our subcommittee staff did not estimate the number of buyouts that have occurred since the authority lapsed. We didn't know, we could only guess, and that is one reason we asked you back. But you did testify, in fact, before this subcommittee of Congress that you conducted 1,400 buyouts at a cost of approximately $30 million beyond the time as provided by law; is that correct?

Mr. KOSKINEN. Mr. Chairman, let me clarify. We provided you with an exhibit that shows the total number of buyouts that were approved for deferred application under the law. Those buyouts total slightly over 6,000.

The question at issue in terms of the application of the statute does not apply to all 6,000 because the number of—the vast majority of those apply to employees that had signed up and were deferred.

Mr. MICA. Then deferred later on. You are saying there are 1,400—your agency took it on itself—in spite of even opinions that had been sent out by OPM in February 1995, your agency took it on itself to authorize the expenditure of $30 million in taxpayer funds, which the General Accounting Office says in plain language, fundamental logic. In that context, that it couldn't be interpreted in any other fashion.

Mr. KOSKINEN. I disagree with that. I do not think it is clear it could not be interpreted in any other fashion. In fact, the Department of Energy counsel, an intelligent lawyer, interpreted it quite the opposite fashion.

What we did at OMB, we do not interpret that statute. Our requirement under the act is, in fact, to make sure that the allocations are appropriate with regard to the reductions in the workforce and to ensure that there is a reasonable approach being followed.

Our review, as noted in the materials we provided you, was that the Department of Energy's approach of the legal interpretation seemed appropriate under the act and their total allocations were small, and their opinion, which we received Thursday afternoon, now says that they view the matter in a different way.

This is not the first time the legislative branch and the GAO counsel have disagreed with counsel of the executive branch. As I noted in my testimony, we have that information. We passed it on to the agencies for their review and interpretation to determine their legal rule. Now it is a different matter.

Mr. MICA. It appears fairly clear that both sides of the aisle of Congress have made themselves crystal clear as to how we should proceed. We have in fact made it perfectly obvious, that in fact previous interpretations from OPM have directed agencies in that fashion, and still OMB has chosen to go around us and that counsel.

I want to ask the General Accounting Office a couple of questions, and either Mr. Bowling or Mr. Wray may respond.

What corrective measures does the Congress have available now if an administration decides to spend funds this way that aren't authorized by Congress?

Mr. WRAY. Fundamentally, if the executive branch continues to maintain its view that these buyouts are authorized, the practical remedies are probably limited to enacting legislation. That would really be the only——

Mr. MICA. Recourse? Is that the only recourse we have?

Mr. WRAY. Essentially, yes.

Mr. MICA. You made it pretty perfectly clear, your opinion. Mr. Moran has made it perfectly clear from his side. I made it clear. I said a year ago, after we looked at some of the results of the buyouts, that in fact—and we held hearings on it, extensive hearings, and found out that half the buyouts were going to people who were planning to retire anyway and in close proximity to retirement. So we made it clear, and I made perfectly clear that I didn't want buyout authority extended.

In fact, I have been trying to work with the minority side to come up with some solution so we could do some targeted buyouts, and this process of the bureaucrats getting the cart before the horse is now undermining the entire process and our credibility to go and ask for legitimate buyout authority authorized by Congress, which may be a unique approach. Maybe we don't need them, Mr. Moran. Maybe we should just turn it over to them and take a cruise or something.

Again, what are the normal procedures for notifying the executive branch officials of Comptroller General opinions that could affect their ability to certify or disburse funds, Mr. Wray or Mr. Bowling? What are the normal procedures?

Mr. WRAY. We normally make our opinions available to the executive branch, and we did that, I think, essentially as soon as this opinion was issued. It was provided to both OMB and OPM.

Mr. MICA. Could an official who has disbursed funds in violation of the Comptroller's opinion be held personally liable for an illegal expenditure?

Mr. WRAY. It is a mechanism under the law. The GAO has statutory authority to take exception, as the term is used, to the accounts of the certifying officer or accounting officer of the Government who signed off on payments that turn out to be illegal.

That's a remedy that goes back to, I think, the last century and is, frankly, not a very effective remedy. Even if we took exception to payments that we regarded as illegal, no action could be taken against the certifying officers unless the executive branch pursued a debt against them, which they presumably wouldn't do.

One problem with that remedy is that the certifying officer who certified these payrolls, it would be very difficult for that person to, in a meaningful way, be familiar with the types of payments that were made. So it is not an effective remedy in terms of actually recovering money. GAO has no power to recover money.

Mr. MICA. If such unauthorized spending were to continue, what liabilities could an official incur as a result of certifying or disbursing such funds in that fashion?

Mr. WRAY. As I say, accountable officers of the Government, primarily certifying and disbursing officers, are responsible, are per-

sonally liable for making payments in violation of law and are responsible for the legality of the payments that they certify.

One other point I might make is, there is also a provision in the law that authorizes our agency to waive collection of recovery against employees who have received illegal payments if those employees had no reason to know that the payments were illegal. So there would be a different set of issues that would apply to employees who may have received some of these buyouts we at least would regard as illegal. We really had not known they were illegal.

Mr. MICA. Mr. King, you got into some statistics about downsizing, and you cited some agencies. Let me see if I got the figures correct. You cited somewhere between 12 and, say, 15 percent reductions in some agencies. I think you mentioned NASA. Was that a timeframe from 1993–1996 or——

Mr. KING. This has been over a 3-year period, Mr. Chairman.

Mr. MICA. It wasn't like 12 percent a year?

Mr. KING. No, sir.

Mr. MICA. It is my understanding from previous hearings that the normal attrition rate is about 3 percent of the Federal employees retire, then another 3 percent die or quit. So that is a total of 6 percent per year.

Now fundamentally, I am not good at math, but 6 times 3 is 18. Normal attrition rate over that time would be 18 percent. And you said that most of those—and I didn't catch all the figures—were between 12 and 15 percent. So actually we are surpassing the normal attrition rates.

Mr. KING. Mr. Chairman, the attrition rate doesn't necessarily hit the bottom line, people hired back. That is why, if you check each administration over the last 10 years, they averaged about 100,000 new hires every year, and this administration has been an average of 40,000 a year for new hires.

What we are talking about is a skill mix, Mr. Chairman, and many times someone who drops—for example, Mr. Chairman, I would certainly, and I use an example, because it would be a shocking loss to both you and the committee if Mr. Nesterczuk were to leave the committee. My assumption is, someone would be rehired for that task. It would be very difficult to replace the particular skill mix because you had, say, a custodial helper in the building that you were going to employ, you wouldn't logically move in that direction. It is a skill mix along with attrition.

Mr. MICA. Wait a second. Again, you mentioned bottom line. My job is to look at the bottom line for the taxpayers. We are only sent here temporarily to represent their interests. I have to look at the bottom line, and if we have 18 percent of the folks over a 3-year period that are going to die or retire or leave or whatever, and we are making changes in that, I offered that as one remedy, only one remedy. We even had conceded to offer some limited buyouts where agencies are going to be impacted.

What we didn't authorize was an agency to subvert the intent of the law, and I didn't say it was a deliberate attempt but there was a clear indication from this subcommittee that we didn't want this to continue, and it has continued.

Most offensive is May 23 when we did our last hearing. They are posting notices in the Department of Commerce, and one of our pe-

riods here of time Department of Commerce is actually increasing its employees when we are offering buyouts.

We are looking at the bottom line, Mr. King. And I know the position this puts you in and you are not here to rescue OMB from what they have done.

Mr. KING. Mr. Chairman, the bottom line is, though, that there are 240,000 fewer Federal employees, and that is the first time in 30 years.

Mr. MICA. Eighty percent of them are out of DOD, and some buyouts should have been there, and in fact a lot of this occurred not because of anything in reinvention or to the credit of reinvention but because of base closure, the peace dividend, and other changes in our national priorities.

But I am going to yield now to the—and I will come back to this. I am going to go vote, and I will yield to the gentleman from Virginia, Mr. Moran.

Mr. MORAN. Thank you, Mr. Chairman.

Actually, the point that Jim King made is a terribly important one to emphasize. If you look at why the United States has such a phenomenally strong and consistent productivity rate, it is not primarily because of more investment capital, it is not primarily because of downsizing, it is not primarily because of improved technology, it is primarily because of a reorganization of the work force. That is the principal reason why we have become so productive.

We are reorganizing people, retraining them, re-educating them, and that skills mix is terribly important, and it is as important in the public sector as the private sector.

I want you hiring more people. I want people within the Federal work force retrained. And I want people who are no longer as necessary as others would be for that particular slot that we paid—that requires taxpayers' money, to find some other employment or some other way to get retrained, or if they choose not to continue to be participants, then to be able to retire with some dignity in the work force. We want that.

I don't think our objective is primarily to save money. I think saving money is a very important objective. The primary objective is to use the plan that has been allocated in the most effective and efficient manner. Sometimes if your exclusive objective is to save money, you wind up undercutting those other objectives of effectiveness and efficiency. So we should be clear about that.

We should also be clear about the—where we are going to go from here. Before we do that, I know Alan Belkin is here, who is probably the person who did the legal analysis. Give me in as concise a way as possible the legal basis for your opinion which conflicts with OMB's opinion in terms of the latitude this work force—Federal Work Force Restructuring Act gave.

Did Mr. Wray or Mr. Bowling or—go ahead.

Mr. WRAY. I would prefer to defer to Mr. Belkin, but I will take a shot at it.

Mr. MORAN. He probably shared his analysis with you.

Mr. WRAY. As has been pointed out before, the law established as a normal condition that in order to receive the buyout payment an employee has to separate from service prior to April 1, 1995.

The law then says under the heading "Exception," an employee doesn't need to separate before that date if the agency had determined that, in order to facilitate performance of the agency's mission, it is necessary to delay the separation of such employee.

It seems clear to us that such employee means an identifiable employee, not a series of positions, and also that the logic of the statute would be defeated if the determination of agency need was somehow disconnected from the basic approval of the buyouts to allow an employee to defer separation and apply for buyout down the road would basically nullify the condition that the buyouts—the employee must retire by April 1.

The other thing I could mention—I will try to be as succinct as a lawyer can be. But the legislative history is quite consistent. When the administration first proposed this legislation, it was very clear that they wanted a narrow window of time in which employees would have the opportunity to select buyouts. OPM witnesses testified to that point before Congress. And all the versions of the bill kept the notion that this was a program of limited duration.

I think someone mentioned earlier, and this is true, that the original legislation only had two deadlines. It had a 90-day window that could vary by agency and also had another overall deadline, which I think was originally September 30, 1994. In other words, there were two windows, but the essential meaning was the same, you had to make a decision within a limited period of time.

Legislative history indicates that the 90-day window was eventually dropped not because Congress didn't want that kind of a limit to apply but because they thought 90 days wasn't enough time. The committee reports indicate that. So they dropped a 90-day window as a certain limit, then kept the overall limit that was tied in Government-wide to a date that ultimately was March 31.

Again, it seems quite consistent from beginning to end that there was always a notion that both reflected in the language of the statute, we think, and very consistently in the legislative history that the authority to approve buyouts would terminate on whatever the ultimate deadline was, and the ability to defer one's separation carried on there but applied only to people who had applied for and been approved for buyouts within the statutory deadline.

Mr. MORAN. Thank you. That is what I was looking for.

The language—I will give you an opportunity Mr. Koskinen. The language was clear, it was consistent, and it was logical. That is the point you made.

It would be illogical to tell Federal employees that they had until March 31 to decide and then, after that period, to let some agencies, based upon the decision of other people, begin to provide buyouts to those who had not decided before March 31. Not only would it be illogical internally within that agency but across the Federal work force, because it would give confusing signals.

Would you not agree from a management—I asked you from a legal standpoint, but from a management standpoint, you want these laws and regulations and policies to apply equally, consistently, across the Federal work force, do you not?

Mr. BOWLING. Yes, that is correct.

We testified in the past that if you are going to offer separation incentives, it should be a one-time deal with a point definite cutoff,

so additional people do not delay their separation in the hopes that they may get another buyout somewhere down the line.

Mr. MORAN. That is the problem. That is why we are upset, because this strikes us as poor management. At the very least, it has caused a great deal of confusion; at worst, it has undermined the credibility of the Congress and executive branch in terms of what we mean when we pass legislation and create personnel policies. And I have got to tell you, the majority of Federal employees today do not know whether there will be—in fact, I have to say it has got to be 90 percent—don't know whether there will be buyouts available, don't know whether there will be an enrichment provision to make them better than the ones that occurred before, don't know whether your policy of reducing it each subsequent year is to their benefit, or whether in fact it will ever be made available.

And based upon what happened in the past, because of this, what we consider to be an illegal direction that was taken by the executive branch, they don't know whether or not to believe anything we say. That is the problem. That is why it is a big issue. It is the precedent that we have now established.

Now, we are not going to put you in jail, Mr. Koskinen. I think that is fairly clear.

