

AUDIT REPORT



REEMPLOYMENT OF ANNUITANTS BY THE IMMIGRATION AND NATURALIZATION SERVICE

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REEMPLOYMENT OF ANNUITANTS BY THE IMMIGRATION AND NATURALIZATION SERVICE

EXECUTIVE SUMMARY

The Office of the Inspector General conducted an audit of the rehiring of federal annuitants by the Immigration and Naturalization Service (INS). Beginning in Fiscal Year (FY) 1996, INS was granted emergency authority to rehire federal retirees. We performed this audit in response to a request by the Chairmen of the House Judiciary Committee and the Subcommittee on Immigration, Border Security, and Claims, who expressed concern over the length of time the INS had used this authority and the INS's apparent failure to develop new hiring practices to obviate the need to rehire annuitants. Our audit identified areas of internal control that require strengthening. Most importantly, we found that the INS had not developed long-range hiring alternatives to reduce or eliminate the use of rehired annuitants.

Background

The INS began hiring annuitants in an effort to meet a 1995 Congressional mandate calling for hiring 5,000 new Border Patrol Agents. The INS sought delegated authority from the Office of Personnel Management (OPM) to hire annuitants possessing the requisite skills while waiving compulsory pay reductions against annuities. The INS obtained this authority on February 22, 1996, and it expired on September 30, 1998.

The OPM stipulated that the INS not exceed 500 reemployed annuitants during the term of this authority and that appointments made under this authority had to be in the areas of:

- training;
- interviewing and processing new Border Patrol Agents;
- replacing or supplementing field positions as -
 - Border Patrol Agents
 - Immigration Inspectors, Investigators, and Instructors
 - Adjudications Officers
 - Other administrative support personnel.

In its delegation letter, OPM outlined specific hiring and retention criteria that the INS must adhere to and advised the INS that prospective new hires were to be evaluated on a case-by-case basis to ensure their eligibility. The OPM stipulated that this authority was to be utilized merely as a stopgap

measure, and the INS would have to develop alternative hiring methods to ensure future compliance with the Congressional mandate.

By letter dated August 11, 1998, the OPM granted the INS its first extension of the waiver authority through September 30, 2000, again vesting the delegated authority with the INS Assistant Commissioner, Human Resources and Development. However, the extended delegation of authority reduced the ceiling on reemployed annuitants from 500 to 200 during the new term of the authority. On September 12, 2000, the OPM granted a second extension of the delegated authority through September 30, 2002, with a ceiling of 300 annuitants. However, the OPM noted that the INS's hiring practices had apparently become a recurring problem. Therefore, the OPM approval provided that the Attorney General could redelegate the authority only to the Department of Justice (Department) Assistant Attorney General for Administration or other senior official in the Justice Management Division (JMD). Accordingly, the OPM removed the authority to approve waivers from the INS and vested it with JMD.

On April 1, 2002, the OPM extended the waiver authority for the third time to September 30, 2004. The OPM extension provided that the Department could redelegate limited approval to an INS Headquarters official. However, in an e-mail dated August 13, 2002, an official of OPM revised its grant of waiver authority to permit re delegation only to JMD.

OIG Audit

In response to the Congressional request, we undertook three tasks:

- (1) Identify the annuitants the INS rehired and the compensation awarded,
- (2) Determine if the INS and JMD approved waivers of dual compensation reductions appropriately, and
- (3) Assess the INS's long term hiring and training strategies that would reduce the need to rehire annuitants.

We found that the INS did not have a system that accurately tracked the number of federal annuitants it rehired and lacked sufficient accounting controls to confirm the compensation paid to annuitants it employed from FY 1996 through FY 2002. We therefore contacted the National Finance Center (NFC)¹ for this information and found that from FY 1996 through FY 2002 the INS employed a total of 379 annuitants and paid them

¹ The NFC, a component of the U.S. Department of Agriculture, provides federal agencies with automated support services for payroll, personnel, administrative payments,

approximately \$49 million in salary (including overtime) compensation.² Of these 379 annuitants, 294 received waivers enabling them to collect their annuities and full salaries. These 294 annuitants received salary compensation totaling \$39.5 million. We recommend that the INS maintain an accurate source of data for rehired annuitants, and implement accounting procedures to identify the compensation paid to rehired annuitants and reconcile the data with the NFC.

The INS also did not maintain records to document its rationale for hiring each annuitant from FY 1996 through FY 2000. Therefore, our review is qualified to that extent that we cannot render an opinion on the appropriateness of the INS's decisions to rehire annuitants during that period. Accordingly, we focused on 69 INS requests reviewed and approved by JMD during FY 2002. We found that while JMD denied a number of requests by the INS, it does not currently maintain a standard review sheet or similar analysis that provides the basis or rationale for its decisions on the waiver extension requests. In our judgment, JMD also can improve its review process and mitigate or eliminate potential questions regarding its waiver extension decisions by documenting its analyses.³

We also concluded that the INS had not developed an effective plan to reduce its dependence on rehired annuitants. When the OPM first granted the INS waiver authority in 1996, it stated that the authority was temporary and to be used for emergencies dealing with threats to life or property, or unusual circumstances. It also stated that the authority was to be used to hire 5,000 new employees, most of whom, according to the OPM, were to be Border Patrol Agents, Immigration Inspectors, and Immigration Investigators. At the time of the second request by the INS for an extension of the waiver authority, the OPM recognized the need to formalize a requirement for the INS to develop alternate hiring methods. In its September 12, 2000, waiver extension letter, the OPM asked JMD to request the INS to develop long-term strategies for their officer training and adjudication functions, and asked JMD to review the INS plans before JMD approved waivers for annuitants during FY 2002. We acknowledge that the OPM language does not require JMD to approve the long-term strategy from

accounts receivable, property management, budget, and accounting activities.

