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Office of Inspector General

United States Government Accountability Office

Accessible Version

December 15, 2016

**Memorandum For:** Gene L. Dodaro  
Comptroller General of the United States

**From:** Adam R. Trzeciak  
Inspector General

**Subject: Transmittal of Office of Inspector General (OIG) Audit Report**

Attached for your information is our final report, *Reservist Differential Pay: Policies and Procedures are Needed to Prevent or Detect Errors and Overpayments* (OIG-17-2). The audit objective was to assess the extent to which GAO has established effective controls to prevent or detect reservist differential errors and overpayments and collect any resulting debt.

We determined that GAO had implemented the reservist differential authority without proper controls. The report contains two recommendations to prevent or detect reservist differential errors and overpayments. In its written comments to the report, GAO did not address our first recommendation to develop and implement policies to ensure compliance with all applicable provisions of the reservist differential law. However, in response to our second recommendation, GAO has developed draft standard operating procedures to ensure accurate eligibility determinations and calculations in the future. If properly designed and implemented, these actions should meet the intent of our recommendation. Actions taken in response to our recommendations are expected to be reported to our office within 60 days.

We are sending copies of this report to the other members of GAO's Executive Committee, GAO's Audit Advisory Committee, and other managers with reservist differential payment and debt collection management and oversight responsibilities. The report is also available on the GAO website at [www.gao.gov/about/workforce/ig.html](http://www.gao.gov/about/workforce/ig.html).

If you have questions about this report, please contact me at (202) 512-5748 or [trzeciaka@gao.gov](mailto:trzeciaka@gao.gov).

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### **Abbreviations**

CHCO	Chief Human Capital Officer
HCO	Human Capital Office
OPM	Office of Personnel Management

## Introduction

When federal employees who serve in the Reserves and National Guard are called or ordered to active duty, federal law entitles some of them to “reservist differential” payments from their civilian employers.<sup>1</sup> The payments ensure that federal employees do not incur a cut in pay when called to active duty. Specifically, the law protects the employees’ pay by making up any reduction in earnings that may result from the differences between what the employees were projected to earn in their federal civilian jobs and what they earned while on active duty.

As of June 30, 2016, GAO had 49 employees who were members of the Reserve or National Guard and potentially eligible for reservist differential payments if called to active duty. Without effective controls for making reservist differential payments, GAO could make improper payments that result in debts owed to the agency.<sup>2</sup>

## Objective, Scope, and Methodology

As the second in a series of debt collection audits, this report addresses the extent to which GAO has established effective controls to prevent or detect reservist differential errors and overpayments and collect any resulting debt.<sup>3</sup>

To achieve our objective we identified and reviewed relevant federal laws and regulations, and Office of Personnel Management (OPM) implementing guidance related to reservist differential payments. In addition, we determined the extent to which GAO had established policies and procedures related to reservist differential pay. We also identified and reviewed GAO policies related to debt collection. We interviewed key human capital managers and staff (e.g., Deputy Chief Human Capital Officer and GAO’s debt collection coordinator) to obtain an understanding of their roles and responsibilities for reservist differential payment calculations and debt collection management and oversight.

To assess GAO controls over reservist differential payments, overpayments, and debt collection, we obtained and analyzed reservist data provided by GAO’s Chief Administrative Office for all GAO employees who

1. were Reserve or National Guard members, as of June 30, 2016, *and*
2. served on active duty between the start of reservist differential pay authority (March 15, 2009), and June 30, 2016.

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<sup>1</sup>The reservist differential is authorized for members of the Reserve or National Guard called or ordered to active duty under certain specified provisions of law. 5 U.S.C. § 5538(a).

<sup>2</sup>For purposes of our review, we refer to improper payments in a general sense, not based on any specific statutory definition. An improper payment is any payment that should not have been made or that was made in an incorrect amount, including overpayments.

<sup>3</sup>Our first debt collection report made four recommendations to improve controls over student loan debt collections. See OIG, *Debt Collection: Improved Controls are Needed to Identify and Collect Student Loan Repayment Debt*, [OIG-16-1](#) (Washington, D.C.: March 1, 2016).

Table 1 identifies the total number of potentially eligible employees, the number of employees who served on active duty, and the number of those employees in our review.

