



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL



EPA Compliance With Retention Incentive Regulations and Policies

Report No. 14-P-0245

May 2, 2014



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Report Contributors:

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Abbreviations

CFR	Code of Federal Regulations
DFAS	Defense Finance and Accounting Service
EPA	U.S. Environmental Protection Agency
HR	Human Resource
HRO	Human Resources Officer
OHR	Office of Human Resources
OIG	Office of Inspector General
OPM	Office of Personnel Management

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At a Glance

Why We Did This Review

On August 27, 2013, a member of the U.S. Senate Committee on Environment and Public Works requested that the U.S. Environmental Protection Agency (EPA), Office of Inspector General (OIG), initiate work in connection with a fraud committed by John C. Beale, a former Senior Policy Advisor with the EPA's Office of Air and Radiation. In particular, the committee member asked the OIG to determine EPA policies and processes that "facilitated" Beale's fraud. Although the EPA authorized retention incentive pay to Beale until 2003, the agency continued to make retention incentive payments to him until 2013.

This report addresses the following EPA theme:

- *Embracing EPA as a high performing organization.*

For further information, contact our public affairs office at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2014/20140502-14-P-0245.pdf

EPA Compliance With Retention Incentive Regulations and Policies

What We Found

The EPA did not comply with Office of Personnel Management regulations or agency policies on retention incentive pay. From 2006 through 2013, retention incentives were paid to 13 EPA employees totaling \$667,376. Eleven employees received retention incentive pay totaling \$481,819.

For 10 of the employees, no documentation of the required annual recertification was available. One employee received retention incentive pay for 4 years beyond the date of a promotion.

EPA did not comply with Office of Personnel Management regulations or agency policies on retention incentive pay.

EPA employees received unauthorized retention pay due to:

- Agency and management confusion over the requirement for annual recertification of retention incentive pay.
- The agency's human resource system lacking internal controls to track, notify and automatically discontinue retention incentive pay if not properly authorized.
- Lack of follow-up by the EPA's Office of Human Resources regarding coding errors for terminated retention incentives.
- Lack of follow-up by EPA managers and employees regarding the status of outstanding actions being processed by the EPA's Office of Human Resources.

Recommendations and Agency Corrective Actions

We recommend that the Assistant Administrator for Administration and Resources Management and the Chief Financial Officer:

- Determine if any additional evidence exists to justify a retention incentive. If unjustified, pursue action to recover retention incentive payments made to EPA employees.
- Pursue action to recover the unauthorized retention incentive amounts paid to the EPA employees who received retention incentive pay beyond their promotion date or authorized end date.

The agency agreed with the recommendations. The agency is working to find additional evidence to determine if retention incentive payments were justified, and has initiated the collection processes for the two overpayment cases.




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

May 2, 2014

MEMORANDUM

SUBJECT: EPA Compliance With Retention Incentive Regulations and Policies
Report No. 14-P-0245

FROM: Arthur A. Elkins Jr. 

TO: Craig E. Hooks, Assistant Administrator
Office of Administration and Resources Management

Maryann Froehlich, Acting Chief Financial Officer
Office of the Chief Financial Officer

This is our report on the subject audit conducted by the U.S. Environmental Protection Agency (EPA), Office of the Inspector General (OIG). The report contains findings that the OIG has identified and corrective action that the OIG recommends. The report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determination on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 60 calendar days. You should include planned corrective actions and completion dates for the unresolved recommendations. Your response will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want released to the public. If your response contains such data, you should identify the data for redaction or removal, along with corresponding justification. Because there are two action officials identified in this report, we request that the Office of Administration and Resources Management take the lead to provide the agency's response.

We will post this report to our website at <http://www.epa.gov/oig>.

If you have any questions, please contact Kevin Christensen, acting Assistant Inspector General for Audit, at (202) 566-1007 or christensen.kevin@epa.gov; or Robert Adachi, Director, Forensic Audits, at (415) 947-4537 or adachi.robert@epa.gov.

U.S. Environmental Protection Agency

Office of Inspector General

EPA Compliance With Retention Incentive Regulations and Policies

Report No. 14-P-0245,
May 2, 2014

Reasons for Review

- Part of continuing work on internal controls of payroll and benefits.
- Review initiated on the U.S. Environmental Protection Agency's (EPA's) policies and procedures for paying retention incentives.

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Scope and Methodology

- Performed fieldwork from October 31, 2013, to March 20, 2014.
- Conducted assignment in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States.
- EPA Office of Inspector General (OIG) personnel were covered in a separate report.
- Determined whether the EPA paid employees retention incentives in accordance with federal regulations and EPA policy.

