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United States Government Accountability Office
Washington, DC 20548

September 10, 2012

The Honorable Joseph Lieberman
Chairman
The Honorable Susan M. Collins
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Darrell E. Issa
Chairman
The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

Subject: Reemployment of Retirees: Six Agencies' Use of Dual Compensation Waiver Authority is Limited

This report formally transmits a briefing we provided to the U.S. House of Representatives, Committee on Oversight and Government Reform on May 31, 2012, and to the U.S. Senate, Committee on Homeland Security and Governmental Affairs on June 5, 2012, which we have revised to reflect technical comments made in response to a draft of this report (see enc. I). We developed this briefing in response to a requirement in section 1123 of the National Defense Authorization Act (NDAA) for fiscal year 2010, which requires us to provide information on the use of agencies' authority to grant NDAA waivers to Civil Service Retirement System and Federal Employment Retirement System reemployed annuitants. During our briefings to your offices, it was agreed that the work we conducted to date on agencies' use of the NDAA waiver authority was sufficient to respond to the mandate.

The federal government has faced challenges in hiring and retaining talented workers, which are exacerbated by increased retirements in the federal workforce. To address these challenges, agencies have sought to rehire retired federal employees. Generally, when agencies rehire retirees their salary is subject to a deduction (offset) in the amount of the annuity.¹ Section 1122 of the NDAA for fiscal year 2010 gives agencies the authority to waive this requirement on a temporary basis to allow for dual compensation of the salary and annuity as necessary; to fulfill functions critical to the mission of the agency; and to assist in

¹See, 5 U.S.C. §§ 8344 and 8468.

the development, management, or oversight of agency procurement actions; among other purposes.²

To respond to the NDAA mandate for information on federal agencies' use of NDAA waivers for Civil Service Retirement System and Federal Employment Retirement System reemployed annuitants in fiscal years 2010 and 2011, we attempted to obtain and analyze government-wide dual compensation reemployment data from the Office of Personnel Management (OPM); however, agency-reported data were insufficient to definitively determine the number of NDAA waivers the agency issued. Thus, we obtained data directly from a nongeneralizable sample of selected agencies.

In the absence of reliable government-wide information, this report provides data directly from selected agencies and addresses the experience of selected agencies in using NDAA waiver authority to rehire retired Civil Service Retirement System and Federal Employment Retirement System annuitants. To do this, we selected a nongeneralizable sample of six agencies to review. We selected four Chief Financial Officer Act agencies³—Nuclear Regulatory Commission (NRC), Small Business Administration, U.S. Agency for International Development, and Department of the Treasury—because they appeared to have the highest use of dual compensation waivers based on available data. We also selected U.S. Postal Service, a non-Chief Financial Officer Act agency, because it has a large number of employees, and because its increase in the use of part-time staff to address its financial insolvency indicated that it may have used a large number of NDAA waivers. Finally, we included OPM, a Chief Financial Officer Act agency, because it maintains executive agencies' dual compensation reemployment data, and during the course of the review we inquired about OPM's use of NDAA waiver authority. We obtained and reviewed data and conducted interviews with officials from these six agencies about their use of dual compensation waiver authorities. We determined that the agencies' NDAA waiver data and information we used were sufficiently reliable given the extensive discussion and follow-up we conducted with them about the requested data.

We conducted this performance audit from January 2012 through September 2012 in accordance with generally accepted government auditing standards. These 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.

In summary, the six agencies we reviewed made very little use of the NDAA waiver authority in fiscal years 2010 and 2011. The Department of Treasury made the most, although still very little, use of the waiver authority in both fiscal years—167 waivers in fiscal year 2010 and 214 waivers in fiscal year 2011. Agency officials told us that their agencies used a combination of NDAA and other waiver authorities already in place when hiring retired workers. For example, during our review we found that the NRC used the waiver authority provided to it in the

²Pub. L. No. 111-84, § 1122, div. A. title XI, 123 Stat. 2190, 2505-09 (Oct. 28, 2009). While this authority applies across the government (executive, legislative, and judicial branches), the Department of Defense and our agency are excluded from this authority since we both have separate authority permitting the reemployment of annuitants without subjecting salaries to offset. NDAA waivers are limited to annuitants who work no more than: 520 hours during the first 6 months of their retirement, 1,040 hours during any 12-month period, or 3,120 hours total during their reemployment.