Mr. KOSKINEN. I want to go back and talk with the janitor about replacing Mr. Nesterczuk. If I am going to jail, I am taking Mr. Nesterczuk with me.

Mr. MORAN. The fact is, you are far too important. You do far too good a job. You are working very hard. You have taken on an enormous amount of responsibility at a very challenging time.

This is not an indictment of the job that you have done for the Federal Government. The problem is and the reason we are having to beat up on you is that a decision was made which, in our strongly held view, was a mistake. We don't want it to happen again.

We know what the repercussions are, and especially when I am representing 70,000—although it is probably down to 60,000—Federal employees by now, if not less, but it is still a lot. And, gosh, I have got to tell you, there is such confusion, they don't know which way to go, and that is—that is cost, a substantial cost, and one that we have got to avoid in the future.

What I want to get to, though, is where we go from here. What are we now going to do for these employees? How are we going to be able to hire the mix of skills that we do need? How are we going to inform these employees who took those 1,400, who took those illegal buyouts? They need to know whether they are real or not.

I assume they are going to be able to do it, because it wasn't their fault for participating in this unauthorized program, but we need to know what remedial action we need to take, not so much from a legal standpoint but from a management standpoint. Where are we going from here?

Again, the legislation that you suggested that buyout extension, I have real questions how serious you were when, again, you did not work it out with us beforehand. We read about it, and it is clear that the chairman is not going to enable that legislation to be passed through the subcommittee, which means it is dead, and even if I had the votes on the minority side, we are the minority. So it is—that issue is a dead one.

Now we need to know where we go from here, what your next proposal is, how to get the Government back on its feet again.

At this point, Mr. Koskinen has been dying to respond here, Mr. Chairman. Do you want to give him that opportunity?

Mr. MICA. OK.

Mr. KOSKINEN. I want to respond that the GAO and the statement of their position was concise, and I would just like to note where it is not crystal clear and where there are two sides to this issue. They noted it was very important under the concept that the statute for employees to be identified by the agency head if there were to be a deferral.

In this particular case, these cases, the agencies, the areas, the jobs, the employees, the agencies identified employees that would be deferred. The question is whether those employees had to actually sign up for the buyout before the March 31, 1995, date or simply, as the statute says, leave by March 31, 1997. The employees were identified by class.

What GAO is saying is that the statute requires that employees actually sign up for the buyout before March 31, but, as I noted, the Congress had before it provisions that would have made that clear and decided not to include those in the final version.

Earlier versions of the legislation stated that for a deferral to take place, an employee would have had to have signed up. That was dropped. So in the cases we are looking at, the agency in the timeframe identified the classes and the areas of employees to be deferred. So within the agencies, all the employees knew whether they were in a deferred class or not a deferred class. There is no confusion in those agencies on which areas were designated for deferral. The issue is whether the employees actually had to sign up for that deferral.

As I note, the agencies designated employees. The rule is they had to make the designation before March 31, 1995. They had clearly identified which employees were involved as a group. We did not require and the statute deleted the requirement that the employees actually sign for buyout.

That is not to say that we are right and they are wrong. It is to say there are two ways to read this statute and its legislative history. It is not an attempt to thwart or undercut where the committee is going.

But your point is well taken, the question is: Where do we go from here? The chairman has stated that he has a firm commitment that we are not ending this hearing until we agreed to comply with the law. As you can tell, we think we are complying with the law. So to some extent we can all go away thinking something else.

But historically, as GAO noted, we don't resolve these issues. This is not the first time there has been a different interpretation of an existing law between a subcommittee or a committee and the executive branch. Historically, those have been resolved on an analytical basis.

As GAO noted, there is not a legal forum in which these issues get resolved. We have gotten GAO's opinion on Thursday afternoon. We shared it with the agencies. The 1,400 buyouts or allocations,

they have not all been offered yet. It is up to the agencies now to review this opinion with us.

We are perfectly prepared to discuss this further with the committee. But in the context of whether we have been behaving illegally or not, I think it is important for us to make clear it is not our judgment that we have.

We think the Department of Energy's legal opinion was a reasonable one. It is perfectly understandable like my other indications. It is a wonderful litigious society we have that there are two ways of interpreting the statute.

We need to figure out where we go from here not only in regard to these three particular agencies and relatively small number of employees affected. Where do we go when we are going forward with a number of agencies that have an option right now of either RIFing employees, or we would hope they would have the option of buyouts, and to the extent that the committee's view is, we ought not to have a global buyout program, which we have proposed, our view is, we would do better controlling it that way, focused on agencies that specifically are going to have a decline in buyouts. I think each agency will have to paddle its own canoe.

As I would note, the chairman on this hearing and previous hearing has noted that some agencies use buyouts at the same time their employment increased. The statute allowed that. That was not, again, a subversion of the statute. The statute said the executive branch could use a number of buyouts outside to the overall decline in the work force, and that was the civilian work force, not in the Defense Department work force. Buyouts were allocated accordingly, and in fact we did not use all buyouts that were authorized under the statute.

So as we go forward, we agree that in the next round of buyouts the agency should be in a position where it is reducing. The alternative is RIF, and therefore it is, in fact, going to have a one-for-one reduction, not in the executive branch generally, but that there would be a one-for-one reduction in the agency for every buyout used.

We think that is an appropriate way to proceed, but to the extent that the committee feels more comfortable doing this on an agency-by-agency basis, the only risk there is, some agencies that need the buyouts may, for whatever reason, not be included. Then we would be confronted with RIF's.

My final note is with regard to the Commerce Department, the Commerce Department RIF buyouts, the 203 that have been also indicated to be reused have been allocated employees with RIF notices. To the extent the Commerce Department has been told not to issue any of those buyouts that were the ones that were offered recently, those employees are under RIF notices and would be RIF'd.

When we go back to the bottom line, the $30 million in question is not payroll. What will happen in many of these cases is, if employees do not get buyouts, they will be RIF'd. Then we get into the issue of, are RIF's more expensive, just as expensive, or slightly less expensive than buyouts? Either way, the net gain for the Government is not in fact $30 million for not offering the buyouts. We will RIF those employees or lose them otherwise.

Mr. MORAN. Mr. Koskinen, it is generally good advice to quit when you are ahead. In your respect, it would have been good advice to quit when you are not too far behind.

Mr. KOSKINEN. I will take that advice.

Mr. MORAN. It is too late now.

Mr. KOSKINEN. Could you identify where it was I could have quit?

Mr. MORAN. You should have quit after I said all those nice things about you. The fact is—and in fact everyone is entitled to their own opinion, but they are not entitled to their own set of facts. The fact is that GAO is right and you are wrong.

The reason I say that without equivocation is that the language of the law is clarified by congressional intent, which includes the process of legislation, the debate, the report language, and the understanding between the two parties involved.

The Office of Personnel Management was involved with the Congress from beginning to end. They knew congressional intent. They knew it was clear; they knew it was logical; they knew it was consistent. They told you so. They had a far better understanding of congressional intent than OMB did or, in fact, any of the individual agencies. Their opinion was clear; it was logical; it was consistent with congressional intent.

If you had any questions given the unequivocal nature of OPM's decision, you should have gone to the Congress or could have asked for another legal opinion. This legal opinion you got from this person is a—is almost embarrassing. And here we have this followup statement that says it may appear that the Clinton administration has made an arbitrary extension of a limited congressional authority. And then it talks about negative publicity and so on. It was badly handled.

Now, let me also interject here, because this brings up a further problem, I worked for the executive branch in the comptroller's office for—the comptroller of HEW's office for 6½ years. I worked for the Library of Congress. Then I was staff on Senate Appropriations.

It was clear throughout that time, and I know it has not changed, that the real decisions were being made by OMB, but the last people to be held accountable were those OMB people making those decisions. They were not the ones coming up to Congress. They were not the ones getting beaten up on. They were not the ones having to explain the appropriations request.

We at one point invented this "who struck John" table just to figure out where things fell apart between the understanding of Congress and the executive agencies. It was invariably OMB making unilateral decisions, and, more often than not, they were never held accountable.

This is what has happened in this case. OPM knew the right thing to do; OMB decided it wanted to do something differently. I don't necessarily disagree with the motivation, but it exposes a real problem here, and that is that these folks act with impunity, have consistently acted with impunity, and we may have to change that.

It is a much larger issue, it is one that falls under Government operations, but I think it is a very serious issue, and this is only one of a string of them.

But you have attempted to suggest that there are two equally valid opinions. I think the best thing for you to do would be to retract that to make it clear that there was one prevailing opinion and you chose to come up with another, because it was expedient and pragmatic to achieve a different—another objective. And until you do that, we are going to have problems in working out the more important objective which is, where do we go from here? Because until you recognize you are in error, we have no confidence that is not going to be repeated. And these folks in OMB need to recognize that too.

Now, I have gone way beyond my time, but I think we have made ourselves pretty clear, Mr. Chairman. Go ahead.

Mr. MICA. Anyone who misses a vote to stay and question has some serious concern, and you have expressed that. I want to follow up with a couple of points.

Mr. Koskinen, we have the GAO's legal opinion confirming the understanding of the meaning of the law. Tell me exactly what you plan it do now. You are now getting input from this panel; you have got other opinions that conflict with your interpretation. What exactly do you plan to do now?

Mr. KOSKINEN. It is an important question to clarify. Our interpretation was that the Department of Energy and the agencies made a reasonable interpretation of the law. We have passed to them the GAO opinion, asked them to reconsider that. We will be meeting with them——

Mr. MICA. Did you do this in writing?

Mr. KOSKINEN. Yes. Well, our general counsel has passed it to them. I don't know in what format he gave that to them.

Mr. MICA. Is that just within the last 24 hours or since you have seen this opinion?

Mr. KOSKINEN. Yes.

Mr. MICA. Do we have a copy of your letter to these agencies?

Mr. KOSKINEN. It is not my letter. Our general counsel shared the opinion and asked with the general agency counsels—I can find out how we did that. General counsel said we called the agency general counsels and advised them we were sending them the GAO opinion and we would like their review of it and their response.

Mr. MICA. So you are not asking them to comply, you are just asking for a response?

Mr. KOSKINEN. We are asking for their response and interpretation of the GAO opinion in light of their views; that is correct.

Mr. MICA. So do you plan to contest GAO's opinion? Is that the intent of OMB? Are you going to pursue this further, and in light of what you have heard here today, in light of the opinion that has been rendered, in light of other opinions that are pretty clear on the subject as to the intent of Congress, are you going to pursue this any further?

Mr. KOSKINEN. We need to pursue further, and, as I noted earlier, it is to take a look at the GAO opinion review, the agency's response to it, and discuss with the committee where we go from here.

Mr. MICA. Well, I think we—I don't know. I met with the folks with hearing disabilities, and maybe I need to be tested. I think we made ourselves pretty clear, we didn't—we interpret the law the

way GAO has interpreted the law, that we didn't want this authority carte blanche, as you have interpreted, extended. Some of these 1,400 positions have not been allocated to individuals; is that correct?

Mr. KOSKINEN. That is my understanding.

Mr. MICA. Do you intend to allocate them to individuals and pursue this even with what you had had as an opinion, what you have heard here, what is going to happen?

Mr. KOSKINEN. What is going to happen: We will hear back from the agencies; we will review those matters and discuss them with you and your staff.

Mr. MICA. Well, I don't think we need to confer too much more that we don't want you to proceed with any that have not been assigned to an individual. Now you told me there are 6,000 that have been assigned to an individual.

Mr. KOSKINEN. Six thousand one hundred with a total of——

Mr. MICA. One thousand four hundred fall into this category.

Mr. KOSKINEN. Four thousand seven hundred are not at issue.

Mr. MICA. That is water over the dam.

Mr. KOSKINEN. There is no question about those as water over the dam. Those were actually authorized.

Mr. MICA. OK. Even giving you the benefit of the doubt, even if this hearing deals with 1,300 positions, we are trying to ask you to comply with our interpretation of the law as written by this Congress, interpreted by the General Accounting Office and others, that we don't want you to proceed with giving these deferred nonallocated, nonspecific individuals to anyone.

Do you have a problem with that still?

Mr. KOSKINEN. We still need, notwithstanding Congressman Moran's view that we run the world, we do not view it as appropriate for us to not give the agencies the chance to review the opinion and give us the benefit of their opinions.

We also need to determine——

Mr. MICA. Is the agency determining the law, Mr. Moran, or are we just excess baggage in the process? Clearly, do we ever——

Mr. MORAN. The agencies are looking for guidance. I am sure you have all kinds of memos from agencies asking, "What the heck do we do here?"

Mr. MICA. Rarely do we all sing off the same sheet of music. We made ourselves perfectly clear. We are supported by the General Accounting Office; we are supported by other legal interpretations. We don't think there is a lot of leeway here.