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Scope and Methodology (cont'd.)

- Obtained a listing of EPA employees who received retention incentives for calendar years 2006 through August 7, 2013.
- Reviewed retention incentive request forms, correspondence and SF-50s (if available) for each employee.
- Interviewed staff from the EPA's Office of Human Resources (OHR) and staff from the agency's Shared Service Centers.
- Interviewed two EPA employees who received retention incentive pay in 2013.

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OPM Regulations

- Office of Personnel Management (OPM) regulations found in the Code of Federal Regulations (CFR) at 5 CFR Part 575:
 - Authorize payment of incentive for employees:
 - With unusually high or unique qualifications.
 - Likely to leave in the absence of an incentive.
 - Require annual review of the determination to pay the incentive.
 - Require an authorized agency official to annually document in writing its determination to pay the incentive.
 - Require reduction or termination of the retention incentive authorization whenever conditions change.

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EPA Policies

- The EPA's Pay Administration Manual:
 - Authorizes a 1-, 2- or 3-year retention incentive.
 - Requires annual recertification using the EPA authorization form.
 - Requires the Human Resources Officer (HRO) to provide notification in advance of the annual reauthorization date.
 - Requires termination if the employee is reassigned or promoted to a different position.

- Per the EPA's waiver policy, the employee is required to notify the supervisor and the HRO about overpayments.

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Results

- The EPA did not fully comply with OPM regulations or EPA policy on retention incentive pay.
- Thirteen EPA employees received retention incentives from 2006 through 2013 (excluding John C. Beale*).
- The EPA paid a total of \$667,376 in retention incentives to those 13 employees.

* See OIG Report No. 14-P-0036, issued on December 11, 2013.

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Results (cont'd.)

- Of the 13 EPA employees paid retention incentives, 11 employees received retention incentive pay totaling \$481,819.
 - For 10 EPA employees, no documentation of annual recertification was identified.
 - One employee received retention incentive pay for 4 years beyond the promotion date.
- No EPA employees currently receive retention incentives.

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Results (cont'd.)

Employee	Uncertified Incentive*	Beyond Promotion**	Total
1	\$72,712		\$72,712
2	83,232		83,232
3	33,762		33,762
4		\$104,975	104,975
5	1,342		1,342
6	29,356		29,356
7	16,311		16,311
8	13,858		13,858
9	22,156		22,156
10	26,911		26,911
11	77,204		77,204
Total	\$376,844	\$104,975	\$481,819

*Amounts were calculated using data provided by the EPA and are subject to reconciliation with payroll records.

**Amount was calculated by the Defense Finance and Accounting Service (DFAS).

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Uncertified Incentives

- For 10 employees, no documentation was identified to support that incentives were authorized annually, as required by federal regulations and EPA policies.
- One employee received \$77,204 in unauthorized pay. The agency had approved a 1-year retention incentive, but the agency continued to make uncertified incentive payments for over 4 more years.

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Pay Beyond Promotion

- One employee received incentive pay for 4 years, but the employee's incentive should have been terminated in 2009 because he was promoted.
 - The agency's OHR notified the employee about the termination of incentive pay in 2009.
 - The OHR processed the termination in the human resource (HR) system in 2009.
 - The termination action was miscoded in the HR system, so the employee continued to receive incentive pay.
 - In 2013, DFAS issued a debt notice of \$104,975 to the EPA employee.

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How Did This Happen?

- Confusion over the requirement for annual recertification.
- Evidence of the annual recertification was not retained.
- The EPA's HR system lacks internal controls to track, notify and automatically discontinue retention incentive pay if the incentive pay is not authorized by an annual recertification.
- The OHR did not follow up with DFAS to verify that termination of pay took effect.
- Managers and employees did not follow up with the OHR regarding the status of outstanding actions.

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Why Is This Important?

- Unauthorized retention payments were made to 11 EPA employees.
- Two EPA employees are disputing the collection process for the overpayment of incentive pay.
- The John C. Beale case has placed heightened scrutiny on how EPA manages and controls its payroll and administrative activities, including retention incentive pay.

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Recommendations

- We recommend that the Assistant Administrator for Administration and Resources Management and the Chief Financial Officer:
 1. Determine if any additional evidence exists to justify a retention incentive. If unjustified, pursue action to recover retention incentive payments made to EPA employees.
 2. Pursue action to recover the unauthorized retention incentive amounts paid to the EPA employees who received retention incentive pay beyond their promotion date or authorized end date.