³There are 24 agencies subject to the Chief Financial Officer Act, listed at 31 U.S.C. § 901.

Energy Policy Act of 2005, and used the NDAA authority to rehire an annuitant for purposes not available in the Energy Policy Act.⁴ None of the agencies reported that they exceeded the threshold imposed by the NDAA, 1 percent of their full-time employees, thus they were not required to prepare succession plans, as would have been required under the act.

Agency Comments and Our Evaluation

We provided a draft of this report to OPM, NRC, the Department of the Treasury, Small Business Administration, U.S. Agency for International Development, and U.S. Postal Service for review and comment. All agencies agreed with our findings, and NRC was the only agency that provided written comments. The other agencies responded, but had no additional comments on our draft report.

In an August 16, 2012 letter (enc. II), NRC generally concurred with our finding that agencies made very limited use of the NDAA waiver authority during fiscal years 2010 and 2011, and stated that our report accurately reflected NRC's use of the authority. NRC provided clarifying and technical comments to the report, which we incorporated as appropriate. In commenting on its use of the NDAA waiver authority, NRC stated that it appreciated the flexibility under the authority to waive pension offset to fulfill functions critical to the mission of the agency or any component of the agency; develop, manage, or oversee agency procurement actions; or promote appropriate training or mentoring of employees; among other reasons. NRC stated that it hopes that the authority will be extended.

We are sending copies of this report to the appropriate congressional committees. We are also sending copies to OPM, NRC, the Department of the Treasury, Small Business Administration, U.S. Agency for International Development, and U.S. Postal Service. This report will also be available at no charge on our website at <http://www.gao.gov>.

Should you or your staff have questions concerning this report, please contact me at (202) 512- 6806 or mihmj@gao.gov. Contact points for Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Lisa Pearson, Assistant Director; Sara Daleski; Pawnee A. Davis; Karin Fangman; Rebecca Shea; and Greg Wilmoth made significant contributions to this report.



J. Christopher Mihm
Managing Director, Strategic Issues

Enclosures—2

⁴42 U.S.C. § 2210c. This waiver authority may be used when a temporary emergency hiring need exists or when there is exceptional difficulty recruiting or retaining a qualified employee.



**Reemployment of Retirees:
Six Agencies' Use of Dual Compensation
Waiver Authority is Limited**

Briefing for Committee Staff



Briefing Overview

- Background
- Objective
- Scope and Methodology
- Finding



Background

The federal government has faced challenges in hiring and retaining talented workers, which are exacerbated by increased retirements in the federal workforce.¹ To address these challenges, agencies have sought to rehire retired federal employees. Ordinarily, when agencies rehire retirees their salary is subject to a deduction (offset) in the amount of the annuity.² However, when retirees are rehired under certain circumstances, including to fulfill critical mission functions, section 1122 of the National Defense Authorization Act (NDAA) for fiscal year 2010 gives agencies the authority to waive this requirement on a temporary basis to allow dual compensation of the salary and annuity.³ This authority terminates in October 2014.

¹GAO, *Older Workers: Federal Agencies Face Challenges, but Have Opportunities to Hire and Retain Experienced Employees*, GAO-08-630T (Washington, D.C.: Apr. 30, 2008).

²See, 5 U.S.C. §§ 8344 and 8468.

