

January 2010

# HUMAN CAPITAL

## Continued Opportunities Exist for FDA and OPM to Improve Oversight of Recruitment, Relocation, and Retention Incentives



GAO

Accountability \* Integrity \* Reliability



Highlights of [GAO-10-226](#), a report to congressional committees

### Why GAO Did This Study

The Food and Drug Administration (FDA) within the Department of Health and Human Services (HHS) has faced challenges in obtaining the workforce needed to support its responsibilities and similar to other agencies, has paid selected employees recruitment, relocation, and retention (3R) incentives. This report examines (1) the extent to which FDA is linking its use of 3R incentives to its strategic human capital approaches to address its current and emerging challenges; (2) the extent to which FDA's 3R incentives were awarded consistent with regulations and the internal controls FDA has in place to ensure proper disbursement of 3R incentives; and (3) the steps the Office of Personnel Management (OPM) has taken to help ensure that agencies have effective oversight of their 3R incentive programs and how HHS is providing oversight. GAO analyzed a stratified sample of FDA's 3R incentives files, 3R data provided by HHS, HHS's 3R policy and FDA's guidance, and interviewed HHS, FDA, and OPM senior officials.

### What GAO Recommends

GAO recommends that (1) FDA take several actions to improve its oversight of 3R incentives; (2) OPM require agencies to incorporate succession planning efforts into the decision process for awarding retention incentives; and (3) HHS revise its 3R incentive policy to address important OPM requirements. FDA and OPM agreed with the recommendations and HHS acknowledged the need to update its 3R incentive policy.

[View GAO-10-226 or key components.](#)  
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## HUMAN CAPITAL

### Continued Opportunities Exist for FDA and OPM to Improve Oversight of Recruitment, Relocation, and Retention Incentives

#### What GAO Found

Retention incentives encompass the majority of 3R incentives awarded to FDA employees in recent years (see table 1).

**Table 1: Number and Percentage of FDA 3R Incentives Awarded by Year**

Year	Recruitment incentives		Retention incentives		Relocation incentives	
	Number	Percentage	Number	Percentage	Number	Percentage
2007	3	0.4%	749	99%	8	1%
2008	366	35%	673	64%	10	1%
2009	93	15%	516	85%	0	0%

Source: GAO analysis of HHS data.

Note: The 2009 data are of July 4, 2009; FDA had not awarded any relocation incentives in 2009.

FDA's employees in mission-critical occupations received the greatest number of 3R incentives from 2007 to 2009. However, without an updated strategic workforce plan or established agencywide indicators for tracking its use of 3R incentives, FDA cannot assess the impact that these incentives have on its overall human capital strategy. While FDA collects data on workforce indicators at the agency and center levels, it has not analyzed how 3R incentives are helping the agency achieve its recruitment and retention goals.

On the basis of GAO's review of a stratified sample of FDA's 3R incentive files awarded from January 2007 through October 2008, GAO found that FDA maintained documentation which provided sufficient explanation to justify each award. However, several of the incentive files we reviewed lacked adherence to certain other requirements, such as prescribed contents of a service agreement, which in most instances may have resulted from a lack of documentation. To help ensure the proper awarding of 3R incentives, FDA has various internal controls in place, such as a centralized review and approval process for incentive requests. Over the past 3 years, FDA has made some changes to its internal controls, such as updating its guidance including the standard forms for 3R incentive requests. If effectively implemented, FDA's revisions to its internal controls may help ensure that in the future 3R incentives are properly awarded and documentation exists to support the incentives.

While both OPM and HHS provide oversight of 3R incentives through various mechanisms, including guidance and periodic evaluations and accountability reviews, there are opportunities for improvement. As a next step, OPM could provide guidance to all agencies on the importance of considering succession planning in the decision process for awarding retention incentives. While HHS's 3R incentive policy generally addressed the requirements for 3R incentive plans as outlined in OPM's regulations, there were several instances where the policy omitted or did not clearly address certain important requirements, such as the conditions for terminating or reducing an incentive.

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**Abbreviations**

3R	recruitment, relocation, and retention
CPDF	Central Personnel Data File
ERB	Executive Review Board
FDA	Food and Drug Administration
GP	GS pay plan that covers physicians and dentists paid market pay
GR	GS pay plan that covers physicians and dentists covered by the Performance Management and Recognition System termination provisions paid market pay
GS	General Schedule
HHS	Department of Health and Human Services
OPDIV	operating division
OPM	U.S. Office of Personnel Management
RHRC	Rockville Human Resources Center
SES	Senior Executive Service
SF 50	Standard Form 50

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United States Government Accountability Office  
Washington, DC 20548

January 22, 2010

The Honorable Henry A. Waxman  
Chairman  
The Honorable John D. Dingell  
Chairman Emeritus  
The Honorable Joe L. Barton  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

The Honorable Bart Stupak  
Chairman  
The Honorable Greg Walden  
Ranking Member  
Subcommittee on Oversight and Investigations  
Committee on Energy and Commerce  
House of Representatives

The Food and Drug Administration (FDA) within the Department of Health and Human Services (HHS), has had difficulties carrying out its expanding mission in part because of challenges in obtaining the workforce needed to support its increased responsibilities. We have designated two areas of federal oversight under FDA—food safety and medical products—as high risk in 2007 and 2009, respectively, and reported on the significant challenges that continue to compromise the agency’s ability to protect Americans from unsafe food and ineffective drugs and medical products.<sup>1</sup>

FDA has announced plans that may help it address some of its resource challenges, such as a major, multiyear hiring initiative and an information technology modernization effort. Although these are positive steps, FDA still faces workforce challenges. For example, about 70 percent of FDA’s career employees onboard as of fiscal year 2008 will be eligible to retire by the end of fiscal year 2014, which may lead to gaps in institutional knowledge at all levels.<sup>2</sup> FDA will face high retirement eligibility rates with

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<sup>1</sup>GAO, *High-Risk Series: An Update*, [GAO-09-271](#) (Washington, D.C.: January 2009).

<sup>2</sup>Based on analysis of data from the U.S. Office of Personnel Management’s Central Personnel Data File for fiscal year 2008, which were the most recent data available during the time of our review.

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career employees in certain mission-critical occupations, with about 63 percent of mathematical statisticians and 73 percent of pharmacologists onboard as of fiscal year 2008 eligible to retire by the end of fiscal year 2014.

To help the federal government improve its competitiveness in recruiting and maintaining a high-quality workforce, the Federal Workforce Flexibility Act of 2004 provided federal agencies increased flexibilities to award recruitment, relocation, and retention (3R) incentives.<sup>3</sup> Governmentwide, federal agencies awarded 3R incentives totaling more than \$207 million in 2007 with retention incentives accounting for the majority of 3R incentive costs at \$127 million.<sup>4</sup> In May 2009, the U.S. Office of Personnel Management (OPM) asked agencies to review their 3R incentive programs to ensure that current and future incentives are used only when necessary to support their mission and program needs, and are consistent with the criteria in law and regulations. As a next step, in July 2009, OPM directed agencies to review and certify that 3R incentive plans and internal approval and monitoring procedures were consistent with regulations.

In the last few years, FDA's use of retention incentives has come under greater congressional scrutiny. Specific issues concerned the number and dollar amount of incentives being given to FDA managers and whether they met OPM regulatory requirements. At your request, this report examines (1) the extent to which FDA is linking its use of 3R incentives to its strategic human capital approaches to address its current and emerging challenges; (2) the extent to which FDA's 3R incentives were awarded consistent with the law, regulations, and guidance and the internal controls FDA has in place to ensure proper disbursement of 3R incentives and encourage efficient use; and (3) the steps OPM has taken to help ensure that agencies including HHS have effective strategic oversight of their 3R incentive programs and how HHS is providing oversight of its 3R incentive program.

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<sup>3</sup>Federal Workforce Flexibility Act of 2004, Pub. L. No. 108-411, 118 Stat. 2305 (Oct. 30, 2004); 5 U.S.C. §§ 5753 and 5754.

<sup>4</sup>OPM, *Recruitment, Relocation, and Retention Incentives Calendar Year 2007: Report to the Congress* (September 2008). This report was the most recently available data on governmentwide use of 3R incentives at the time of our review.

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To meet our objectives, we used a data collection instrument to analyze a stratified sample of FDA's files for 3R incentives awarded from January 1, 2007, to October 31, 2008 by year and incentive type.<sup>5</sup> We randomly selected files for review from the 2007 and 2008 retention incentives and 2008 recruitment incentives. For the 2007 and 2008 relocation incentives and 2007 recruitment incentives, we reviewed all of the files due to the small population size. For the randomly selected files, we weighted each incentive file so that our sample statistically represented the population. In addition, we analyzed data provided by HHS on FDA's and the department's use of 3R incentives for calendar years 2007 to 2009 (as of July 4) along various categories including type of incentive, pay plan, occupational series, and duty station; analyzed FDA data from OPM's Central Personnel Data File (CPDF) for fiscal year 2008 to identify trends in FDA's workforce, such as retirement eligibility by occupational series for career permanent employees; analyzed HHS's 3R incentive policy to determine consistency with OPM's regulatory requirements; and interviewed HHS, FDA, and OPM senior officials knowledgeable about 3R incentives. We checked the 3R incentive data provided by HHS for reasonableness and the presence of any obvious or potential errors in accuracy and completeness. We interviewed selected HHS officials knowledgeable about the data, and brought to the attention of these officials any concerns or discrepancies we found with the data for correcting or updating and further clarification. On the basis of these procedures, we believe the data provided by HHS are sufficiently reliable for use in the analyses presented in this report. (See app. I for a more detailed discussion of our objectives, scope, and methodology.)

We conducted this performance audit from December 2008 through January 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

3R incentives are among the human capital flexibilities intended to help federal agencies address human capital challenges and to build and maintain a high-performing workforce with essential skills and

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<sup>5</sup>These were the most recent 3R incentive files available when we drew our sample.

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competencies. According to OPM, the intent of 3R incentives is to provide agencies with discretionary authority to use nonbase compensation to help recruit, relocate, and retain employees in difficult staffing situations. On the basis of OPM's regulations for 3R incentives, employees eligible to receive these incentives include the following positions: General Schedule (GS), senior-level, scientific or professional, Senior Executive Service (SES), law enforcement, Executive Schedule or those whose pay is set at a rate equal to a rate for the Executive Schedule, prevailing rate positions (employment in a recognized trade or manual labor occupation), and employees in a category approved by OPM at the request of the head of an agency.<sup>6</sup> The regulations also prohibit certain employees from receiving 3R incentives including those who are in positions that are appointed by the President with or without Senate confirmation, noncareer SES members, agency heads or those expected to receive an appointment as an agency head, and employees in positions excepted from the competitive service by reason of their confidential, policy-determining, policy-making, or policy-advocating duties (i.e., Schedule C employees).<sup>7</sup>

At FDA, certain physicians and dentists appointed under title 38 of the United States Code<sup>8</sup> and Senior Biomedical Research Service employees appointed under 42 U.S.C. § 237 are also eligible for 3R incentives.<sup>9</sup> FDA employees appointed pursuant to 42 U.S.C. §§ 209(f) and 209(g) are not eligible to receive 3R incentives under the authority contained in title 5 of the United States Code. According to an HHS official, FDA's authority to award incentive payments to these employees is derived from the appointment provisions themselves. Beginning in 2007, FDA began phasing out the use of retention incentives for employees paid under titles 38 and 42. (See app. II for additional details on employee eligibility.)

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<sup>6</sup>See, 5 U.S.C. 5753 (a), 5754(a) and 5 C.F.R. §§ 575.103, 575.203, 575.303 for covered employees. See [http://www.opm.gov/oca/pay/HTML/3Rs\\_extensions.asp](http://www.opm.gov/oca/pay/HTML/3Rs_extensions.asp) for the list of single-agency pay systems for which OPM has approved 3R incentive coverage.

<sup>7</sup>5 C.F.R. §§ 575.104, 575.204, 575.304.

<sup>8</sup>Pursuant to OPM's authority under 5 U.S.C. § 5371, OPM delegated to HHS the authority to use certain title 38 personnel authorities for health care occupations within two pay plans. The GP pay plan covers GS physicians and dentists paid market pay under 38 U.S.C. § 7431(c) and the GR pay plan covers physicians and dentists covered by the Performance Management and Recognition System termination provisions who are paid market pay under 38 U.S.C. § 7431(c). Employees under these pay plans are considered GS employees and therefore eligible for 3R incentives.

<sup>9</sup>At the request of HHS, OPM approved Senior Biomedical Research Service employees' eligibility to receive 3R incentives in 1999.



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The Federal Employees Pay Comparability Act of 1990 first authorized OPM to allow federal agencies to give 3R incentives to employees under the following circumstances.<sup>10</sup>

- A recruitment incentive could be given to a new employee in a federal position and a relocation incentive to a current employee who had to move to accept a different federal position if it was determined that the agency would be likely to encounter difficulty filling the position in the absence of such an incentive.
- A retention incentive could be given to a current employee if the unusually high or unique qualifications of the employee or a special need of the agency made retaining that employee essential, and it was determined that the employee would be likely to leave federal service without the incentive.

The Federal Workforce Flexibility Act of 2004 revised prior 3R incentive authorities with the goal of increasing agencies' flexibility in using 3R incentives. We and OPM had reported that 3R incentives were effective human capital management tools, but agencies were failing to use them extensively due to a variety of factors including limited funds and reduced hiring due to downsizing.<sup>11</sup> The 2004 act increased the number of situations in which agencies may give 3R incentives; allowed for alternative methods of payments, such as installments or lump sum; and increased the potential size of the incentives. For example, individual retention incentives that were capped at 25 percent of the employee's basic pay rate could be increased to up to 50 percent in cases of critical agency need with OPM's approval. The act also required OPM to annually report to Congress to ensure the incentives were being used effectively. In December 2007, OPM issued final regulations on 3R incentives reflecting its technical modifications and corrections to and clarifications of the interim regulations issued in May 2005. Separately, in November 2007, OPM issued final regulations implementing an additional authority to agencies to pay a retention incentive to an employee who would be likely to leave for a different federal position before the closure or relocation of the employee's office, activity, or organization.

