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GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-254766

October 8, 1993

The Honorable Jim Lightfoot
House of Representatives

Dear Mr. Lightfoot:

In your letter of September 14, 1993, you requested answers to questions on a number of matters discussed in our report entitled Personnel Practices: Retroactive Appointments and Pay Adjustments in the Executive Office of the President (GAO/GGD-93-148, Sept. 9, 1993). In that report, we provided information on a number of retroactive appointments and pay actions that were made under the employment authorities provided to the President under title 3 of the U.S. Code. Our responses to your questions are provided in enclosure I to this letter.

I hope this additional information is helpful in your consideration of our concern as to whether the broad interpretation of title 3 made by the White House and the Department of Justice's Office of Legal Counsel clearly reflects Congress' wishes concerning the scope of the President's authority. If you have further questions about our report, feel free to call me on (202) 512-5074.

Sincerely yours,

Nancy Kingsbury
Nancy Kingsbury
Director
Federal Human Resource Management
Issues

REPRESENTATIVE LIGHTFOOT'S QUESTIONS AND GAO'S RESPONSES

1. Did you inquire as to whether any memos or internal correspondence existed which discussed the issue of payroll backdating in the White House, either recommending or not recommending it, in addition to the undated memo circulated by David Watkins which stated, "...there is no backdating in the Federal government."? For example, I have been told there was a memo in Robert Rubin's personnel file recommending against Mr. Rubin's appointment being backdated. If GAO did inquire about this, did White House officials tell GAO no such correspondence or memos existed, or did they simply not make them available to GAO? If such memos or correspondence exist, I would like to know the dates they were originated.

As part of our review, we asked for all available memoranda, correspondence, and instructions that discussed terminating existing employees and appointing new employees in the Executive Office of the President (EOP). The only documents provided to us that discussed the overall issue of backdating, i.e., retroactive appointments and pay adjustments, were the undated memorandum from Mr. Watkins and the Department of Justice's Office of Legal Counsel memoranda, which were included in our final report. Although we did not document the number of occurrences, most, if not all, of the personnel files we reviewed contained such documents as Standard Form 52s or WHP-1s¹ authorizing the retroactive personnel actions for individual employees. Some of these files also contained memoranda for such personnel actions as establishing individuals' pay rates or requesting adjustments in individuals' salaries.

Mr. Rubin's appointment documents were originally prepared in January for an effective appointment date of January 20 but were not processed until April 23, with an actual appointment date of March 1, 1993. Mr. Rubin's personnel file contained an April 22, 1993, memorandum from a White House Office personnel official recommending that his appointment be made no earlier than April 11, the beginning of the then current pay period.

At the time we reviewed Mr. Rubin's file, he had already been appointed effective March 1, and we were aware that he had provided services before and after that date. Thus, as was the case with other retroactive appointments, he was a de facto employee and entitled to be paid for his services. In addition, since we were aware that he had filed his public financial disclosure report on February 19, 1993, which was prior to his

¹A WHP-1 is an alternative form used by the White House to initiate a personnel action.

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appointment date and thus timely, we did not have any basis to question his appointment further.

2. What exactly were the "certifications" provided by White House officials on which GAO relied to ascertain whether White House employees were present and working in the White House for the period of time they received backdated pay? Why did GAO choose to accept these forms as "proof" that the employee worked for that period?

In general, no contemporaneous biweekly time and attendance records approved by supervisors existed for the employees whose records we examined. Timekeeping was done to record exceptions to an employee's regular work schedule and to authorize retroactive payments. Enclosure II contains a copy of the leave and pay adjustments form used by timekeepers and certifying officials at the White House to approve payroll adjustments. Such forms were used to authorize the retroactive payments we examined. Because timekeepers and certifying officials were not always the supervisors of the retroactively appointed employees, we asked that employees' supervisors sign the forms and thereby certify that the employees had actually worked. We considered the supervisory attestations to be the best available evidence that the employees worked during the retroactive periods in question.