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Agency Response

- The OIG received comments from EPA's Office of Administration and Resources Management and the Office of the Chief Financial Officer and at the exit conference held April 23, 2014. Based upon the exit conference, updated comments were received from the Office of Administration and Resources Management and the Office of the Chief Financial Officer on April 28, 2014.
- Based upon the exit conference and agency comments, we modified some wording in the report to clarify our position.
- The agency concurred with key modifications to the report and agreed with the recommendations.
- The agency's comments and the OIG's response are included in appendix A.

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Agency Initiatives and Corrective Actions

- In response to recommendation 1, the agency is working to find additional evidence to determine if retention incentive payments were justified.
- In response to recommendation 2, the agency has initiated the collection processes for the two overpayment cases.
- The agency also has taken initiatives to strengthen its internal controls over retention incentives. Specifically, the agency:
 - Created a new retention incentive request justification requiring detailed documentation.
 - Issued an HR bulletin on retention incentives.
 - Issued communications in the *Management Matters* newsletter.
 - Developed a new draft human resources incentive policy.
 - Created a quarterly retention incentive report.

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Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	14	Determine if any additional evidence exists to justify a retention incentive. If unjustified, pursue action to recover retention incentive payments made to EPA employees.	U	Assistant Administrator for Administration and Resources Management and Chief Financial Officer		\$300	
2	14	Pursue action to recover the unauthorized retention incentive amounts paid to the EPA employees who received retention incentive pay beyond their promotion date or authorized end date.	C	Assistant Administrator for Administration and Resources Management and Chief Financial Officer	4/28/14	\$182	\$182

¹ O = recommendation is open with agreed-to corrective actions pending
 C = recommendation is closed with all agreed-to actions completed
 U = recommendation is unresolved with resolution efforts in progress

Agency's Comments on Discussion Draft Report and OIG Responses

April 28, 2014

MEMORANDUM

SUBJECT: OIG Review of EPA's Compliance with Retention Incentive Regulations and Policies

FROM: Craig E. Hooks, Assistant Administrator
Office of Administration and Resources Management

Maryann Froehlich, Acting Chief Financial Officer
Office of the Chief Financial Officer

TO: Arthur A. Elkins, Jr.
Inspector General

We have reviewed the discussion draft report entitled *Review of EPA's Compliance With Retention Incentive Regulations and Policies*. The OIG review complements EPA's on-going efforts to strengthen its internal controls over payroll management. The EPA believes that the OIG's conclusions in the report may be flawed if the OIG presumes that retention incentives paid were in "excess" if certain documentation was not located. That potential conclusion does not acknowledge the fact that, in at least some of the cases, the record retention schedules had expired and therefore the documentation may have existed but was properly destroyed. In other cases, personnel files for the employees in question have been transferred to a new employer or to OPM (in the case of retired employees) and, therefore, the EPA would no longer have the documentation sought by the OIG. We have not been provided working papers from OIG and do not know if documents were sought from OPM or from new employers for at least four of the reviewed employees. It is inappropriate to conclude that the incentive pay agreement was somehow flawed in situations where the retention pay was justified but for various reasons no documentation could be located.

OIG Response 1. We recognize that records may have existed and were properly destroyed in accordance with retention schedules. Our intent in the discussion draft report was to acknowledge that evidence was not necessarily retained for all recertifications. However, documentation provided to the OIG indicates managers and OHR were confused about the need to determine on an annual basis whether the retention incentive payment is still warranted. We recognize that the agency will need to review incentive payments without benefit of the documentation required in accordance with EPA policy to make a determination whether the incentive pay should be recovered.

In the aftermath of the Beale fraud case, the agency implemented a number of changes to the policies, procedures and processes governing retention incentives. Also, the EPA's migration to the Department of Interior Business Center will provide additional functionality in our systems and provide further protection. Finally, OARM and OCFO prepared a joint report, "2014 Internal Control Assessments: Travel, Payroll, Parking and Transit," which evaluated the effectiveness of the agency's internal financial management controls in place in 2013.

OIG Response 2. We acknowledge the agency's efforts to strengthen internal controls. However, no EPA employees are currently receiving retention incentives and we are unable to assess the implementation and adequacy of the controls.

