
May 1997

FEDERAL CIVILIAN PERSONNEL

Cost of Lump-Sum Annual Leave Payments to Employees Separating From Government



General Government Division

B-276038

May 29, 1997

The Honorable John R. Kasich
Chairman, Committee on the Budget
House of Representatives

Dear Mr. Chairman:

Employee pay and benefits is one of many areas of the federal budget receiving congressional attention because of scarce federal resources. This report was prepared in response to your request that we examine one such benefit—a federal civilian employee's entitlement under 5 U.S.C. 5551(a) to receive a lump-sum payment for any accumulated, unused annual leave upon separation from federal service.

Specifically, as agreed with your office, the objectives for our examination were to determine (1) the governmentwide costs of providing the lump-sum annual leave payment and recent trends in these costs, (2) the basis for and consistency of agency practices in making the payment, including the sufficiency of guidance to ensure that employees who have similar pay and amounts of unused annual leave receive similar payments, and (3) any personnel cost savings that could be achieved from limiting the lump-sum leave payment to the employee's pay rate at the time of separation, instead of the current method of determining payment, which assumes the employee remains in service until the entire leave balance has expired.

Results in Brief

In calendar year 1996, the cost of lump-sum leave payments to separating civilian employees was about \$562 million governmentwide. Between 1985 and 1996, lump-sum payments averaged about \$595 million per year (in constant 1996 dollars). The costs ranged from a low of about \$355 million in 1991 to a high of about \$700 million in 1992, when downsizing resulted in large numbers of separations.

The Office of Personnel Management (OPM) has not provided formal written guidance regarding lump-sum payments since 1993, and the other sources of guidance that are available to agencies are insufficient to ensure consistent agency payment practices. As a consequence, employees separating from different agencies with the same rates of pay and amounts of unused annual leave may not receive the same payment amount. Congress gave OPM specific authority to prescribe lump-sum payment regulations in 1992, and OPM has drafted regulations and told us that it

intends to publish them in the summer of 1997. In the meantime, agencies must rely on the language of the statute and Comptroller General decisions, but these sources do not cover all situations. An OPM survey of agency practices revealed that although there appeared to be a high degree of commonality in the types of pay that agencies were including in the payment, practices diverged for some types of pay.

Based in part on our information and analysis, the Congressional Budget Office (CBO) estimated that agencies could realize personnel cost savings of \$18 million over 5 years if lump-sum annual leave payments were limited to the rate of pay at the time of separation, instead of the current method of assuming the employee had remained in service until the entire leave balance had expired. However, such a limitation would not ensure consistent treatment of employees and might cause some workforce disruptions if it were to cause employees to use all or a substantial part of their accumulated leave before separation.

Background

To expedite entry of federal civilian employees into the Armed Forces during World War II, Congress authorized agencies to make lump-sum payments for accumulated, unused annual leave to employees who were separating from federal civilian service to enter the armed forces. Previously, the Dual Compensation Act had prohibited federal civilians entering the armed services from receiving compensation from both civilian office and military pay if the combined amounts exceeded \$2,000 per year and agencies were not authorized to “buy back” an employee’s accumulated, unused leave. When employees retired or otherwise left federal service, agencies commonly carried them on the payroll in a “terminal leave” status until they had exhausted all unused annual leave. These practices potentially could have delayed federal civilian employees’ entry into military service until their leave was exhausted.

Agencies’ authority to buy back a separating employee’s accumulated, unused annual leave was extended to all employees in 1944 (58 Stat. 845). Under this statute, any employee who leaves federal service with unused annual leave is to receive a lump-sum payment for that accumulated leave. The lump-sum payment is calculated based on the pay that the employee would have received for the leave, as if the employee had remained in service until the leave was exhausted. To illustrate the calculation method, if an employee’s date of separation had been January 3, 1997, and he or she had 200 hours of unused annual leave, the lump-sum leave payment would have been calculated as if the employee actually worked an

additional 25 days, excluding any holidays. The payment, therefore, would include any pay increases the employee would have received during those days due to any scheduled General Schedule (GS) pay increase, if the increase was authorized before the employee's separation.¹ The lump-sum payment has been limited to some extent over the years. In 1980, Congress narrowed the definition of annual leave that agencies are to use in the calculation and prohibited crediting hours for any holiday occurring after separation. In 1991, Congress also excluded from the calculation method two specific types of premium pay for employees serving in foreign areas—post differential pay and danger pay allowance.