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<sup>10</sup>See, Pub. L. No. 101-509, 104 Stat. 1389 (Nov. 5, 1990). This act amended the Federal Pay Comparability Act of 1970 and other acts relating to federal employment.

<sup>11</sup>OPM, *Report of a Special Study: The 3Rs: Lessons Learned from Recruitment, Relocation, and Retention Incentives* (1999) and GAO, *Human Capital: Effective Use of Flexibilities Can Assist Agencies in Managing Their Workforces*, [GAO-03-2](#) (Washington, D.C.: Dec. 6, 2002).

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Through its regulations, OPM requires agencies to develop plans for using 3R incentives outlining, among other things, the required documentation for the justification and any criteria for determining the amount of the incentive and the length of the service period under a service agreement, which is a written agreement between the agency and the employee outlining the terms of the incentive. According to OPM officials, agencies do not need OPM approval of their 3R incentive plans in order to use these incentives. HHS has issued a departmentwide 3R incentive plan or policy that applies to all of its agencies or operating divisions (OPDIV), as HHS refers to them, including FDA. According to HHS's Deputy Assistant Secretary for Human Resources, the OPDIVs are allowed to develop more stringent internal guidance to supplement HHS's policy, but they cannot make their internal processes for awarding 3R incentives more lenient. Building on HHS's 3R incentive policy for the department, FDA issues supplemental guidance and instructions to its employees for awarding 3R incentives. Applicable to all of its centers and offices, FDA uses standard forms for requesting recruitment, relocation, and retention incentives with instructions attached for completing the forms that outline the regulatory and HHS policy requirements for those types of incentives. The official who is recommending the individual for the incentive must complete the form prior to seeking approval of the award.

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## FDA Uses 3R Incentives to Recruit and Retain Mission-Critical Staff, but Lacks Agencywide Indicators for Tracking the Progress of 3R Incentives in Addressing Its Recruitment and Retention Goals

Employees in mission-critical occupations as identified by FDA make up the majority of FDA's workforce and have also received the greatest number of 3R incentives from 2007 to 2009.<sup>12</sup> According to the Assistant Commissioner for Management at FDA, mission-critical positions are broadly categorized at the agency level and not specific to FDA centers. These positions encompass the core scientific base of FDA, and include occupations such as medical officers, pharmacologists, and consumer safety officers. According to this official, mission-critical positions have remained unchanged with the exception of a few positions that have become more significant as the nature of FDA's work has evolved, such as operations research analysts and veterinary medical officers.

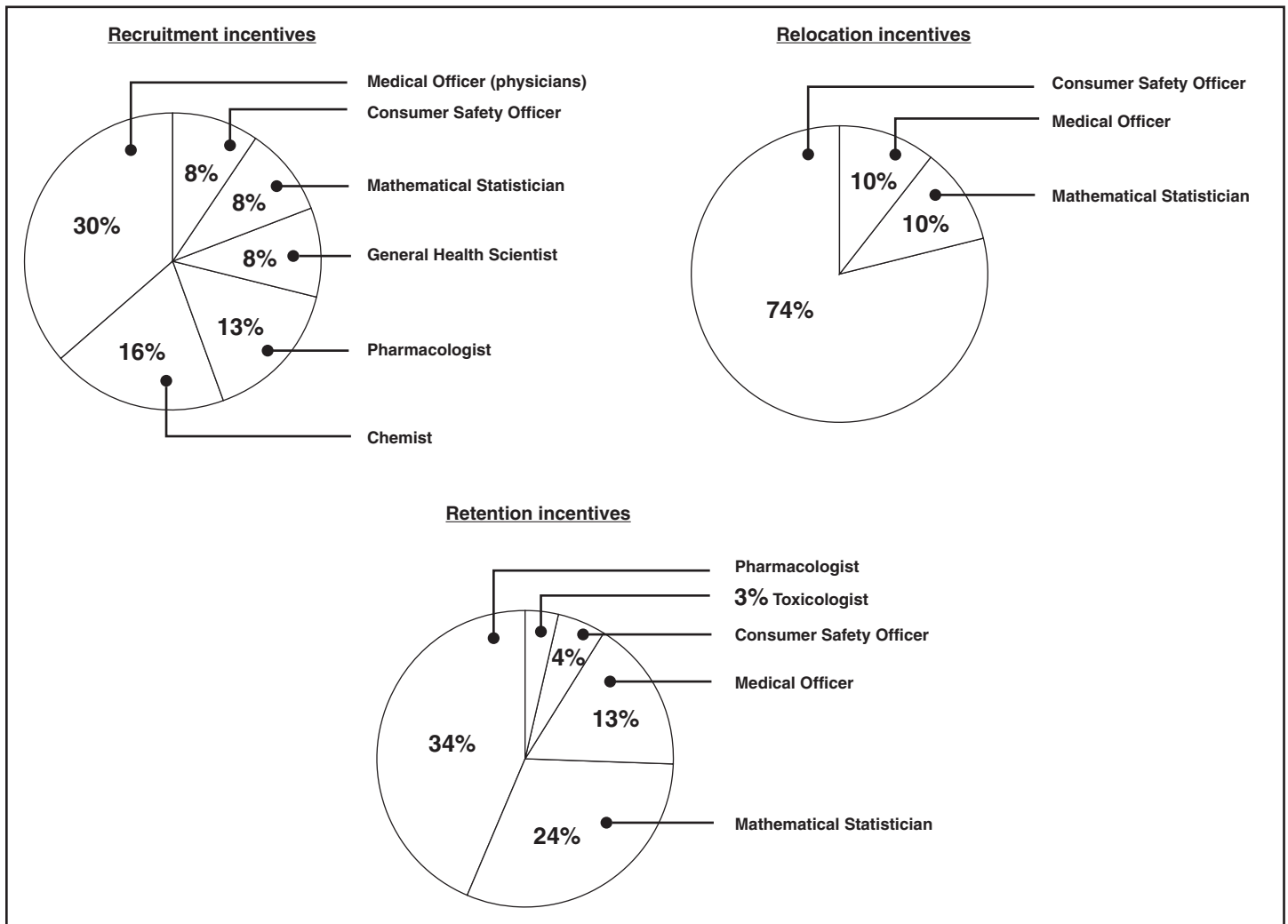
As shown in figure 1, employees in different mission-critical occupations received different percentages of each type of incentive. Medical officers, which includes physicians and surgeons, consistently received on average the greatest number of recruitment incentives of any mission-critical occupation from 2007 to 2009. Consumer safety officers, which is the largest mission-critical occupation according to FDA, on average received the majority of relocation incentives among mission-critical occupations, while pharmacologists on average ranked first among all mission-critical occupations that received retention incentives over this time period.<sup>13</sup>

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<sup>12</sup>We analyzed data on FDA's workforce from OPM's CPDF for fiscal year 2008 (the most recent data available during the time of our review) and HHS provided data on 3R incentives awarded to employees in FDA and the rest of the department from January 1, 2007, through July 4, 2009.

<sup>13</sup>Consumer safety officers are charged with protecting consumers from foods, drugs, cosmetics, and other products and equipment that are impure, unwholesome, ineffective, improperly or deceptively labeled or packaged, or in some other way dangerous or defective.

**Figure 1: Average Percentage of FDA 3R Incentives Awarded by Top Mission-Critical Occupational Series from 2007 through 2009**



Source: GAO analysis of HHS data.

Note: Averages do not total to 100 percent because only the top occupations are included in the graphic. FDA did not award each type of 3R incentive to every mission-critical occupational series each year.

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## FDA Lacks an Updated Strategic Workforce Plan to Document Its Strategies for Achieving Its Recruitment and Retention Goals

FDA is facing potential retirements that could result in a loss of leadership and institutional knowledge in its mission-critical occupations. For example, an average of 24 percent of FDA top leadership is retirement eligible in 2014 according to FDA.<sup>14</sup> Additionally, about 73 percent of career pharmacologists and about 68 percent of career medical officers onboard as of fiscal year 2008 will be eligible for retirement by the end of 2014. Therefore, it is important to ensure that FDA's 3R incentives are helping the agency meet its human capital goals. Our previous work has shown that federal agencies should ensure that the use of human capital flexibilities including 3R incentives are part of an overall human capital strategy clearly linked to the mission and program goals of the organization.<sup>15</sup> Agencies need to plan for how they will use and fund these flexibilities, what results they expect to achieve, and what methods they will use to evaluate actual results, such as establishing indicators for measuring success. Importantly, 3R incentives are just one type of flexibility available to agencies for recruiting and retaining a quality workforce. Agencies need to assess and determine which human capital flexibilities are the most appropriate and effective for managing their workforces. Furthermore, an updated strategic workforce plan would help FDA clearly document its strategies for addressing gaps in the number, skills, competencies, and deployment of its workforce and how human capital flexibilities, such as 3R incentives, are being used to help achieve recruitment and retention goals.

FDA has outlined its goals and approaches for recruiting and retaining the necessary workforce to meet its mission and program goals in its succession plan and strategic workforce plan. In its succession plan for 2009-2012, FDA defines succession management as the ongoing development of potential successors to ensure a smooth transition and minimum loss of efficiency when management vacancies occur. To help prepare its current and future leadership, FDA outlines specific succession planning initiatives in its plan, such as individual development planning and training that aligns with organizational goals. According to officials at FDA, succession planning has played a significant role in filling mission-critical occupations at its centers and the plan should help assist FDA with these efforts. While some of what is described in FDA's succession plan is prospective, FDA officials told us that they are partnering with a university

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<sup>14</sup>FDA defines "top leadership" in its succession plan for 2009-2012 as SES employees, employees whose pay is administratively determined, and GS-14 and GS-15 employees.

<sup>15</sup>[GAO-03-2](#).

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in Florida in an attempt to satisfy the agency's long-term staffing needs for a mission-critical occupation. Specifically, they are developing an undergraduate curriculum for pharmacokineticists intended to help increase FDA's recruitment pool for this occupation.<sup>16</sup>

FDA's fiscal year 2006 workforce plan provides an overview of past and projected workforce trends and emphasizes the staffing needs of FDA's mission-critical programs. According to the Assistant Commissioner for Management at FDA, the plan was intended to be a road map for future hiring strategies across the agency. However, FDA has not updated the workforce plan since 2006 and targets for its recent hiring surges have not been included. According to this official, managing FDA leadership transitions has been a higher priority than strategic workforce planning. FDA is preparing to begin a workforce planning effort in fiscal year 2010 to address key agency-level initiatives and provide linkages between the agency's use of 3R incentives and broader human capital decisions. Having an agencywide workforce plan that clearly documents the recruiting and retention goals and strategies FDA is working to achieve can help to ensure that the centers are aware of the agency's goals and strategies and strategically managing their workforces in a manner that meets the agency's needs. Given FDA's period of leadership transitions, developing such a workforce plan creates a road map for the agency to use to move from the current to the future workforce needed to achieve agency goals.

While not documented in its current workforce plan, FDA has set recruitment targets for the agency to address the need to hire additional employees in recent years. Specifically, as part of its hiring surges in fiscal years 2008 and 2009, FDA set staffing goals that were linked to the agency achieving its mission and goals. For example, the agency set targets to fill more than 600 new positions and to backfill over 700 others in fiscal year 2008 to implement new responsibilities as a result of legislation, which it achieved within the first 6 or 7 months, according to FDA's Assistant Commissioner for Management.<sup>17</sup> That was nearly triple the number of people FDA hired from 2005 to 2007. Similarly in fiscal year 2009, the agency set a goal to hire 1,600 additional full-time equivalent positions. According to FDA officials, the agency has exceeded its 2009 hiring goals

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<sup>16</sup>Pharmacokineticists are among the scientists at FDA who determine the scientific validity of manufacturers' tests, drug safety, and efficacy claims.

<sup>17</sup>Food and Drug Administration Amendments Act of 2007, Pub. L. No. 110-85, § 121 Stat. 823 (Sept. 27, 2007).

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by 22 percent and these targets were set within the centers based on their staffing needs. Further, FDA officials told us one of its recruitment strategies to increase its Hispanic workforce was to target this population during its interview job fairs, but this strategy is not documented in its current workforce plan.

FDA officials told us that they award 3R incentives where they are needed most and the type of incentive awarded depends largely on the location. For example, recruitment is a larger issue in some of FDA's field locations, including areas in Montana and in the southwest along the Mexican border. To address this challenge FDA offers relocation incentives to employees in its headquarters and field to move to other areas of the country. Recognizing the challenge of recruitment in its remote field locations, FDA is looking for additional sources of recruiting, including state and local governments in these areas. FDA officials have found that retention usually is not a problem in its field locations.

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## FDA Should Better Track How Its Use of 3R Incentives Is Helping the Agency Achieve Its Recruitment and Retention Goals

We have reported on the importance of establishing the necessary data and indicators to track a program's effectiveness, as well as establishing a baseline to measure the changes over time and assess the program in the future.<sup>18</sup> Agencies need such measurements to help them determine if a program is worth the investment compared to other available human capital flexibilities targeted at recruitment and retention of employees, such as student loan repayment. FDA has not established agencywide indicators for tracking the progress of 3R incentives in addressing recruitment and retention needs. While FDA collects data on workforce indicators at the agency and center levels, it has not analyzed how 3R incentives are helping the agency achieve its recruitment and retention goals.