We are trying to do some positive things in this area. We have thousands of Federal employees who want to know what is happening with buyouts, what is happening with their careers, what is happening with RIF's, and this is clouding the issue. It is clouding us for Mr. Moran and I to go forward if we want to try to do something constructively.

The other thing too is, Mr. Moran gave you an opportunity to work with us, just in this hearing, and you seem to be digging the hole deeper. I may have misconstrued the way this is, and I don't think OMB runs the world, but it is supposed to provide some management guidance.

When you tell me that because Congress didn't say an agency that was increasing its employment should ignore a commonsense approach to buyouts, why would you do buyouts if you are increasing that that we didn't mandate, that what the hell did we have OMB for to help guide the Federal agencies in their decisions? That doesn't float.

Mr. KOSKINEN. Can I respond to that? The agencies also submitted plans as how we are going to use the buyouts, and we discussed earlier, and the number of agencies their skill mix issues, and there are also a number of agencies like the Department of Justice, which you cited, which are growing in some areas like Immigration and Naturalization Service and Prison Service, and shrinking in other areas. While they necessarily report total numbers that go up, their buyouts were tied to readjustments and shrinking and layoffs in areas where there are bureaus.

Most of these agencies and departments, as you know, are in anywhere from 3 to 10 different lines of business, and in the case of the Justice Department and other agencies, they specifically identified where they were going to use their buyouts and how this tied into their restructuring, and that is the basis on which those judgments were made and what we thought were exits with the purposes of the act which were to, in fact, allow the agencies, where they were downsizing and restructuring, to use buyouts effectively.

Mr. MICA. Again, you see bad management practice compounded by bad management practice.

We also have testimony and evidence here with the Department of Commerce, and you said that these folks were already given a RIF notice.

Mr. KOSKINEN. That is correct.

Mr. MICA. Then offered a buyout.

Mr. KOSKINEN. They had RIF notices, and reauthorization of the reduction of the previously authorized buyouts were provided to people with the RIF notices.

Mr. MICA. Why would we do that? You can't tell me it is cheaper. They had already been told that their position was being eliminated, so any—I mean, you eliminate the position.

We had testimony in another hearing disputing some of the RIF figures, and if someone RIF'd versus a buyout, a buyout is an add-on attraction.

Mr. KING. A RIF notice doesn't mean separation, Mr. Chairman. A RIF notice starts a triggering mechanism where the person who receives the RIF notice may never reach the street.

Mr. MICA. Again, they may be placed in another agency. We have talked and worked to try to place people in other agencies to avoid RIF's and see where their skills could be utilized, and we have a big investment in training; we have a big investment in getting these people on board. There are all kinds of things.

I am just stunned by some of this approach. I mean—and people that are people who have invested and things of that sort we should be looking at in the RIF process and veterans' preference and other things that we have talked about. But it doesn't appear to me that OMB is either interpreting the law or executing their management responsibility in a way that is conducive to deal with

the problems we have to deal with and the management that we have to provide.

Let me ask a question of—I am really concerned, too. We have 1,400 people out here on a limb. Some have already been offered this—these deferred buyouts. Then we have our other category.

For example, can a taxpayers group or citizens group—does anyone have any understanding—I am not an attorney—to come up and challenge what is being done here?

Mr. Wray.

Mr. WRAY. In this situation, it is probably very doubtful they were challenging the options under the action.

Mr. MICA. The only recourse we have, as you go back to it, would be a legislative recourse if OMB and the administration doesn't comply with our intent and your interpretation of the law.

Mr. WRAY. Yes.

Mr. MICA. Well, I have a couple of questions about the Department of Commerce offer. I want to go back to it for a second. The Department of Commerce initial offer indicated a 1-day window of opportunity to accept the new buyouts. The Department's June 7 letter to this subcommittee, however, describes a period from May 21 to August 16 during which new buyouts will be offered.

What limits has OMB imposed on the new Department of Commerce's offer, Mr. Koskinen?

Mr. KOSKINEN. My understanding that the limits are those buyouts—the limits we have imposed is, buyouts can only be used if they were actually for employees designated before March 31, 1995, and in those areas, so he cannot designate new employees or new areas, they can only use those buyouts in those areas previously designated. That is the limitation.

Mr. MICA. One footnote: The table attached to the Commerce Department's letter describes one limit to the buyouts reading, "our experience has been that few employees who receive RIF notices opt for buyouts. Generally, their severance pay is a more preferable benefit, especially given the buyout limitation on future employment." The note concludes, "We anticipate that the greatest number of buyouts will be taken by employees at GS–14 and above."

Are you aware of this footnote?

Mr. KOSKINEN. I am not aware of that footnote, but the experience of most of the agencies, whether they were deferred buyouts or not, was that they were offered by and used by employees at the higher end of the pay scale which was the reason it was directed as one of the goals.

Mr. MICA. This tells me two things; one, that people who are eligible to retire want to buyout because they couldn't get severance pay and a RIF; the other is that people not eligible to retire would rather be RIF'd. In such cases, don't buyouts actually become an unnecessary expense, again, to my point of putting this burden on taxpayers?

Mr. KOSKINEN. Again, as Mr. King noted, the issue with RIF's—first of all, I don't know of anyone who thinks RIF's are an effective and efficient way to manage an agency. When you designate employees for RIF's, you then trigger the bumping rights, so the employees who get RIF notices do not necessarily turn out to be the employees who leave. It may be someone who is bumped two or

three levels down. So some employees with RIF notices will not take the buyout because, in fact, they do not plan to leave.

With regard to the employees who are eligible to retire, basically the act has been applied only to employees who are either eligible for regular retirement or early retirement, and the theory is as to why you use the buyouts is a number of those employees would stay for some substantial time.

There are employees who are working for the Federal Government who have been there for 40 or 50 years, and the use of buyouts is to encourage them to take their retirement. So almost by definition, anyone who took a buyout is someone who is eligible to retire and at some point planning to retire, and the purpose of the buyout is to provide them an incentive to retire earlier rather than later to avoid RIF's.

Mr. MICA. Some of this, when you get into the large RIF's, doesn't wash. Even Mr. King's agency, OPM 1993–1995, lost 2,159 employees, of which there were 434 RIF's—buyouts, rather; 434 buyouts as opposed to dumping 2,159 folks. So a lot of people were not treated fairly. There is inequity in this process.

Take an agency like USAID, not one of my favorites, but they lost in that period some personnel. You know how many got buyouts? Zip, zero, nada. So the ones who are getting hit the hardest are not getting the benefit of the buyouts too.

Mr. King, did you want to respond?

Mr. KING. I was just going to say, Mr. Chairman, when you were inquiring as to the grade, about 7 out of 10 who take the buyouts are from 11 to 15 in SES, just as an informational point for the committee.

Mr. KOSKINEN. The chairman's point is well taken. Obviously, we have had close to 240,000 people leave the Government, and there have only been buyouts for 100 to 110,000. More that half of the people who have left have left under other circumstances; 20,000 have been RIF'd; others have been retired; others have been part of the normal attrition.

I don't think anyone who supports buyouts says that every employee who leaves and every FTE cut should be or will be someone with a buyout. For a number of reasons, employees won't take buyouts, at which point, agencies will use RIF's or they will rely on normal attrition.

So the buyouts are not a be-all and end-all. The issue is whether they are an effective set of tools, and the agencies that have used them found that they are.

Mr. MICA. I want to get into other instances here. I talked about Department of Commerce, and the subcommittee was provided by your office the memo dated September 28, 1995, seeking policy approval for the Department of Energy's deferred buyout authority.

That memo notes, "There was an agreement between the agencies and OPM in March to require individual employees to sign up by March 31, 1995, and agencies should force to take the buy—force them to take the buyouts, if necessary."

The memo also observes, "If a policy decision is made to allow DOE to reprogram several hundred buyouts, it may appear that the Clinton administration has made an arbitrary extension of the limited congressional authority.".

Your initials indicating approval are affixed to the document dated October 4, 1994—is that 4 or 5?

Mr. KOSKINEN. It is looks like 4.

Mr. MICA. OK, 4.

[The memorandum referred to follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 28, 1995

MEMORANDUM FOR OMB DEPUTY DIRECTOR FOR MANAGEMENT JOHN KOSKINEN

FROM: Gary Bennethum, Energy Branch Chief GB
Cyndi Vallina, Policy Analyst CV

SUBJECT: DOE Buyout Reprogramming

ISSUE: This is a decision memorandum for your consideration on OMB's policy to allow the reprogramming of the Department of Energy's (DOE) buyout authority.

BACKGROUND: DOE General Counsel Robert Nordhaus prepared and submitted to OMB for consideration, a legal opinion on reprogramming deferred buyouts. DOE would like to replace approximately 200-400 of the individuals, who had signed up for a deferred buyout prior to the March 31, 1995 deadline with others in the same job categories and would like OMB to support its decision.

We circulated the DOE legal opinion to our General Counsel and the Budget Concepts and Personnel Divisions, as well as the Office of Personnel Management (OPM) for discussion. Bob Damus concluded that DOE's legal interpretation is valid and that legally they can reprogram the buyout signatories, but that a policy decision should be made. According to Ed Rea and Bob Rideout, there was agreement between the agencies and OPM in March to require individual employees to sign up by March 31, 1995, and agencies should now force those individuals to take the buyout, if necessary. There is a legal precedent that allows agencies to force individuals to take a buyout if their staying, would disrupt operation of the agency or if the position has been eliminated or filled by someone else.

If a policy decision is made to allow DOE to reprogram several hundred buyouts, it may appear that the Clinton Administration has made an arbitrary extension of a limited Congressional authority, even though it is legal to do so. There is also the possibility that several of the other four agencies that have been approved for deferred buyouts, may want to do the same.

If a decision is made not to allow reprogramming, DOE would have to force individuals to take the conditional buyouts and most likely still have to RIF other individuals, since many of the original signatories did not agree to leave until March 1997. This too could cause negative publicity for the Administration since voluntary buyouts are a more humane way to downsize and are a much cheaper alternative to RIFs.

DOE has proposed to canvass individuals approved for delayed buyouts to determine their willingness to move up their departure dates to FY 1996 or early FY 1997 and anticipates that between 25 and 35 percent would decline. DOE would then extend these offers to other individuals in the job categories targeted for downsizing and deferred buyouts as approved by the Secretary, in order to alleviate the number of RIFs it will have to make. This too, could be contentious, in that it could appear that DOE has a windfall of offering additional buyouts to its employees while other agencies face RIFs, in order to meet immediate budget cutbacks.

We support the reprogramming of buyouts for the Department and would like your policy decision on DOE's plan. We believe it is more prudent to offer voluntary buyouts to employees, than to needlessly demoralize employees with RIFs, which are much more costly, or forced buyouts, which could lead to legal battles that are costly and could cause unwarranted negative publicity.

POLICY DECISION TO BE MADE:

Allow DOE to reprogram its buyouts

DAK 12/4/95

Do not allow DOE to reprogram its buyouts, in which case DOE could force individuals who signed up to take the buyouts, or lose the buyout opportunity for those who signed up but decide not to take it, forcing additional RIFs at the Department

_____

EXECUTIVE OFFICE OF THE PRESIDENT

04-Oct-1995 06:50pm

TO: T J Glauthier
TO: Kathleen Peroff
TO: Cynthia A. Vallina

FROM: John A. Koskinen
Office of Mgmt and Budget

CC: Deborah L. Shaw

SUBJECT: DOE Buyouts

I have signed the approval for DOE to reprogram its buyouts. None of these issues are simple, but it seems hard to justify forcing them to engage in any more RIFs than they have to use.

Thanks.

Mr. MICA. We have also received an e-mail communication confirming your approval of these buyouts.

In another memo dated August 25, 1995, Edward Wrate of your staff concluded, "It seems clear that agencies cannot, as DOD has proposed, give delayed separation buyouts to employees other than those who have agreed before April 1, 1995, to accept such buyouts." Nonetheless, this is exactly what became approved through the memorandum dated September 28 and initialed on October 4, 1995.

I want to know why you approved the Department of Energy's actions then, and was there any sense that this was urgently required?

Mr. KOSKINEN. First, Mr. Chairman, again, I would like to submit to the record the memorandum of August 25, 1995, from Barry Anderson, who is the supervisor of the author of the memo you read who says: "Thanks, however the determining factor is who the buyout offers were made to, not who accepted them." And basically the supervisor wrote a memorandum that contradicted the first memorandum which was part of the record that we all had and reviewed.

[The information referred to follows:]

EXECUTIVE OFFICE OF THE PRESIDENT

25-Aug-1995 01:17pm

TO: (See Below)

FROM: Barry B. Anderson
Office of Mgmt and Budget, BR

SUBJECT: RE: DOE Buyout Request

Thanks, however the determining factor is who the buyout offers were made to, not who accepted them. By that I mean, if the agency head made x buyouts available to any class or category of his employees, then the fact that one or more of the x that accepted the offer and then changed his/her mind does not preclude the agency head from offering that buyout(s) to another employee(s) in the class or category. Conversely, if the agency head offered buyouts to x individuals without any reference to class or category, then the subsequent refusal of any of those individuals does not free up buyouts for others. For example, OMB Director Rivlin made up to 25 buyout offers to a class (support staff), not to 25 individuals. If all 25 offers were taken up (they were not), and if some of the offers accepted were delayed until after March 31, and if some of those delayed changed their minds, then OMB could offer these buyouts refused to other OMB support staff, if it choose to do so.