² All reported compensation information excludes financial data for FY 2001 because the NFC did not have it available for our use.

³ Since the INS is scheduled to transfer to the Department of Homeland Security (DHS) on March 1, 2003, the administrative component in the DHS will need to address this issue.

the INS, but it is evident to us that the OPM did recognize the need for the INS to develop a methodology that would negate the need for waiver authority.

The INS submitted its strategy to JMD on October 12, 2001, but JMD rejected it on October 23, 2001, stating that the information addressed hiring of annuitants but lacked a long-term strategy for officer training and adjudication positions. The INS resubmitted its strategy to JMD on March 22, 2002, but JMD again rejected it. According to JMD officials, they believed the resubmission had too many similarities to the previously rejected strategy. Notwithstanding the INS's repeated failure to devise a long-term recruitment strategy, which OPM asked JMD to review before approving waivers in FY 2002, JMD continued to review and approve waivers requested by the INS.

As a result of our audit, we made five recommendations to the INS and JMD (or the appropriate component in the Department of Homeland Security). The recommendations include the need to develop improved accounting procedures; a single source database of rehired annuitants; documentation of effective long-range hiring and training strategies; and possible revocation of the INS's ability to rehire annuitants.

The details of our field work are contained in the Findings and Recommendations section of the report.⁴ Our audit scope and methodology are detailed in Appendix I.

⁴ As part of our audit process, we asked INS headquarters and JMD management to furnish us with a signed management representation letter containing assurances that our staff was provided with all necessary documents and that no irregularities exist that we were not informed about. As of the date of issuance of this report, the INS had declined to sign the letter, and although JMD did not decline to do so, we had not received the letter. Therefore, our findings are qualified to the extent that the INS and JMD management may not have provided us with all relevant information.

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INTRODUCTION

By letter dated September 5, 2002, the Chairmen of the House Judiciary Committee and the Subcommittee on Immigration, Border Security, and Claims asked the Office of the Inspector General (OIG) to review the Immigration and Naturalization Service's (INS) hiring of annuitants who received dual compensation waivers. In the letter, the Chairmen noted that:

OPM has allowed the Justice Department to approve waiver requests on a case-by-case basis for annuitants in positions required "[t]o adjudicate naturalization and adjustment of status applications . . . in offices with processing times averaging more than 6 months during periods when that office either offers other adjudicators overtime or has used overtime to the maximum extent possible and has vacant positions due to the lack of available candidates," as well as to train Border Patrol Agents and their supervisors

But the Chairmen also cited a concern that the Office of Personnel Management (OPM) raised in renewing the authority for FY 2000. The OPM Director stated that the INS's staffing emergency appeared to have become a continuing staffing problem and that the INS needed to develop long-range strategies to resolve the staffing issues to avoid relying on the waiver authority. As a result of these concerns, the Chairmen requested that the OIG review:

the INS's reemployment of annuitants for whom dual compensation reductions have been waived, to assess whether that authority has been used appropriately and to evaluate whether the INS has developed long-term strategies to fill its officer training and adjudication functions without relying on this authority.

Accordingly, the objectives of our audit were to: (1) identify the annuitants the INS rehired and the compensation awarded, (2) assess whether the INS approved waivers of dual compensation reductions appropriately, and (3) determine whether the INS developed and implemented long term hiring and training strategies that would reduce the need to rehire annuitants.

Background

According to 5 U.S.C. § 8344 (regarding the Civil Service Retirement System) and 5 U.S.C. § 8468 (regarding the Federal Employees Retirement System), a rehired annuitant shall have an amount equal to the annuity allocable to the period of actual employment deducted from his pay. However, pursuant to 5 CFR 553.201, the OPM Director may, at the request of the head of an Executive agency, waive the application of the deduction requirements on a case by case basis for employees in positions for which there is exceptional difficulty in recruiting or retaining a qualified employee. Under 5 CFR 553.202 the Director may do the same for an employee serving on a temporary basis, but only if, and for so long as, the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances. The OPM may delegate this authority to the head of an Executive agency.⁵

By letter dated December 5, 1995, the INS requested assistance from the Justice Management Division (JMD) to acquire from the OPM a delegation of authority to grant waivers of annuity offsets in individual cases. The INS request came in response to its anticipated hiring of 5,000 additional officer corps employees in FY 1996. According to the letter:

Temporary re-hiring recently retired INS employees in support roles would immediately provide a cadre of well trained employees who clearly understand the mission and function of the INS to support mission requirements and training. These employees' experience in the INS would be invaluable since most of them already speak and read Spanish, understand Hispanic culture, and could quickly become current in immigration and nationality law.

The OPM granted the INS's request by letter dated February 22, 1996, vesting the delegated authority with the INS Assistant Commissioner for Human Resources and Development. The OPM stipulated that the INS not exceed 500 reemployed annuitants during the term of the authority and that appointments made under the authority had to be in the areas of:

⁵ The OPM delegated such authority to the Social Security Administration, the Department of Treasury, and the Department of Agriculture.