FDA collects data on agencywide workforce indicators, such as attrition, retirement, and declination rates, which measure the number of jobs offered that are declined by potential employees. In addition, FDA's centers and offices are responsible for tracking their own workforce data as well as the effect of 3R incentives on their organizational goals. Specifically, FDA has asked its centers to provide more detailed attrition

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<sup>18</sup>GAO, *Federal Student Loan Repayment Program: OPM Could Build on Its Efforts to Help Agencies Administer the Program and Measure Results*, [GAO-05-762](#) (Washington, D.C.: July 22, 2005).

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rates over a 2-year period to help support the need for 3R incentives. Officials stated that FDA has no agencywide exit interview process; rather, it uses HHS's quarterly exit survey results. Although some centers track exit survey results to determine why employees are leaving the agency, the center data are not necessarily provided to the Office of Management—the human capital office within FDA—according to the Assistant Commissioner for Management at FDA. Further, FDA officials stated that the agency relies on HHS-provided data for tracking the number of responses to job announcements, and the basis for employee separations, but FDA does not have access to all of the necessary data in a useful format to accurately track workforce statistics and the linkage to the use of 3R incentives.

Additionally, FDA's Assistant Commissioner for Management said the agency does not track the use of 3R incentives to assess the effectiveness of these payments or how they contribute to FDA's human capital goals. For example, FDA does not track statistics on its diversity initiatives or the impact of 3R incentives on diversity recruiting because there is a lack of available data. However, FDA officials said they need to document the agency's short- and long-term goals for its 3R incentive program and identify better agencywide indicators to support the need for 3R incentives. Presently FDA's guiding principles for awarding 3R incentives developed in the summer of 2009 are the only documented guidance to centers on 3R incentives, but the guiding principles do not address how 3R incentives should be used strategically to help achieve agencywide recruitment and retention goals.

Updating its workforce plan to document its recruitment and retention goals and strategies and include indicators to track the progress of 3R incentives in achieving these goals will help ensure FDA makes maximum use of funds to recruit and retain key talent, a critical goal in an era of fiscal constraints. As we have found in our work on human capital flexibilities,<sup>19</sup> gauging the 3R incentive program's direct effect on recruitment and retention trends may be difficult because a 3R incentive is not likely to be the only major factor in an employee's decision to join or stay with an agency, although the incentive may help to tip the scale in the agency's favor. FDA officials told us that they have recently found that other factors, such as labor market conditions, could affect these decisions.

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<sup>19</sup>[GAO-05-762](#).



## Retention Incentives Account for the Majority of 3R Incentives Awarded by FDA and the Percentage of 3R Incentives Awarded by FDA Is Large Compared to HHS

In 2008 and 2009, recruitment and retention incentives accounted for greater than 95 percent of all 3R incentives awarded in FDA, as shown in table 1. The majority of the FDA employees receiving 3R incentives in 2007 and 2008 were in positions within the GS pay plan, which includes consumer safety officers, medical officers, and mathematical statisticians, and paid at grades 14 or higher in the case of retention incentives. To explain the large decrease in the number of retention incentives between 2007 and 2008, FDA officials told us that they have taken a more strategic approach to awarding retention incentives over the last few years by elevating the approving authority of retention incentive renewals to the Commissioner and phasing out the use of retention incentives for certain employees paid under titles 38 and 42 of the United States Code given existing compensation flexibilities with those positions. For example, in 2007, FDA employees appointed under title 42, which includes service or staff fellows and senior science managers, received 15 percent of all retention incentives FDA awarded and 5 percent of retention incentives awarded as of July 4, 2009. As a result of its detailed review of its 3R incentives in 2009, FDA officials said several retention incentives were eliminated. In addition, FDA does not allow any new recruitment incentive requests for any new employees except for rare and unusual circumstances that require the Commissioner’s approval. According to FDA, the agency continued to honor any recruitment incentives that were promised during recruitment discussions with potential employees.

**Table 1: Number and Percentage of FDA 3R Incentives Awarded by Year**

Year	Recruitment incentives		Retention incentives		Relocation incentives	
	Number	Percentage	Number	Percentage	Number	Percentage
2007	3	0.4%	749	99%	8	1%
2008	366	35%	673	64%	10	1%
2009	93	15%	516	85%	0	0%

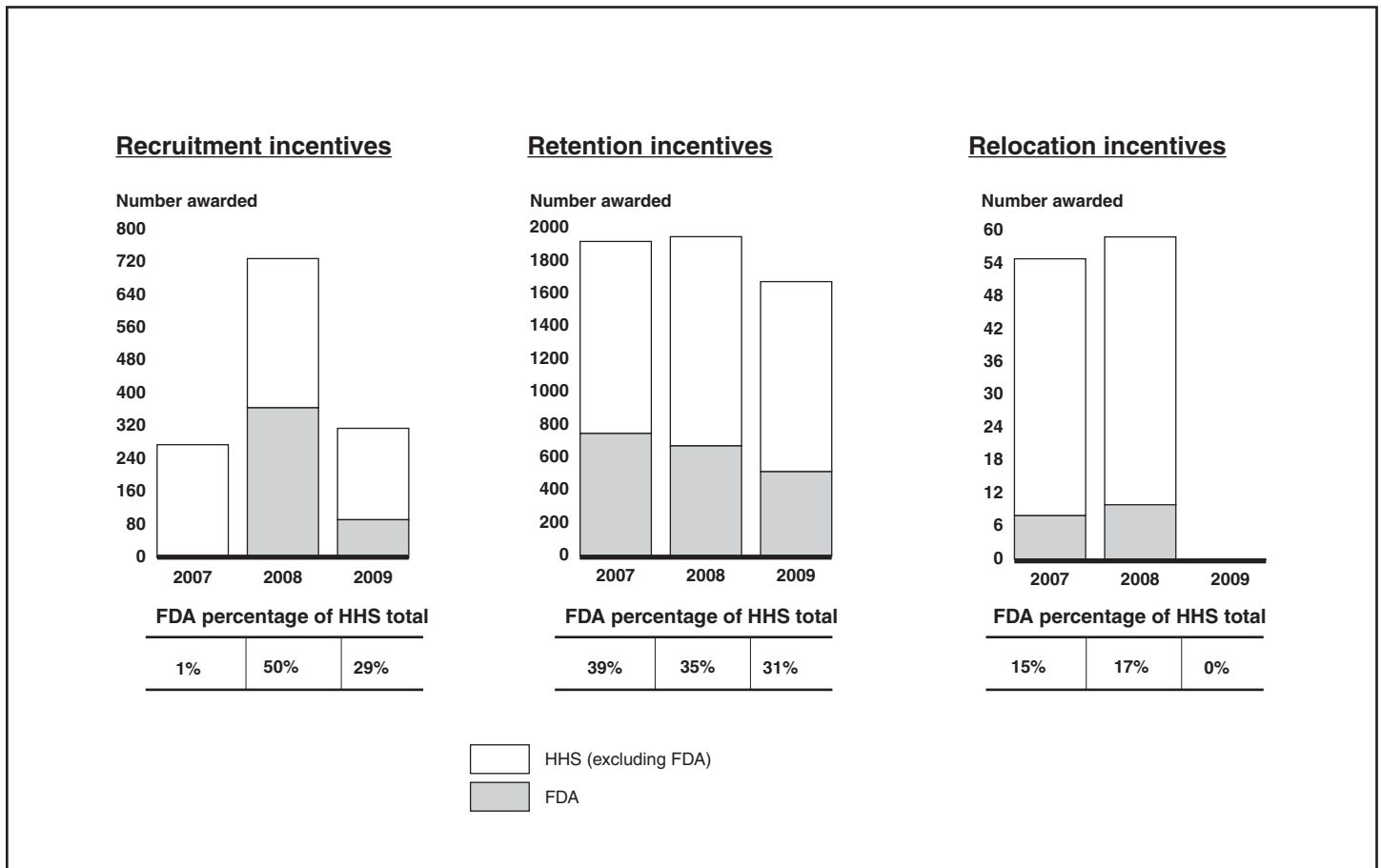
Source: GAO analysis of HHS data.

Note: For 2009, FDA had not awarded any relocation incentives as of July 4, 2009.

In comparing FDA’s use of 3R incentives to HHS’s use of the incentives departmentwide, FDA’s percentage of HHS’s recruitment incentives awarded exceeded 25 percent from 2008 to 2009. Specifically, in 2008, FDA accounted for 50 percent of all recruitment incentives in HHS, which was due to FDA’s hiring surge that year. In contrast, FDA’s total number of retention incentives awarded steadily decreased from 2007 to 2009 due to the elimination of these incentives for certain employees. (See fig. 2.) As a point of comparison, in 2008, FDA spent over \$11 million, which was over

half of the total dollars spent by HHS on 3R incentive payments; however, FDA employees made up only about 16 percent of HHS's total workforce in fiscal year 2008.

**Figure 2: HHS and FDA 3R Incentives Awarded and FDA Percentage of HHS Total by Year**



Source: GAO analysis of HHS data.

Note: 3R incentives awarded to employees in FDA and HHS from January 1, 2007, through July 4, 2009. FDA awarded three recruitment incentives in 2007. HHS total includes FDA.

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## FDA Generally Awarded 3R Incentives Consistent with Law and OPM Regulations, but Adherence to Some Requirements Was Lacking and FDA Could Improve Its Internal Controls

OPM regulations outline requirements for the proper awarding of 3R incentives and require agencies to keep documentation and records sufficient to allow a reviewer to reconstruct the 3R incentive process and decision. We reviewed the files of a random, stratified sample of 3R incentives awarded at FDA from January 2007 through October 2008 to determine whether they met requirements in law, OPM regulations, HHS policy, and FDA guidance.<sup>20</sup> All the FDA files we reviewed provided sufficient explanation to justify the awards, addressing one or more of the factors for each type of incentive which OPM regulations state must be considered, as applicable to the case at hand, to support the awarding of the incentive.<sup>21</sup> These factors are to guide the agency in determining whether a particular position would be difficult to fill in the absence of a recruitment or relocation incentive, or whether the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee and the employee would be likely to leave the federal service in the absence of a retention incentive. According to OPM, since the regulations require an agency to document only those factors that are applicable to the case at hand, one factor could be sufficient support for authorizing the incentive. We estimate that every 3R incentive awarded during the time of our file review included at least one factor of support in the justification for the incentive.<sup>22</sup> Figure 3 lists the factors that an agency must consider in justifying a 3R incentive.

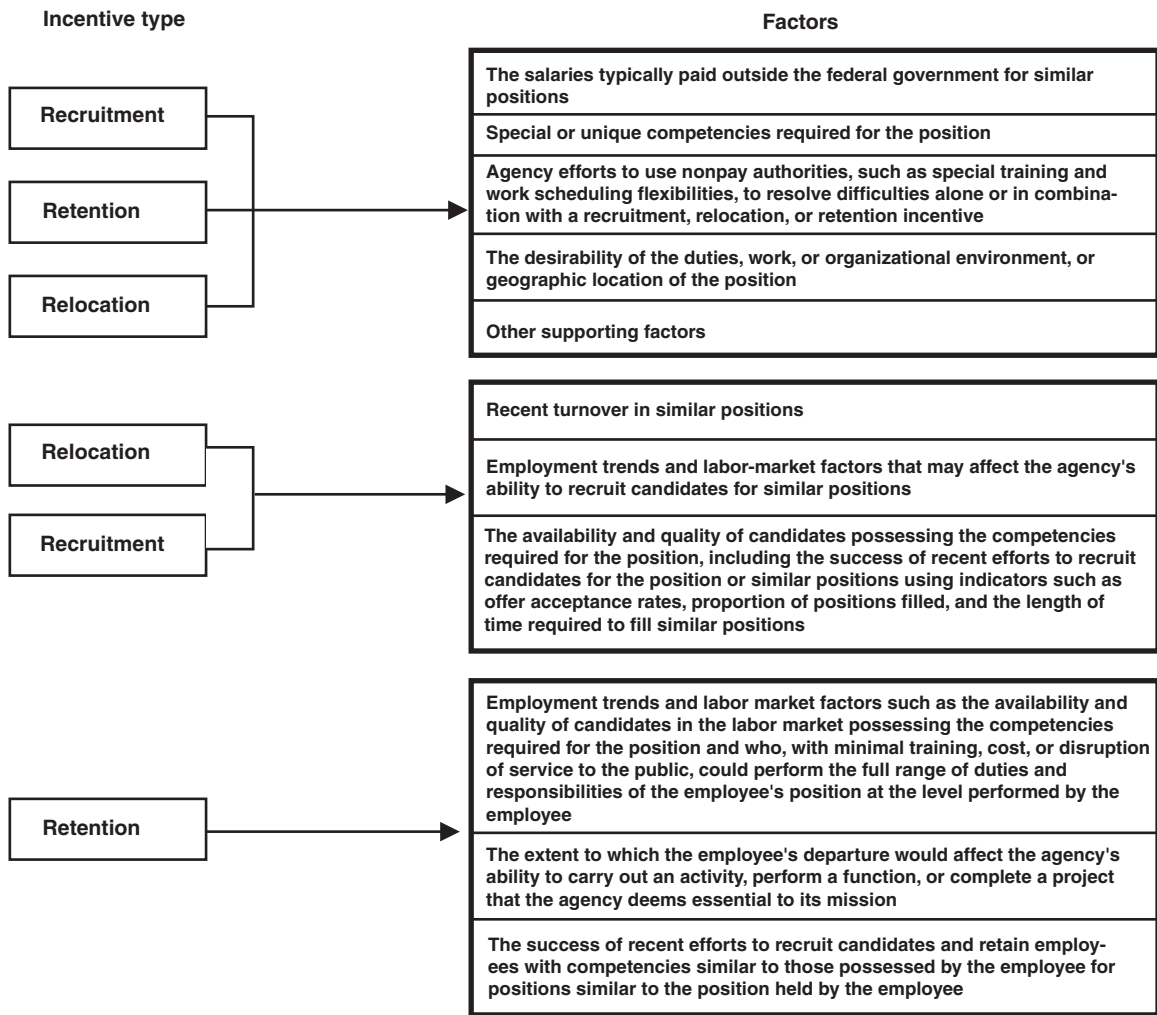
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<sup>20</sup>Our sample includes 17 recruitment, 12 relocation, and 76 retention incentives. We reviewed the entire population of relocation incentives awarded from January 2007 through October 2008 so estimates on the population are not necessary. For recruitment and retention incentives, we are able to make population attribute estimates at the 95 percent confidence level with an overall precision of +/- 10.0 percent for the time of our file review. While additional recruitment and relocation incentives may have been approved from October 31 to December 31, 2008, the list of incentive actions from which we drew our sample included all retention incentive actions in 2008 given FDA's quarterly review process for retention incentive requests. For more information on how the sample was drawn, see appendix I.