To clear up what exactly is the case for OPM and DOE, I will arrange a meeting early next week to go over the exact nature of each offer, the implications of the original offer to any re-offers, and the implications of our decisions to other agencies actions.

Distribution:

TO: Edward M. Rea

CC: Robert G. Damus
CC: Rosalyn J. Rettman
CC: Kathleen Peroff
CC: Gary L. Bennethum
CC: Cynthia A. Vallina
CC: David J. Haun
CC: Barbara A. Retzlaff
CC: John W. Kelly
CC: Raymond P. Kogut
CC: Robert B. Rideout

Mr. KOSKINEN. Second, with regard to the memorandum you cite from, which I have already submitted for the record, it notes, there may appear that the Clinton administration—it may appear the Clinton administration has made an arbitrary extension even though it is legal to do so. This was an internal memorandum based on the Department of Energy legal opinion. This was not the legal opinion itself. It was a reference to that legal opinion, and it explicitly notes and concludes that we support the reprogramming because we think it is prudent to offer voluntary buyouts to employees rather than needlessly demoralizing employees with RIF's, which are much more costly.

Mr. MICA. I am not certain that these memos were in fact to cover tracks for the actions that were about to be taken.

Mr. KOSKINEN. These were actual decision memos. That is why they have signatures at the bottom, and, that is, they are presenting the case as it is best known them for review and decision.

Mr. MICA. Did it occur with the agency to check with Congress about this interpretation or this action?

Mr. KOSKINEN. I don't know what occurred to the agency.

Mr. MICA. Your agency participated in this. Do you plan to check with Congress again before you take any actions?

Mr. KOSKINEN. As I noted, we are going to review with the agencies the opinion and we will review with you and your staff the answer to the question Congressman Moran asked, "Where do we go from here not only with regard to this issue but with regard to the entire issue of buyouts."

Mr. MICA. I have got another area I want to talk about and Mr. Moran had lengthy opportunity to question and I want to get into a little bit about the veterans' affairs of the Department.

There is a column in the Washington Post by David Broder and published Sunday, June 9, just a couple of days ago. He reported an exchange that I thought was kind of interesting between the Senate Appropriations Subcommittee dealing with Department of Veterans Affairs and other agencies and the Secretary of Veterans Affairs. Secretary Brown informed the chairman, and I quote, "We will not be able to live with the red line, showing the President's budget." Secretary Brown added again, "The President understands that, I talked with him personally about it. He gave me his personal commitment that he was going to make sure the Nation honors its commitments to veterans and he will negotiate the budget each and every year."

Similarly, the administrator of NASA told the same subcommittee that the White House has instructed us to take no precipitous action on out budget years and we are taking them at their word.

If agencies—first of all, if agencies had been instructed to ignore out year projections in the President's budget, then on what basis are they going to be making their plans in these management decisions?

Mr. KOSKINEN. The agencies have not been instructed to ignore the out-year numbers as a management device. What the agencies have been instructed when they have asked is to basically understand that the President is committed to a glide path to a balanced budget but within the out-year numbers. As has always been the case, each year when the budget presentations are made, those al-

locations and resources are made first with the executive branch then within the Congress. If it weren't that way, we would all just agree to a 5-year path and what the numbers were and there would not be an annual budget process.

So basically the confusion, to the extent there is any, is between the out-year guidance numbers from what the glide path is and the annual appropriation process that will determine what the allocation of resources are within those cap numbers.

We are in fact sending out guidance—have sent out guidance to the agencies for the 1998 budget process telling them to take the 1998 numbers in the budget column to give us their best guess as to resource allocations in that number, to give us an estimate of what it would take to cut those numbers by 5 percent to generate additional resources that could be applied where necessary and also to provide us with other indications as to what the difficulties will be if they are meeting either the 1998 budget or the 5 percent cut.

But that is an annual budget process issue that goes on every year. If you look at the actuals in any year compared to what the previous years projections were, they virtually all were different in virtually every agency.

Mr. MICA. Again, I think that some of the comments of some of those end positions testifying before committees of Congress conflicts with what we see as necessary action and direction and again management tools. The administration submitted a bill that reestablished the buyout program.

As we discussed at our last hearing, your 1997 budget projects an increase of 2,000 FTE and non-DOD employment. Is there some hidden plan or is there something that justifies this buyout request that you can address or have I missed something?

Mr. KOSKINEN. I thought I had addressed it at some length in the last hearing. I am happy to summarize that point.

First of all, the total for the civilian agencies includes those agencies again where there is growth, whether it is in prisons or immigration. As I noted last time, and I think the record has it in the examples of the number of agencies in there that have under the President's 1997 budget program declines in FTE's to the extent that the Congress is now looking at a 1997 appropriation for nondefense discretionary of as much as $10 billion less than that, the number of FTE declines will increase and the pressure on the agencies will be magnified.

Finally, as I noted last time, always what you have is you have a difference between the actuals and estimated because of the fact that as agencies go forward they never end up with both for budgetary reasons and only the numbers that are projected—so while the total overall agency, non-Defense discretionary agency number goes up by 2,000, my estimate is that that number will be a decline of at least 20,000 when the actuals roll in, and if the Congress goes forward with stronger and more stringent cuts of the amount of $10 billion that that number will increase, and, as a result, the number of agencies that are going to be confronted in the next fiscal year with significant downsizing and potential RIF's will increase.

Mr. MICA. I may come back in just a minute but I don't want to take the entire morning, and I want to yield to the gentlelady from Maryland who has returned.

Mrs. MORELLA. Thank you, Mr. Chairman.

I want to reaffirm my support of what the chairman has stated, and ranking member, not only in their opening statements but in the line of questioning, because I don't think that the Workforce Restructuring Act was unclear. I think the concern is that again our Federal employees, that there is not a shutdown like we had. But the Federal employees are the ones that are the pawns of the fact that we don't even have any clarity in interpreting something that appears to be pretty clear to all of us. What it leads to is a state of absolute confusion, again anxiety. It is terribly demoralizing.

What I would like to ask you, Mr. Koskinen, can you tell us now that there will be no further extensions of buyouts unless Congress is the one who approves pending legislation to extend it in some ways with some agencies. I think that is really what we are driving at is to have you say there will be no more extensions of buyouts.

Mr. KOSKINEN. We don't think we have the authority to add some extensions and buyouts. The issue is here. It is in the handful of agencies that are designated for deferred buyout before March 31, 1995. That is what we are talking about. We have no intention, and we have made it clear to the agencies that have inquired, of reaching out to any other form of buyout use, so the agencies are not at all in doubt as to whether or not there is buyout authority available.

Only buyouts we are talking about are within the 6,000 that were authorized as delayed buyouts before March 31, 1995. Of those, presently the resolution applies to approximately 1,400 of the 6,000. Those 1,400 will not necessarily all be accepted or used, but that is the universe we are talking about. There is no other possibility for an agency asking for or getting additional buyout authority.

Mrs. MORELLA. Mr. Wray, would you like to comment on that according to your interpretation?

Mr. WRAY. I think we agree that certainly wherever employees were identified for buyouts prior to the March 31 cutoff date, there is no question about the legality of those buyouts. And in terms of the remaining ones, I guess our view again is that simply designating categories of positions and agencies for potential buyout eligibility is not sufficient to meet the requirement of the—the act refers specifically to employees.

I would say at DOE, for example, the categories of positions identified for buyouts were quite expansive. I think all managerial and supervisor positions, all positions at grade 14 and above and a number of positions below GS–13. It is not a real narrow field of positions, but again it is our view to be able to be eligible to receive a buyout before March 31 an employee had to be identified for a buyout before that cutoff date, that particular employee whether identified individually or by some other means.

Mr. KOSKINEN. To answer the Congresswoman's question, clearly at this point we do not—there is no issue in the broad scope of agencies applying for buyouts. We do not anticipate there will be

any other issues other than the three issues we are talking about, plus the FCC has applied for its reuse. We are talking about four agencies and we clearly are prepared to commit that we are trying to figure out how to deal with those four agencies. There are other agencies at this time and we don't propose to add any agencies beyond the four.

The use of previously issued buyout authority, this is not to minimize it, I think it is an important issue and it has been an important conversation, but as GAO and we agree that the employees who have already accepted the deferred buyouts have accepted them before March 31, 1995, are not an issue for us. This did not designate a class of employees for preferred buyouts before March 31, 1995. They are not an issue at this point. We are talking about the three agencies that have been allocated, given an authorization, and the fourth that is pending right now is the FCC.

Mrs. MORELLA. How about the whole problem of recycling if somebody changes his or her mind? Are those numbers allocated to others?

Mr. KOSKINEN. The buyouts—the only buyouts that can be used after March 31, 1995, are buyouts that were designated as deferred buyouts as of March 31, 1995. So employees either took their buyouts or they didn't before then. There was no recycling. There was a lot of allocation.

As we noted, we did not allocate the full number of buyouts, so the agencies we actually had earned by downsizing but their buyouts had expired. If people were assigned buyouts and did not leave by 1995—though buyouts cannot be reused—the only buyouts we are talking about is where the agency, before March 31, 1995, designated a class of employees for deferral in that area we are actually having the discussion.

Mrs. MORELLA. Thank you. I defer back to the chairman.

Mr. MICA. One question before yielding to the ranking member, for Mr. King. What do you intend to do?

Mr. KING. Mr. Chairman, we have done it. We will continue—or by the way this permits me an opportunity, and I thank you, Mr. Chairman. During the hearing of the 23d, you asked as to how our updated report on OPM and the buyouts is coming. It is complete as of today. I have it here. I would like to submit it for the record, Mr. Chairman.

Mr. MICA. We will look at it and don't put the whole thing in the record, but we will submit it for the subcommittee and make a determination of how many pages it is for the record.

[The information referred to follows:]

THE FEDERAL WORKFORCE RESTRUCTURING ACT OF 1994
BUYOUTS AND DOWNSIZING
LOOKING AT THE PROGRAM

This report describes the use of voluntary separation incentive payments, or "buyouts," and other techniques used by Federal agencies to reduce the size of the workforce.

Between January 1993, and January 1996, the Federal workforce was reduced by nearly 240,000 employees -- smaller than it has been in over 30 years[1].

During that same period, Federal agencies paid 110,559 buyouts.

Despite significant cuts in the workforce for this period, recent improvements in workforce diversity were not significantly impacted by these reductions.

Only about 21,000 employees were involuntarily separated by reduction in force (RIF) during this same period.

The Federal Government has traditionally dealt with workforce reductions by voluntary attrition and reduced hiring. Offering voluntary early retirement has been an effective tool to deal with more significant cuts in workload and funding. At times when voluntary means fail to get the job done, Federal agencies are forced to use involuntary separations known as "RIFs." RIFs are costly, disruptive, damaging to morale and productivity, and harmful to diversity of the workforce. For these reasons, agencies generally try to avoid the use of RIF.

---

[1]According to OPM's Central Personnel Data File, total Federal on-board employment (not FTEs) stood at 2,010,921 employees at the end of FY 95. The workforce has not been that small since FY 65 when it totalled 1,900,578 employees. These numbers represent all Executive Branch Civilian (non-Postal) employment of all work schedules (full-time/part-time/intermittent) and all tenure groups (permanent and temporary).

On February 10, 1993, President Clinton signed Executive Order 12839 which called for reductions in the size of the Federal workforce by 100,000 positions, mainly in middle management and supervisory areas. The President also called for a reduction in the proportion of supervisors to employees. In late 1993, the National Performance Review (NPR) took that goal a step further and recommended reducing the size of the federal bureaucracy by a total of 252,000 employees, building a government that works better and costs less. Cuts were recommended in positions dealing with budgeting, oversight, personnel functions, procurement, and other so-called "overhead" positions. NPR also reinforced the call for the lowering the number of supervisors and managers in government. The 252,000 includes the 100,000 cuts ordered by the President.

At the same time, voluntary attrition rates -- influenced by a sluggish economy and declines in Federal hiring -- declined to near record lows. From FY 1983 through FY 1992, the attrition rate in the Government averaged 7.6 percent. In FY 1993, it dropped to a ten year low of 2.9 percent. Governmentwide voluntary early retirement take rates[2] were falling from an average of 25 percent to as low as 4.5 percent. Regular optional retirement rates were off as well.