- training;
- interviewing and processing new Border Patrol Agents;
- replacing or supplementing field positions as -
 - Border Patrol Agents
 - Immigration Inspectors, Investigators, and Instructors
 - Adjudications Officers
 - Other administrative support personnel.

According to the delegation granted by the OPM, the INS had to review and approve each waiver individually. The OPM further specified that the INS reassign employees replaced by rehired annuitants to process and train new recruits.

By letter dated August 11, 1998, the OPM granted an extension of the waiver authority through September 30, 2000, again vesting the delegated authority with the INS Assistant Commissioner for Human Resources and Development. However, the extended delegation of authority was reduced from a maximum of 500 reemployed annuitants to a maximum of 200 reemployed annuitants during the revised term of the authority.

By letter dated September 12, 2000, the OPM advised the Assistant Attorney General for Administration that it extended the delegated authority through September 30, 2002. The OPM stated that the Attorney General may redelegate the authority to the Assistant Attorney General for Administration or other senior official in JMD. By so doing, the OPM took the authority to approve waivers away from the INS Assistant Commissioner for Human Resources and Development and vested it with JMD. The JMD then assumed review and approval authority for the INS's requests for waiver authority. The OPM letter also noted that:

INS's staffing emergency, which began in 1995, appears to have become a continuing staffing problem. Please ask INS to look carefully at their workforce needs for FY 2003 through FY 2007 and to develop long-term strategies for their officer training and adjudication functions without continued reliance on this delegated authority. We ask that you review their plans prior to approving waivers for annuitants during FY 2002.

The OPM suggested that the INS formulate plans to include alternatives to reemploying annuitants, such as, ". . . details, internal staffing actions, training agreements, recruiting bonuses, retention allowances, incentive awards, contracting, etc."

On April 1, 2002, the OPM again extended the waiver authority, this time to September 30, 2004. The OPM letter provided that the Department could redelegate limited approval authority to an INS Headquarters official. However, in an e-mail dated August 13, 2002, between an official of the OPM and an official of the Department of Justice (Department), the re delegation provision was revised to provide for re delegation authority only to JMD not the INS. Therefore, at the time of our review, JMD had to review and approve all requests for waivers of dual compensation from the INS.

FINDINGS AND RECOMMENDATIONS

I. NUMBER OF REHIRED ANNUITANTS AND COMPENSATION AWARDED

The INS does not maintain accurate and complete data on annuitants who were rehired under OPM granted waiver authority. Additionally, the INS lacked sufficient accounting controls to identify the compensation paid to annuitants it employed from FY 1996 through FY 2002. We determined through the National Finance Center (NFC) that during those fiscal years the INS granted waivers to a total of 294 annuitants, paying them approximately \$39.5 million in salary compensation⁶, including overtime. A total of 85 additional annuitants, who were not granted waivers, received compensation totaling approximately \$9.4 million during the fiscal years. However, due to the lack of accurate and complete data, we could not verify the number of annuitants and amounts they were compensated.

We requested INS officials to provide a list of rehired annuitants and the amount of compensation paid to them from FY 1996 through FY 2002. The INS Human Resource and Development (HRD) staff provided a list of 320 annuitants rehired at various times during that period but could not provide the amounts of compensation paid to them by fiscal year. The INS acknowledged that their records did not include this information. As a result, we had to identify an alternate source for the compensation information.

We requested the JMD Finance Staff to obtain specific data from the NFC, which maintains payroll information for the Department. We asked that the data cover FY 1996 through FY 2002, and include the following information about INS reemployed annuitants: identifying information, dates of employment, salary, amount of annuity, entered-on-duty dates, annuitants working with and without a waiver⁷. The NFC reported a total of 294 rehired annuitants with waiver working for the INS during the seven fiscal years reviewed, as follows:

⁶ We were unable to obtain annuity payment data from either the INS or the NFC because that data is under separate control by the OPM. We consolidated the INS and the NFC lists of rehired annuitants and requested annuity data from the OPM. The OPM was unable to provide that to us before the issuance of this report.

⁷ The INS did employ retired employees who consented to be rehired with a reduction to their salaries based on their annuities.

INS Annuitant Hiring Pattern By Fiscal Year

FY	Hired With Waiver
1996	19
1997	61
1998	102
1999	53
2000	14
2001	6
2002	39
Total	294

Source: NFC⁸

According to the NFC data, 227 of the 294 annuitants hired with salary offset waiver were in two General Series (GS): 99 annuitants in GS 1712, Training Instructor; and, 128 annuitants in GS 1801, General Inspection, Investigation and Compliance. The remaining 67 annuitants were in 25 other occupational series. The series used by the INS were consistent with the specific job areas covered by the OPM delegations of authority.

Once we identified the number of annuitants hired using a waiver, we compared the total number of annuitants with waiver on board against limits set by the OPM in its delegations of authority. We found that the INS stayed within the maximums for every period, as follows:

Comparison of Annuitants With Waivers vs. Maximums Per OPM Delegations

FY	Employed at End of Period	Maximum Allowed per OPM
1996 – 1998	152	500
1999 – 2000	140	200
2001 – 2002	121	300

Source: NFC and OPM

The NFC data also included the amount of compensation provided to annuitants who received waivers and those who did not. According to the NFC, from FY 1996 through FY 2002⁹ the INS paid \$39.5 million in salary

⁸ The NFC informed us that the data contained in the report is under the control of the INS input and the NFC does not perform quality checks as to the completeness and accuracy of the information.