Scope and Methodology

To identify the costs of lump-sum leave payments and recent trends in these costs, we obtained from OPM a summary of the costs of lump-sum leave payments governmentwide for a 12-year period—calendar years 1985 through 1996. OPM retrieved this information from data reported monthly by agencies on a standard form (SF-113A). OPM requests agencies, among other things, to report “monies paid for annual leave to employees who have separated from the Federal Government.” OPM uses information from this form primarily to monitor changes in civilian employment levels in agencies, which it summarizes in public reports entitled “Federal Civilian Workforce Statistics: Employment and Trends as of [month, year].” OPM does not publish in these monthly reports the information that it gathers on lump-sum leave payments from this standard form. OPM retrieved and summarized this information at our request. To adjust for the effects of inflation, we converted the historical cost data that OPM provided us to constant 1996 dollars using the gross domestic product price index published by the U.S. Department of Commerce, Bureau of Economic Analysis.

To determine the basis for and consistency of agency practices in making lump-sum leave payments, including the sufficiency of guidance to ensure that employees with similar pay and hours of accumulated, unused leave receive similar payments, we reviewed (1) the legislative history and development of the statutory criteria, (2) prior OPM guidance contained in the now-abolished Federal Personnel Manual, (3) the status of OPM's

¹Most federal civilian employees can accumulate up to 30 days (240 hours) of annual leave that may be carried forward from year to year. Any leave accumulated beyond this ceiling at the beginning of a new leave year is subject to forfeiture, whereby the employee must “use it or lose it.” Employees working outside the United States generally may accumulate 45 days of leave before forfeiture. Currently, members of the Senior Executive Service (SES) can accumulate leave up to 90 days (720 hours) before forfeiture. In addition, SES members who had accumulated more than 90 days of annual leave before October 14, 1994, (when there was no earning ceiling for SES members) are authorized under some circumstances to retain as a personal leave ceiling any higher amount that they had earned before October 14, 1994.

rulemaking on lump-sum payments, (4) administrative decisions of the Comptroller General,² and (5) applicable court cases. We also reviewed unpublished documents that OPM provided at our request, including a document summarizing the results of an informal survey of agency practices that OPM conducted between 1995 and 1996.

To identify any personnel cost savings associated with limiting the lump-sum leave payments to the employee's pay rate at the time of separation, we obtained historical information from OPM on the personnel cost of annual leave and the number of employees separating from federal service. CBO used this and other historical data that we gathered, along with its own data and information, to estimate the 5-year savings for fiscal years 1998 to 2002.

As agreed with your office, we did not independently verify the accuracy or completeness of the cost, workforce, or other data and information that OPM provided us during this review. Concerning OPM's survey of agency lump-sum payment practices, OPM officials did not want to identify agencies by name, in part, because OPM's information on these practices had been obtained informally and was not verified. Although we did not verify OPM's personnel cost data, we independently gathered data on one federal agency's lump-sum payments and used those data to test the reasonableness of the governmentwide data that OPM provided. We made available a draft of this report to OPM for review and comment. OPM's comments are discussed at the end of this letter. We conducted our review from January 1997 through March 1997 in accordance with generally accepted government auditing standards.