In an effort to stimulate stalled attrition, reduce the size of the Government, and avoid involuntary separations and layoffs, the Administration determined that voluntary separation incentive payments, or "buyouts" should be tried. Many private sector models had shown that buyouts can be a less expensive, more humane, and more manageable way to reduce the workforce. The Department of Defense began successfully using buyouts in January 1993, to close military bases and reshape its force structure while minimizing involuntary separations.

In October 1993, the Administration sponsored legislation to provide non-Defense agencies buyouts to assist in downsizing and streamlining the workforce. The ensuing legislative process further shaped the bill to not only allow for the use of buyouts, but to incorporate safeguards which ensured that:

1) buyouts made real and permanent reductions in the size of the Federal Government;
2) employees who took buyouts could not return to work in the Government; and
3) the buyout program not only saved taxpayer dollars, but paid for itself without any additional appropriation of funds.

---

[2]the "take rate" is the percentage of employees eligible for voluntary early retirement who will actually take advantage of early out and retire when it is offered to them.

The resulting legislation approved by Congress is Public Law 103-226, the Federal Workforce Restructuring Act of 1994.

On March 30, 1994, the President signed the Workforce Restructuring Act, authorizing the immediate availability of up to $25,000 to non-Defense federal employees who volunteered to retire, resign, or take voluntary early retirement during periods of major downsizing. The Office of Personnel Management, in anticipation of the buyout law, had already established a special "Workforce Restructuring Office." The Office moved to streamline the voluntary early retirement program and provided authority to over 100 agencies, prepared agencies to use buyouts, wrote and issued guidance packages, employee guides, sample documents, newsletters, and strategies, and had all the groundwork in place before the bill was ever signed into law.

The Administration's advance planning allowed over 13,000 non-Defense employees to separate with buyouts during the first six months buyouts were available. Between March 30, 1994, the date of enactment of the Federal Workforce Restructuring Act of 1994, and September 30, 1995, 32,734 non-Defense employees took buyouts, cutting excess layers of management and reducing overall employment levels.

On April 4, 1995, the White House declared the buyout program "a huge success." Buyouts gave the government a "jump start" toward achieving mandated employment reductions in the Executive branch. The law included annual fiscal year reductions in the overall size of Government (effectively reducing the Executive branch, non-Postal workforce from 2.08 million employees in FY 93 to 1.88 million by FY 1999). To date, buyouts have been a major tool in efforts to achieve a net reduction of 240,000 workers[3] between January 1993, and January 1996, with only 20,000 involuntary separations over the same period.

At least 77,825 Defense employees have separated with buyouts since FY 1993. Combined with 32,734 non-Defense buyouts, 110,559 Executive Branch employees have left the rolls. In addition, several thousand non-Defense employees have been approved for buyouts but have had their separations delayed through March 31, 1997, to complete work critical to the performance of their agency's mission. Defense is projected to offer as many as 42,000 additional incentives between now and the end of FY 1997. This means that, before the end of FY 1997, an estimated 158,759 Executive Branch employees will receive buyouts without the enactment of additional legislation. (DOD's authority to offer buyouts extends until September 30, 1999).

---

[3]CPDF shows total on Executive Branch non-Postal on board employment stood at 2,188,704 in January 1993. That level dropped to 1,949,414 by January 1996.

OPM has worked with nearly every agency to insure that buyouts were used effectively and appropriately and that the goals set out by the National Performance Review were met. Positive results are indicated by data which shows 73 percent of all non-Defense buyouts were paid to employees in grades GS-11 through 15, Senior Executive Service, and blue collar supervisory positions. Further, OPM data shows that 35 percent of all non-Defense buyouts were paid to employees in general administration, personnel, budget and accounting, and other positions targeted for significant reductions. Buyout takers reflected the representation rates for women and minorities in the retirement age population of the Federal workforce.

SUMMARY, HIGHLIGHTS, & OVERVIEW

NON-DEFENSE BUYOUTS[4] PAID:

FY 94	14,531
FY 95	18,203
TOTAL:	32,734

TYPE OF SEPARATION:

Optional Retirement:	16,798
Voluntary Early Retirement:	12,030
Resignation:	2,916
(Other[5]:	990)
TOTAL:	32,734

AVERAGES:

FISCAL YEAR	AGE	GRADE	AMOUNT
94	56.8	11.0	$23,880
95	57.0	10.6	$23,569
CUMULATIVE	56.9	10.7	$23,670

[4]Except as noted, buyout totals and numbers represent Executive branch, non-Defense, non-Postal buyouts paid under Public Law 103-226, The Federal Workforce Restructuring Act of 1994, and does not include buyouts paid under buyout programs established by Legislative or Judicial branch agencies under section 3 of P.L. 103-226. Buyouts totals include 62 buyouts paid by the Federal Deposit Insurance Corporation under separate authority. These 62 appear in overall counts and demographic data taken from CPDF.

[5] "Other" buyouts are recorded in CPDF under Notice of (personnel) Action Codes which were not identifiable under the "regular retirement," "early retirement," or "resignation" categories. These represent 3 percent of all buyout separations.

EXEC NON-POSTAL WORKFORCE LEVELS		DOD	NON-DOD
JAN 93	2188704	966087	1222617
JAN 94	2113691	905167	1208524
JAN 95	2028061	859598	1168463
JAN 96	1949414	812323	1137091
TOTAL REDUCTION	239290	153764	85526

REDUCTIONS IN FORCE
RIFS

	TOTAL	DOD	NON-DOD
FY 93	4331	3262	1069
FY 94	8645	5773	2872
FY 95	7352	5935	1417
ALL YEARS	20328	14970	5358

DEFENSE AND NON-DEFENSE BUYOUT TOTALS

DATA AS OF	FY 93	FY 94	FY 95	FY 97 (projected)
DOD FY	32000	21033	24792	42000
DOD CUM	32000	53033	77825	119825
NON-DOD FY	0	14531	18203	6200
NON-DOD CUM	0	14531	32734	38934
TOTAL FY	32000	35564	42995	48200
GRAND TOTAL	32000	67564	110559	158759

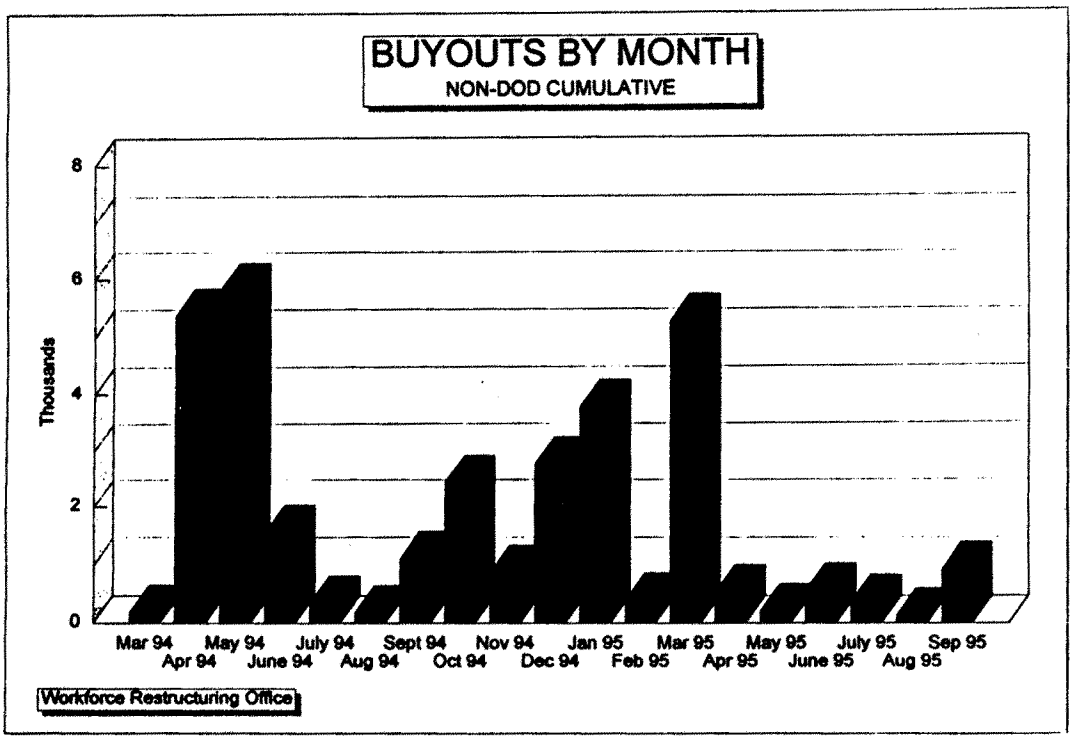
Defense Department buyout totals represent all buyouts paid as reported by DOD.
Defense Department FY 93 buyout totals in OPM's Central Personnel Data File are somewhat lower than DOD's reported totals. This is attributed to differences in coding buyouts for input into CPDF early in the program. For this reason, OPM uses DOD's buyout TOTALS for overall buyout counts, but relies on CPDF counts for other, more detailed purposes (i.e., demographic profiles, average payments, etc.)