**Table 1: Breakdown of Employees**

<b>Employees</b>	<b>Number</b>
Identified as Reserve or National Guard members, as of June 30, 2016	49
Served on active duty, between March 15, 2009, and June 30, 2016	12
Served on active duty, between March 15, 2009, and June 30, 2016, and included in our review	11 <sup>a</sup>

Source: OIG analysis of GAO National Finance Center personnel data. | OIG-17-2.

<sup>a</sup>We did not include one of the 12 employees who served on active duty during the scope of our review because payment of the employee's reservist differential was resolved through litigation. The issue and outcome of this case were unrelated to GAO's controls over reservist differential payments.

To assess the completeness of Reserve or National Guard member data, we interviewed GAO staff responsible for maintaining the data about the steps GAO has taken to ensure the quality of the data. To assess the accuracy of the data on employees who served on active duty, we traced the related information for the 12 employees who served on active duty between March 15, 2009, and June 30, 2016, to related source documents. We determined that the data were sufficiently reliable for the purposes of this report.

We conducted this performance audit from July 2016 to December 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## Background

Federal law generally ensures that reservists who are federal civilian employees do not experience a pay cut because of a call to active duty.<sup>4</sup> The law authorizes "reservist differential" payments to eligible federal employees who serve in the Reserve or National Guard when called to active duty on or after March 11, 2009.<sup>5</sup>

To be eligible for reservist differential pay, federal civilian employees must be:

- in a leave without pay status from their federal civilian jobs for the purpose of active duty pursuant to specified statutory authority; and
- entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act.<sup>6</sup>

<sup>4</sup>5 U.S.C. § 5538.

<sup>5</sup>This authority became effective on March 15, 2009, for employees on the standard biweekly payroll cycle. Omnibus Consolidated Appropriations Act, 2009, Pub. L. 111-8, § 751, 123 Stat. 524, 693-695 (enacted March 11, 2009) (codified at 5 U.S.C. § 5538).

<sup>6</sup>Generally, service members are entitled to reemployment by their civilian employers consistent with the Uniformed Services Employment and Reemployment Rights Act of 1994, if they meet certain eligibility requirements set out in the Act. 38 U.S.C. 4301, *et seq.*

Meeting these eligibility requirements entitles the employees to additional compensation for pay periods in which their military pay is less than their basic federal civilian pay.

Absent statutory exemption, the law applies to all agencies in the executive, legislative, and judicial branches of the federal government, including GAO. Under the law, each agency with an employee entitled to a reservist differential is responsible for paying the differential on a biweekly basis using the appropriation account or fund that would have been used to pay the employee's civilian salary.

The law establishes responsibilities for implementing the reservist differential authority and assigns those responsibilities to specific agencies and individuals:

- OPM, in consultation with the Secretary of Defense, is responsible for prescribing regulations necessary to carry out the reservist differential authority. In December 2009, OPM issued policy guidance to agencies on applying the reservist differential provision, including (1) specific eligibility criteria, (2) civilian basic pay and military pay and allowances definitions for purposes of computing a reservist differential, and (3) detailed steps for calculating the amount of differential pay.<sup>7</sup>
- OPM provided agencies with procedural guidance for implementing the reservist differential authority. OPM's *Reservist Differential Agency Implementation Guidance*, among other things, requires each agency to establish processes and procedures for implementing the reservist differential authority, including procedures for (1) identifying and notifying affected reservists, (2) reviewing reservists' military orders, (3) projecting civilian basic pay during the qualifying period of active duty service, and (4) calculating and paying the reservist differential.

GAO's Human Capital Office (HCO), in consultation with the agency's General Counsel, is responsible for issuing policies accurately reflecting the agency's human capital practices, including policies and procedures governing reservist differential pay. To assist in maintaining accurate and current policies, GAO's General Counsel is responsible for monitoring legislative and regulatory developments, such as the reservist differential authority, and sending notices of relevant changes to HCO.

### **GAO Had Not Established Controls to Prevent or Detect Errors and Overpayments**

GAO had not established policies to help ensure compliance with all applicable provisions of the reservist differential law. Further, when HCO determined that reservist differentials were due and payable, it lacked written procedures for:

- determining eligibility for differential pay,
- computing the differential payment amounts,
- verifying accuracy of payment computations, and
- reviewing and approving payments before the payments were made.