3. With respect to employees who received dual pay and began refunding money to the Presidential Transition Account, on what date did these refunds begin, to the best of your knowledge? Did GAO ask GSA to provide documentation as to when these refunds were received? Did you ask why GSA was unable to provide you with documentation as to when refund checks were received? Why wouldn't proper accounting procedures have been followed with respect to these public funds?

A General Services Administration (GSA) systems accountant told us that the White House returned the checks issued to or written by 10 of these individuals from late April 1993 and to late June 1993. Four individuals returned the government checks they originally received from the transition payroll, while the other six wrote personal checks for the amounts they received from the transition payroll. We obtained copies of all returned checks.

The GSA official said the four government checks were returned to GSA in late April. She added that it was possible that some of these individuals returned their government checks to the White House as early as mid-March and the White House did not forward them to GSA until late April. Two of the personal checks were dated May 3 and May 5 and were recorded by GSA as being received on June 17. The GSA official told us that the other four

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personal checks were dated from June 22 to June 24 and were received by GSA during the last week of June.

We concentrated our efforts on ensuring that appropriate actions would be taken with regard to the individuals we identified as receiving pay for overlapping periods of employment. We did not attempt to determine the specific dates GSA received each of the checks. GSA's accounting procedures for recording the receipt of these funds were not within the scope of our review.

4. According to GAO investigators, a GSA employee stated that there had been a contact from the office of David Watkins in the White House about the possibility of changing the ending employment dates of Transition employees who were put on the White House payroll. Did GAO ask on what date that conversation occurred? Is there no record of that conversation/communication?

The GSA official told us that this conversation took place near the end of April 1993. The conversation followed the return of the four government checks and also served to inform GSA that six other individuals would be writing personal checks to reimburse the transition fund. It was in this context that the matter of changing ending employment dates was discussed. This individual told us that the specific date of the conversation with Mr. Watkins' office was not recorded and that she could not recall the specific date.

5. Also, GAO's report states that EOP staff had notified GSA of the possibility of overpayment (dual pay from Transition and White House accounts) in mid-March. Can this contact be verified? Did GAO attempt to verify the date, or did GAO simply rely on White House statements to this effect?

The mid-March notification relates to a conversation initiated by EOP staff, prior to the April call referred to in question 4, regarding the possibility of overpayments to transition employees. We relied on the statement of the GSA official. Without a contemporaneous record of the call, we could not otherwise verify the date.

6. Did GAO ask on what date the White House first levied fines against those White House officials who failed to file Public Financial Disclosure forms? If not, why not? Did the White House fail to respond to this question?

We did not ask on what date or dates the fines were levied. However, we did obtain a copy of a July 27, 1993, memorandum from a White House counsel to the Office of Administration's Financial Management Division that transmitted the two individuals' checks for forwarding to the Department of the Treasury. Having

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determined that fines had been paid, we did not see the need to determine the specific date or dates the fines were levied. Rather, we focused on determining whether other individuals who did not file timely reports would also be fined or whether waivers had been requested and received from the Office of Government Ethics.

7. In the final report, GAO refers to certain retroactive payroll actions as "proper." Why did GAO use the term "proper?" This term implies GAO condones these retroactive actions. Is this true?

In view of the statute's broad language, we had no basis to question these payroll actions, and we therefore characterized them as proper within the statutory authority under which they were made. Our use of the term "proper" was meant to convey the meaning that the President's actions were legal. However, as indicated in our report, we were concerned as to the potential for abuse in light of the broad authority provided in the statute. We therefore suggested that clarification of the President's authority may be desirable.

8. With respect to dual pay received by White House employees from the Transition Account, GAO states, "The White House and Office of Administration officials are in the process of determining if these employees have been unduly compensated." If White House employees have already begun refunding payments to the Transition Account, the White House must have already determined that these employees were, in fact, unduly compensated. Why did GAO not question this statement?