Trends in Costs of Lump-Sum Leave Payments

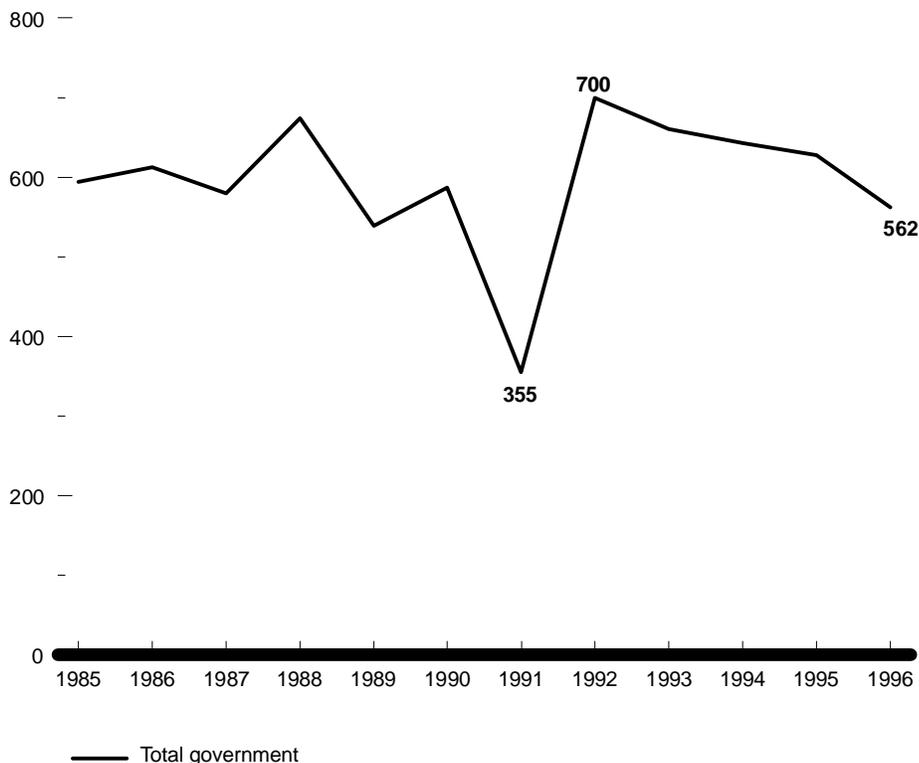
In calendar year 1996, the total cost of lump-sum leave payments to federal civilian employees was about \$562 million. Between 1985 and 1996, these costs averaged about \$595 million per year (constant 1996 dollars). As shown in figure 1, the costs ranged from a low of about \$355 million in 1991 to a high in 1992 of about \$700 million.³

²The Comptroller General's authority to make administrative determinations, involving federal civilian employees' compensation and leave, was transferred to the Director of OPM by the "General Accounting Office Act of 1996" (P.L. 104-316, Oct. 19, 1996).

³According to OPM, this cost data cover employees in all work schedules, pay systems, types of service, and all agencies except certain intelligence-related agencies.

Figure 1: Governmentwide Costs of Lump-Sum Leave Payments, CY 1985-1996 (1996 dollars in millions)

Lump-sum leave payments (1996 dollars in millions)



Source: GAO analysis of unpublished OPM data.

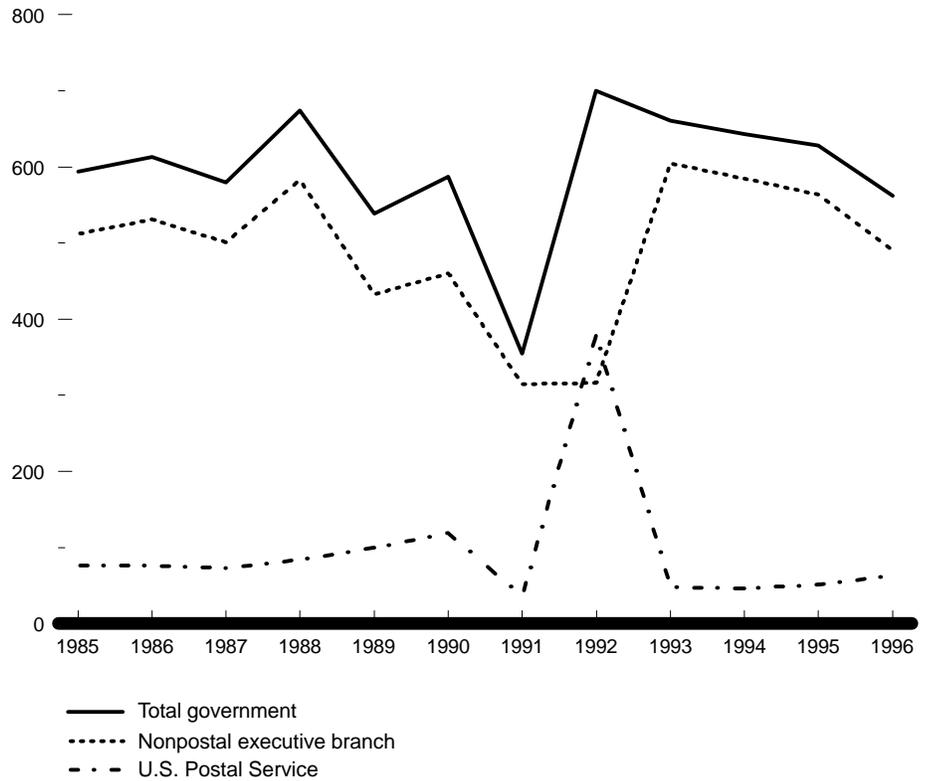
According to OPM officials, most of the 1992 costs can be attributed to an unusually large number of lump-sum payments made by the U.S. Postal Service, which underwent a major downsizing in that year. Figure 2 shows, for the 12-year period of 1985 through 1996, the trend in the cost of payments to federal civilian employees for most of the government (top line), executive branch agencies excluding the U.S. Postal Service (middle line), and the U.S. Postal Service (bottom line).⁴ Payments by the U.S.