³Pub. L. No. 111-84, § 1122, div. A, title XI, 123 Stat. 2190, 2505-09 (Oct. 28, 2009). The NDAA waiver authority may also be used to assist in the development, management, or oversight of agency procurement actions and to promote appropriate employee training or mentoring programs. While this authority applies across the government (executive, legislative, and judicial branches), the Department of Defense and our agency are excluded from this authority since we both have separate authority permitting the reemployment of annuitants without subjecting salaries to offset. NDAA waivers are limited to annuitants who work no more than: 520 hours during the first 6 months of their retirement, 1,040 hours during any 12-month period, or 3,120 hours total during their reemployment.



Background

The NDAA limits the total number of annuitants to whom an agency may grant a waiver to no more than 2.5 percent of the total number of full-time employees of that agency. Agencies must prepare succession plans if they exceed 1 percent of their total workforce.⁴ To assist in the administration of the use of this authority, the Office of Personnel Management (OPM) requested in a January 2010 memorandum that executive agencies, including Chief Financial Officer (CFO) Act agencies,⁵ annually report their use of the NDAA waiver authority for rehired annuitants. In accordance with the memorandum, the U.S. Postal Service (USPS) reported its use of the NDAA waiver authority for rehired annuitants to OPM as well.

In addition to the NDAA waiver authority, when an agency wants to use an offset waiver for circumstances that are not addressed by the NDAA waiver authority (e.g., to reemploy an annuitant beyond the time limitations), under 5 U.S.C. § 8344(i) and § 8468(f), an agency may request that OPM waive the offset requirement on a case-by-case basis or provide the agency head with the authority to do so through a delegation of authority.⁶

⁴Under section 1122, if the total number of annuitants to whom a waiver is made by the head of an agency exceeds 1 percent of the total number of full-time employees of that agency, the head of that agency shall submit to the U.S. Senate, Committee on Homeland Security and Governmental Affairs; the U.S. House of Representatives, Committee on Oversight and Government Reform, and the Office of Personnel Management a report with an explanation that justifies the need for the waivers in excess of that percentage and not more than 180 days after submitting the report, a succession plan.

⁵There are 24 agencies subject to the CFO Act, listed at 31 U.S.C. § 901.

⁶Under 5 U.S.C. § 8344(i) and § 8468(f), and OPM regulations an agency may request that OPM waive the offset requirement on a case-by-case basis if a request is for a case in which (1) the services of an individual are needed on a temporary basis for an emergency hiring need, (2) there is severe recruiting difficulty, (3) there is a need to retain a particular individual, or (4) for other unusual circumstances. An agency may also request that OPM delegate to the agency head the authority to waive the offset requirement on a case-by-case basis where the services of an individual are needed on a temporary basis to respond to an emergency involving a direct threat to life or property, or other unusual circumstances. 5 C.F.R. part 553. In addition, some agencies have been provided agency-specific statutory authority to waive a pension offset (e.g., NRC's Energy Policy Act of 2005).



Objective

The NDAA requires that we provide information on the use of agencies' authority to grant NDAA waivers to Civil Service Retirement System and Federal Employment Retirement System reemployed annuitants.⁷ Our objective was to determine:

To what extent did CFO Act agencies and the USPS use the NDAA authority to grant offset waivers to Civil Service Retirement System and Federal Employment Retirement System reemployed annuitants in fiscal years 2010 and 2011?

⁷Pub. L. No. 111-84, § 1123, 123 Stat. 2190, 2509-10.



Scope and Methodology

To determine the extent to which selected agencies used the NDAA waiver in fiscal years 2010 and 2011 we used data provided to us directly from five CFO Act agencies and USPS. We attempted to use government-wide dual compensation data from OPM, but data were insufficient to definitively determine the number of NDAA waivers the agencies issued.⁸