<sup>21</sup>These factors are found at 5 C.F.R. §§ 575.106(b), 575.206(b), and 575.306(b).

<sup>22</sup>The 95 percent confidence interval for this estimate is from 97.2 to 100 percent.

**Figure 3: Factors for Justifying a 3R Incentive**



Source: GAO analysis of OPM regulations.

Note: This figure does not reflect the factors for justifying retention incentives for employees likely to leave for a different position in the federal service. 5 C.F.R. § 575.315 (d) (2). FDA did not award any of these incentives during the time of our review.

The 3R incentive files met additional statutory and regulatory requirements, such as awarding 3R incentives only to eligible employees and paying of 3R incentives within applicable aggregate pay limits prescribed under 5 U.S.C. § 5307 or, for certain administratively determined pay plans, within the aggregate pay limits established by

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HHS.<sup>23</sup> (See app. II for additional information on the aggregate pay limits and other results from the file review.)

However, several of the incentive files we reviewed lacked adherence to certain other requirements, such as approval prior to the incentive payment, proof of employee relocation, and prescribed contents of a service agreement, which in most instances may have resulted from a lack of documentation. Overall, the deficiencies we found with the lack of adherence to requirements would not invalidate an incentive. Internal controls are important for managing an agency's human capital system, including the 3R incentive program, to help ensure the effective and efficient use of these incentives in accordance with the law and OPM regulations.<sup>24</sup> Over the past 3 years, FDA has made some changes to its internal controls, such as continuing to revise its centralized review and approval process for 3R incentive requests and updating its guidance including the standard forms for 3R incentive requests. If effectively implemented, the revisions to its internal controls may help ensure that in the future 3R incentives are properly awarded and documentation exists to support the incentives.

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<sup>23</sup>Generally, 5 U.S.C. § 5307 limits payment of bonuses, awards, or other cash payments under title 5 in any given year when payments added to an employee's basic pay would exceed the rate payable for level I of the Executive Schedule. For FDA employees appointed under the authority of 42 U.S.C. §§ 209(f) and 209(g), HHS states their compensation, including 3R incentive payments, is authorized pursuant to these appointment provisions, which permit HHS flexibility in setting compensation for those appointed. The aggregate pay limit under section 5307 does not apply to these incentive payments since they are not payments provided under title 5. However, HHS establishes aggregate pay limits for all such employees across HHS to which FDA adheres. Although we find that the aggregate pay limit under section 5307 is not applicable to payments made to employees appointed under 209(f) and 209(g), we express no opinion as to whether the cap on administratively determined pay under 5 U.S.C. § 5373 should limit, as a matter of law, the pay levels established by HHS for these employees.

<sup>24</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

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3R Incentives Were Not Always Processed Consistent with Regulations and FDA Guidance, but Revisions to FDA's Centralized Review and Approval Process May Lead to Improvements

OPM regulations require that all incentives must be approved by the agency prior to payment to the employee. We estimate that 92 percent of all 3R incentives awarded from 2007 through October 2008 were approved by the agency, as evidenced by the approving official's signature—the FDA Commissioner or designee—prior to payment to the employee.<sup>25</sup> In addition, the regulations require an agency to make the determination to pay a recruitment or relocation incentive before the employee enters on duty in the position for which he or she was recruited or relocated. We estimate that for all recruitment incentives the agency made the determination to pay the incentive, as evidenced by the date of the approving official's signature, before the prospective employee entered on duty.<sup>26</sup> In 4 of 12 of the relocation incentive files (the universe during the time of our file review), the agency did not make the determination to pay the relocation incentive, as evidenced by the date of the approving official's signature, before the prospective employee entered on duty. However, we verified that no payment was made to the recipients of these relocation incentives until after the employee relocated to the new position. According to a senior FDA official, the center in FDA that requested these relocation incentives did not understand that the incentives needed to be provided to the Office of Management—the human capital office within FDA—for processing and approval prior to the employee entering on duty and mistakenly believed that the former Commissioner's memorandum authorizing a broad approval of incentives for their center covered these relocation incentive requests. The official said that this was an isolated misunderstanding that has been corrected with further discussions with the center.

In addition, according to HHS policy and FDA guidance, the official who is recommending the employee for the 3R incentive must sign off on the request before the official who approves the award, which in FDA's case is the Commissioner or designee.<sup>27</sup> We estimate that in less than 2 percent of 3R incentives awarded from 2007 through October 2008 the recommending official did not sign off on the request before the approving official.<sup>28</sup> In the

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<sup>25</sup>The 95 percent confidence interval for this estimate is from 84.6 to 96.6 percent.

<sup>26</sup>The 95 percent confidence interval for this estimate is from 83.8 to 100 percent.

<sup>27</sup>For the recommending official, FDA requires the center directors/Associate Commissioner for Regulatory Affairs or within the Office of the Commissioner, the deputy commissioners/Chief Counsel or Chief of Staff, as applicable, to officially request the incentive and sign the request form.

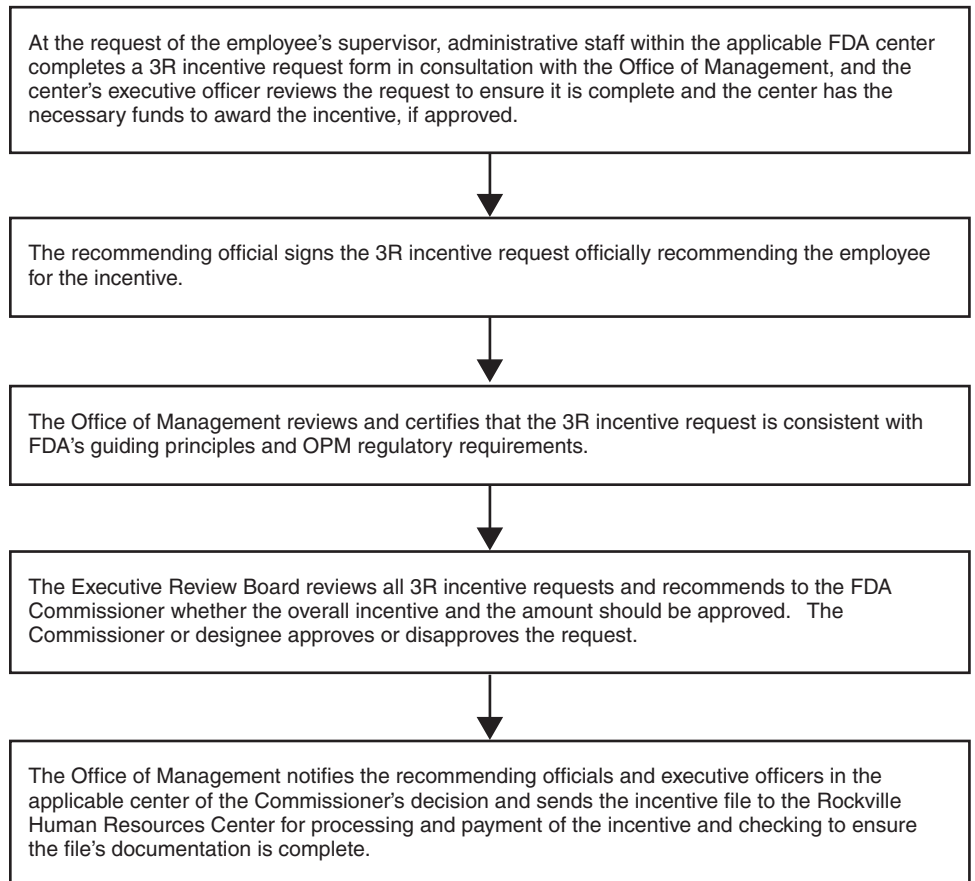
<sup>28</sup>The 95 percent confidence interval for this estimate is from 0.1 to 5.9 percent.

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three relocation incentive files that we reviewed where this occurred, the agency used a justification and approval for the awards signed by the approving official more than 22 months before the awards were recommended. When asked why this occurred, FDA said the incentives were mistakenly signed out of order.

Beginning in March 2006, FDA revised its 3R incentive review and approval process by centralizing the process—a key internal control that if implemented properly may improve the processing sequence of the incentives. Since that time, FDA has continued to streamline its process, assign oversight responsibility to its Executive Review Board (ERB), and issue updated guidance, which it calls guiding principles. FDA's ERB, which consists of the Principal Deputy Commissioner who serves as the chair, the center directors, the Associate Commissioner for Policy, and the Assistant Commissioner for Management, is responsible for reviewing all compensation programs and flexibilities including 3R incentives across the agency and developing guidelines for implementing each program. Since the time of our file review, FDA undertook a detailed review of its 3R incentive program and as a result of its review, clarified details of FDA's process for approving 3R incentives and the role of the ERB. Figure 4 shows the revised review and approval process for 3R incentive requests that FDA currently follows.

**Figure 4: FDA's Revised Review and Approval Process for 3R Incentive Requests**



Source: GAO analysis of FDA.

Beginning in September 2009, FDA's procedures call for its Office of Management to certify if a new 3R incentive request addresses FDA's guiding principles prior to submitting the incentive request to the ERB for its review. Further, in an effort to streamline the process, the ERB Chair may review and recommend some of the incentive requests to the Commissioner without the full ERB review when the Office of Management certifies the request. The ERB Chair can request a review by the full ERB for any incentive request, according to a senior FDA official. Finally, according to a senior official from the Rockville Human Resources Center (RHRC), which is responsible for processing FDA's personnel actions such as incentive requests, the center adopted the practice of double checking the incentive file to ensure the documentation in the file,



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such as the commencement and termination dates on the service agreements, are complete after the incentive has been processed.

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### Relocation Incentive Files Did Not Consistently Document Employees' Relocation, but Revisions to the Incentive Form Address These Requirements

OPM regulations for relocation incentives require that in order to receive a relocation incentive the employee's work site for the new position must be 50 miles or more from the work site of the position held immediately before the move, unless the agency waives the 50-mile requirement, and the employee must establish a new residence to accept the position. We found that in 3 of 12 of the relocation incentives awarded from 2007 through October 2008, the incentive files did not document that the employee's new work site was more than 50 miles from the previous work site. For example, an individual who received a relocation incentive was transferring from another federal agency to work at FDA in the Washington, D.C., area and the file did not document where that previous agency was located (e.g., Washington, D.C., or another city). In addition, 8 of 12 of the relocation incentives were paid to the employee before or on the same day that the agency had record of the employee establishing a residence in the new geographic area.<sup>29</sup> In three of these cases, the sequence of dates was less than a month different, but in three other cases it was several months. For the remaining two cases, the first record of the employee's residence in HHS's human capital data system was the date of the incentive payment. By reviewing the data system and additional employee records, we found proof that for 11 of the 12 relocation incentives, the employee eventually established a residence in the new geographic area. For one incentive the previous address on file was an Army P.O. box with no city or state included. According to FDA, this individual was deployed with the military to Europe prior to establishing a residence in the geographic area for the new position. While the relocation incentive forms we reviewed did not include these relocation requirements, in the fall of 2008, FDA recognized the need to more clearly document these relocation requirements and revised its recruitment or relocation incentive form to include check boxes addressing these requirements.

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<sup>29</sup>In order to obtain the date the employee established residence in the new geographic area, we reviewed information in HHS's human capital data system—the Enterprise Human Resources and Payment System—which HHS uses to centrally maintain personnel data for all employees. Specifically, we identified the date the employee's change of address request was processed and the previous location the agency had on file for each employee. We then compared the dates for change of address to the relocation incentive payment date. When the previous location for an employee was not recorded in the data system, we reviewed the employee's resume on file at FDA to identify the location.

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In response to our finding on the dates of relocation, senior officials from FDA and RHRC acknowledged that there is no formal process to document that the new work site is greater than 50 miles from the previous work site or that the individual has established a residence in the new geographic area before the incentive is awarded. Rather, the RHRC official said they check these requirements through more informal means—conversations with the employee, reviewing the resume, and knowledge of where the person is coming from, which in some cases, is such a great distance from the new duty station that it is common knowledge that the new work site is greater than 50 miles from the previous work site and the individual has established a residence in the new geographic area. According to FDA, the centers are to verify the change of residence before submitting the incentive request for payment processing to RHRC by checking that a personnel action for an address change to the new duty station has been submitted. As a next step, the centers are to check in the data system that the address has been changed. In addition, FDA and RHRC officials said there may be a delay in RHRC’s processing of the change of address from the time the employee submits the request, which may account for the sequence of dates.

