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Memorandum

TO: Director, FGMS

FROM: General Counsel - Paul G. Dembling

SUBJECT: Payroll Certification

This is in response to the question raised by Mr. Maycock in his memorandum to you dated January 28, 1977. Mr. Maycock asked whether GAO's certifying officer is fulfilling his statutory responsibilities under our present system of payroll processing.

Briefly stated, our understanding of the positive system of payroll processing currently used by GAO is as follows: the Time and Attendance Reports constitute recordation of the time worked and leave taken by an employee for a complete pay period. However, these time reports must be prepared and delivered to the payroll section no later than 10 a.m. on Friday, the 13th day of the current pay period. Consequently, the recordation of the time worked and 1 leave taken . on the latter days of the pay period is based on the employees' projection of what his status will be on those days. We understand that in Headquarters, an employee's status on the 13th and 14th days of the pay period is projected. In Regional Offices, employees estimate their status for all or part of the second week of the pay period. Supervisors in the Regional Offices are required to report any changes that occur between the time an employee's Time and Attendance Report is initially submitted to the timekeeper and the end of the pay period. However., only those changes that occur by Wednesday of the second week are reflected in the Time and Attendance Reports submitted to Headquarters. Changes in an employee's status on the 9th through the 14th days of the pay period are reflected on the Time and Attendance Report for the subsequent enpay period.

The certification printed on the GAO Time and Attendance Report, GAO Form 4&4 (3-76) recognizes this situation only with respect to the 13th and 14th days of the pay period; as follows:

Certified correct, and approved in accordance with law and regulations, for all regular time, overtime, night differential, and holiday time worked, and leave taken up to and includingthe 12th day of this pay period and the 13th and 14th days of the prior pay period."

The supervisor's signature on each employee's time card certifies, the

correctness of the reported time worked and leave taken up to and including the 12th-day of the current payperiod and for the 13th and 14th days of the prior pay period. After payroll vouchers are prepared, the agency certifying officer is required to certify to the correctness and validity of the payments being made prior to sending thevouchers to the Department of Treasury disbursing officer,

The issue raised by Mr. Maycock is whether the certifying officer is fulfilling his duties when he certifies that amounts included in the payroll are due and proper based upon time cards that have not been certified by the supervisors as correct for the latter days of the payroll period.

Pursuant to 31 U.S.C. Sec. 82c the certifying officer is, subject to later waiver under appropriate circumstances, accountable for any illegal or improper payment.

Under GAO's present system of payroll processing, as well as under similar systems in other agencies, the possibility exists that erroneous information contained on time cards for the latter days of the pay period may escape detection. As Mr. Maycock points out in his memorandum, this Office held in 43 Comp. Gen. 36, 38-39 (1963) that:

"* * * We believe that any plan of examining vouchers prior to certification which contemplates the certification of vouchers with the knowledge that some of them--even though the particular ones are not known--contain erroneous or improper payments violates the spirit and intent, if not the letter, of the acts establishing the responsibility of certifying officers."

Apparently as a result of 43 Comp. Gen. 36, the Congress subsequently amended accountable officer legislation to allow limited use of statistical sampling in payment voucher certifications Thus 31 U.S.C. 82b-1, contrary to the injunction of 43 Comp. Gen. 36, now allows statistical sampling within set by GAO, and absolves certifying and disbursing officers of liability for unaudited erroneous payments certified and paid under approved statistical sampling procedures, assuming good faith and diligent efforts to collect the erroneous payments.

Also, we believe the present situation is distinguishable from the one discussed in the cited case, which dealt with certification of travel vouchers on a statistical sampling basis, because we view the certification by a certifying officer of a payroll voucher under the circumstances involved here to be provisional with respect to the days certified which are yet to be worked. That is, any time not worked during those days for which payment is erroneously certified will be picked up during the following pay period and proper adjustments made to leave accounts or in the amount of compensation paid for the succeeding pay period. This would not be the case where travel vouchers are involved since the only scrutiny of a travel voucher would be that given prior to certification and payment. While there is the theoretical possibility that a certified payment might be made for which an adjustment during the following pay period is not possible, as discussed below, this possibility is slim and in our opinion does not render the provisional certification of payroll vouchers illegal.

Provisional certification of interim payment vouchers cost-type Government contracts was approved in B-180264, March 11, 1974. In that case, certification and payment of interim vouchers without detailed audit was approved on the basis

that such provisional payments would be subject to detailed audit before final payments were made under the contract so that any erroneous interim payments could then be adjusted. However, there is the possibility in this situation that erroneous payments incorrectly certified on a provisional basis would not be recoverable during final audit as a result for example' of a contractor's default or bankruptcy. B-180264 had the following to say about the standard of care to be required by GAO in determining whether the liability of certifying officers should be waived in cases involving provisional certifications.

"However, what distinguishes this situation from that in the statistical sampling cases and other cases where chance of error is present, is the fact that here there will eventually, upon contract completion, be made a complete audit of the contractors' books and records, and adjustments based upon those findings will be made if indicated. It therefore seems that what constitutes 'reasonable diligence and inquiry for provisional vouchers expressly made subject to a final audit and settlement may be different from and somewhat less than what is required on vouchers involving other than provisional payments."

A risk of loss to the Government would also exist in the present situation if a GAO or other agency employee who lacks a sufficient accumulation of annual leave or retirement benefits, or combination thereof, against which to offset any pay received for the latter days of the pay period, were absent without leave from work on those days and subsequently did not return to work.

Richard Brown, the Controller of GAO, informed our Office that, to his knowledge, no GAO employee has left the Agency under the circumstances described above. In addition, Mr. Brown stated that during the pay period that ended on February 26, 1977, there were 23 employees out of a total of approximately 5, 000 who did not have a sufficient accumulation of annual leave and retirement benefits against which to offset any pay received for the last 2 days of the pay period. Although we have no information with respect to other agencies, we note that a recent audit report criticized HEW for the large amount of outstanding erroneous salary and leave payments .for which no collection action has been attempted. However, the report does not indicate that the erroneous payments were made on the basis of provisional certifications.

We believe that the risk incurred by the certifying officer is minimal in this situation and that the provisional certification of the latter days of the pay period on payroll vouchers satisfies the " reasonable diligence and inquiry" required.- by 31 U.S.C. Sec. 82c to support waiver of erroneously certified payments where collection cannot be accomplished, and where the circumstances of the case otherwise support waiver.

This Position, of course, is not intended to pass judgment on the merits of positive versus exception-type payroll systems, and should not be interpreted as limiting any changes in Government payroll systems which your division might want to recommend or require by means of amendment to the GAO policy and Procedures Manual for Guidance of Federal Agencies.

We would like to point out that GAO, as well as other agencies, can institute sufficient safeguards in the system that will, for the most part, eliminate the risk involved. The GAO certifying officer does not certify payroll vouchers until the Tuesday following the pay period in question. Consequently, there would appear to be sufficient time for supervisors in the Regional Offices, as well as in Headquarters, to notify the payroll office if an employee who lacks a

sufficient accumulation of leave and retirement benefits, was absent without leave from work on those days provisionally certified as having been worked and subsequently failed to return to work. Upon such notification, appropriate adjustments in the employee's pay could be made before certification.

In addition, if GAO continues to use the positive system of payroll processing, we suggest that the Time and Attendance Report be modified for use in the Regional Offices to accurately reflect the number of days certified.

cc: Mr. Pierson, OGC Mr. Maycock, FGMS Mr. Hunter, OGC Ms. Finley, OGC Index and Files