- Specifically, we reviewed and analyzed all CFO Act agencies' data from OPM's Central Personnel Data File (CPDF).⁹ During the course of our review we found that not all data reported by agencies on the use of the NDAA waiver authority were available in the CPDF and could not be distinguished from other waiver authorities, and thus, not sufficiently reliable to definitively determine the number of NDAA waivers granted each fiscal year. Some agencies reported that they were unaware of appropriate coding guidance and did not implement such guidance immediately. We also reviewed OPM's data on the number of issued waivers reported to it by the CFO Act agencies and USPS. These data were unreliable because not all agencies reported annual data directly to OPM when requested. Further, the data agencies reported were not consistent with CPDF data.
- Thus, to obtain reliable data and information about the use of NDAA waivers and monitoring of NDAA waivers, we selected a nongeneralizable sample of six agencies to review. We believe the NDAA waiver data and information provided directly by the agencies is sufficiently reliable given the extensive discussion and follow-up we conducted with these agencies about the requested data.

⁸CPDF data were also not sufficiently reliable to definitively determine the number of NDAA annuitants on-board as of the end of the fiscal year. However, they were sufficiently reliable to determine the total number of full-time employees on-board as of the end of the fiscal year.

⁹The CPDF does not contain USPS data. The Department of Defense, a CFO Act agency, was excluded from the NDAA waiver authority and therefore was not a part of our review.



Scope and Methodology

- We interviewed officials from six agencies: OPM, Nuclear Regulatory Commission (NRC), Small Business Administration (SBA), U.S. Agency for International Development (USAID), and Department of the Treasury (Treasury), which are CFO Act agencies; and USPS, a non-CFO Act agency.
- We selected OPM, a CFO Act agency because it maintains executive agencies' dual compensation reemployment data, and during the course of the review we inquired about OPM's use of NDAA waiver authority. We selected four additional CFO Act agencies, NRC, SBA, and USAID, because CPDF data indicated they had the highest use of dual compensation waivers proportional to full-time staff and therefore might be more likely to have used the NDAA specific authority. We selected Treasury because data from OPM reported by agencies indicated it also issued a large number of NDAA waivers. Further, we selected USPS because it has a large number of employees, and its increase in the use of part-time staff to address its financial insolvency indicated that it may have used a large number of NDAA waivers in fiscal years 2010 and 2011.
- However, because of the data reliability issues previously discussed, we have presented only the information we received from the six agencies we interviewed.



Agencies Granted NDAA Waivers to Annuitants, but Use Was Very Limited

The NDAA waiver authority was not widely used in fiscal years 2010 and 2011, based on data the six agencies provided to us.

Of these six agencies from which we directly gathered data, Treasury made the most, but still very limited, use of the NDAA waiver authority in both fiscal years. In fiscal year 2010, USPS used the authority once, and three agencies did not use it at all. Table 1 shows the number of NDAA waivers agencies used in fiscal years 2010 and 2011.

None of the six agencies reported that they exceeded the 1 percent threshold during either fiscal year. Thus, succession plans were not required.



Agencies Granted NDAA Waivers to Annuitants, but Use Was Very Limited

Table 1: Agencies' Use of NDAA Waiver in Fiscal Years 2010 and 2011

Agency	FY 2010		FY 2011		Reason for using NDAA waiver and other offset waiver authorities
	NDAA waivers	Full-time employees ^a	NDAA waivers	Full-time employees ^a	
NRC	0	3,990	1	3,898	Used the NDAA waiver for functions critical to its mission. NRC also used the waiver authority provided to it in the Energy Policy Act of 2005. ^b
SBA	0	4,673	2	4,066	Used the NDAA waiver for functions critical to its mission. SBA also used the waiver authority delegated by OPM to SBA's Office of Disaster Assistance for disaster recovery and economic recovery. ^c
USAID	0	4,002	6	3,796	Used the NDAA waiver for functions critical to its mission and to assist in recruitment and retention. USAID also used the waiver authority established by Congress for acquisition-related positions ^d and additional waiver authorities available to it, including the waiver authority for foreign service annuitants delegated to it by the Secretary of State under section 824(g) of the Foreign Service Act of 1980, as amended. ^e
USPS	1	414,188	11	396,077	Used the NDAA waiver when USPS determined that specialized skills were necessary to meet specific requirements critical to the operation of the Postal Service. USPS used the waiver authority delegated by OPM to USPS field human resources offices for Postmaster Relief/Leave Replacement and Rural Carrier Leave Replacement positions. ^f
OPM	19	4,926	13	5,288	Used the NDAA waiver for functions critical to the agency's mission. On a case-by-case basis, OPM used its authority to approve individual exceptions for hiring annuitants without reduction or termination of annuity.
Treasury	167	118,520	214	115,576	Used the NDAA waiver for functions critical to the agency's mission. The largest number of NDAA waivers authorized to a Treasury office or bureau was to the Internal Revenue Service, 199 NDAA waivers in FY 2011 for hiring former Revenue Agents (RA) to train newly hired RAs to perform mission critical tax compliance duties. Treasury also used the waiver authority delegated by OPM for bank examiner positions.
Total	187	550,299	247	528,701	