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<sup>7</sup>Office of Personnel Management, *OPM Policy Guidance Regarding Reservist Differential under 5 U.S.C. 5538*. OPM originally issued the policy guidance on December 8, 2009, via memorandum to agency Chief Human Capital Officers, and has intermittently amended and reissued the policy guidance and the most recent was issued on June 23, 2015.

As a result, reservist differential payments to eligible employees were incorrectly calculated or improperly paid, resulting in errors that were not identified by HCO and debt owed to the agency.

### **GAO Had Not Established Reservist Differential Policies**

GAO policy requires its organizational units to establish and adequately document GAO-wide policies, such as reservist differential pay, in appropriate written documents.<sup>8</sup> However, we found that GAO had not established policies governing how the agency intended to carry out the provisions of the reservist differential pay law. For example, GAO did not have established policies that:

- specified eligibility requirements under the reservist differential authority and how eligibility is determined;
- described reservist differential approval procedures or criteria, such as the process used to evaluate an employee's entitlement to a payment; or
- assigned and described specific roles and responsibilities regarding reservist differential payment determinations, approvals, and processing.

It is important for an organization's management to update its policies over time to reflect changing statutes or conditions, and those policies should be communicated to those who need to implement them.<sup>9</sup> Not having documented policies for reservist differential pay is a significant weakness, particularly because the federal law requiring the payments went into effect more than 7 years ago. Until GAO establishes policies for reservist differential pay, GAO does not have assurance that the reservist differential authority is adequately understood, has reached all those who are covered by it, and is correctly implemented.

### **A Lack of Procedures for Determining Entitlement and Payment Amount Led to Improper Reservist Differential Payments**

GAO did not develop procedures or guidance covering specific steps (and responsible individuals) for determining entitlement and payment of a reservist pay differential, such as determining the qualifying period of active duty that triggers coverage and potential entitlement to reservist differential payments. In addition, GAO did not establish procedures for how federal civilian basic pay and military pay and allowances should be compared to ensure that determinations regarding whether a payment was due and the amount owed was proper.

Our review of documentation for 11 employees who served on active duty between March 15, 2009, and June 30, 2016, found that HCO did not maintain information relevant to differential pay determinations for 8 of the 11 employees. Specifically, HCO generally did not document its eligibility determinations and decisions regarding whether the employees

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<sup>8</sup>GAO Order 0010.1, *Government Accountability Office (GAO) Orders, Operational Directives, and Manuals* (July 1, 2013).

<sup>9</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999). GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#), (Washington, D.C.: Sept. 10, 2014). The new standards were effective beginning fiscal year 2016. We did not use the new standards to evaluate the current controls to prevent or detect reservist differential errors and overpayments and collect any resulting debt, but as context in preparing for an effective internal control system in the future.

were entitled to reservist differential payments. As a result, we were unable to determine whether GAO management vetted and approved eligibility and entitlement decisions for these employees. GAO policy provides that adequate and proper documentation should be created or received and maintained within GAO to fully document, among other things, agency decisions, such as determinations regarding employee eligibility and entitlement to a reservist pay differential.<sup>10</sup> In addition, federal standards for internal control provide that information should be recorded and communicated to management and others within the agency who need it, and in a form and within a timeframe that enables them to carry out their internal control and other responsibilities. For an agency to manage its operations, it must have relevant, reliable, and timely communications relating to internal events, including both operational and financial data.<sup>11</sup>

Based on our review of information HCO maintained on the remaining 3 of 11 employees who served on active duty and received reservist differential payments, we found that the lack of reservist differential pay procedures for determining entitlement to reservist differential payments led to calculation errors and ultimately to an improper payment. Specifically, we found:

**A reservist differential payment to 1 employee was erroneously issued.** An employee who performed active duty service over several years received a reservist differential payment totaling nearly \$150,000 in August 2013.<sup>12</sup> In January 2014, GAO determined that the payment was erroneous because the employee's military pay and allowances exceeded the employee's civilian basic pay. Accordingly, the employee was not entitled to receive a reservist differential. We determined that an HCO senior human capital specialist determined eligibility, calculated and approved the reservist differential payment amount owed, and authorized the payment. Although the overpayment was a result of an HCO administrative error, it resulted in a debt owed to the agency. HCO established a bill for about \$150,000 in April 2014 using GAO's normal debt collection procedures.<sup>13</sup> The employee who received the overpayment sought a waiver of the full overpayment amount. Following the application for waiver in 2014, the HCO senior human capital specialist prepared an internal written report identifying corrective actions planned to prevent the occurrence of similar erroneous payments as called for by GAO's debt collection procedures. The corrective actions included developing standard operating procedures for processing requests for reservist differential pay and supervisory review of all reservist differential computations. However, GAO management took no action to implement these corrective actions, or otherwise strengthen controls.