AGENCY TECHNICAL COMMENTS

1. As a result of the Beale case, the agency has been proactive in taking steps to strengthen its internal controls over retention incentives which the report does not recognize. Some of the specific actions the agency has taken are:
 - Created a new retention incentive request justification requiring clear, detailed documentation including copies of previous retention allowances, if any, explicit periods of coverage and salary adjustment with explicit not to exceed dates, signatures by supervisors, management, human resource and financial officials as well as an employee signature certification.
 - Issued an HR bulletin on retention incentives delineating all requirements for approval, justification, documentation and annual review of incentives. The Bulletin was disseminated to HR officers, program managers and the HR Shared Service Centers.
 - Issued communication in the *Management Matters* newsletter to all agency managers dedicated to the topic of appropriate use and management of retention incentives.
 - Developed a new draft human resources incentive policy which clearly delineates EPA's implementation requirements and processes. The agency will finalize the policy after OPM issues the new government-wide update of a recruitment, relocation and rewards incentive directive.
 - Created a quarterly retention incentive report drawn from the data in the payroll system. The report is provided to the HR Shared Service Centers, the Executive Resources Division, and HR PMOs to ensure only designated employees are receiving retention incentives.

In addition to the above, the agency is mapping out and analyzing its payroll management processes to further strengthen the internal controls over retention incentives. The assessment will, include:

- Documenting the internal controls to manage retention incentives and statutory pay limit payments;
- Documenting payroll processing (starting payroll, payroll corrections, payroll journal, garnishment reporting, wage type reports, etc.);

- Documenting OCFO's role in conjunction with the shared service provider, including payroll posting to COMPASS, debt collection, cash differences, benefit calculations, and reconciliation processes;
- Documenting internal controls for each of the office's processes;
- Analyzing the internal controls and documenting findings;
- Developing recommendations and corrective action procedures; and
- Conducting an A-123 review of the new corrective actions.

OIG Response 3. We acknowledge the agency efforts to strengthen internal controls. We also appreciate that the agency recognizes retention incentives were a vulnerability and made an extensive effort to update internal controls to prevent overpayments in the future.

2. The agency does not agree with a potential conclusion that in all cases no documentation existed to support the retention incentives for the 13 non OIG employees. In the agency's response to the audit, we have committed to review of a wide variety of documents or other information which provides evidence of a need for and establishment of a warranted incentive agreement. Some information located to date may be evidence of valid annual recertifications. Moreover, as described below, documentation may not currently be available at the EPA because of records retention schedule expirations or employee separations from agency. For example:
 - Transition to the electronic Official Personal Folder (eOPF) caused files to be purged of retention incentive documentation. Agency policy on retention allowances specifies that servicing Human Resources Officers will maintain retention allowance records on the temporary side of the employee's eOPF and in a separate allowance file. The documents were retained in hard copy by the agency in temporary files until the records retention requirement was satisfied and then the records were shredded. Since agency policy specified a two year retention of the files, the OIG assumption that no documents existed to support annual re-certifications may be inaccurate. In at least one of the cases, we are aware of some documentation of a re-certification request that was maintained by an HR Specialist. Once our review of service center re-certification documentation is complete, we will share our findings with the OIG.
 - With regard to employee separations, there were two employees who retired and two who left the agency. As a result, official (eOPF) files are not in EPA possession. For the two retirees, as is custom, official files are in the possession of OPM's records center in Boyers, PA. For the departed employees, their new employers, if a federal agency, would possess official personnel files. No conclusion can be reached on these cases based solely on the fact that documentation no longer exists at the EPA.

OIG Response 4. In the discussion draft report we only identified 11 employees as having received unauthorized retention incentive pay. Of the 11, two received retention incentive pay beyond their promotion date or authorized end date. We acknowledge that the agency has initiated the collection processes for these two cases.

As stated in **OIG Response 1**, we recognize that records may have existed and were properly destroyed in accordance with retention schedules. Our intent in the discussion draft report was to acknowledge that evidence was not necessarily retained for all recertifications. Considering that there was confusion over the need to recertify every year, there is a risk the annual recertifications were not completed. We did find examples of the documentation of the initial retention incentive in the employee file but no recertifications for years two and three. It is not unreasonable to assume that if the documentation for the initial year is available that documentation prepared for the subsequent years would also be available.

As stated in the report, OPM regulations and EPA policies require the agency to review employee retention incentives at least annually to determine whether the pay is still warranted. An authorized agency official must certify this determination in writing. The regulations further state that the agency may continue to pay the retention incentive as long as the conditions giving rise to the original determination still exist. Documentation provided to the OIG indicates that managers and HR specialists were unclear on the recertification requirements and that recertifications may not have been authorized for all years that employees received retention incentives. Therefore, the EPA needs to take steps to determine if the retention incentives were in fact properly justified for all employees.

3. We disagree with potential conclusions that agreements for which recertification documentation cannot currently be located are automatically deemed not valid or that the current absence of, or failure to locate, annual recertification documentation demonstrates that employees received excess pay. An examination of each case with consideration given to equity and fairness to employees acting in good faith under a presumption of a three-year arrangement is warranted. In addition, we note that in the Beale case the OIG determined that Mr. Beale was “authorized for two, three year periods” of a retention incentive, even though the OIG did not locate annual recertifications for the second incentive period. In light of this, similar treatment for the eleven employees with incentive agreements may be reasonable.