As another explanation for the difference in dates, a senior FDA official explained that employees who have received the incentive are permitted to stay in temporary housing after receiving the incentive before they officially establish a new residence and change their residence with the agency. OPM officials stated that the regulations do not define “residence” for this purpose and since relocation incentives may be paid for temporary work site changes, it is not necessary for an employee to move his or her permanent residence to qualify for a relocation incentive; establishing temporary housing is acceptable. FDA and RHRC officials noted that in some of the older files we reviewed there was no place to document that an employee had established a new residence or relocated a distance greater than 50 miles, as the current incentive form now allows.

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Service Agreements Failed to Include Elements Required in Statute and OPM Regulations, but Revised Guidance May Lead to Some Improvement

The service agreements frequently failed to include contents prescribed by statute and OPM regulations. Consistent with the statute and regulations, FDA requires service agreements for recruitment and relocation incentives, but does not use service agreements for retention incentives.<sup>30</sup> In some areas, we observed appropriate documentation of the prescribed contents in the service agreement, such as the total amount of the incentive and length of the service period, but other areas were lacking, such as the method of paying the incentive and timing and amounts of each incentive payment. Not including the prescribed contents of the service agreement may affect FDA's ability to recover funds should the agency terminate or reduce an incentive. For an employee who leaves the position prior to completing the service period for the incentive, FDA uses information in the service agreement to determine the prorated amount of the incentive payment that needs to be collected from the former employee. Since the time of our file review, FDA has updated its guidance and recruitment or relocation incentive form including the service agreement section, which if effectively implemented may help prevent future problems associated with deficient service agreements.

We estimate that all of the recruitment incentive files<sup>31</sup> and 11 of 12 of the relocation incentive files awarded from 2007 through October 2008 documented a permitted total incentive amount in the service agreement—the maximum amount is 25 percent of base pay—with the exception of the 1 relocation incentive file that lacked a service agreement, but documented an appropriate total incentive amount elsewhere in the file. While considering the criteria in HHS's 3R incentive policy, FDA has established guidelines for determining the amounts of the 3R incentives. Specifically, during the time of our file review, recruitment and relocation incentives were to be between 10 and 15 percent of base pay.

The service period, which is a specified period of employment with the agency the employee agrees to complete in exchange for payment of the

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<sup>30</sup>In accordance with 5 U.S.C. § 5754, regulations do not require a service agreement for retention incentives, if the agency pays the incentive in biweekly installments, and sets the biweekly installments at the full retention incentive percentage rate established for the employee. FDA pays all of its retention incentives in biweekly installments set at the full retention incentive percentage. Eleven of 12 of the relocation incentive files and 1 of 1 and 16 of 16 of the recruitment incentive files from 2007 and 2008, respectively, contained service agreements.

<sup>31</sup>The 95 percent confidence interval for this estimate is from 83.8 to 100 percent.

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incentive, may not exceed 4 years for recruitment and relocation incentives with a minimum of 6 months for recruitment incentives. With the exception of one relocation incentive file which lacked a service agreement, all the recruitment and relocation incentive files documented a permitted length of service in the service agreement length field.<sup>32</sup> FDA sets guidelines for determining the length of the service period for recruitment and relocation incentives. According to a senior FDA official, FDA has traditionally used 12 months as the length, but in early 2008, as FDA began hiring a large number of employees, it started requiring a length of 18 months. If FDA authorized multiple incentives to an employee, e.g., student loan repayment in addition to a recruitment incentive, it required a 24-month service period and in some cases where FDA approved a higher percentage for the incentive amount, it required a 36-month service period.

Further, the service agreement for recruitment and relocation incentives must specify the method of paying the incentive, and the timing and amounts of each incentive payment (i.e., a lump sum at the beginning or end of the service period, installments throughout the service period, or a combination). We estimate that 12 percent of the recruitment incentives,<sup>33</sup> and 1 of 12 of the relocation incentives awarded from 2007 to October 2008, included how the incentive was to be paid—a lump sum payment—and the amount. None of the recruitment and relocation incentives included when the incentive would be paid—at the beginning of the service period—in the service agreements.<sup>34</sup> According to a senior FDA official, FDA has traditionally paid recruitment and relocation incentives as lump sum payments at the beginning of the service period because it is most attractive to prospective employees at recruitment fairs or interviews and it places less burden on FDA to maintain records and monitor payments than biweekly or quarterly payments. According to this official, FDA has previously explored providing managers with other payment options and managers overwhelmingly responded that this payment method was most effective. The service agreement section of FDA's current recruitment or relocation incentive form now states that the

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<sup>32</sup>Eleven of 12 of the relocation incentive files and 1 of 1 and 16 of 16 of the recruitment incentive files from 2007 and 2008, respectively.

<sup>33</sup>The 95 percent confidence interval for this estimate is from 1.5 to 38.4 percent.

<sup>34</sup>Five of 5 and 7 of 7 of the relocation incentive files from 2007 and 2008, respectively, and 1 of 1 and 16 of 16 of the recruitment incentive files from 2007 and 2008, respectively.

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payment is to be made as a lump sum, but does not specify the timing of the payment.

FDA's service agreements for recruitment and relocation incentives also included fields for the commencement and termination dates of the service period as required. We estimate that about 25 percent of recruitment incentive files, and 1 of 12 of the relocation incentive files during the time of our file review, included both commencement and termination dates.<sup>35</sup> A senior FDA official explained that once the Commissioner approves the award, the Office of Management sends the incentive file to RHRC, which is responsible for processing the incentives. During the processing of the award, the dates of the service period are finalized and according to this FDA official, RHRC officials must fill in the dates once they determine the official effective date of the incentive. A senior RHRC official noted that there previously has been no system to add these dates, so this step was often missed. As discussed earlier, according to this official, in the fall of 2009, RHRC adopted the practice of double checking the incentives to ensure the documentation in the file, such as the commencement and termination dates on the service agreements, are complete after the incentive has been processed.

OPM officials responsible for administering the governmentwide 3R incentive program commented that while not necessarily invalidating the incentive, these missing elements in the service agreements are potentially significant omissions and a lack of documentation may lead to problems in paying the incentives. For example, the timing and amount of each incentive payment needs to be documented in the service agreement for disbursement purposes and to ensure that the employee and agency concur about the payment schedule. Without this information, the agency may have a difficult time supporting its case if the employee questions payments, and the payment schedule is not documented in the file. OPM officials said that the agency has a general responsibility to ensure all requirements of the incentive are clearly laid out in the incentive file and communicated to the employee. The officials added that it was important that the commencement and termination dates of the service period be documented because FDA may be hindered in exercising proper oversight. Without the dates, it could be difficult for the agency to recover incorrect payments or establish that an employee has left the position prior to completing the service period outlined in the service agreement.

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<sup>35</sup>The 95 percent confidence interval for this estimate is from 7.2 to 52.4 percent.

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## FDA Could Further Improve Its Guidance for 3R Incentives

While FDA revised its guidance since the time of our file review, FDA has not addressed several areas specified in the regulations in its guidance for retention incentives. First, FDA's guidance states that all recruitment and relocation incentives are to be paid as lump sum payments, but FDA does not include the method it uses to pay retention incentives—biweekly installment payments—in its guidance. A senior FDA official said it has been a long-standing practice in HHS to give retention incentive payments in biweekly installments and acknowledged that the guidance should be updated to reflect this practice. By including the payment method in its guidance, FDA will help ensure that the method is communicated to all employees and that payments are made in accordance with regulations.

Second, as specified in the regulations, FDA's guidance does not include a condition for terminating a retention incentive when no service agreement is required based solely on the management needs of the agency. Not including all of the termination conditions in its guidance could hinder employees' understanding of the conditions under which they would no longer receive incentive payments, such as due to insufficient agency funds. While FDA's guidance generally addresses the conditions for terminating retention incentives due to the fault of the employee, such as receiving a performance rating of less than "fully successful," the other conditions for termination are impressed upon managers through meetings and other communication on the importance of using these incentives as discretionary flexibilities, according to a senior FDA official. As OPM has stated, the agency has a general responsibility to ensure all requirements of the incentive are clearly communicated to the employee.

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## OPM and HHS Provide Oversight of 3R Incentives, but Improvements Can Be Made

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### OPM Provides Oversight of 3R Incentives through Various Mechanisms, but a Stronger Emphasis on Agencies' Strategic Use of 3R Incentives Is Needed

#### OPM Annually Reviews and Reports on Agencies' Use of 3R Incentives

The 3R incentive authorities provided under the Federal Workforce Flexibility Act of 2004 were designed to provide agencies with additional flexibility to help recruit and retain employees and better meet agency strategic human capital needs. Since agencies began using the new flexibilities, OPM has provided governmentwide oversight by reviewing and reporting on agencies' use of 3R incentives, providing guidance to agencies, and evaluating agencies' human capital systems including the use of 3R incentives.

Because the Federal Workforce Flexibility Act of 2004 requires OPM to annually report to Congress on how agencies used 3R incentives, OPM requires agencies to report that information annually to OPM. Agencies must submit data on the number and dollar amount paid by incentive type, pay grade or work level, occupational series, and other variables and descriptive information on how the 3R incentive authority was used that year. For the 2007 annual report to Congress, OPM also asked agencies to provide information on how the use of 3R incentives helped improve their agencies' recruitment and retention efforts and identify any barriers the agencies faced in using 3R incentives. However, the descriptive information in OPM's annual report to Congress that agencies provided on how 3R incentives helped address their recruitment and retention efforts is anecdotal, and according to OPM's Deputy Associate Director in the Center for Pay & Leave Administration, OPM's annual report is not intended to be an evaluation determining whether agencies are following the regulations and using the 3R incentive authorities appropriately. The act's reporting requirement will sunset after OPM's report covering 2009, but according to OPM, OPM may ask agencies to continue their 3R

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incentive reporting.<sup>36</sup> Therefore, it will be important for OPM to determine what it will do with that information going forward.

In July 2009, the OPM Director initiated a governmentwide review of 3R incentives to help ensure effective use of 3R incentives and identify opportunities to strengthen the 3R incentive program administration and oversight. When asked about the impetus for this review, the Deputy Associate Director said the economic situation the nation is facing and the renewed interest in federal service caused the OPM Director and administration to question if the need for 3R incentives and the amount of money agencies spend on these incentives—in particular retention incentives—was still necessary.

- OPM directed agencies to review their use of 3R incentives and if needed, update their 3R incentive plans, approval, and monitoring procedures to ensure they meet regulatory requirements. OPM requested agencies certify that they completed the review by signing a form and submitting it to OPM by the end of August 2009. A senior HHS official in the human resources office said HHS completed its review and certified to OPM that HHS has a plan for awarding 3R incentives that meets regulations. According to OPM's Deputy Associate Director, the agency review was a one-time request by OPM to help ensure that agencies' 3R incentive plans comply with the most recent version of the regulations.
- OPM is analyzing trends in the use of 3R incentives governmentwide and in the 12 agencies (including HHS) that spent the most in terms of overall dollars on 3R incentives according to 2007 data the agencies submitted for OPM's annual report to Congress. For these 12 agencies, OPM is also analyzing trends in their workforce data, such as the number of recruitment incentives as a percentage of new hires. According to an OPM official, OPM expects to complete its review in early 2010 and will share the results with agencies shortly after. Further, OPM formed a workgroup of the compensation experts from these 12 agencies to develop recommendations for measuring the cost-benefit of the 3R incentive program for the federal government and evaluating what the impact would be on recruitment and retention efforts if agencies were to scale back their funding of the 3R incentives. According to this OPM official, as of October 2009, the workgroup has drafted recommendations and is discussing how

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<sup>36</sup>5 CFR 575.315(i). The requirement that agencies report annually on the use of retention incentives for employees likely to leave for another position in the federal service before the closure or relocation of the employee's facility or office does not have a sunset provision.



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OPM's 3R Incentive Guidance to Agencies Could More Fully Emphasize the Importance of Considering Succession Planning in the Decision Process for Awarding Retention Incentives

to share its recommendations with the Chief Human Capital Officers Council.

According to OPM, OPM's and the agencies' reviews of 3R incentives could result in OPM guidance on metrics agencies may use to ensure the incentives are being used effectively and addressing their recruitment and retention goals. Such metrics would enable agencies to report more systematically on the results of their use of 3R incentives. Continuing to have governmentwide information on 3R incentives will provide OPM and policymakers with the information they need to help assess trends in the overall usage of the 3R incentive program across the government and determine if changes are needed.

Since issuing interim regulations for 3R incentives in 2005, OPM has issued final regulations for 3R incentives and retention incentives for employees who are likely to leave for a different federal position before the closure or relocation of the employee's office, issued memorandums and posted frequently asked questions and fact sheets providing guidance on the use of 3R incentives on its Web site, and held forums for agency officials to discuss the regulatory changes and other topics in May 2005 and March 2008. According to OPM, OPM also provides guidance in response to agency inquiries through e-mails or phone calls on agency-specific 3R issues. In the 2009 memorandums providing guidance to agencies for reviewing their 3R incentive programs, the OPM Director stressed the importance of ensuring the money spent on 3R incentives is being used effectively and that the cost of using any pay flexibilities, including 3R incentives, should be weighed against the benefits gained especially in the case of retention incentives, which account for the majority of 3R incentive costs.

As a next step, OPM could provide guidance to all agencies on the importance of considering succession planning in the decision process for awarding retention incentives. We have noted the importance of succession planning to strengthen both current and future organizational capacity and identify, develop, and select successors who are the right people, with the right skills, at the right time for leadership and other key positions.<sup>37</sup> OPM supports succession planning as a vital tool for maintaining a highly-skilled workforce and, according to OPM, succession planning may help an agency reduce its need more quickly for an

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<sup>37</sup>GAO, *Human Capital: Succession Planning and Management is Critical Driver of Organizational Transformation*, [GAO-04-127T](#) (Washington, D.C.: Oct. 1, 2003).