⁹ Excludes FY 2001 compensation, see footnote number 2.

compensation, including overtime, to the 294 annuitants who received waivers and \$9.4 million to the 85 annuitants who did not receive waivers, thus paying a total of 379 annuitants salary compensation totaling approximately \$49 million. The following table provides the amount of compensation by fiscal year that the INS paid to annuitants with waivers.

**NFC Salary Data for Annuitants with Waivers
FY 1996 through FY 2000
and FY 2002**

FY	Total Salary Paid Per NFC
1996	\$ 398,373
1997	3,104,874
1998	5,487,816
1999	10,929,976
2000	11,286,730
2001	Unavailable
2002	8,313,373
Total	\$39,521,142

Source: NFC

Recommendation

We recommend that the INS Commissioner ensure that the INS:

1. Has procedures in place to identify the names, series, and compensation paid to rehired annuitants who receive waivers and ensure that this information reconciles with data provided to the NFC.

II. ASSESSMENT OF THE WAIVER APPROVAL PROCESS

The Department needs assurance that decisions regarding requests for waivers of annuity offsets for the INS rehired annuitants comply with guidance provided by the OPM. The INS did not consistently include in annuitant files statements from appointees that they would not accept positions without waivers being granted and did not maintain historic records (FY 1996 through FY 2000) to substantiate its rationale for identifying individual rehired annuitant positions. JMD, who assumed responsibility for approving rehiring annuitants on a case-by-case basis in FY 2000, does not currently maintain a standard review sheet or similar analysis that provides the basis for its decisions on these requests. As a result, neither the INS nor JMD can provide assurance that they made these decisions in accordance with the authority provided to them by the OPM.

In the Introduction section and Finding I of this report we discuss the timing of the INS requests for delegated waiver authority and subsequent OPM actions. The following table summarizes the timeline of delegated authority.

Period	Delegation
FY 1996 – FY 2000	INS
FY 2001 – FY 2004	JMD

Source: OPM

In the initial OPM delegation of waiver authority to the INS (and every letter thereafter), the OPM stated that the INS had to maintain specific information for each rehired annuitant receiving a waiver, including:

- the appointee's name,
- the appointee's position,
- the location of the appointment, and
- a statement from the appointee that he or she would not accept the position without a waiver being granted.

To determine the INS's responsiveness to these requirements, we reviewed 146 files: 69 files that the INS provided to JMD in FY 2002 for requests to extend waivers, and 77 files maintained at the Immigration Officer Academy and the Border Patrol Academy. The 69 files that INS provided to JMD contained the information cited in the initial OPM delegation. However, of the 77 files we examined at the academies, only 24 contained statements from applicants that they would not accept the

positions without waivers being granted. In our judgment, the INS needs to ensure that all of the annuitants' files include this information.

The next essential step to the review was to assess the INS's rationale and decisions to rehire annuitants with waivers, and determine if such information was documented by the INS. We asked the INS for records documenting their rationale and decisions to rehire individual annuitants from FY 1996 through FY 2000. The INS could not provide data to substantiate their rationale for rehiring specific annuitants. Therefore, our results are qualified to the extent that we cannot attest to the appropriateness of the INS decisions to rehire annuitants with waiver from FY 1996 through FY 2000.

For FY 2003 and 2004, JMD's Personnel Staff reviews the INS requests for waivers and extensions of annuity offsets, and the Assistant Attorney General for Administration has authority to approve them. A JMD official stated that this process entails screening the rehired annuitant's application for crucial skills that would benefit the INS. Each waiver is reviewed on a case-by-case basis. According to JMD, the factors considered are the nature of the job, the skills needed to perform the job, and the geographic locale. In an effort to add consistency to the waiver process, JMD contacted the OPM on September 29, 2000, to request advice regarding how to review waivers and extensions properly. The OPM provided general advice to JMD but suggested that JMD consider six questions when reviewing waivers and extensions:

- How long can the timeframe of mission critical positions be deferred without causing significant harm to the program?
- Can the office accomplish the mission critical tasks of the position by any other means?
- Is this an authorized and fully funded position for which INS is actively recruiting?
- Have prior recruiting efforts failed to identify a fully qualified candidate?
- Is there an urgent need to do the work while a candidate is waiting for clearances?
- What is the minimum overlap required to train a new, reassigned, or promoted employee?

From the guidance provided by the OPM, JMD developed a list of information that the INS was to submit with each waiver application that addressed the mission of the project and program, personal information about the individual, and information about the position. (See Appendix II for the detailed list of required information.) JMD Personnel Staff

representatives stated that they reviewed the requests against these requirements, taking into consideration the needs of the INS and the Department.

To assess JMD's actions, we judgmentally selected for review requests for extensions from the INS in FY 2002. During the period JMD denied 23 of 69 waiver extension requests from the INS as shown in the following table.

**Results of JMD's Reviews of FY 2002
Waiver Extension Requests**

Position	Number of INS Requests	Decisions by JMD	
		Approved	Denied
Immigration Inspector ¹⁰	10	10	0
Training Instructor ¹¹	39	28	11
Field Operations ¹²	20	8	12
Total	69	46	23

Source: JMD

We reviewed a judgmental sample of 57 of the 69 requests and compared the actual submissions from the INS against JMD decisions. We found no documentation of how JMD applied the criteria to each request. Such evidence could have been maintained in the form of a checklist, a narrative, or some other type of written record. Without such documentation, JMD cannot provide assurance to the Department that the reviews were conducted in accordance with criteria suggested by the OPM and subsequently developed by JMD. Accordingly, we believe that JMD can improve its review process and mitigate any potential questions regarding the justification of its waiver extension decisions by documenting its analysis and results of each application for extension.