Source: GAO analysis of agency-reported NDAA waiver data and number of full-time employees from OPM's CPDF and USPS.



Agencies Granted NDAA Waivers to Annuitants, but Use Was Very Limited

*Full-time employee counts include all full-time employees on-board as of September 2010 and September 2011. We used CPDF data to determine the number of full-time employees at NRC, SBA, USAID, OPM, and Treasury, and included employees that were year round, seasonal, and in the senior executive service. For the number of full-time employees at USPS we used data reported by the agency, which excludes employees that were in a management or supervisor position, and nontraditional full-time, part-time regular, part-time flexible, and rural employees.

^b42 U.S.C. § 2210c. This waiver authority may be used when a temporary emergency hiring need exists or when there is exceptional difficulty recruiting or retaining a qualified employee.

^cAs noted earlier, under authority of 5 U.S.C. §§ 8344(i) and 8468(f), and 5 C.F.R. § 553.202, OPM may delegate to an agency the authority to waive the offset requirement on a case-by-case basis where the services of an individual are needed on a temporary basis to respond to an emergency involving a direct threat to life or property.

^d41 U.S.C. § 1703(k). This authority expired December 31, 2011.

^eSection 824(g) is codified at 22 U.S.C. § 4064(g). See also U.S.AID waiver authority under 22 U.S.C. § 2385(j) to waive the offset requirement under 5 U.S.C. §§ 8344 and 8468 in order to facilitate assignment of persons to Iraq, Pakistan, and Afghanistan.

^fPursuant to 39 U.S.C. § 1005(d), USPS is authorized to seek waivers (or a delegation of waiver authority) from OPM under 5 U.S.C. §§ 8344(i) and 8468(f).

Comments from the Nuclear Regulatory Commission



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 16, 2012

Ms. Lisa Pearson, Assistant Director
Natural Resources and Environment
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Ms. Pearson:

I appreciate the opportunity to review and submit comments on your proposed report entitled Reemployment of Retirees: Six Agencies' Use of Dual Compensation Waiver Authority is Limited (GAO-12-855R). The U.S. Nuclear Regulatory Commission generally concurs in your findings that we, like other agencies, made very limited use of the authority during fiscal years 2010 and 2011. We nonetheless find this a valuable human capital tool and hope that we continue to enjoy access to it. Enclosed are a few technical and editorial comments.

We found the report informative and appreciate the opportunity to compare our use to that of other agencies. Should you have any questions about these comments, please contact Jesse Arildsen of my staff at (301) 415-1785.

Sincerely,

A handwritten signature in black ink that reads "R. W. Borchardt".

R. W. Borchardt
Executive Director
for Operations

Enclosure:
As stated

The U.S. Nuclear Regulatory Commission (NRC) Comments on the Draft General Accountability Office Report (GAO-12-855R) "Reemployment of Retirees: Six Agencies' Use of Dual Compensation Waiver Authority is Limited"

The NRC appreciates the time and effort that you and your staff have taken to review agency use of the dual compensation provisions of the National Defense Authorization Act (NDAA) for fiscal year (FY) 2010. We offer one correction and two suggested clarifications for your consideration. In addition, we recommend that you consider incorporating summary information reflecting agency perceptions of the value of the authority.