We are in the process of examining documentation for initial agreements and renewal certifications. While we have located some documentation, we have not completed our review. We are willing to share relevant documentation uncovered during the review process, if any.

OIG Response 5. As discussed in **OIG Response 4**, the discussion draft report identified 11 employees with unauthorized retention incentive payments. We acknowledge that the agency has already initiated the collection processes for two employees.

The retention incentive regulations and EPA policies are clear on the need to provide a written recertification annually. OPM regulations at 5 CFR 575.311(f)(3) require an authorized agency official to reduce or terminate a retention incentive when conditions change. A condition change could be a promotion with an increase in salary or a change in the labor market conditions making it more likely to recruit a candidate with similar competencies. The EPA Payroll Administration Manual requires the recommending official to annually determine whether the retention incentive is still justified. EPA policy requires this determination must be certified by the approving official in writing.

While agency employees may have operated in good faith under the assumption that their incentive pay was for a multi-year period, this does not override the agency's responsibility that EPA managers and OHR had to ensure that OPM regulations and EPA policies were followed. Documentation in the files provided to the OIG does show evidence that there were managers aware of the requirement to recertify annually. Also, a 2008 email from the OHR Policy Division to the Las Vegas Human Resources Officer provided clarification on retention incentive policy. The OHR stated that the requirement for annual recertification is required by regulation and does not authorize multiple-year incentives.

The agency has recognized that there were vulnerabilities in the internal controls over retention incentives based on the steps it has taken to strengthen controls. We believe these vulnerabilities may have resulted in payments of retention incentives that were not justified in accordance with federal regulations. Our intent in making recommendation 1 was to recognize that other evidence can be considered by the agency in determining that the retention incentive payments were justified. For example, the other evidence can include:

- Documentation available in locations other than the human resources offices in Las Vegas, Cincinnati and Research Triangle Park.
- Annual recertifications that had been prepared but destroyed or lost. This could be confirmed through interviews with the employee's supervisor.

It is at the agency's discretion to take this information to determine if the payments made were justified or to seek recovery actions.

John C. Beale's retention incentive pay was not audited as part of this review. However, in OIG Report No. 14-P-0036, *Early Warning Report: Internal Control and Management Actions Concerning John C. Beale Pay Issues*, we reported that Beale was first authorized a retention incentive in 1991 and his retention incentive pay was recertified annually for 1992 and 1993. No requests were submitted between 1994 and 1999. A new 3-year request was submitted by the Office of Air and Radiation in 2000, but no recertifications were prepared or submitted for years 2 and 3. From our review of the Office of Air and Radiation's analysis of Beale's retention incentive pay, the Office of Air and Radiation stated that retention incentive pay "must be reauthorized every third year." This is not correct, according to OPM regulations and EPA policies, and reinforces our position that there was confusion over the need for annual recertifications.

AGENCY’S RESPONSE TO REPORT RECOMMENDATIONS

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
1	Determine if any additional evidence exists to justify a retention incentive without documented, authorized annual recertification. If no additional evidence exists, pursue action to recover unauthorized retention incentive payments made to EPA employees.	The agency will continue the process of searching for relevant evidence of initial retention incentive agreements and renewal certifications and determine if any recovery actions are warranted.	OARM will complete the documentation review by May 30, 2014.
2	Pursue action to recover the unauthorized retention incentive amounts paid to the EPA employees who received retention incentive pay beyond their promotion date or authorized end date.	The agency has already initiated the collection processes for the two overpayment cases.	Completion pending outcome of the labor relations process initiated by the involved employees.

OIG Response 6. For recommendation 1, the agency has agreed to take corrective action, but did not provide a milestone date for issuing determinations on any recovery actions that may be warranted. Therefore, we consider this recommendation to be unresolved, pending a corrective action plan that includes milestones dates for the determination.

The agency agreed with recommendation 2 and has taken corrective action. Therefore, we consider the agency’s actions to be complete and we will close out this recommendation upon issuance of our report.

Questions regarding human resources issues, can be directed to Susan Kantrowitz, Director, Office of Human Resources (202) 564-4606; any questions regarding financial issues can be directed to Jeanne Conklin, Acting Director, Office of Financial Management at (202) 564-5342.

cc: David Bloom
 Nanci Gelb
 Susan Kantrowitz
 Jeanne Conklin
 Stefan Silzer

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