¹⁰ Annuitants perform the full range of inspection, examination, processing and law enforcement duties regarding persons seeking to enter the United States from abroad. The positions are located at Dulles Airport.

¹¹ Annuitants perform a variety of training tasks, which consist of but are not limited to the following topics: course planning and development, evaluating and updating curriculum, professional duties, and other duties as assigned. The assignments are located at the FLETC in Glynco, GA, the Border Patrol Academy in Charleston, SC, and advanced training facilities in Artesia, NM.

¹² Annuitants perform various duties in the areas of adjudication, detention, deportation, and investigation.

Recommendations

We recommend that the INS Commissioner:

2. Ensure that rehired annuitant files include statements that the appointees would not accept the position without waivers being granted.

We recommend that the Assistant Attorney General for Administration, JMD, or the successor counterpart in the Department of Homeland Security (DHS):

3. Utilize a formal record to document the analysis performed of each request for waiver or extension by the INS.

III. DEVELOPMENT AND IMPLEMENTATION OF LONG-TERM HIRING AND TRAINING STRATEGIES

The INS had not developed an effective methodology to reduce its dependence on rehired annuitants whose annuity offsets are waived. The OPM granted the waiver authority to rehire annuitants in 1996 on a temporary basis in response to a Department request to meet a staffing emergency. In its September 12, 2000, waiver extension letter, the OPM recognized that the INS had made no progress in addressing its continual reliance on rehired annuitants. The OPM asked JMD to request the INS to develop long-term strategies for their officer training and adjudication functions. The INS submitted its strategies to JMD on October 12, 2001, and March 22, 2002. JMD rejected both saying that the information in the plans pertained only to the hiring of annuitants and did not address the INS's long-term strategy to staff officer training and adjudication positions. Therefore, the INS needs to develop and implement a meaningful long-term strategy.

When the OPM first granted the Department request for waiver authority in 1996, it stated that the authority was for use on a temporary basis, for emergencies dealing with threats to life or property, or unusual circumstances. Various INS officials, including the Executive Associate Commissioner for Management, told us that they considered the rehiring of annuitants with waivers to be an efficient and cost effective way of acquiring experienced and qualified employees. For example, in the Immigration Officer and Border Patrol Academies, they said their rehired annuitants made up a pool of qualified instructors with practical experience to share in the classroom. They said that the extent of this experience can only be matched by detailing working officers to the academies, thus creating a drain on the manpower available to the field. According to the INS, this is cost effective in that a rehired annuitant is not paid relocation or other benefits, while a relocated officer is paid to move and a detailed officer is given temporary duty allowance.

Notwithstanding the opinions of the INS officials, the OPM determined that the INS needed to use hiring methods other than relying on granting annuitants waivers. Therefore, in its September 12, 2000, letter extending the delegation authority, the OPM requested that JMD ask the INS to review their workforce needs for FY 2003 through FY 2007 and develop long-term strategies for their officer training and adjudication functions without continued reliance on the delegation of authority. The OPM asked JMD to review the INS plans before JMD approved waivers for annuitants during

FY 2002. We acknowledge that the OPM language does not require JMD to approve the long-term strategy from the INS, but it is evident to us that the OPM did recognize the need for the INS to develop a methodology that would negate the need for waiver authority. The OPM provided JMD with general guidance regarding the composition of long-range strategies:

Such strategies could include details, internal staffing actions, training agreements, recruiting bonuses, retention allowances, incentive awards, contracting, etc.

The INS submitted its initial strategy to JMD on October 12, 2001. The document listed methods of reducing the INS reliance on rehired annuitants by upgrading recruiting efforts, but the INS qualified the effort by saying that there was an assumed shortage of quality candidates available. JMD rejected the submission, stating that the information addressed hiring of annuitants but not a long-term strategy to staff officer training and adjudication positions.

JMD advised the INS to submit a revised plan within 15 days of October 23, 2001. Until JMD reviewed such plan, the 96 individuals would only receive extensions through November 30, 2001, and 5 new annuitants would not be approved. The INS submitted a revised plan almost 4 ½ months later. JMD also rejected that plan for the same reasons as it did the INS's October 12, 2001, submission.

JMD continued to review requests for waiver extensions and after subsequent communications with the INS, JMD received INS's revised strategy dated March 22, 2002. As of the time of our audit, JMD had not provided a formal response to the plan. However, officials of the JMD Personnel Staff advised us that JMD had verbally rejected the revised plan. JMD officials told us that they had determined that there were too many similarities between the second submission and the first, rendering it a mirror version with too little additional input. Accordingly, from JMD's perspective the INS still lacks an acceptable long-range recruitment plan. Yet, JMD continued to review and approve requests for new waivers and hiring extensions of existing waivers. JMD needs to decide if it should continue to approve new waivers and extensions of waivers in advance of the INS developing and implementing an acceptable long-term hiring plan in response to the OPM's concerns.