⁴Unlike most federal civilian employees that have a 240-hour ceiling on the number of annual leave hours that can be carried forward to another leave year before forfeiture, the ceiling for the Postal Service varies. For the vast majority of Postal Service employees (i.e., members of bargaining unions) the ceiling is 440 hours (55 days).

Postal Service increased tenfold between 1991 and 1992, from about \$35 million to more than \$378 million. Also, payments by nonpostal agencies nearly doubled between 1992 and 1993, from about \$316 million to about \$605 million.

Figure 2: Effect of U.S. Postal Service Payments on Governmentwide Costs, Cy 1985-1996 (1996 dollars in millions)

Lump-sum leave payments (1996 dollars in millions)



Source: GAO analysis of unpublished OPM data.

Appendix I contains the specific cost data we acquired from OPM and converted to 1996 dollars for each of the 12 years included in our trend analysis.

Guidance Currently Insufficient to Ensure Consistent Agency Practices

OPM has not provided formal written guidance on lump-sum payments since 1993.⁵ OPM has drafted regulations and told us that it intends to publish them in the summer of 1997. In the meantime, agencies must rely on the language of the statute and Comptroller General's decisions, but the guidance is incomplete and therefore insufficient to ensure consistent agency payment practices.

OPM Is Developing Regulations to Provide Formal Written Guidance

As the central human resource management agency for the federal government, OPM prescribes policies and procedures that agencies are to follow regarding civilian employee pay and benefits. CFR title 5 part 630 includes regulations on the accumulation and use of annual leave and part 550 includes regulations on pay administration. OPM currently has no regulations or other written guidance on lump-sum leave payment calculations.

OPM requested that Congress provide OPM specific statutory authority to regulate lump-sum leave payments in June 1991, as part of a larger proposal intended to correct problems arising from OPM's implementation of its title 5 pay authorities. In October 1992, Congress provided OPM the requested authority in a provision of The Technical and Miscellaneous Civil Service Amendments Act of 1992.⁶ However, the act specified no deadline for OPM action, and OPM has not as yet formally proposed regulations on lump-sum leave payments. In April 1997, OPM officials said that draft rules have been prepared and are awaiting the OPM Director's approval. According to these officials, a notice of proposed rulemaking should be issued by the end of June 1997.

Other Guidance Available to Agencies Is Incomplete

OPM believes that there is a high degree of commonality in agency approaches to making lump-sum leave payment calculations because basic pay is the primary type of pay in a lump-sum payment, and both the Comptroller General and OPM have provided guidance on some types of payments in the past. While there may be a high degree of consensus on the types of pay that agencies include in lump-sum payments, OPM has recognized that agency practices differ for some types of pay.

⁵Prior to December 1993, OPM's Federal Personnel Manual (FPM) chapter 550-2 and a related supplement provided instruction to agencies regarding the calculation of lump-sum leave payments. These issuances were eliminated in December 1993 when most of the FPM was abolished as part of an effort to reduce the administrative burden of personnel rules on agencies.

⁶This provision is codified at 5 U.S.C. 5553.

As discussed below, practices differ for some types of pay because the guidance available to agencies is incomplete. In particular, the lump-sum payment provision of 5 U.S.C. 5551 does not define the term “pay.” The Comptroller General’s decisions have interpreted the statutory language only to the extent necessary to resolve disputes over particular payments agencies have made. As a consequence, available guidance does not set forth a complete listing of the types of pay that should be included.