In September 2014, GAO's Chief Human Capital Officer (CHCO) granted a partial waiver of \$52,000 of the debt (including all interest and penalties) based upon the employee's representation that a portion of the overpayment funds had been used to pay other outstanding personal financial debts. Documentation reviewed showed that HCO established a bill for the remaining debt (about \$96,000) using the agency's normal debt

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<sup>10</sup>GAO Order 0410.1, *The GAO Records Management Program* (March 2, 2004). This policy is based, in part, on the Federal Records Act, 44 U.S.C. 3301, *et seq.*; see also 36 C.F.R. Part 1220.

<sup>11</sup>[GAO/AIMD-00-21.3.1](#) and [GAO-14-704G](#).

<sup>12</sup>Although the payment was disbursed in a single lump sum, the amount reflected several years' worth of reservist differential pay.

<sup>13</sup>GAO Order 0254.1, *Debt Collection* (October 2014). This order superseded GAO Order 0254.1, *Debt Collection*, dated September 22, 2006, to reflect agency restructuring, and corrected minor typographical errors throughout the order.

collection procedures. The CHCO agreed to the employee's offer, based on the employee's assertion of financial hardship, to make \$50 payments in biweekly installments from the debtor.

**A reservist differential payment to 1 employee was incorrectly calculated.** An employee was absent from GAO to serve on active duty for 10 months. In April 2013, the employee requested that GAO pay a reservist differential payment totaling more than \$1,020, based on the employee's review of applicable statutes, regulations, and the employee's military and civilian earnings and leave statements. An HCO human capital specialist, instead, erroneously determined the employee was entitled to a reservist differential totaling over \$40,000. GAO avoided making a \$39,000 overpayment to the employee after the employee questioned the amount. In November 2013, the HCO human capital specialist authorized and processed a payroll action request for a reservist differential payment to the employee for \$1,020.

**Reservist differential payments to 1 employee were incorrectly calculated for an undetermined amount.** An employee was on active duty for 8 months. Because the reservist differential payment is supposed to be calculated based on the actual pay and allowances the employee receives while serving on active duty, an HCO senior human capital specialist should have obtained and used the employee's monthly military leave and earning statements for the full 8-month period. When we requested to review the leave and earnings statements, HCO staff could only provide 4 of them. Our review of the 4 statements showed that GAO had incorrectly excluded two types of military payments that should have been included when computing the employee's reservist differential payment. When we questioned HCO staff about the calculation, they told us that the differential payment was based on one month's worth of leave and earning statements. However, the amount of military allowances can vary, sometimes significantly, from one month to the next. Calculating the payment differential using the employee's military leave and earning statements for a single month would not reflect any such changes, if applicable. As such, GAO was unable to support that the amounts paid to the employee were based on an adequate comparison of the employee's military and civilian pay. The employee received reservist differential payments totaling over \$26,500 (\$7,483 in 2011 and \$19,054 in 2012).



## **HCO Actions Planned**

In response to our work, HCO human capital managers stated that they intend to take the following actions:

- update established leave policies and procedures to include a section on reservist differentials;
- contact human resource personnel in other agencies to request copies of their standard operating procedures for reservist differentials;
- benchmark reservist differential procedures against those of other federal agencies, including the Department of Defense; and
- establish standard operating procedures for applying, calculating, and documenting reservist differentials.

## **Conclusions**

The reservist differential payment authority protects the salaries of GAO employees who serve in the Reserves and National Guard when they are called or ordered to active duty. However, implementing that authority without the proper controls can lead to payment errors and improper payments. Overpayments become debts that are owed to the agency—which GAO is then required to identify and collect. To help prevent these debts or to identify and collect them if they occur, it is important for GAO to establish policies governing how it intends to carry out the provisions of the reservist differential pay law. It is also important for GAO to establish reservist differential procedures for determining reservist eligibility and calculating reservist differential payments.