We asked INS officials to describe the issues it faced in developing a viable long-range plan. The INS indicated that after the events of September 11, 2001, it encountered various obstacles in devising a plan, including:

- Public Law 107-206, which permits the Federal Law Enforcement Training Center (FLETC), a major competitor for qualified law enforcement training professionals, to rehire annuitants without offset;
- a general drain on qualified field personnel from competition with newly formed law enforcement agencies, such as the Transportation Security Agency; and
- an impending major reorganization under legislation creating the DHS.

Public Law 107-206 §1202(a), "2002 Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States," states that the FLETC:

may, for a period ending not later than 5 years after August 2, 2002 appoint and maintain a cadre of up to 250 Federal annuitants: (1) without regard to any provision of title 5, United States Code, which might otherwise require the application of competitive hiring procedures; and (2) who shall not be subject to any reduction in pay (for annuity allocable to the period of actual employment) under the provisions of section 8344 or 8468 of such title 5 or similar provision of any other retirement system for employees.

An INS official stated that the INS is at risk to lose significant qualified training staff to FLETC because the INS does not have comparable salary and annuity protection for the individuals. Therefore, in our opinion the INS is more inclined to continue to offer waivers to annuitants than it is to develop a long-term plan to fill training vacancies with new hires or transfers.

Similar concerns were voiced by officials at the Border Patrol Academy, Immigration Officer Academy, and Field Operations staff, who cited critical staffing constraints imposed by the loss of qualified agents to newly formed law enforcement agencies such as the Transportation Security Administration. Although this does not impact the rehired annuitant population directly, the INS suggested that the reduced staffing aggravates the existing training problem. According to the INS, the imposition of increased hiring to meet demand and the reduction in the number of qualified agents to other law enforcement enhances the need for training new recruits. Additionally, the INS stated that detailed veteran agents traditionally staff many training positions, and those agents cannot be spared from their field positions for training duties. Finally, according to the

INS, it cannot provide newly trained officers to the field to alleviate the staffing problem. The INS decided to use rehired annuitants in the training academies to augment the need for detailed veteran agents from the field.

The INS also said that its impending transfer to the newly created DHS has forced it to refocus its organizational priorities. As a result, this further impacted its ability to develop long-term hiring strategies.

Notwithstanding the comments by INS officials, in our opinion the INS still needs to develop an acceptable long-term hiring strategy in accordance with the request in the OPM's September 12, 2000, letter to JMD. Further, JMD needs to decide if it should continue to review and approve new requests for waivers and extensions of waivers in advance of the INS having an acceptable long-term hiring plan.

Recommendations

We recommend that the INS Commissioner:

4. In collaboration with JMD (or the successor component in the DHS), ensure that an acceptable long-range hiring and training strategy is implemented that establishes viable alternatives to the use of reemployed annuitants using offset waivers.

We recommend that the Assistant Attorney General for Administration, JMD, or the successor component in the DHS:

5. Consider not approving INS's requests for waiving annuity offsets against salaries if an agreeable long-term plan is not developed and implemented in a specific timeframe.

APPENDIX I

OBJECTIVES, SCOPE, AND METHODOLOGY

In response to a request by the Chairmen of the House Judiciary Committee, and the Subcommittee on Immigration, Border Security, and Claims, the Office of the Inspector General initiated an audit of waivers to dual compensation restrictions utilized by the INS to reemploy retired annuitants. Our preliminary objectives were three-fold: (1) identify the annuitants INS rehired and the compensation awarded, (2) assess whether the INS approved waivers of dual compensation reductions appropriately, and (3) determine whether the INS developed and implemented long-term hiring and training strategies that would reduce the need to rehire annuitants.

We conducted an entrance conference at INS headquarters where we were provided documentation detailing the extensive involvement of JMD as oversight agency per OPM guidance, in managing the INS's waiver approval process effective September 30, 2000. Accordingly, JMD was included within the scope of this audit. Our objectives, as they pertain to each distinct department, remained three-fold and unchanged.

This audit was conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States. Consequently, we included in our research records pertaining to personnel management and financial accounting as provided by the NFC, JMD, and INS.

In the course of our research we conducted interviews with INS, JMD, NFC, and OPM officials. The audit team conducted on-site visits to the U.S. Border Patrol Academy's training facility in Charleston, SC, in addition to an on-site visit to the Immigration Officer Academy located within FLETC in Brunswick, GA. We interviewed the academy chiefs, border patrol agents, senior administrative personnel, and annuitant training instructors past and present.

As part of our audit process, we routinely ask management of the organization audited to furnish us with a signed management representation letter. In this letter, INS and JMD management would certify to us that: (1) they provided us with all standards, internal reports, memoranda, and other documentation associated with the reemployment of annuitants; and (2) there are no relevant matters, contingencies, irregularities, or subsequent events of which our staff has not been aware. As of the date of issuance of the report, the INS Executive Associate Commissioner for Management

declined to sign the letter. At the exit conference, JMD officials indicated that they would provide a management representation letter. However, at the time of issuance of this report, we had not received it. Therefore, our findings are qualified to the extent that the INS and JMD management may not have provided us with all relevant information.