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OPM Evaluates Agencies' Human Capital Management Systems Including the Use of 3R Incentives

employee's services to a level that makes it unnecessary to continue paying the retention incentive and allows the agency to terminate it. However, through its regulations and guidance, OPM does not require agencies to consider succession planning as part of the decision and documentation process for awarding a retention incentive. The regulations allow agencies to award retention incentives to employees, including those who are eligible to retire and are likely to leave federal service in the absence of receiving an incentive. While requiring agencies to annually review the conditions for giving the retention incentive to ensure they are still present when a service agreement is not required, OPM regulations do not place any restriction on the number of consecutive years an individual can receive a retention incentive.

OPM provides oversight of agencies' human capital systems including the use of 3R incentives by periodically conducting two types of evaluations—human capital management evaluations and delegated examining reviews<sup>38</sup>—and participating in agency-led evaluations as part of their broader human capital accountability requirements under OPM's Human Capital Assessment and Accountability Framework by providing guidance and assistance. As part of these evaluations, OPM reviews an agency's 3R incentive plan including designation of the proper approval authority, documentation of individual incentive decisions, and agency 3R incentive data for compliance with applicable regulations. An OPM official responsible for conducting the evaluations said examples of 3R incentive problems that OPM may find would be an incomplete or missing incentive request form or justifications lacking the necessary documentation for the incentive. If OPM finds that an agency's 3R incentive plan or payments do not comply with regulations, OPM includes a required action in its evaluation report, which gives the agency 60 days to submit to OPM for approval the evidence that it has corrected any identified violations. According to this official, OPM may make recommendations to the agency for improvements, but it does not follow up on the implementation of these recommendations since they do not pertain to legal or regulatory violations. Regarding an opportunity for improvement that OPM sees for

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<sup>38</sup>Delegated examining reviews examine agencies' use of the authority granted by OPM to fill competitive civil service jobs. Appointments under this authority are subject to civil service laws and regulations to help ensure fair and open competition; recruitment from all segments of society; and selection on the basis of the applicants' competencies or knowledge, skills, and abilities. As part of this review, OPM reviews agencies' decisions to use hiring compensation incentives (e.g., recruitment and relocation incentives) to ensure they are appropriately documented and justified.

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agencies' use of 3R incentives based on these evaluations, the official stated that OPM would like to see a more strategic approach to overall 3R incentive program design and implementation to help ensure the incentives are used appropriately to reflect changing conditions in the agency and the labor market. OPM expects each agency to perform the necessary analysis to determine the tools and flexibilities, including 3R incentives, which would help each agency achieve its goals as part of each agency's strategic workforce planning process, according to this official. It is important for OPM to encourage agencies to take this step and identify the linkage between an agency's use of 3R incentives and meeting its recruitment and retention goals.

Most recently, OPM conducted several delegated examining reviews for organizations within HHS including RHRC, which provides human capital services to FDA, in fiscal year 2006. OPM has not recently conducted any human capital management evaluations at HHS; rather, OPM participates in the HHS-led accountability reviews, such as the reviews of several OPDIVs including FDA in fiscal year 2007. OPM did not examine HHS's 3R incentive program as part of its delegated examining reviews and found no problems with the use of 3R incentives in its participation in the HHS-led reviews of several OPDIVs in fiscal year 2007.

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### HHS Provides Oversight of 3R Incentives, but Areas of Its 3R Incentive Policy Could Be Strengthened

HHS Implements a Departmentwide Policy for 3R Incentives, but the Policy Does Not Clearly Address Certain Important Requirements

HHS provides oversight of its OPDIVs'—the agencies within HHS—use of 3R incentives by implementing a departmentwide 3R incentive policy and monitoring and periodically conducting accountability reviews of its OPDIVs' human capital systems including the use of 3R incentives.

According to OPM regulations, the agency's 3R incentive plan must cover certain requirements, such as the designation of officials with authority to review and approve the payments, required documentation for justifying the incentive, and conditions for terminating an incentive and obligations of the agency and employee upon such termination, among other things. HHS developed a written policy for authorizing the use of 3R incentives across the department.<sup>39</sup> While HHS's 3R incentive policy generally addressed the requirements for 3R incentive plans as outlined in OPM's regulations, there were several instances where the policy omitted or did not clearly address certain important requirements. Clearly incorporating

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<sup>39</sup>HHS, *Human Resources Manual, Instruction 575-1, Change 1, Recruitment, Relocation and Retention Incentives* (Dec. 15, 2008).

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the regulatory requirements into the policy will help to ensure that managers and OPDIVs are using 3R incentives consistent with the law and regulations. According to a senior HHS official, HHS is reviewing the current 3R incentive policy and determining if updates are needed as part of its review of 3R incentives in response to OPM's directive to agencies in May 2009 to review their 3R incentive programs. We found that HHS's 3R incentive policy could be strengthened in the following areas.

- **Conditions for reducing or terminating an incentive.** HHS's policy generally addressed the mandatory and discretionary conditions for reducing or terminating an employee's incentive payment and the agency's and employee's obligations with regard to notification, payments, and repayment of the incentive. However, HHS's policy incorrectly refers to a condition for reducing or terminating a retention incentive authorization as a discretionary (may) condition, when it should be documented as a mandatory (must) condition. Specifically, when no service agreement is required, payment of a retention incentive must be reduced or terminated when the original determination to pay the incentive no longer applies or when payment is no longer warranted at the level originally approved. Further, HHS's policy does not include a mandatory termination condition for retention incentives when no service agreement is required due to the employee being demoted or separated for cause or the employee receiving a rating of less than "fully successful." The policy only discusses this condition for retention incentives with service agreements. HHS officials acknowledged these errors in the 3R incentive policy and stated that the policy should be corrected and more specific than the general rules for terminating service agreements that are currently in the policy. Not correctly specifying the mandatory and discretionary conditions for reducing or terminating 3R incentives and service agreements could hinder OPDIVs' interpretation and understanding of these conditions when reductions or terminations of the incentives may be in order.
- **Annual review of retention incentives with no service agreement.** OPM regulations state that for retention incentives that are paid when no service agreement is required, an agency must review each determination to pay the incentive at least annually to determine whether payment is still warranted and certify this determination in writing. HHS's policy does not provide that retention incentives paid biweekly, which require no service agreements, need to be reviewed annually. According to HHS officials, HHS does not provide any guidance on this requirement; it is up to the OPDIVs to determine how they will review their incentives, including the annual review for retention incentives without service agreements. The officials stated that they plan to build a check of this requirement into the future accountability reviews of 3R incentives across HHS.

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- **Conditions for repayment of an incentive.** According to OPM regulations, if a 3R incentive service agreement is terminated due to employee fault or failure related to performance, the employee can retain payments received for completed work, but the agency does not have to pay the amount attributed to completed work that has not been received unless agreed to in the service agreement, nor is the agency obligated to pay any incentive payments attributable to uncompleted service. HHS's policy on the department's obligations in the event of the termination of a 3R incentive is not clear, suggesting that an agency may be obligated to make outstanding payments attributed to uncompleted service if provided for in a service agreement, which is not permissible when terminated due to employee fault.

According to an HHS official, HHS has not yet awarded retention incentives to employees who would be likely to leave for a different position in the federal service before the closure or relocation of the employee's office or organization. HHS's policy does not address all the regulatory requirements that apply when using retention incentives in this manner, such as the requirement that these incentives cannot be paid in biweekly installments at the full incentive percentage rate. A senior HHS official said HHS has not yet determined if it will update the policy to document these requirements because it has not yet used this type of incentive. Moving forward, HHS should have the policy in place before using this type of retention incentive to help ensure the OPDIVs use this flexibility in a manner that meets the approval of HHS and regulatory requirements.

#### HHS Monitors and Periodically Conducts Accountability Reviews of Its OPDIVs' Human Capital Systems Including the Use of 3R Incentives

OPM regulations require agencies to monitor the use of 3R incentives to ensure the incentive plan and payments are consistent with the law and regulatory requirements. In its 3R incentive policy, HHS assigns its OPDIVs the responsibility of ongoing monitoring of 3R incentives to ensure compliance with regulations and HHS policy. HHS does not uniformly review the OPDIVs' guidance outlining the internal process they follow or 3R incentive forms, but a senior HHS official stated that HHS provides advice to OPDIVs when requested or required. While its ongoing monitoring of 3R incentives has been minimal in the past, according to another senior HHS official, HHS is planning to take a more active role in light of its recent review of 3R incentives in response to OPM's directive to agencies in May 2009 to review their 3R incentive programs. The official stated that HHS is deciding how to implement the results of its 3R incentive review and build ongoing monitoring and future reviews of 3R incentives into the existing human capital accountability reviews conducted by the Office of Human Resources.

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Providing further oversight of 3R incentives, HHS's Human Capital and Accountability Division within the Office of Human Resources conducts accountability reviews of the OPDIVs' human capital systems, including the use of 3R incentives as part of OPM's Human Capital Assessment and Accountability Framework requirements. The purpose of the accountability reviews is to ensure the OPDIV's' human capital programs and policies are effective and adhere to merit system principles and other pertinent laws and regulations. In response to HHS's recommendations and required actions as a result of its reviews, an HHS official responsible for conducting the accountability reviews said the OPDIVs are asked to respond to all recommendations and required actions identified by HHS, but HHS only requires a response to the required actions, which are legal or regulatory violations. Moving forward, the official said that HHS plans to conduct its accountability reviews of departmentwide programs, such as 3R incentives, instead of the OPDIV-specific reviews, to enable the audit team to examine specific details of the programs across HHS, which the current approach does not allow. HHS is planning an accountability program review of 3R incentives in fiscal year 2010.

For its accountability review of FDA in fiscal year 2007, HHS reviewed FDA's compensation strategies, including 3R incentives, and reported that they helped attract and retain quality employees. As part of the review, HHS said the team reviewed 13 group retention incentive actions at FDA to ensure that the files were completed properly and contained correct documentation. HHS did not identify any required actions for FDA on 3R incentives or other aspects of its human capital system, but it did identify a number of recommendations for improvements in the human capital area including one specific to retention incentives. HHS found that overall FDA's retention policies and practices appear to meet the requirements of HHS policy and other governmental guidelines. However, HHS reported that FDA had not incorporated the use of retention tools into its workforce plan and recommended that FDA identify existing retention tools, analyze their effectiveness, and incorporate retention strategies into the FDA workforce plan. According FDA's Assistant Commissioner for Management, FDA plans to address this recommendation in the scheduled update of its strategic workforce plan in fiscal year 2010. HHS has not reviewed FDA since fiscal year 2007 and plans to include FDA as part of its scheduled program review of 3R incentives for fiscal year 2010.

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## Conclusions

Federal agencies have a number of available flexibilities, including 3R incentives, to help them strategically manage their workforces. OPM's call to agencies to review their 3R incentive programs has raised awareness

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about the importance of ensuring that current and future incentives are used only when necessary to support agency mission and program needs. FDA, OPM, and HHS have an opportunity to make further improvements to internal controls and oversight of 3R incentives. FDA lacks an updated strategic workforce plan that would help it determine how its use of 3R incentives is contributing to its human capital goals. Despite positive enhancements over the past 3 years, FDA's internal controls have weaknesses related to requesting, approving, and processing 3R incentive requests. Strong internal controls help provide assurance that 3R incentives are used efficiently and effectively.

As for oversight, OPM requiring all federal agencies to incorporate succession planning in the decision process for awarding retention incentives would help to ensure that agencies consider other effective means to acquire and retain talent. Clearly incorporating important requirements into HHS's 3R incentive policy will help to ensure that managers and OPDIVs are using 3R incentives consistent with the law and regulations.

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## Recommendations for Executive Action

To better align the use of 3R incentives with the agency's human capital goals, we recommend that the Commissioner of FDA update FDA's strategic workforce plan to document the agency's recruitment and retention goals and strategies and as part of that update, identify indicators to better track the progress of 3R incentives over time in addressing the agency's recruitment and retention goals.

As FDA implements the results of its 2009 review of 3R incentives, we recommend that the Commissioner of FDA continue to strengthen FDA's internal controls for requesting, approving, and processing 3R incentives by taking the following two actions:

- update the guidance for awarding 3R incentives to include the payment method used for retention incentives and all the conditions for terminating a retention incentive when no service agreement is required, and
- ensure 3R incentive files are properly completed and reviewed to address policy and regulatory requirements before the employees receive the incentive payments.

As OPM implements the results of its governmentwide 3R incentive review, we recommend that the Director of OPM require agencies to incorporate succession planning efforts into the decision process for

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awarding retention incentives and document this requirement for succession planning in their 3R incentive plans.

To ensure the department and OPDIVs are aware of HHS's policy in all areas of 3R incentives and use these incentives consistent with law and OPM regulations, we recommend that the Secretary of HHS revise HHS's 3R incentive policy to ensure that the guidance provided clearly addresses certain important requirements outlined in the regulations.

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## Agency Comments and Our Evaluation

We provided a copy of the draft report to the Secretary of HHS and Director of OPM for their review and comment. HHS's Acting Assistant Secretary for Legislation provided written comments that included comments from FDA (see app. III). FDA generally agreed with our recommendations. FDA stated that it will continue to review its 3R incentives to ensure that their use is consistent with the agency's guidance for the use of 3R incentives. In response to its recommendation, HHS acknowledged the need to revise its 3R incentive policy and stated that it is in the process of reviewing and making the appropriate changes. HHS also provided technical comments on the draft report, which we incorporated as appropriate.

OPM provided written comments, which are included in appendix IV. OPM agreed with our recommendation and stated that it will develop future guidance on the importance of considering succession planning in the decision process for awarding retention incentive. OPM stated that it is working with agencies to review the 3R incentive program and its current regulations, guidance, and monitoring policies to identify areas where improvements can be made, such as developing and using metrics to monitor and evaluate 3R incentive usage. OPM also provided technical comments on the draft report, which we incorporated as appropriate.