- **Correction:** In the Executive Summary, on page 4, the draft incorrectly states, "For example, during our review we found that NRC used the NDAA waiver and, for purposes not available in the NDAA, it used the waiver authority provided to it in the Energy Policy Act of 2005." The reverse would be accurate, "For example, during our review we found that NRC used the waiver authority provided to it in the Energy Policy Act of 2005, and, for purposes available under the NDAA authority but not available in the Energy Policy Act, it used the NDAA authority."
- **Suggested Clarification:** Under Background, paragraph 2, page 4, the draft report notes governmentwide authorities for pension offset waiver in addition to the NDAA authority. Although you have included such information elsewhere in the report, we believe it might be helpful to add mention in the background that several agencies – among them the Department of Defense, GAO, and NRC - have received statutory authorities unique to the particular agency to waive pension offset.
- **Suggested Clarification:** Under Scope and Methodology, page 6, the draft states, "Specifically, we reviewed and analyzed all CFO Act agencies' data from OPM's Central Personnel Data File (CPDF).⁶ During the course of our review we found that not all data reported by agencies on the use of the NDAA waiver authority were available in the CPDF, and thus, not sufficiently reliable to definitively determine the number of NDAA waivers granted each fiscal year. We also reviewed OPM's data on the number of issued waivers reported to it by the CFO Act agencies and the U.S. Postal Service. OPM data were unreliable because not all agencies reported NDAA waiver data into OPM's CPDF or reported it incorrectly, and not all reported annual data directly to OPM when requested. Further, the data agencies reported were not consistent with CPDF data."

We understand GAO's need to go beyond the CPDF in order to obtain accurate information about the extent of agency use of the NDAA authority. However, we do not believe that readers will understand from the above paragraph why it was difficult to distinguish in CPDF data the specific authority under which rehired annuitants received pension offset waiver in FYs 2010 and 2011. We are concerned that the report may be interpreted as suggesting that agencies ignored reporting requirements or willfully failed to report data accurately. We trust that GAO found NRC's report to OPM on use of the NDAA authority to have been accurate.

We suggest substituting or adding clarification. At least in NRC's case, it would be accurate to indicate, "It was difficult to (1) distinguish the specific authority (e.g., NDAA, other governmentwide authority, or agency-specific authority) for pension offset waiver based on

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CPDF data, and (2) reconcile it with agency reports to OPM on use of the NDAA authority. This may have occurred, at least in part, because of the gap between the effective date of the authority and issuance of implementing OPM guidance on using the authority. Moreover, OPM issued process guidance on coding personnel actions for the CPDF separately from and at a later date than guidance for using the authority. As a result, at least some agency contacts indicated that they were unaware of appropriate coding guidance and did not implement such guidance immediately.”

- Recommendation: The draft report accurately reflects the limited extent of NRC and other agencies' use in FYs 2010 and 2011. It does not offer qualitative analysis of the authority or share agency perceptions of the authority. The authority is less likely to be extended if the report is interpreted as reflecting a lack of agency interest in or need for this human capital tool. Please consider incorporating a brief summary of qualitative feedback from agencies. NRC is making somewhat greater use of the NDAA authority (though still less than 1% of NRC's workforce) in FY 2012, and NRC staff value this tool for rehiring retirees with extensive expertise. The authority supplements NRC's unique statutory authority in that it may be used to help accomplish a relatively broad range of agency work needs. NRC appreciates the flexibility under the NDAA authority to waive pension offset, among other reasons, in order to fulfill functions critical to the mission of the agency or any component of the agency; develop, manage or oversee agency procurement actions; or promote appropriate training or mentoring of employees. We therefore hope that the NDAA authority will be extended.

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