NON-DEFENSE BUYOUTS
BY TYPE OF SEPARATION

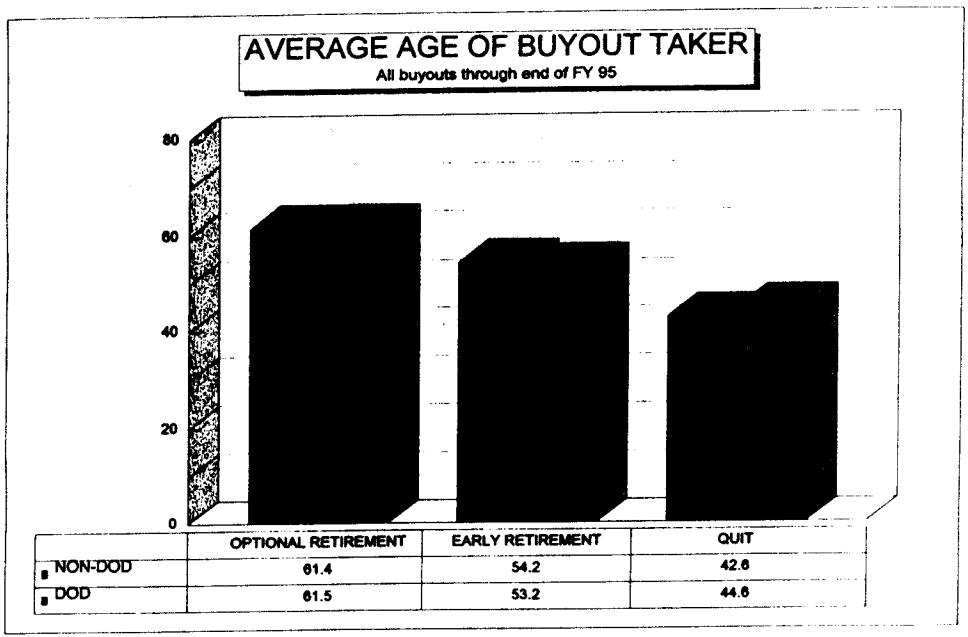
from CPDF

AGENCY	CUMULATIVE BUYOUTS	CUMULATIVE [illegible]	CUMULATIVE [illegible]	CUMULATIVE [illegible]	CUMULATIVE [illegible]	FY 94 BUYOUTS	FY 94 [illegible]	FY 94 [illegible]	FY 94 [illegible]	FY 94 [illegible]	FY 95 BUYOUTS	FY 95 [illegible]	FY 95 [illegible]	FY 95 [illegible]	FY 95 [illegible]
AGRICULTURE	5450	2431	2058	584	397	3070	1425	1216	274	185	2380	1006	842	310	212
COMMERCE	1247	661	388	178	20	186	121	27	35	3	1061	540	361	143	17
EDUCATION	482	249	227	3	3	365	188	175	0	2	117	61	52	3	1
ENERGY	1283	608	581	91	3	547	260	272	14	1	736	348	309	77	2
HEALTH AND HUMAN SERVICES	2451	1420	868	121	2	106	73	28	6	1	2345	1347	840	115	1
HOUSING AND URBAN DEVELOPMENT	1018	914	327	69	11	151	105	40	8	1	867	809	287	61	10
INTERIOR	5348	2395	2185	661	127	2951	1368	1243	277	63	2397	1027	942	384	64
JUSTICE	851	375	321	129	28	435	207	170	39	19	416	168	151	90	9
LABOR	352	217	121	6	15	68	44	23	6	1	284	173	98	0	14
STATE	428	359	65	3	1	136	128	9	2	0	292	231	56	1	0
TRANSPORTATION	3871	2043	1251	263	15	3048	1399	1010	226	11	823	644	241	37	4
TREASURY	512	206	226	43	37	92	44	41	7	0	420	162	185	36	37
VETERANS AFFAIRS**	2247	1107	877	99	55	1564	834	604	67	40	683	273	273	32	15
CONSUMER PRODUCT SAFETY COMMISSION	17	14	3	0	0	17	14	3	0	0	0	0	0	0	0
CORPORATION FOR NATIONAL AND COMMUNITY SERVICE	30	0	0	0	30	0	0	0	0	0	30	0	0	0	30
ENVIRONMENTAL PROTECTION AGENCY	488	282	190	15	9	0	0	0	0	0	488	282	190	15	9
EXPORT-IMPORT BANK	14	8	4	1	1	0	0	0	0	0	14	8	4	1	1
FARM CREDIT ADMINISTRATION	31	14	4	13	0	16	11	0	5	0	15	3	4	8	0
FEDERAL COMMUNICATIONS COMMISSION	90	46	33	5	6	6	5	1	0	0	84	41	32	5	6
FEDERAL DEPOSIT INSURANCE CORPORATION *	62	16	4	39	1	62	16	4	39	1	0	0	0	0	0
FEDERAL LABOR RELATIONS AUTHORITY	5	1	2	1	1	1	0	1	0	0	4	1	1	1	1
FEDERAL MEDIATION AND CONCILIATION SERVICE	7	2	4	0	1	0	0	0	0	0	7	2	4	0	1
FEDERAL TRADE COMMISSION	47	27	19	0	1	32	26	6	0	0	15	1	13	0	1
GENERAL SERVICES ADMINISTRATION	2186	1174	810	160	42	192	53	87	37	15	1994	1121	723	123	27
INTER-AMERICAN FOUNDATION	2	0	2	0	0	0	0	0	0	0	2	0	2	0	0
INTERNATIONAL BOUNDARY AND WATER COMMISSION (US&MEX)	26	15	11	0	0	10	10	0	0	0	16	5	11	0	0
INTERNATIONAL JOINT COMMISSION	2	2	0	0	0	1	1	0	0	0	1	1	0	0	0
INTERSTATE COMMERCE COMMISSION	103	55	44	2	2	54	41	13	0	0	49	14	31	2	2
MERIT SYSTEMS PROTECTION BOARD	11	9	2	0	0	5	4	1	0	0	6	5	1	0	0
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	2648	1674	721	248	5	1178	711	382	72	3	1470	963	339	176	2
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION	114	72	18	14	10	16	7	6	0	3	98	65	12	14	7
NATIONAL COMMISSION FOR EMPLOYMENT POLICY	1	0	1	0	0	0	0	0	0	0	1	0	1	0	0
NATIONAL CREDIT UNION ADMINISTRATION	8	3	4	1	0	2	0	1	1	0	6	3	3	0	0
NATIONAL ENDOWMENT FOR THE ARTS & HUMANITIES	15	4	6	0	5	7	0	2	0	5	8	4	4	0	0

NATIONAL LABOR RELATIONS BOARD	28	6	18	1	1	8	2	3	0	1	20	4	15	1	0
NUCLEAR REGULATORY COMMISSION	48	21	22	0	2	14	8	4	0	2	31	13	18	0	0
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION	2	0	1	0	1	0	0	0	0	0	2	0	1	0	1
OFFICE OF GOVERNMENT ETHICS	3	0	3	0	0	2	0	2	0	0	1	0	1	0	0
OFFICE OF MANAGEMENT AND BUDGET	8	3	4	1	0	8	0	0	0	0	6	3	4	1	0
OFFICE OF PERSONNEL MANAGEMENT	488	149	158	82	29	144	36	88	25	13	282	102	80	57	13
OFFICE OF SPECIAL COUNSEL	1	1	0	0	0	0	0	0	0	0	1	1	0	0	0
PENSION BENEFIT GUARANTY CORPORATION	29	18	11	1	2	24	13	8	1	2	8	2	3	0	0
RAILROAD RETIREMENT BOARD	81	31	39	11	0	30	18	12	3	0	81	19	27	0	0
SELECTIVE SERVICE ADMINISTRATION	18	8	5	3	0	10	6	2	2	0	8	2	3	1	0
SMALL BUSINESS ADMINISTRATION	342	202	104	28	8	0	0	0	0	0	342	202	104	28	8
SMITHSONIAN INSTITUTION	209	132	48	39	8	20	18	1	3	1	186	117	47	17	8
SOCIAL SECURITY [illegible]	19	13	8	0	0	0	0	0	0	0	19	13	8	0	1
U.S. INFORMATION AGENCY	353	168	66	48	134	280	75	48	35	100	67	31	19	13	34
TOTAL	32734	10776	12023	2916	880	14631	7288	8628	1167	443	18283	8610	6387	1749	547
* [illegible]															
** [illegible]															



04/19/96 02:47 PM



Workforce Restructuring Office average.wk4 06/02/96 11:07 AM

BUYOUT AVERAGES BY AGENCY

NON-DEFENSE

from CPDF

AGENCY	CUMULATIVE BUYOUTS	CUMULATIVE average age	CUMULATIVE average grade	CUMULATIVE average amount	FY 1994 BUYOUTS	FY 1994 average age	FY 1994 average grade	FY 1994 average amount	FY 1995 BUYOUTS	FY 1995 average age	FY 1995 average grade	FY 1995 average amount
AGRICULTURE	5450	56.9	9.9	$22,648	3070	56.1	9.8	$24,803	2380	55.7	9.9	$22,637
COMMERCE	1247	56.3	10.2	$22,778	188	58.2	7.8	$18,982	1061	56.4	10.3	$22,934
EDUCATION	482	58.5	11.5	$24,532	365	58.5	11.3	$25,000	117	58.7	12.2	$24,469
ENERGY	1283	57.0	11.4	$24,188	547	57.3	11.7	$24,632	736	56.9	11.1	$23,854
HEALTH AND HUMAN SERVICES	2451	57.9	11.1	$24,444	106	58.6	11.0	N/A	2345	57.8	11.1	$24,444
HOUSING AND URBAN DEVELOPMENT	1018	58.0	10.4	$24,163	151	58.9	12.8	$24,878	867	58.9	10.1	$24,044
INTERIOR	5348	56.2	10.3	$22,935	2951	56.7	10.3	$23,610	2397	55.7	10.3	$22,916
JUSTICE	851	54.7	11.1	$23,148	435	56.4	10.8	$23,042	416	53.0	11.2	$23,165
LABOR	362	58.8	11.2	$24,743	68	59.8	11.1	$24,524	294	58.6	11.2	$24,796
STATE	428	58.6	10.4	N/A	136	57.8	12.7	N/A	292	59.0	9.7	N/A
TRANSPORTATION	3571	56.7	11.8	$23,877	2645	56.4	11.5	$23,813	926	57.7	12.1	$24,082
TREASURY	512	55.9	10.2	23591	92	56.7	10.4	$24,806	420	55.8	10.2	$23,434
VETERANS AFFAIRS	2247	58.2	10.2	$24,376	1654	58.2	10.5	$24,393	593	58.2	9.5	$24,315
CONSUMER PRODUCT SAFETY COMMISSION	17	62.2	12.0	$25,000	17	62.2	12.0	$25,000	0			
CORPORATION FOR NATIONAL AND COMMUNITY SERVICE	39	57.2	10.1	$24,402	0	0.0	0.0	$0	39	57.2	10.1	$24,402
ENVIRONMENTAL PROTECTION AGENCY	498	58.5	11.2	$24,999	0	0.0	0.0	$0	498	58.5	11.2	$24,999
EXPORT-IMPORT BANK	14	60.0	11.0	$24,831	0	0.0	0.0	$0	14	60.0	11.0	$24,831
FARM CREDIT ADMINISTRATION	31	48.2	N/A	$18,057	16	52.2	N/A	N/A	15	44.0	N/A	$18,057
FEDERAL COMMUNICATIONS COMMISSION	90	58.0	10.9	$24,610	6	58.8	16.0	$25,000	84	57.8	10.7	$24,566
FEDERAL DEPOSIT INSURANCE CORPORATION *	62	47.9	N/A	N/A	62	47.9	N/A	N/A	0	N/A	N/A	N/A
FEDERAL LABOR RELATIONS AUTHORITY	5	53.4	12.0	$25,000	1	56.3	N/A	N/A	4	52.9	12.0	$25,000
FEDERAL MEDIATION AND CONCILIATION SERVICE	7	57.3	10.4	N/A	0	0.0	0.0	$0	7	57.3	10.4	N/A
FEDERAL TRADE COMMISSION	67	57.9	10.3	$24,863	52	58.8	10.2	$24,861	15	54.7	10.7	$25,000
GENERAL SERVICES ADMINISTRATION	2186	58.1	10.2	$23,587	192	54.0	9.9	$21,406	1994	58.5	10.2	$23,750
INTER-AMERICAN FOUNDATION	2	60.6	7.0	$25,000	0	0.0	0.0	$0	2	60.6	7.0	$25,000
INTERNATIONAL BOUNDARY AND WATER COMMISSION (US&MEX)	26	58.4	N/A	$24,361	10	60.2	N/A	$23,465	16	57.3	N/A	$24,834
INTERNATIONAL JOINT COMMISSION	2	62.3	N/A	N/A	1	61.9	N/A	N/A	1	62.8	N/A	N/A
INTERSTATE COMMERCE COMMISSION	103	58.7	10.2	$25,000	54	62.1	10.0	$25,000	49	54.9	10.4	$25,000
MERIT SYSTEMS PROTECTION BOARD	11	60.5	8.6	$24,817	5	61.9	8.7	$24,588	6	59.2	8.5	$25,000

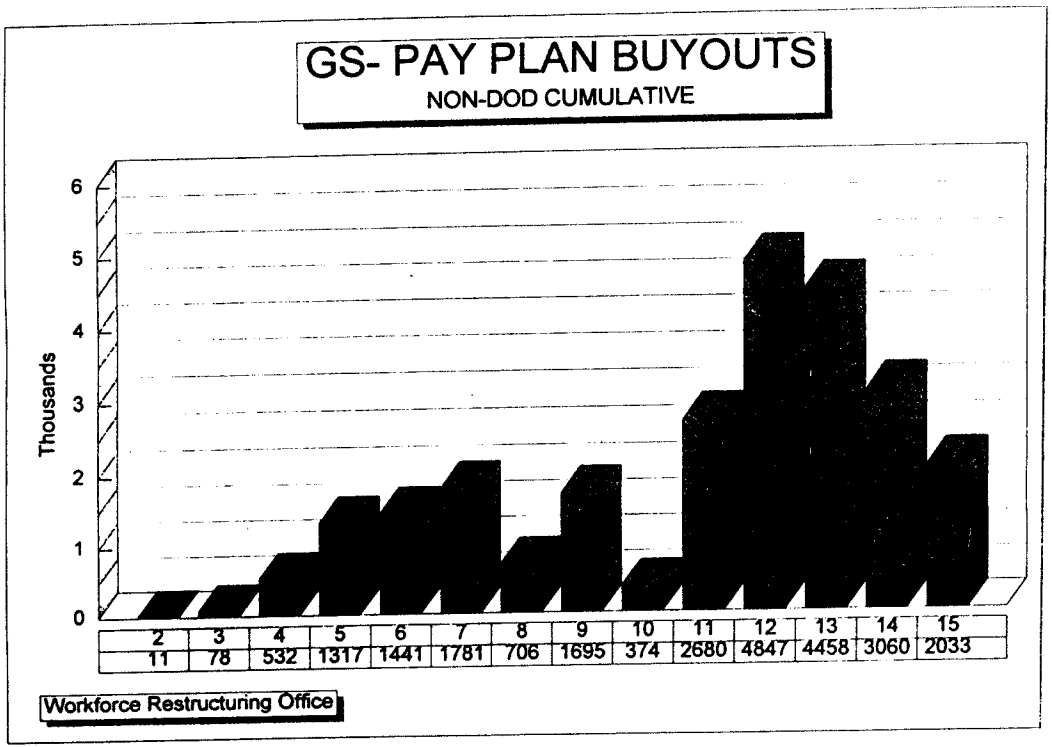
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	2848	57.2	11.7	$24,075	1178	57.7	11.9	$24,083	1470	56.8	11.5	$24,542
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION	114	58.8	8.5	$22,436	16	58.9	13.5	$25,000	98	59.1	7.6	$22,015
NATIONAL COMMISSION FOR EMPLOYMENT POLICY	1	53.2	N/A	$25,000	0	0.0	0.0	$0	1	53.2	N/A	$25,000
NATIONAL CREDIT UNION ADMINISTRATION	8	55.7	N/A	$25,000	2	54.0	N/A	$25,000	6	56.2	N/A	$25,000
NATIONAL ENDOWMENT FOR THE ARTS & HUMANITIES	15	57.4	13.3	$25,000	7	58.5	N/A	N/A	8	56.4	13.3	$25,000
NATIONAL LABOR RELATIONS BOARD	26	56.8	9.2	$25,000	6	58.4	N/A	N/A	20	56.3	9.2	$25,000
NUCLEAR REGULATORY COMMISSION	45	60.9	N/A	$25,000	14	61.6	N/A	$25,000	31	60.6	N/A	$25,000
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION	2	60.9	9.0	$25,000	0	0.0	0.0	$0	2	60.9	9.0	$25,000
OFFICE OF GOVERNMENT ETHICS	3	50.9	12.0	$25,000	2	51.4	9.0	$25,000	1	50.0	15.0	$25,000
OFFICE OF MANAGEMENT AND BUDGET	8	53.0	8.8	$23,392	0	0.0	0.0	$0	8	53.0	8.8	$23,392
OFFICE OF PERSONNEL MANAGEMENT	406	54.1	9.7	$20,431	144	53.1	10.6	$21,809	262	54.7	9.2	$19,673
OFFICE OF SPECIAL COUNSEL	1	59.2	13.0	$25,000	0	0.0	0.0	$0	1	59.2	13.0	$25,000
PENSION BENEFIT GUARANTY CORPORATION	29	58.7	10.2	$24,073	24	59.1	9.7	$23,880	5	56.9	12.5	$25,000
RAILROAD RETIREMENT BOARD	81	54.0	9.1	$22,760	30	57.5	8.2	$23,023	51	51.9	9.7	$18,032
SELECTIVE SERVICE ADMINISTRATION	16	56.5	11.9	$25,000	10	55.1	11.6	$25,000	6	58.8	12.3	$25,000
SMALL BUSINESS ADMINISTRATION	342	59.0	10.8	$24,075	0	0.0	0.0	$0	342	59.0	10.8	$24,075
SMITHSONIAN INSTITUTION	209	59.3	9.2	$23,291	20	61.2	9.3	$19,388	189	59.1	9.2	$23,711
SOCIAL SECURITY	19	59.6	12.0	$25,000	0	0.0	0.0	$0	19	59.6	12.0	$25,000
U.S. INFORMATION AGENCY	353	55.3	11.1	$22,117	256	56.1	11.0	$22,292	97	53.4	11.4	$21,650
									0			
TOTAL	32734	58.9	10.7	$23,670	14531	56.8	11.0	$23,880	18203	57.0	10.6	$23,569
* [illegible]												