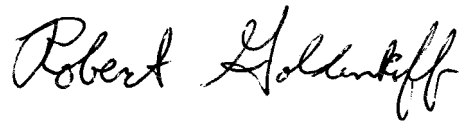
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As we agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this letter. At that time, we will send copies of this report to the appropriate congressional committees, the Secretary of HHS, Commissioner of FDA, Director of OPM, and other interested parties. The report will also be available at no charge on the GAO Web site at <http://www.gao.gov>.



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If you or your staff have any questions regarding this report, please contact me at (202) 512-6806 or [goldenkoffr@gao.gov](mailto:goldenkoffr@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix V.



Robert N. Goldenkoff  
Director, Strategic Issues

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# Appendix I: Objectives, Scope, and Methodology

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This report examines (1) the extent to which the Food and Drug Administration (FDA) is linking its use of recruitment, relocation, and retention (3R) incentives to its strategic human capital approaches to address its current and emerging challenges; (2) the extent to which FDA's 3R incentives were awarded consistent with the law, regulations, and guidance and the internal controls FDA has in place to ensure proper disbursement of 3R incentives and encourage efficient use; and (3) the steps the Office of Personnel Management (OPM) has taken to help ensure that agencies, including the Department of Health and Human Services (HHS), have effective strategic oversight of their 3R incentive programs, and how HHS is providing oversight of its 3R incentive program.

To address our first objective, we collected and analyzed aggregate pay data as provided by HHS on the amount and number of 3R incentives by various categories for employees in FDA and the rest of HHS from January 1, 2007, through July 4, 2009, and data on FDA's workforce from OPM's Central Personnel Data File (CPDF) for fiscal year 2008.<sup>1</sup> To describe FDA's use of 3R incentives and draw a comparison to the rest of HHS, we analyzed and compared the data on FDA and the rest of HHS to determine the number of each type of 3R incentive provided to employees and the aggregate distributions across various categories including duty location, pay plan, and occupational series by calendar year. Using the HHS pay data, we calculated the percentage of FDA and HHS total numbers of 3R incentives and total expenditures on these incentives, the mission-critical occupational series' percentage of FDA's total number of 3R incentives with mission-critical occupations as defined by FDA, the average distribution of FDA 3R incentives by top occupational series, and the distribution of FDA 3R incentives by pay plan.

To compare the use of 3R incentives in FDA with trends in its workforce, using data from CPDF, we calculated FDA retirement eligibility by occupational series for career permanent employees,<sup>2</sup> and FDA's percentage of HHS's total workforce. As a point of comparison on the governmentwide use of 3R incentives, we reviewed OPM's *Recruitment, Relocation, and Retention Incentives Calendar Year 2007: Report to the*

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<sup>1</sup>The CPDF is a database that contains individual records for most federal employees and is the primary governmentwide source for information on federal employees.

<sup>2</sup>We calculated retirement eligibility by occupational series for career permanent employees. Career employees are employees with appointments that do not have an ending date or maximum length of service.

*Congress*, issued in September 2008, and identified the total dollar amount spent on 3R incentives in 2007. We checked the HHS data for reasonableness and the presence of any obvious or potential errors in accuracy and completeness. We conducted interviews with selected HHS officials knowledgeable about the data, and brought to the attention of these officials any concerns or discrepancies we found with the data for correcting or updating and further clarification. On the basis of these procedures, we believe the data provided by HHS are sufficiently reliable for use in the analyses presented in this report. In addition, we believe the CPDF is sufficiently reliable for the informational purpose of this report.<sup>3</sup>

To identify linkage with the use of 3R incentives and FDA's human capital documents, we analyzed FDA's *Fiscal Year 2006 Workforce Plan*—the most recent workforce plan available—and FDA's *Succession Plan 2009-2012*. We also conducted interviews with FDA officials about the trends we identified in the 3R incentives pay data, FDA's strategic human capital approaches and how the use of 3R incentives fits into broader human capital decisions at the agencywide and center-specific levels, and how the agency tracks the use of 3R incentives to assess the effectiveness of these payments and how they contribute to FDA's broader human capital goals.

To address our second objective, we identified all elements that are required to be included in documenting the awarding of an incentive. We analyzed applicable provisions of title 5 of the United States Code, OPM regulations, HHS policy, and FDA guidance, and interviewed HHS, FDA, and OPM officials to create a data collection instrument identifying the applicable requirements. We used this data collection instrument to analyze a sample of 3R incentives awarded by FDA in 2007 and 2008 in order to determine the extent to which documentation elements required for the awarding of 3R incentives were present.

To review the FDA 3R incentive files, we took a stratified sample. We looked at new incentives for three categories of incentive files—recruitment, relocation, and retention—from 2007 and 2008. There were 2,056 incentive actions in this population from January 1, 2007, to October

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<sup>3</sup>We previously reported that governmentwide data from the CPDF were 96 percent or more accurate. See GAO, *OPM's Central Personnel Data File: Data Appear Sufficiently Reliable to Meet Most Customer Needs*, [GAO/GGD-98-199](#) (Washington, D.C.: Sept. 30, 1998). Also, in a document dated February 28, 2008, an OPM official confirmed that OPM continues to follow the CPDF data quality standards and procedures contained in our 1998 report.

31, 2008. We randomly selected files for review from each set, or stratum, of incentive actions for each category and year, except for three strata where we reviewed all of the files due to the small population size. Our sample size was 107 files, with the number of selected files per stratum shown in table 2.

**Table 2: FDA 3R Incentive Population Size and Number of Random Case Selections by Stratum**

Stratum	Population	Sample size	Number of out-of-scope cases
2007 Relocation	5	5	0
2007 Retention	807	37	0
2007 Recruitment	1	1	0
2008 Relocation	7	7	0
2008 Retention	898	41	2
2008 Recruitment	338	16	0
<b>Total</b>	<b>2,056</b>	<b>107</b>	<b>2</b>

Source: GAO.

Subsequent analysis of the 107 files showed that 2 of the files were not in the scope for this review, leaving us with a random sample of 105 files. We applied our data collection instrument to the random sample of 105 files to determine whether each file contained all the elements that needed to be documented in the awarding of a 3R incentive. Each incentive file was weighted so that our random sample statistically represented the population in each stratum.

Because we followed a probability procedure based on random selections, our sample of 3R incentive files was only one of a large number of samples that we might have drawn. Because each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results in 95 percent confidence intervals. These are intervals that would contain the actual population values for 95 percent of the samples we could have drawn. As a result, we are 95 percent confident that each of the confidence intervals in this report will include the true values in the study population. All percentage estimates from the 3R incentive file review have margins of error at the 95 percent confidence level of plus or minus 10 percentage points or less, unless otherwise noted.

The practical difficulties of utilizing any data collection instrument may introduce errors, commonly referred to as nonsampling errors. For example, difficulties in how a particular question is interpreted, in the

sources of information that are available to respondents, or in how the data are entered into a database or were analyzed can introduce unwanted variability into the results. We took steps in the development of the instrument, the data collection, and the data analysis to minimize these nonsampling errors, including providing detailed instructions of the data collection instrument. In addition, we had a second independent reviewer for the data analysis to further minimize such errors.

We interviewed OPM officials to help understand OPM's policy on oversight of 3R incentives and the regulations, their interpretation of HHS's policy and FDA's guidance on 3R incentives, and how the results of the file review were viewed in this context. We did not ask OPM to review HHS's policy or FDA's guidance on 3R incentives as part of our review. We also interviewed FDA officials to discuss their internal controls relating to the awarding and oversight of 3R incentives, and how the findings of our review fit within the context of their oversight. We reviewed FDA's most recent review of its policy and usage of 3R incentives to identify revisions that were made to internal controls.

To address the third objective, we analyzed OPM's guidance on 3R incentives including regulations, memorandums, and fact sheets; templates for its human capital evaluations; and the 3R incentive report to Congress for calendar year 2007. We also interviewed cognizant officials from the two divisions in OPM that are responsible for developing the 3R incentive regulations and annual reports and monitoring agencies' use of 3R incentives. To obtain information on HHS's oversight of 3R incentives, we analyzed HHS's 3R incentive policy to determine consistency with OPM regulations on 3R incentives, HHS's fiscal year 2007 human capital accountability review of FDA to identify relevant findings on 3R incentives, and other relevant documentation; interviewed senior-level HHS officials responsible for implementing the 3R incentive policy and conducting accountability reviews of the operating divisions' human capital management systems including 3R incentives; and interviewed senior-level FDA officials familiar with HHS's monitoring and oversight of 3R incentives.

We conducted our work from December 2008 through January 2010 in accordance with generally accepted government auditing standards.

# Appendix II: Highlights of the Food and Drug Administration 3R Incentive File Review Results

The following table provides examples of the results for our review of FDA's 3R incentive files. We reviewed the files of a random, stratified sample of 3R incentives awarded from January 2007 through October 2008 to determine whether they met requirements in law, OPM regulations, HHS policy, and FDA guidance.<sup>1</sup>

**Table 3: Examples of How FDA's 3R Incentive Files Addressed Selected Requirements**

Requirements for 3R incentive files according to law, OPM regulations, HHS policy, or FDA guidance	How FDA 3R incentive files addressed requirements
<b>Required forms</b>	
<u>Incentive request</u> : An FDA form that outlines descriptive information, such as the employee's name, pay series, and incentive amount, and documents the approving signatures.	We estimate that all 3R incentive files contained the request form for the incentive. <sup>a</sup>
<u>Justification for the incentive request</u> : Documents the need for the incentive and the reason why the incentive is warranted according to regulatory and policy requirements and includes supplemental information, such as salary surveys, to support justification.	We estimate that about 95 percent of 3R incentive files contained the justification for the incentive request. <sup>b</sup> Further, we estimate that about 83 percent of 3R incentive files contained supporting documentation, predominantly salary surveys, <sup>c</sup> used to support the need for the incentive.
<u>Service agreement</u> : A written agreement the employee must sign before receiving the incentive to complete a specified period of employment with the agency prior to receiving the incentive. Regulations require service agreements for recruitment and relocation incentives, but not for retention incentives when the incentive is paid on a biweekly basis at the full percentage amount.	All recruitment incentive files we reviewed, and 11 of the 12 relocation incentive files we reviewed, contained a service agreement. None of the retention incentive files had an agreement as allowed by regulations. <sup>d</sup>
<ul style="list-style-type: none"> <li>FDA requires service agreements for recruitment and relocation incentives, but does not use service agreements for retention incentives because it pays these incentives in biweekly installments at the full percentage amount.</li> </ul>	
<u>Standard Form (SF) 50</u> : A notification of the personnel action for the incentive payment to help ensure the authorization was processed accordingly.	We estimate that all 3R incentive files contained the SF-50 showing the proper payment authorization. <sup>e</sup>
<b>Approval of the incentive request</b>	
<u>Recommending official signature</u> : FDA requires the center director or a deputy commissioner to officially request the incentive and sign the request form. <sup>f</sup>	We estimate that about 99 percent of 3R incentive files were signed by the recommending official, or a proxy on his or her behalf. <sup>g</sup>

<sup>1</sup>Our sample includes 17 recruitment, 12 relocation, and 76 retention incentives. We reviewed the entire population of relocation incentives awarded from January 2007 through October 2008 so estimates to the population are not necessary. For recruitment and retention incentives, we are able to make population attribute estimates at the 95 percent confidence level with an overall precision of +/- 10.0 percent for the time of our file review.

**Appendix II: Highlights of the Food and Drug Administration 3R Incentive File Review Results**

**Requirements for 3R incentive files according to law, OPM regulations, HHS policy, or FDA guidance**

**How FDA 3R incentive files addressed requirements**

Approving official signature: FDA's Commissioner is the approving official who is to officially approve or disapprove all incentive requests and sign the request form.

- From 2007 through 2008, FDA allowed the Deputy Commissioner for Operations/Chief Operating Officer to sign for the Commissioner and approve the requests. According to an HHS official, this delegation of approval is consistent with HHS policy and OPM regulations.

We estimate that all of the 3R incentive files were signed by the approving official<sup>b</sup> or a designee on his behalf. For most of the files, the Deputy Commissioner for Operations/Chief Operating Officer signed as a designee for the Commissioner as the approving official.

**Eligibility conditions for 3R incentives**

Eligible categories of employees: As provided for by statute, OPM regulations identify the categories of eligible employees including positions in or whose pay is set at the General Schedule (GS), senior-level or scientific or professional, Senior Executive Service (SES), law enforcement officers, Executive Schedule, prevailing rate, and other positions approved by OPM.

- Employees appointed pursuant to 42 U.S.C. §§ 209(f) and 209(g) are not eligible to receive 3R incentives pursuant to the authorities at 5 U.S.C. §§ 5753 or 5754. Rather, their compensation is authorized pursuant to these appointment provisions which permit HHS flexibility in setting compensation for those appointed. FDA began phasing out the use of retention incentives for these employees starting in 2007.

We estimate that all 3R incentives were awarded to eligible categories of employees.<sup>1</sup>

Newly appointed employee for recruitment incentives: An employee must be in the first appointment in the federal government or meet the regulatory definition for newly appointed in order to be eligible to receive a recruitment incentive.

All recruitment incentive files we reviewed contained documentation supporting that the recipient was newly appointed to the federal government.

Current employee for relocation and retention incentives: An employee must be an employee in the federal government immediately before the relocation or receiving the retention incentive payment.

10 of 12 of the relocation incentive files contained documentation supporting that the incentive was given to an employee in the federal government immediately before receiving the incentive. All retention incentives we reviewed were given to current FDA employees.