APPENDIX II

WAIVER APPLICATION GUIDANCE BY JMD

Information needed to request a waiver to annuity offset:

Information required concerning the mission of the project/program:

- Describe why hiring the individual is critical to the project. **Include knowledges, skills, and abilities possessed by the individual that are essential for successful completion of the project and that could not be acquired by another appointee within a reasonable time.** Also explain why the work cannot be assigned to other employees involved in the same project.
- **What are the individual's special qualifications. What are his qualifications as compared to others in his field, i.e., what distinguishes him as outstanding and above any one else.**
- What is the urgent need for his services
- **How will the investigation/program suffer without his services.**
- **Describe recruitment difficulties. What were your recruitment efforts. How was the individual identified.**
- **State length of time needed to complete the project.**

Information required concerning the individual for whom the waiver is being requested:

- Name of the individual
- Social security number and CSRS or FERS claim number, if any
- Date of Retirement
- Type of retirement (voluntary, discontinued service, disability, etc.)
- Amount of current annuity
- Amount of salary if reemployed
- Analysis of the individual's qualifications that meet the agency's emergency need/critical skills
- **Provide documentation as to why this person is the best candidate rather than recruiting from the general public**
- Individual's SF-171, OF-612, or resume
- Documentation of bona fide offers of nonfederal government employment, if any
- Documentation that the individual will retire and not accept the position if a waiver is not granted. Must prove that individual will sustain a financial hardship if waiver is not granted.
- **Were other staffing alternatives considered: retention allowance. If not, why not.**

Information required regarding the position:

- Title, series, grade, salary and duty location, and type of appointment

APPENDIX II

- Copy of position description and description of the qualifications required, including selective factors
- Copy of rating and ranking factors for the position
- Copy of supervisory evaluation of other individuals on the best qualified list which outlines the individuals' knowledges, skills, and abilities and why the other applicant was not selected over the retired federal employee

APPENDIX III

IMMIGRATION AND NATURALIZATION SERVICE RESPONSE



U.S. Department of Justice
Immigration and Naturalization Service


HQOIA 110/8.2-C

Office of the Commissioner

425 I Street NW
Washington, DC 20536

FEB 27 2003

MEMORANDUM FOR GUY K. ZIMMERMAN
ASSISTANT INSPECTOR GENERAL FOR AUDIT
DEPARTMENT OF JUSTICE

FROM: Michael J. Garcia 
Acting Commissioner
Immigration and Naturalization Service

SUBJECT: Reemployment of Annuitants by the Immigration and Naturalization Service

I appreciate the opportunity to comment on the subject draft report and solicited input from the senior management official who is most significantly impacted -- the Executive Associate Commissioner for Management. I reviewed the response and concur with the conclusions, observations, and recommendations.

The Executive Associate Commissioner for Management has given an explanation of the proposed plans to address your findings. Considering the INS reorganization and move to Homeland Security on March 1, I can not specifically give you projected completion dates for the specific recommendations.

If you have any questions, please contact Kathleen Stanley, Audit Liaison, at (202) 514-8800.

Attachment

cc: Vickie L. Sloan, DOJ Audit Liaison

APPENDIX III



U.S. Department of Justice
Immigration and Naturalization Service

HQTRN 110/10

Office of the Executive Commissioner

425 I Street NW
Washington, DC 20536

FEB 26 2003

MEMORANDUM FOR MICHAEL J. GARCIA
ACTING COMMISSIONER
IMMIGRATION AND NATURALIZATION SERVICE

FROM: George H. Bohlinger III
Executive Associate Commissioner
Office of Management

SUBJECT: Reemployment of Annuitants by the Immigration and Naturalization Service

This memorandum responds to the U.S. Department of Justice's Inspector General Draft Report on reemployment of annuitants by the Immigration and Naturalization Service (INS) forwarded to the INS on February 24, 2003. The INS concurs with the recommendations in the report submitted by the OIG and will work to implement the recommendations under the new Department of Homeland Security. Below are our responses to the recommendations 1, 2, and 4 addressed to the INS.

RECOMMENDATION 1: We recommend that the INS Commissioner ensure that the INS: Has procedures in place to identify the names, series, and compensation paid to rehired annuitants who receive waivers and ensure that this information reconciles with data provided to the NFC.

INS STATUS: Concur, we agree with the comments and recommendations that the INS develop specific procedures (i.e., development of a database), practices, and associated quality control measures that will allow easier identification of annuitants with waivers to dual compensation regulations by name, series, and compensation paid.

RECOMMENDATION 2: We recommend that the INS Commissioner: Ensure that rehired annuitant files include statements that the appointees would not accept the position without waivers being granted.

INS STATUS: Concur, we agree with the recommendations that INS improve its procedures and practices for maintaining records associated with the employment of annuitants. It is our position, however, that INS does maintain the official hard copy files, folders and spreadsheets necessary to generally fulfill Office of Personnel Management reporting requirements for the period 1996-2000. However, we recognize that the quality of these records may not meet the expectations of the Office of Inspector General.

APPENDIX III

Memorandum for the Commissioner
Subject: Reemployment of Annuitants by the
Immigration and Naturalization Service

Page 2

RECOMMENDATION 4: We recommend that the INS Commissioner: In collaboration with JMD (or the successor component in the DHS), ensure that an acceptable long-range hiring and training strategy is implemented that establishes viable alternatives to the use of reemployed annuitants using offset waivers.

INS STATUS: Concur, the INS's long-term strategy to address the instructor staffing shortage at the Academies is to dedicate a combination of additional FTE positions and 3-year term positions to increase the instructor capacity resources. In addition, the Office of Training and Career Development is exploring the use of contracted instructors to supplement the staffing shortage during the increased hiring demands for border patrol agents and immigration inspectors.