The insufficiency of guidance on the types of pay agencies are to include is important because many employees are entitled to numerous additional pay and allowances that may, or may not, be considered as part of their basic pay. As part of an ongoing effort to study the feasibility of issuing regulations on lump-sum leave payments, OPM in March 1995 informed agencies that it had identified at least 11 types of pay for which there was at that time no definitive statutory or administrative determination on whether the pay should be included in the lump-sum payment calculation. Table 1 shows OPM’s identification of these “undetermined” types of pay, along with past determinations on the types of pay that should be included or excluded from lump-sum leave payments and available OPM data on the fiscal year 1995 costs.

Table 1: Types of Pay Included and Excluded From Lump-Sum Leave Payments and Fiscal Year 1995 Cost of Premium Pay for Nonpostal Executive Agencies

Dollars in thousands		
Type of Pay	Included or excluded from lump-sum payment	Cost of premium pay for nonPostal executive agencies (FY 1995)
Overtime		\$2,783,990
Administratively uncontrollable	Included	^b
Regularly scheduled	Excluded	^b
Irregular/unscheduled	Excluded	^b
Fair Labor Standards Act	Undetermined	^b
Physicians comparability allowance	Undetermined	393,868
Holiday		241,962
No work performed	Excluded ^a	^b
Work performed	Excluded	^b
Night differential		268,603
Federal Wage System	Included	^b
Other	Undetermined	^b
Sunday	Undetermined	213,136
Supervisory differential	Undetermined	112,948
Hazardous duty	Undetermined	56,647
Post differential		53,710
Nonforeign	Included	^b
Foreign	Excluded ^a	^b
Remote work site allowance	Undetermined	6,761
Other		537,688
Availability pay	Included	^b
Cost of living	Included	^b
Standby duty pay	Included	^b
Danger pay: foreign	Excluded ^a	^b
Environmental differential	Excluded	^b
Retention allowance	Excluded	^b
Evacuation	Undetermined	^b
Quarters allowance	Undetermined	^b
Johnston Island	Undetermined	^b
Uniform allowance	Undetermined	^b
Total		\$4,669,313

^aExcluded explicitly by statute (5 U.S.C. 5551).

^bCost unknown.

Source: GAO analysis of OPM published and unpublished data.

Differences in Types of Pay to Include in Payment Calculations

In 1995, OPM surveyed agency personnel directors on how they were defining pay for the purpose of making lump-sum payments and the types of pay that they believed should be included. OPM told us that, based on the results of the survey, there appeared to be a high degree of commonality in the kinds of pay that agencies were including, but that agency practices diverged for some types of pay. As an illustration of the problem, they noted that court cases had been brought against the federal government in recent years, involving disputes about the types of pay agencies have included or excluded in lump-sum payments. For example, in March 1995 the Justice Department agreed to settle with 696 former federal employees. The settlement included lump-sum back-pay claims totaling about \$570,000, or \$819 per former federal employee. OPM also said that (1) agencies held different views on the types of pay that should be included and that, as a consequence, (2) practices were likely to continue to differ until the issue was clarified—either through the issuance of binding regulations or the enactment of statutory changes.

OPM identified four different agency views on the types of pay that should be included in lump-sum leave payment calculations. The most restrictive would limit lump-sum payments to basic pay. A second approach would count only the pay that is currently included in retirement computations (i.e., basic pay, annual premium pay for standby duty or administratively uncontrollable overtime work, and availability pay). A third would count any pay received by an employee while in a paid leave status (e.g., retention allowances, physicians comparability allowances) in addition to the pay components of the second approach. Finally, the least restrictive approach would include all pay that employees would have received if they had continued to work.

Personnel Cost Savings From Eliminating Pay Increases After Separation

As the previous agencies' views suggest, there are many ways in which the cost of lump-sum payments to separating employees could be calculated. As noted in the background section of this report, Congress has in the past revised the calculation method to restrict the kinds of pay that can be included in the calculation.

We were asked to identify the personnel cost savings that could be achieved from limiting the lump-sum payment to the employee's rate of pay at the time of separation, instead of the current method of payment, which assumes the employee remains in service until the entire leave balance has been exhausted. If Congress enacted such a limitation, no GS pay increases that go into effect following the employee's separation

would be added to the payment calculation. According to CBO, the savings from such a limitation would be modest. As shown in table 2, CBO estimated that agencies would realize total savings of \$18 million over the fiscal year 1998 to 2002 period, if Congress limited payments to the rate of pay in effect on the day the employee separates from federal service.⁷

Table 2: Five-Year Cost Savings

Dollars in millions					
	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
Budget authority	3	3	4	4	4
Outlays	3	3	4	4	4

Source: CBO.