## **Recommendations**

To prevent or detect reservist differential errors and overpayments, we recommend that the Comptroller General direct the Chief Human Capital Officer, in collaboration with the Office of General Counsel, to develop and implement (1) policies to ensure compliance with all applicable provisions of the reservist differential law and (2) procedures for implementing GAO's reservist differential pay policy. Such procedures should establish internal controls, including steps for determining eligibility for differential pay, computing and verifying the accuracy of differential payment amounts due, reviewing and approving payments, and maintaining information relevant to differential pay determinations.

## **Agency Comments and Our Evaluation**

The Inspector General provided GAO with a draft of this report for review and comment. In its written comments, which we have reprinted in appendix I, GAO did not address our first recommendation to develop and implement policies to ensure compliance with all applicable provisions of the reservist differential law. GAO noted that it follows established reservist differential policy issued by the Office of Personnel Management (OPM) in calculating differential payments. Although OPM policy guidance typically applies broadly across federal agencies, its application to GAO reservist differential eligibility determinations has limitations. For example, in the litigated case involving a GAO employee referenced in our report, GAO followed OPM policy guidance and denied the complainant any reservist differential pay. The GAO employee then sued GAO, challenging that denial. Through litigation, the GAO employee prevailed and GAO's narrow

legal interpretation was rejected. Our recommendation to develop and implement policies, in consultation with agency legal counsel, will avoid further improper eligibility determinations. We therefore stand by our recommendation to GAO to develop and implement reservist differential policies, as outlined in this report.

Regarding our recommendation to establish procedures for implementing its reservist differential pay policy, GAO noted that, based on OIG's review, it has drafted and is refining standard operating procedures that will ensure accurate eligibility determinations and calculations in the future. If properly designed and implemented, these actions should meet the intent of our recommendation.

## Appendix I: Comments from the U.S. Government Accountability Office



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

### Memorandum

**Date:** December 12, 2016

**To:** Inspector General – Adam Trzeciak

**From:** Director, Performance & Compensation Management Center – Daniel Shen *DS*

**Subject:** Draft Report on GAO's Reservist Differential Pay (OIG-17-2)

Thank you for the opportunity to comment on your draft report on GAO's administration of reservist differential pay. Administration of reservist differential pay is performed by the Performance and Compensation Management Center (PCMC) within the Human Capital Office. The PCMC follows established reservist differential policy issued by the Office of Personnel Management in calculating differential payments, the total number of which has been historically very low at GAO. As noted in the OIG draft report, only 12 staff served on active duty as a reservist or member of the National Guard during the eight year period reviewed by the OIG.

The low frequency of military differential pay calculations, coupled with high staff turnover during the eight-year review period, resulted in a skill gap within the PCMC in applying established reservist differential policy to accurately determine and apply military pay and allowances. Based on OIG's review, and to ensure robust guidance and procedures are in place to close the skill gap, PCMC has drafted and is refining standard operating procedures for determining eligibility for differential pay, computing and verifying the accuracy of differential payment amounts due, reviewing and approving payments, and maintaining information relevant to differential pay determinations. These procedures clarify the role and responsibilities of the designated POC for managing these cases and will ensure accurate eligibility determinations and calculations in the future.

cc: Karl Maschino, Chief Administrative Officer  
William White, Chief Human Capital Officer  
Renee Caputo, Deputy Chief Human Capital Officer  
Adebiyi Adesina, FMBO  
Evelyn Logue, OIG

## **Appendix II: Major Contributors to This Report**

A key contributor to this report was Sandra Burrell. Legal assistance was provided by Cynthia Hogue. Technical assistance was provided by Melanie Papasian Fallow and Cynthia Taylor.

### **Appendix III: Report Distribution**

#### U.S. Government Accountability Office

Gene Dodaro – Comptroller General  
Patricia Dalton – Chief Operating Officer  
Karl Maschino – Chief Administrative Officer/Chief Financial Officer  
Susan Poling – General Counsel  
William White – Chief Human Capital Officer  
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William Anderson – Controller/Deputy Chief Financial Officer  
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Adebiyi Adesina – Special Assistant to the Controller  
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Chuck Young – Managing Director, Public Affairs

#### GAO Audit Advisory Committee

## Appendix IV: Accessible Data

### Text of Appendix I: Comments from the U.S. Government Accountability Office

Memorandum

Date: December 12, 2016

To: Inspector General - Adam Trzeciak

From: Director, Performance & Compensation Management Center - Daniel Shen

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