**Aggregate pay limitation**

Aggregate pay limitation: Payment of 3R incentives is subject to an aggregate pay limit under 5 U.S.C. § 5307 which limits compensation received in any calendar year to an amount equal to the rate for level I of the Executive Schedule or, for employees in SES positions covered by a certified performance appraisal system, equal to the annual compensation payable to the Vice President.<sup>1</sup> For FDA's GS employees, the amounts were \$186,600 and \$191,300 for 2007 and 2008, respectively. For FDA's SES employees, which are covered under HHS's certified appraisal system, the amounts were \$215,700 and \$221,100 for 2007 and 2008, respectively.

- For FDA employees appointed under the authority of 42 U.S.C. §§ 209(f) and 209(g), the aggregate pay limit under section 5307 does not apply to payments authorized outside of title 5. HHS has established aggregate pay limits for these title 42 positions, which for its 209(g) employees, reflect the limit required under section 5307 for FDA's GS employees. For its 209(f) employees, the aggregate pay limit was \$375,000 for 2007 and 2008.

We estimate that all employees' 3R incentive payments were within applicable aggregate pay limits for the year as set by statute or HHS.<sup>2</sup>

Source: GAO analysis of law, OPM regulations, HHS policy, FDA guidance, and a sample of FDA 3R incentive files.

<sup>1</sup>The 95 percent confidence interval for this estimate is from 97.2 to 100 percent.

<sup>2</sup>The 95 percent confidence interval for this estimate is from 88.3 to 98.3 percent.

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**Appendix II: Highlights of the Food and Drug  
Administration 3R Incentive File Review  
Results**

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<sup>c</sup>The 95 percent confidence interval for this estimate is from 76.4 to 87.6 percent.

<sup>d</sup>1 of 1 and 16 of 16 recruitment incentive files from 2007 and 2008, respectively, and 0 of 37 and 0 of 39 retention incentive files from 2007 and 2008, respectively.

<sup>e</sup>The 95 percent confidence interval for this estimate is from 97.2 to 100 percent.

<sup>f</sup>FDA requires the center directors/Associate Commissioner for Regulatory Affairs, or within the Office of the Commissioner, the deputy commissioners/Chief Counsel or Chief of Staff, as applicable, to officially request the incentive and sign the request form.

<sup>g</sup>The 95 percent confidence interval for this estimate is from 95.0 to 100 percent.

<sup>h</sup>The 95 percent confidence interval for this estimate is from 97.2 to 100 percent.

<sup>i</sup>The 95 percent confidence interval for this estimate is from 97.2 to 100 percent.

<sup>j</sup>5 U.S.C. § 5307(d) provides for the higher aggregate pay limit for SES positions (or senior-level or scientific or professional positions paid under 5 U.S.C. § 5376) in agencies with systems that have been certified by OPM with Office of Management and Budget concurrence as having performance appraisal systems which, as designed and applied, make meaningful distinctions based on relative performance. 5 C.F.R. part 530, subpart B and part 430, subpart D.

<sup>k</sup>The 95 percent confidence interval for this estimate is from 97.2 to 100 percent.



# Appendix III: Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation  
Washington, DC 20201

**DEC 23 2009**

Robert N. Goldenkoff  
Director, Strategic Issues  
U.S. Government Accountability Office  
441 G Street N.W.  
Washington, DC 20548

Dear Mr. Goldenkoff:

Enclosed are comments on the U.S. Government Accountability Office's (GAO) report entitled: "Human Capital: Continued Opportunities Exist for FDA and OPM to Improve Oversight of Recruitment, Relocation, and Retention Incentives" (GAO-10-226).

The Department appreciates the opportunity to review this report before its publication.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrea Palm", written over a horizontal line.

Andrea Palm  
Acting Assistant Secretary for Legislation

Enclosure

**GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S (GAO) DRAFT REPORT ENTITLED: "HUMAN CAPITAL: CONTINUED OPPORTUNITIES EXIST FOR FDA AND OPM TO IMPROVE OVERSIGHT OF RECRUITMENT, RELOCATION, AND RETENTION INCENTIVES" (GAO 10-226)**

The Department appreciates the work that GAO has recently completed on the study entitled, *Human Capital: Continued Opportunities Exist for FDA and OPM to Improve Oversight of Recruitment, Relocation, and Retention Incentives*.

FDA leadership is taking advantage of these opportunities for improved oversight. We have already taken major steps over the last year, and we accept GAO's recommendations for additional changes.

In April 2009, FDA dissolved and reconstituted the FDA Executive Review Board (ERB). Chaired by Principal Deputy Commissioner Dr. Joshua Sharfstein, the ERB now includes the agency's seven Center Directors, the Associate Commissioner for Policy, and the Assistant Commissioner for Management. The ERB is responsible for reviewing all compensation programs across the FDA.

The first charge for the ERB was to develop Guiding Principles for the use of 3R incentives. These principles put additional restrictions on the use of these incentives, beyond those required by law or regulation.

**Recruitment**

The ERB has assessed the agency's use of recruitment incentives. It concluded that based upon the current status of the job market, FDA would end the routine use of recruitment incentives. Since June 1, 2009, the ERB has not approved any new recruitment incentives and FDA anticipates that the use of recruitment incentives will dramatically decrease in 2009 as compared to 2008.

**Relocation**

The ERB reviewed the current use of relocation incentives and found these incentives to be rarely awarded and a potentially effective and appropriate tool for key personnel. In FY 2008, eight employees received the incentives. There were zero relocation incentives awarded in FY 2009, and zero so far in FY 2010.

**Retention**

The ERB reviewed every existing categorical and individual retention incentive. At the time of the ERB's review, 343 employees had received categorical retention incentives and 171 individual employees had received individual retention incentives. FDA had already dropped the use of retention incentives in Title 42.

FDA's review of categorical incentives found that the agency hires many scientists with specialized knowledge in such fields as mathematical statistics, pharmacology, pharmacokinetics, and toxicology in competition with much higher-paying private sector

**GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S (GAO) DRAFT REPORT ENTITLED: "HUMAN CAPITAL: CONTINUED OPPORTUNITIES EXIST FOR FDA AND OPM TO IMPROVE OVERSIGHT OF RECRUITMENT, RELOCATION, AND RETENTION INCENTIVES" (GAO 10-226)**

jobs. These incentives have been critical for FDA to retain critical human capital and are far more efficient than a continual turnover in regulatory scientists.

In its initial re-review of individual retention incentives, FDA revalidated 135 of the 171 individual incentives based on the principles adopted. Of the 135, 31 were reduced for fiscal year 2010, and 7 of those that were not reduced have subsequently been eliminated.

The FDA will continue to review and revalidate the 3R incentives to ensure that the use of these incentives is consistent with the established Guiding Principles.

Overall, the FDA is committed to effectively managing its 3R program and has implemented some program enhancements that are above and beyond the guidance that has been provided either by OPM or HHS. These enhancements include the implementation of human capital elements within the request for retention incentives that require managers to provide specific information about succession planning efforts when requesting a retention incentive. In addition, although OPM regulations do not place any restrictions on the number of consecutive years an individual can receive a retention incentive, FDA has incorporated in its Guiding Principles and implemented a 5-year limit on the number of consecutive years that an individual can receive a retention incentive. In conjunction with the implementation of this 5-year maximum, each incentive is reviewed on an annual basis to determine if the original conditions still apply. The incentives are not automatically renewed.

**Response to Recommendations**

**GAO Recommendation**

*To better align the use of 3R incentives with the agency's human capital goals, we recommend that the Commissioner of FDA update FDA's strategic workforce plan to document the agency's recruitment and retention goals and strategies and as part of that update, identify indicators to better track the progress of 3R incentives over time in addressing the agency's recruitment and retention goals.*

FDA agrees with this recommendation. FDA has recently initiated a Human Capital and Workforce Planning effort that will encompass and document the agency's recruitment and retention goals. As part of that effort, FDA will put in place a mechanism to track and assess the progress of the 3R incentives.

**GAO Recommendation**

*As FDA implements the results of its 2009 review of 3R incentives, we recommend that the Commissioner of FDA continue to strengthen FDA's internal controls for requesting, approving, and processing 3R incentives by taking the following two actions:*

**GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S (GAO) DRAFT REPORT ENTITLED: "HUMAN CAPITAL: CONTINUED OPPORTUNITIES EXIST FOR FDA AND OPM TO IMPROVE OVERSIGHT OF RECRUITMENT, RELOCATION, AND RETENTION INCENTIVES" (GAO 10-226)**

- *Update the guidance for awarding 3R incentives to include the payment method used for retention incentives and all the conditions for terminating retention incentives when no service agreement is required*

FDA agrees with this recommendation. FDA will update the existing guidance for 3R incentive payments to include specific controls that address payment method and conditions for terminating.

- *Ensure 3R incentive files are properly completed and reviewed to address policy and regulatory requirements before the employees receive the incentive payments.*

FDA agrees with this recommendation. FDA will coordinate with the Department of Health and Human Services, Office of Human Resources, to ensure that the cases are processed appropriately and properly documented prior to payment.

**GAO Recommendation**

*To ensure the Department and OPDIVs are aware of HHS's policy in all areas of 3R incentives and use these incentives in a manner that is consistent with law and OPM regulations, we recommend the Secretary of HHS revise the Department's 3R incentive policy to ensure that the guidance provided clearly addresses certain important requirements outline in the regulations.*

HHS acknowledges the need to revise its 3R policy and is in the process of reviewing and making the appropriate changes.

# Appendix IV: Comments from the Office of Personnel Management



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

DEC 30 2009

Mr. Robert N. Goldenkoff  
Director, Strategic Issues  
U.S. Government Accountability Office  
Washington, DC 20548

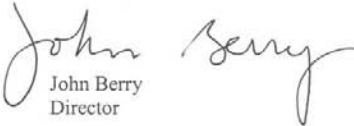
Dear Mr. Goldenkoff:

Thank you for the opportunity to respond to the United States Government Accountability Office's (GAO's) draft report entitled *HUMAN CAPITAL: Continued Opportunities Exist for FDA and OPM to Improve Oversight of Recruitment, Relocation, and Retention Incentives* (GAO-10-226). In the report, GAO examines the extent to which the Food and Drug Administration (FDA) is linking its use of recruitment, relocation, and retention incentives (3Rs) to its strategic human capital approaches to address its current and emerging challenges; the extent to which FDA's 3Rs were awarded consistent with regulations and internal FDA controls; and the steps the U.S. Office of Personnel Management (OPM) has taken to help ensure that agencies have effective oversight of their 3Rs programs and how the Department of Health and Human Services is providing oversight.

I believe the 3Rs are important human resources tools that help agencies attract and retain employees for a model civilian workforce. However, these incentives must be used consistent with the law and OPM's regulations and paid only when necessary to support agency mission and program needs. As you are aware, OPM is working with agencies to review the 3Rs program and our current regulations, guidance, and monitoring policies to identify areas where improvements can be made.

OPM has prepared the attached comments in response to your draft report. I look forward to working with GAO and other Federal agencies to strengthen the effectiveness of the 3Rs program. We appreciate the opportunity to comment on your report.

Sincerely,

  
John Berry  
Director

Enclosure

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**GAO Recommendation for OPM Action**

GAO recommends: “OPM’s 3R incentive guidance to agencies could more fully emphasize the importance of considering succession planning in the decision process for awarding retention incentives” (page 30)

**OPM Comments:** OPM agrees with GAO’s recommendation and will develop future guidance.

**GAO Views on the Use of Metrics**

GAO states that OPM’s annual 3Rs report to Congress could take a more results-oriented approach. (page 28) Specifically, it could include metrics to ensure incentives are being used effectively to address recruitment and retention goals. GAO states that continuing to have Governmentwide information on 3R incentives will provide OPM and policymakers with the information they need to help assess trends in the overall usage of the 3R incentive program across the Government and determine if changes are needed.

**OPM Comments:** OPM’s 3R report to Congress complies with the requirements of the Federal Workforce Flexibility Act (section 101(c) of Public Law 108-411). OPM has not expanded the report because of the already data-intensive burden on agency and OPM resources. However, we have been discussing ways to develop and use metrics with several agencies as well as ways to monitor and evaluate 3Rs usage. (If GAO has some specific recommendations, we would welcome receiving them.) We are starting a long-term project to review and validate 3Rs information in the Enterprise Human Resources Integration (EHRI) system and improve EHRI reporting definitions, standards, and edits. However, we have several competing needs for EHRI data and we cannot predict at this time when our project will be completed. Once completed, we would be able to extract 3R human resources and payroll information from the EHRI system on a biweekly basis rather than relying on separate reporting from agencies. Even so, we would still need to solicit additional 3Rs information from agencies, but it would be substantially less than what we request now.

**OPM’s Oversight Role**

GAO interviewed OPM officials to help understand OPM’s policy on oversight of 3R incentives and 3R regulations, their interpretation of HHS’s policy and FDA’s guidance on 3R incentives, and how the results of the file review were viewed in this context. (page 43)

**OPM Comments:** OPM did provide guidance to GAO on the issues contained in the report, as noted. However, GAO did not ask OPM to review a copy of HHS’s policy or FDA’s guidance on 3R incentives, nor did we conduct such a review as a result of this study.

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# Appendix V: GAO Contact and Staff Acknowledgments

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## GAO Contact

Robert N. Goldenkoff, (202) 512-6806, goldenkoffr@gao.gov

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## Staff Acknowledgments

In addition to the individual named above, Belva Martin, Acting Director; Carl Barden; David Bobruff; Sara Daleski; Karin Fangman; Peter Gilchrist; Wati Kadzai; Janice Latimer; Meredith Moore; Melanie Papasian; Jeffery Schmerling; and Gregory Wilmoth made major contributions to this report.

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