White House officials agreed with us that it was not appropriate for individuals to receive pay from both the transition fund and EOP for the same periods and said they would take action to rectify such situations where they occurred. The questions that remained at the time our report was issued were the amounts owed by the 9 individuals who previously refunded transition pay and the amounts owed by the other 15 individuals we identified. Since we provided the White House with the names of the 24 individuals and our estimate of each overpayment shortly before issuing our report, and the White House had not completed its review of our estimates, we considered the White House's response appropriate.

9. Why did GAO not rule on the above dual payments?

As noted in our response to question 8, White House officials agreed it was not appropriate for employees to receive overlapping compensation. Accordingly, we did not deem it necessary to issue a formal ruling or include in our report an

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extended discussion of the basis for a conclusion that the dual payments were inappropriate.

10. One of three reasons listed in GAO's report for untimely appointments was, "...the time needed by OA to process documents once this approval was obtained." Did GAO interview any OA employees involved in processing appointments to obtain information on the average amount of time it takes for appointments to be processed? Did GAO ask to talk to any such individuals? Did White House officials refuse to allow GAO investigators to talk to such individuals?

We did not specifically ask OA's Acting Personnel Director about average times for processing personnel actions. We observed and discussed with OA staff their usual procedures for the processing of appointment documents. Typical documents that needed to be processed included forms for the withholding of federal and state income taxes, the withholding of health and life insurance premiums, the oath of office, the electronic transfer of payroll funds, and home and office mailing addresses. On the basis of these observations and discussions, a personnel specialist could, in our opinion, review an appointee's paperwork in 1 to 2 days, depending on the individual's or appointing official's availability to respond to questions that might arise.

While routine processing at the time we were completing our work appeared to take only a few days, there were processing delays during the early weeks of the administration when large numbers of personnel actions were processed. As indicated on page 7 of our final report, 205 of the 611 new appointments were processed between January 20 and 30, 1993 (the first pay period of the new administration). Additionally, 151 new appointments were processed in the pay period ending February 13, 1993. In total, 356 of the 611 new appointments (58 percent) were processed in the first 2 pay periods of the new administration.

11. GAO's report details the circumstances of two Title 5 employees who received retroactive pay adjustments. Did GAO request or receive similar details on the Title 3 employees who received retroactive pay adjustments? If not, why?

We obtained detailed information concerning when and why each of the title 3 employees received retroactive pay adjustments, but we did not deem it necessary to describe those details in our report in view of the President's broad statutory authority under title 3. We reported the details of each of the two title 5 cases because the details differed and the facts were more critical to an analysis of legality under title 5.

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12. GAO's report also states, "For each...who received retroactive pay adjustments, we obtained and discussed additional facts with White House Office and Office of Administration officials." Please elaborate.

That statement, contained on page 11 of our final report, was intended to introduce the material that followed. As discussed later in the report, we obtained explanations from White House Office and OA officials on the rationale for the retroactive pay adjustments and signed certifications where possible from the appointing officials involved.

13. I would like GAO to provide me with a breakdown of EOP employees who received retroactive appointments and pay adjustments, by White House agency, i.e. White House Office, Office of Special Assistance to the President, etc.

Table I.1: Number of Retroactive Appointments by EOP Agency

EOP agency	Total number of appointments	Number of retroactive appointments	Number of pay periods late appointments processed				
			One	Two	Three	Four	Nine
Council on Environmental Quality	3	3	3	0	0	0	0
National Security Council	17	5	3	2	0	0	0
Office of Management and Budget	22	2	2	0	0	0	0
Office of Policy Development	35	10	8	1	0	1	0
Office of Science and Technology Policy	9	3	3	0	0	0	0
Office of the Vice President	20	2	1	0	0	1	0
Other EOP offices	61	0	0	0	0	0	0
White House Office	444	203	165	30	7	2	1
Total	611	230	185	33	7	4	1

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Table I.2: Number of Pay Adjustments by EOP Agency

EOP agency	Number of pay adjustments	Increases	Decreases	Number of retroactive pay adjustments
Office of Management and Budget	2	2	0	1
Office of Policy Development	4	3	1	1
Office of Administration	2	2	0	1
Council of Economic Advisors	1	1	0	0
Office of National Drug Control Policy	1	1	0	0
Office of the U.S. Trade Representative	5	3	2	1
White House Office	54	46*	8	26
Totals	69	58	11	30

Note: Two employees received more than one salary increase.