Limiting the lump-sum payment to the employee’s pay at the time of separation would not clarify the types of pay that agencies are to include in the payment, and therefore, would not increase the consistency of agency payment practices. As OPM said, agency practices are likely to remain different until OPM prescribes regulations or Congress enacts legislation specifying the types of pay that agencies are to include in lump-sum leave payments.

Workforce Management Issues Could Arise

Workforce management issues also could arise, depending on employee responses to limiting the lump-sum payment to the employee’s pay at the time of separation. If a separating GS employee used his or her maximum accumulated leave (30 days) and accruing leave (26 days) in the final year of service, the employee could be absent for as many as 56 days—which is about 22 percent of the work year. The employing agency would need to manage around this disruption, unless it could fill the position prior to the employee’s separation. However, the likelihood of large numbers of employees doing so is probably small. To illustrate this point, table 3 shows how small the maximum reduction in payments that separating employees in January 1996 would have been at various GS pay levels if the

⁷The savings CBO estimated are personnel cost savings that would be available for other agency purposes. Savings from discretionary spending program changes contribute to additional deficit reduction only if the Budget Enforcement Act caps on discretionary spending are lowered. Savings that individual agencies would realize depend on particular agency circumstances. As our analysis of OPM workforce data showed, the number of accrued hours of leave that are credited, the value of a leave hour, and the types of pay that are counted all will affect lump-sum payment costs. Also, the 1985 to 1996 lump-sum payment cost trends presented in this letter showed that payment costs (hence, savings) could be materially affected by factors that are not a part of the lump-sum payment calculation. Some factors, such as when an agency downsizes, could be hard to anticipate and would affect agencies differently.

net 2.54 percent pay increase had been eliminated from their lump-sum leave payments.

Table 3: Illustrations of the Maximum Reduction in Lump-Sum Leave Payments to GS Employees From Eliminating January 1996 Net Pay Increase of 2.54 Percent

Pay level/number of unused leave days	Lump-sum leave payment current policy	Maximum reduction in payment after limitation
Average GS-15 pay level (\$88,185)		
10 days	\$3,380	\$86
30 days	10,141	258
56 days	18,930	481
Average 1996 GS pay level governmentwide (\$42,139)		
10 days	\$1,615	\$41
30 days	4,846	123
56 days	9,046	230
Average GS-5 pay level (\$23,529)		
10 days	\$902	\$23
30 days	2,706	69
56 days	\$5,051	\$128

Source: GAO analysis of OPM data.

Agency Comments

We received oral comments on a draft of this report from OPM on April 24, 1997. OPM officials who provided comments included the Associate Director for Human Resources Systems Service, the Deputy Chief of Staff, the Assistant Director for Compensation Policy, and a Team Leader in the Office of Workforce Information. They generally agreed with the information presented in this report and said the report fairly presents the current situation OPM faces in developing regulations on lump-sum leave payments. Comments of a technical and clarifying nature made by these officials were incorporated in this report where appropriate.

We are sending copies of this report to the Ranking Minority Member of the Committee, the Director of OPM, and other interested parties. Copies will also be made available to others upon request.

The major contributors to this report were Assistant Director Margaret T. Wrightson and Senior Evaluator John J. Tavares. If you have any questions on this report, please call me at (202) 512-9039.

Sincerely yours,

A handwritten signature in black ink that reads "Michael Brostek". The signature is written in a cursive style with a large initial "M".

Michael Brostek
Associate Director
Federal Management and
Workforce Issues

Cost of Lump-Sum Payments for Annual Leave, CY 1985-1996

1996 dollars in millions

Calendar year	Governmentwide^a civilian workforce	Nonpostal executive branch agencies	U.S. Postal Service
1985	\$594	\$512	\$76
1986	613	531	76
1987	580	501	73
1988	674	583	84
1989	539	432	100
1990	587	460	119
1991	355	315	35
1992	700	316	378
1993	661	605	48
1994	643	585	46
1995	628	564	51
1996	562	490	63
12-year average	\$595	\$491	\$96

^aThis cost data cover, according to OPM, employees in all work schedules, pay systems, types of service, and all agencies except certain intelligence-related agencies.

Source: Unpublished OPM cost data converted by GAO to 1996 dollars.

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