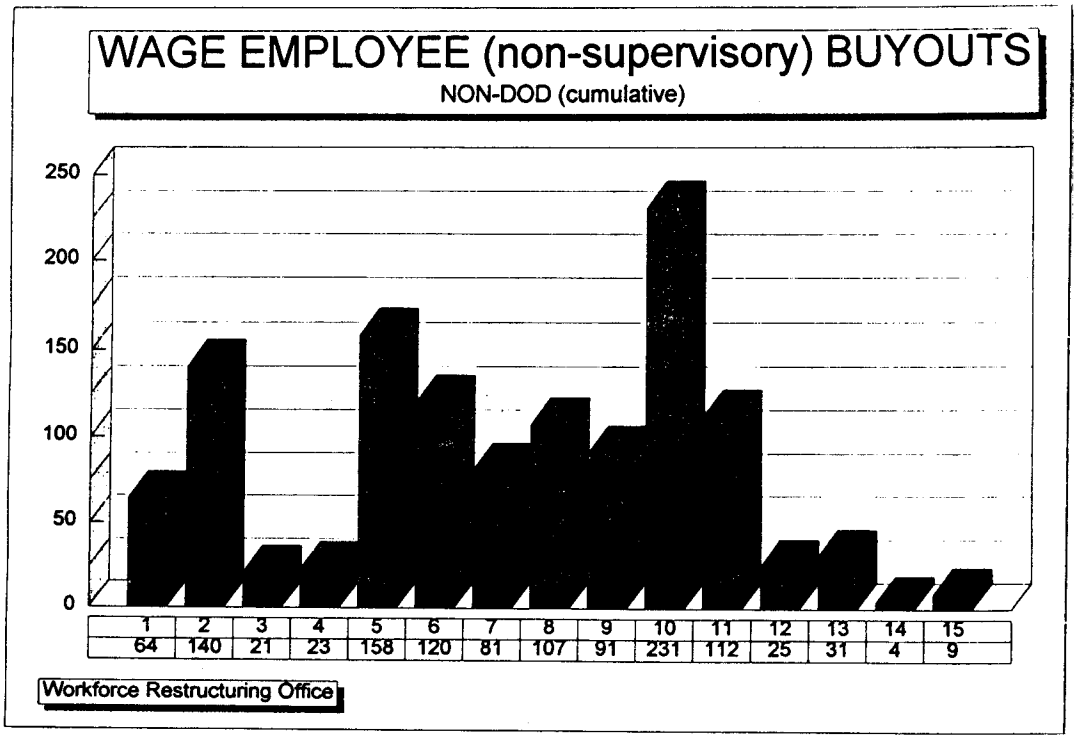
PAY PLAN AND GRADE

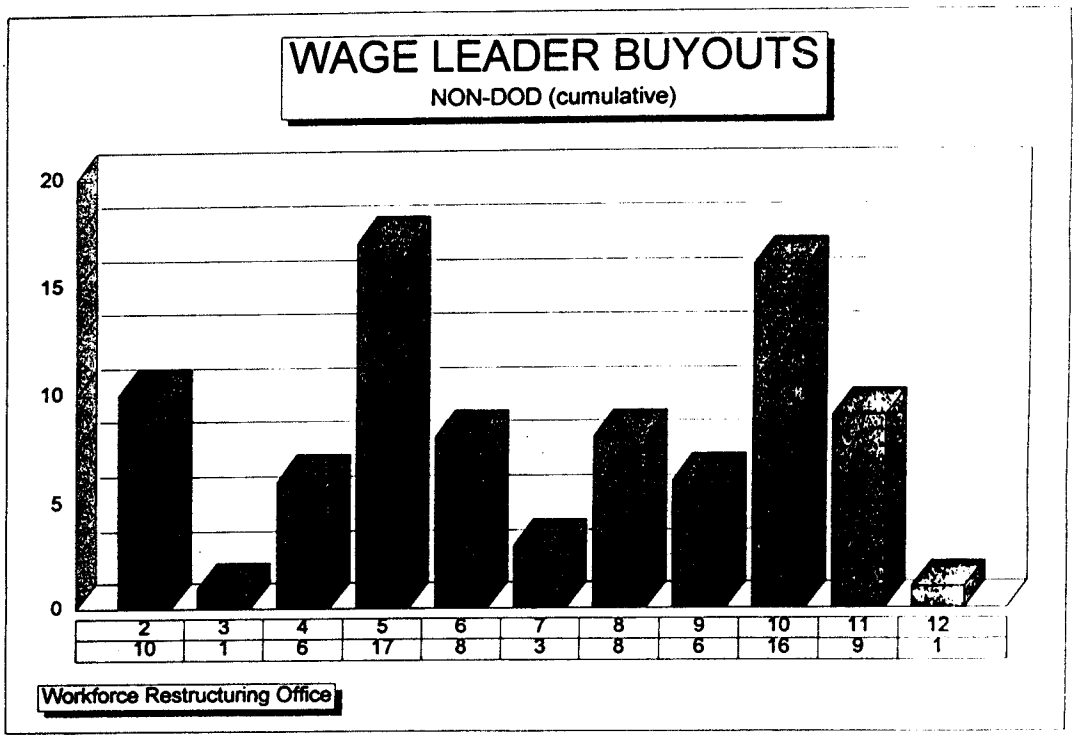
NON-DEFENSE CUMULATIVE

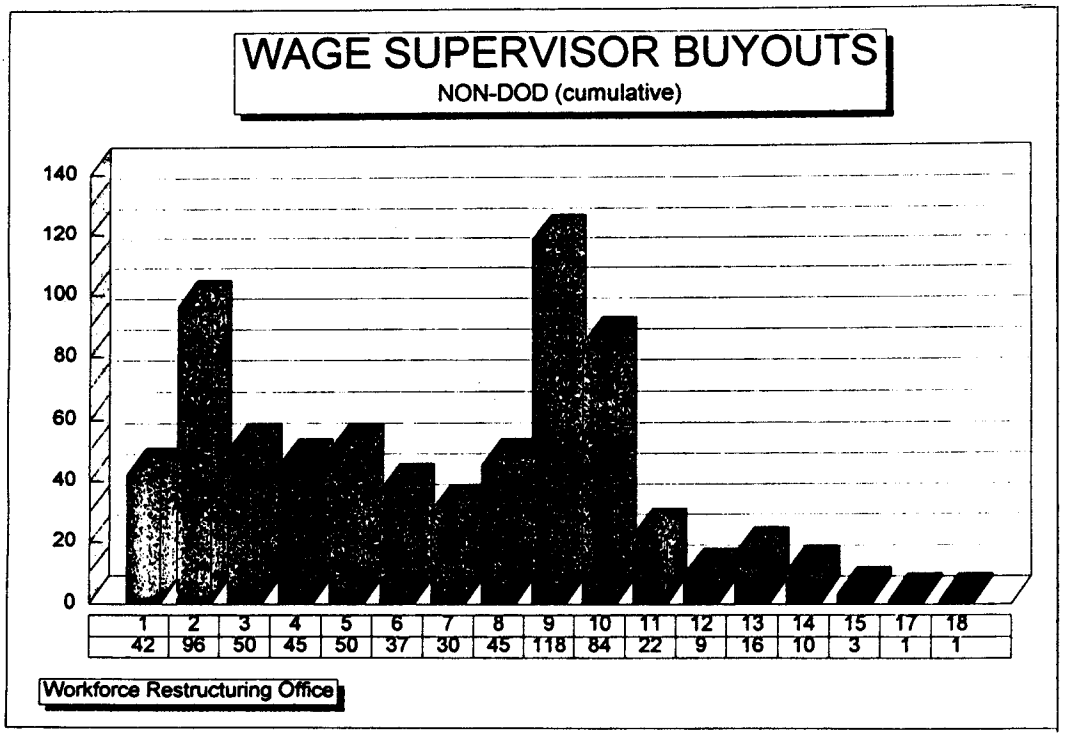
From CPDF

GRADE	GS	WAGE (nonspr)	WAGE LEADER	WAGE SUPER	SES	UNSPEC
1		64		42	9	
2	11	140	10	96	17	
3	78	21	1	50	32	
4	532	23	6	45	277	
5	1317	158	17	50	102	
6	1441	120	8	37	44	
7	1781	81	3	30		
8	706	107	8	45		
9	1695	91	6	118		
10	374	231	16	84		
11	2680	112	9	22		
12	4847	25	1	9		
13	4458	31		16		
14	3060	4		10		
15	2033	9		3		
17				1		
18				1		
88						5279
TOTALS	**25013**	**1217**	**85**	**659**	**481**	**5279**

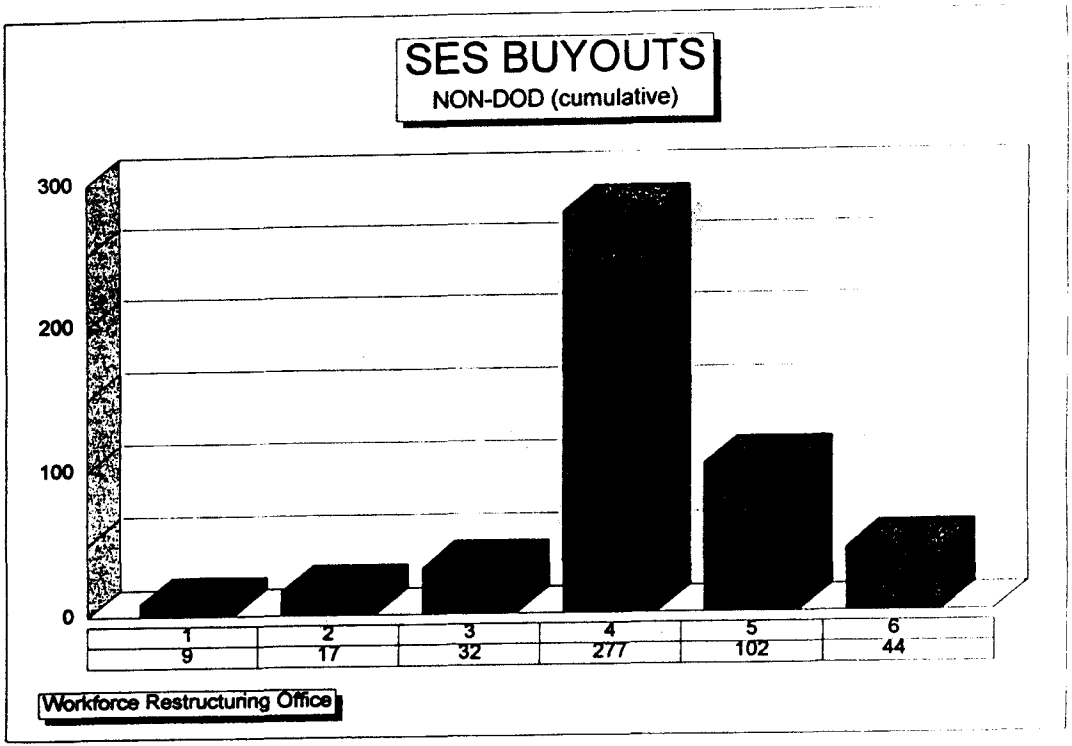

GS- PAY PLAN BUYOUTS
NON-DOD CUMULATIVE
Thousands
6
5
4
3
2
1
0
2 3 4 5 6 7 8 9 10 11 12 13 14 15
11 78 532 1317 1441 1781 706 1695 374 2680 4847 4458 3060 2033
Workforce Restructuring Office