14. Did GAO determine whether the documentation White House officials provided for retroactive payroll actions was prepared retroactively? Were the "certification" forms dated, and if so, were they backdated?

We did not attempt to determine if the documents for the retroactive personnel and pay actions were backdated because they were already dated after the effective appointment dates. For 41 of the 45 employees with retroactive appointments that were 2 or more pay periods late, we requested signed certifications from their supervisors that they worked during the periods covered by their appointments. On June 11, the White House agreed to provide us with these certifications. We considered the certifications necessary because other contemporaneous evidence indicating supervisory approval of hours worked did not exist. The supervisors signed but did not date these certifications.

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15. GAO's report stated, "They (White House officials) also said that the overload of existing processes and procedures contributed to the need for retroactive appointments." What did White House officials mean by "overload of existing processes and procedures?" Did GAO ask them to define this?

We did not ask for an explanation of this term. See also our response to question 10.

16. On page 18 [page 17 of final report] of GAO's report, discussing "Nine Employees Were Overpaid," it is unclear if these employees are a separate group from the 25 employees who received dual pay from the Transition and the White House accounts. GAO's report indicates "...collection actions have been started." Would you please clarify this?

These nine individuals are a separate group from those who received dual pay from the White House and the transition fund. In each of these cases, the original appointment dates were changed to a later appointment date. Because these employees had been paid based on the original appointment date, the changes to later appointment dates resulted in overpayments. White House officials concurred with our analysis and told us that collection actions had been started. Because of the deadline for the completion of our work, we did not verify whether these collection actions had been completed.

17. GAO's report indicates two individuals paid fines for failing to file timely Public Financial Disclosure reports. On what date were these individuals fined, and when was it discovered that they had not complied? Did GAO ask these questions? If not, why?

See our response to question 6. For this review, we were concerned primarily with whether appropriate actions were taken with regard to the employees who did not file in a timely manner.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ADMINISTRATION
AUTOMATED PAYROLL, COST AND PERSONNEL SYSTEM

Leave and Pay Adjustments Form

TO: Defense Electronics Supply Center Payroll Office
 THROUGH: Office of Administration Personnel Management Division
 FROM:
 DATE:

Instruction: This form authorizes Timekeepers to add or delete any entries to an employee's previous certified time card. Form must arrive in the Personnel Management Office no later than the second Wednesday before the end of a pay period to be effective in the employee's salary check for the current pay period.

Please make the following corrections:

NAME: _____

SOCIAL SECURITY NUMBER: _____

PAYROLL BLOCK: _____

PAY PERIOD ENDING: _____

HOURS CHARGED

DATE	HOURS CODE	NO. HOURS

CORRECT HOURS

DATE	HOURS CODE	NO. HOURS

HOURS CODE

R=Reg Hrs
 V=OT Hrs
 H=Hol Wkd
 A=Admin Lv
 J=Jury Duty
 Y=Rel Wkd

P=Ann Lv
 Q=Sick Lv
 W=LWOP
 X=AWOL
 I=Hol Tkn
 Z=Rel Tkn

B=Restored LV
 S=Sunday
 U=Suspension
 M=Mil Lv
 F=Furlough
 T=Cmpltm Tkn

N=Ngt Diff
 E=Env Hrs
 C=Cmptm Wkd
 G=Hazard
 K=Dscmpn N/P
 D=Non-Duty Hrs

(Signature of Certifier)