If you have any questions or require additional information, please contact Ms. Jill Drury, Acting Assistant for the Office of Training and Career Development, at 202-616-2674.

JUSTICE MANAGEMENT DIVISION RESPONSE



U.S. Department of Justice

Washington, D.C. 20530

February 28, 2003

MEMORANDUM FOR GUY ZIMMERMAN

Assistant Inspector General
for Audit

FROM:

Joanne W. Simms
Deputy Assistant Attorney General
for Human Resources and Administration

A handwritten signature in cursive script, reading "Joanne W. Simms".

SUBJECT:

Comments on the Draft Inspection Report of the Office of the
Inspector General (OIG) Concerning Reemployment of Annuitants
By the Immigration and Naturalization (INS)

We have reviewed the findings and recommendations of the OIG's inspection of the use of reemployed annuitants by the INS. According to the draft report, the objective of the inspection was to "... review the INS' hiring of annuitants who received dual compensation waivers ..." and "... to review the INS' reemployment of annuitants for whom dual compensation reductions have been waived, to assess whether that authority has been used appropriately, and to evaluate whether the INS has developed long-term strategies to fill its officer training and adjudication functions without relying on this authority." In so doing, the OIG also reviewed the role of the Justice Management Division (JMD) and made recommendations. The following comments to the OIG Inspection Report's findings regarding JMD are provided for your consideration:

3. Recommend that the Assistant Attorney General for Administration, JMD, or the successor counterpart in the Department of Homeland Security (DHS) utilize a formal record to document the analysis performed of each request for waivers and extensions by the INS.

We agree. However, it must be pointed out that such a system currently exists within the Personnel Staff (PS), JMD, and that individual records have been kept for every person for whom the INS requested a waiver or an extension of a waiver. A standard basis for decision-making also exists and was applied to every case. There is a checklist (which was included as Appendix II), that is used for all dual compensation waiver requests, not just INS'. Also, tables were set up which provided the rationale for approval or denial in the past, memoranda were issued which identified the retiree by name and reasoning behind approval or denial. Therefore, we must take issue with the report's statement to the contrary on Pages 4, 14, and 16.

APPENDIX IV

Memorandum for Guy Zimmerman

Page 2

Subject: Comments on the Draft Inspection Report of the Office of the
Inspector General (OIG) Concerning Reemployment of Annuitants
By the Immigration and Naturalization (INS)

5. Recommend that the Assistant Attorney General for Administration, JMD, or the successor component in the DHS consider not approving INS' requests for waiving annuity offsets against salaries if an agreeable long-term plan is not developed and implemented in a specific timeframe.

We agree. The need for the INS to develop an acceptable long-term hiring strategy is undisputed and imperative; however, this need had to be balanced against real-time mission requirements to address the homeland security issues being faced by this Department. JMD management implemented a compromise to address current mission needs while addressing long-term goals at the same time.

In reviewing the inspection report, we note one needed correction:

1) page 15, paragraph 3 first line - The Director of JMD's Personnel Staff is not responsible for approving the INS waivers and extensions of annuity offsets. **This is the responsibility of the Assistant Attorney General for Administration.**

APPENDIX V

OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT

We have received and reviewed the INS and JMD responses to our draft audit report. Where appropriate, we made changes to the final report based upon the responses and information obtained at the exit conferences. In particular, we edited the first sentence of Finding I on page 5 to indicate that INS did not maintain *accurate and complete* data on annuitants who were rehired under OPM waiver authority. Additionally, in response to a JMD comment, we clarified page 9 of the report to indicate that the Assistant Attorney General for Administration, not the Director of JMD's Personnel Staff, currently has authority to approve waivers.

The INS and JMD responses also address each of the five report recommendations. Our comments on the responses are given below, together with the status of the recommendations and actions necessary to close the report.

1. **Resolved.** (INS) In order to close this recommendation, please provide a copy of the procedures, practices, and associated quality control measures developed that will identify the names, series, and compensation paid to rehired annuitants who receive waivers, and evidence that this information is reconciled with data provided to the NFC.
2. **Resolved.** (INS) In order to close this recommendation, please provide evidence that the files for all rehired annuitants who have received waivers and are currently employed at the INS contain statements that they would not have accepted the position without a waiver being granted.
3. **Resolved.** (JMD) As stated in the report, we acknowledged that JMD personnel staff stated that they reviewed the requests against the criteria we included as APPENDIX II. We also recognize, as JMD indicated in its response to our draft report, that JMD sent the INS memoranda that provided its decisions for INS waiver requests. However, the memoranda JMD is referring to covered groups of employees and did not contain any indication of how it arrived at individual decisions for waivers that JMD approved. As we indicated in our audit report, we believe JMD should document its analysis of each request against the criteria in Appendix II. Such documentation would

provide a formal record of the rationale applied by the JMD reviewers to reach their decision for each annuitant. In order to close this recommendation, please describe the methodology you intend to use to document reviews of the INS's request for waiver for each annuitant against the criteria.

4. **Resolved.** (INS) In order to close this recommendation, please provide a copy of the long-term strategy that establishes viable alternatives to the use of reemployed annuitants using offset waivers that was approved by JMD or the successor component in the DHS.
5. **Resolved.** (JMD) In order to close this recommendation, please provide us with the terms of the compromise JMD enacted to address mission needs while addressing the long-term goals.