WAGE EMPLOYEE (non-supervisory) BUYOUTS
NON-DOD (cumulative)
250
200
150
100
50
0
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15
64 140 21 23 158 120 81 107 91 231 112 25 31 4 9
Workforce Restructuring Office


WAGE LEADER BUYOUTS
NON-DOD (cumulative)
20
15
10
5
0
2 3 4 5 6 7 8 9 10 11 12
10 1 6 17 8 3 8 6 16 9 1
Workforce Restructuring Office



Workforce Restructuring Office paygrade.wk4 04/19/96 02:39 PM


SES BUYOUTS
NON-DOD (cumulative)
300
200
100
0
1
9
2
17
3
32
4
277
5
102
6
44
Workforce Restructuring Office

BUYOUTS BY METROPOLITAN STATISTICAL AREA TOP 20

MSA	TOTAL	FY 93	FY 94	FY 95
Washington DC (MD-VA)	11988	897	4661	6430
Norfolk/Virginia Beach, VA	4619	1784	1361	1474
Philadelphia, PA	4262	753	1729	1780
Salt Lake City/Ogden, UT	3010	1603	597	810
Bremerton, WA	2800	1459	559	782
San Antonio, TX	2542	1002	996	544
Charleston/North Charleston, SC	2540	1185	498	857
Dayton/Springfield, OH	2311	1009	487	815
Sacramento, CA	2218	1144	461	613
Oakland, CA	2173	676		940
Gadsen, AL	1931	20	970	841
Macon, GA	1697	935	153	609
Vallejo/Fairfield/Napa, CA	1635	421	349	865
Los Angeles/Long Beach, CA	1592	112	1249	231
Oklahoma City, OK	1479	143	476	860
Boston, MA	1342	655	227	460
San Diego, CA	1339	119		708
Pensacola, FL	1272	614		542
Columbus, OH	1055	392	339	324
Atlanta, GA	981	52	330	599

OCCUPATION FAMILY

	NON-DOD	DOD	TOTAL
Other (Blue collar/unspec)	6698	23401	30099
General Administration	7829	11758	19587
Engineering	3651	6804	10455
Business & Industry	2378	4378	6756
Accounting & Budget	1561	2902	4463
Physical Science	1296	804	2100
Transportation	1210	788	1998
Personnel	1189	1398	2587
Biological Science	1092	29	1121
Social Science	1065	255	1320
Legal & Related	882	168	1050
Miscellaneous	726	1072	1798
Medical and Allied	641	348	989
Information & Arts	617	663	1280
Investigation	432	80	512
Supply	418	3533	3951
Mathematics & Stats	282	338	620
Equipment	229	1310	1539
Education	215	953	1168
Library	185	153	338
Quality Inspection	105	1545	1650
Vet. Medicine	25		25
Copyright & Patent	8	3	11
TOTAL	32734	62683	95417

Mr. MICA. But Mr. King, given OMB's statements today, and given GAO's statements today, What is your advice and counsel to the agencies? Do you plan to issue a memo as a result of this hearing and what is it going to say?

Mr. KING. Mr. Chairman, OPM has consistently spoken with one voice in our guidance in our discussions and no one in any agency had any doubt as to either general counsel or OPM's position on this issue.

Mr. MICA. Today we have GAO's opinions saying——

Mr. KING. There is nothing inconsistent that is being said here that we have not stated.

Mr. MICA. You are going to say not to continue with these buyouts?

Mr. KING. We have so stated in our opinions, in our comments and discussions with all of the parties in this case. As you are aware, Mr. Chairman, the legislation itself had us in a consultive role with OPM. We did consult and were consulted with.

Mr. MICA. With OMB.

Mr. KING. OMB rather and OPM has been consistent with the very first day to the very last day as to what its opinions were on this matter, Mr. Chairman.

Mr. MICA. So we have GAO, OPM. We have the Members of Congress. Mr. Moran.

Mr. MORAN. Mr. Chairman, this hearing was supposed to be on further downsizing and reinvention. Let me make some overall remarks because I think that the reinvention effort and the buyout program has been a classic example of classical expediency rather than good management. In the first place the whole reinventing Government thing has been primarily motivated by politics as far as I am concerned. I have said this before, though, it has never been particularly well taken and it won't be well taken now, but if we were serious about making Government work better with less, we would have done it in exactly the opposite way from what we did, from the way in which we did do it. The way we did do it was to come up with arbitrary dollar savings and arbitrary numbers of personnel who would be cut and then back into those numbers.

Now granted the White House came up with a figure of a quarter of a million; 250,000 to be exact. Then the Congress did them one better. Then, of course, the Congress took credit for the savings, three times over at every opportunity. So the Congress is equally, at least equally responsible with the White House.

But when we are discussing this issue, I feel it incumbent to make these remarks. That it was done in the opposite way in which it should have been done. The way it seems to me it should have been done was to do an analysis across the board in the Federal Government in the way that the Hoover Commission was done. The Hoover Commission took some time because it was tedious work. It is difficult work. It requires a lot of professional expertise.

But you determine what functions are duplicative, what functions in agencies are duplicative? What programs can be consolidated? Which should after 30 years be dissolved to the State and local governments instead of leaving it to us to debate it from a

purely political standpoint on the floor of the House and in committee. This analysis should have been done by a bipartisan, professional, objective group of people who knew Government and made these determinations. And then after the determination was made of how to make this Government perform most effectively with the minimum number of—amount of resources necessary. Then we can tell you how much this might save, after the process was done. But we put the cart before the horse. There are other ways of phrasing that. That is the kindest and I am sticking to that but that is the way we did it. And as a result, I think we have caused a whole lot of damage.

Now there may have been some political gain. I think the political gain, to be honest with you, has been very marginal. There has been a lot of damage. And we wound up using this buyout mechanism, which again I think was politically expedient to avoid managers having to deal with RIF's or reorganizations, replacing of people. Because most people that will take buyouts are going to take them because they are not going to get fired and have the opportunity for severance pay, they are about ready to retire and this is an extra added bonus that enables them to retire a little earlier with a lump sum that they wouldn't otherwise have received then.

But it makes more economic sense to take severance compensation because then you get unemployment compensation. You also get other benefits in terms of reallocation within the Federal Government or in the private sector if you get RIF'd. There are advantages to taking that course.

But for many people that is not a course. There are others, I am sure, within the one or so thousand that took the buyouts that decided I would rather get the lump sum of $17,000 now, and perhaps didn't make an economic decision, or decided I will go retire off in Florida and take my money and run. But I don't think that was the ideal way to do it by any means and that is what is catching up to us.

Now, I don't think it has worked effectively. And you know I certainly don't want to advise people from a political standpoint. We have minions of astute, politically sophisticated people in the White House. You could trip over them. So I would hardly want to suggest to them that this has not gained the kind of political advantage that was intended but I would hope that someday we will look back upon it and figure it out. And then do what needed to be done from the outset 3 years ago. And that is to form an independent bipartisan, knowledgeable Commission, similar to the Hoover Commission. It has been half a century. That worked. That had enduring value. It really changed the Government around. That is what we ought to set up. Then figure out how to do it right because that careful analysis would give us those kind of results.

More importantly, it will tell us how to reorganize the Federal Government in the way that large corporations have reorganized themselves. It makes themselves more productive to focus more on the consumers, to focus more on the product rather than the process.

We are still bogged down in this personnel, procedural parameter. We are boxed in with all these personnel regulations that don't make a lot of sense. What at least we could have gotten out

of this whole process, and it is coming to a conclusion, I don't know whether it is going to be reinvented again after the November elections but it is coming down to a conclusion right now so little is going to be done.

What we should have done at least, we should have come up with reform of the Civil Service corps. I will say this even though it hurts my constituents and it is more costly to me than probably anybody else in the Congress with possibly the exception of—I think I have more in any district. I think the bumping procedure is wrong. I don't think it makes sense. I think it should be changed. I think that is the first thing we should do in Civil Service reform.

You know why you would let an antitrust lawyer bump down to some kind of administrative person who has never operated in the court, then that administrative person is the person you retain who is supposed—or you eliminate the position. You bring that person down to, the antitrust lawyer down to do some kind of administrative function or even a clerical function, though that never happens, it never gets down to that level, but it is a stupid thing to do. It is a stupid way to run the Government to be bumping people down to the point where they keep their job and do less. They get paid the same and they bump the poor schmoe who is doing their job but happened to be down at a lower rung of the ladder.

We can't touch it because of politics. It is wrong and we should at least come up with changes that were more substantive in that way. Instead, we are going to wind up this year—we left the Federal work force confused. We have come up with these arbitrary savings numbers. I think they have marginal political benefit. We have run rough shod through the agencies and we don't have the people we need and a whole lot of the people we need have left the Government on their own volition. Taken these buyouts. And what is going to happen is they are going to become private contractors because they are the ones with the skills, the expertise, and they are the ones that are going to get these contracts to operate without the benefits, the security, or necessarily the loyalty to the mission of the agency. But that is what we are going to have to wind up doing.

I hate to read the riot act to you people, but, well, I don't hate it so much because Mr. Koskinen is as responsible as anyone and, Jim, you have had to be a good soldier in the whole thing, and I have told the Vice President, Elaine Anderson, and they have shared their other feelings in no uncertain terms with me.

I have got to tell you it is a very disappointing experience, but whatever it is worth, and I am sure nobody is listening to such suggestions, what we ought to do is reinvent the whole exercise next January and do it right.

With that, Mr. Chairman, you can have your hearing back.

Mr. MICA. I thank you, Mr. Moran. I share your frustration. I can probably be partisan as anybody with this committee but after assuming this chair of the subcommittee I have tried to conduct myself in a way that is bipartisan and honestly look at the issue and how we can improve the whole process of personnel and management and fulfill our responsibility as an oversight subcommittee without jumping on people's cases, and I served with Mike Synar

and he and I would tear agencies apart when we got together on them and when they did something wrong, they really had a bad day.

This is the first day we have had together, Mr. Moran, but it isn't an intent to embarrass anyone; it is an intent to try to let the employees know what is going on. My father was a State employee but a public employee, probably at the lowest rung of the ladder you could be at, but he deserved the same consideration that we think every Federal employee deserves regardless of whether he is in charge of an agency or sweeping the floor or a temporary employee. So our intent here has been to make it work better.

I have tried to work with the Vice President in that effort and with Mr. King and others. We are disappointed by this and I think it is very clear that the panel is unanimous in how we want to proceed. I hope that buyouts have not been, and the action of the agency, have not been an attempt to subvert my intent. We reviewed buyouts; you know what we considered was wrong with buyouts. I even agreed with Mr. Wolf, there is no one more compassionate as Mr. Wolf, Mrs. Morella, and Mr. Moran on trying to provide some alternates in the downsizing process. But I do not intend to allow any blanket buyouts to proceed. I will wait to hear what this agency does. I will look at what options you present to Mr. Moran and myself, and I will also intend to consider my options to proceed against the agencies, either in a legislative fashion or whatever other remedies are available to our subcommittee and to meet our responsibilities of the Congress.

We are going to run and direct the show. We try to give them leeway and the benefit of the doubt but when there is a very clear direction we want you to head, and again there isn't the cooperation, we will have to seek the remedies available to us.

This is a contest between wills of the executive branch and the people sent here to represent the people on a temporary basis. So again I don't intend to—I don't mean this as a lecture.

Also, in another attempt to try to resolve this situation, but I can send that message out to Federal employees, there will be no blanket buyouts and we will look at what has been done, what is being done, and contacts with the law and the intent of the Congress and see that the letter of the law is complied with.

Mr. MORAN. Mr. Chairman, if you are about to conclude, if I could just clarify, then you would expect that OMB and coordination with OPM would come to us perhaps with a series of options that we might review?

Mr. MICA. Yes. And also, Mr. Moran, I am going to see counsel. I am not an attorney, thank God, but I want to see what our options are too and if what they present is not acceptable to you and to me, and also in the meantime look at what has taken place here and, if you don't learn by what happens and we don't prevent transgressions in the future, then we haven't done our job. So I will proceed in that fashion.

We thank you for coming out today and we may call the panel back again, if necessary, to see where we are going to go from here.

There being no further business, this meeting of the House Subcommittee on Civil Service is adjourned.

[Whereupon, at 12:20 p.m., the subcommittee was adjourned.]

○