

# Office of Inspector General



January 6, 2001  
Audit Report No. 01-005

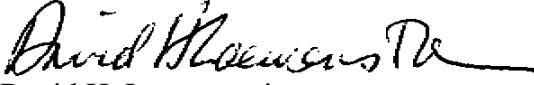
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Audit of the Use of Overtime  
Within the FDIC



**DATE:** February 6, 2001

**MEMORANDUM TO:** Arleas Upton Kea, Director  
Division of Administration

**FROM:**   
David H. Loewenstein  
Assistant Inspector General

**SUBJECT:** *Audit of the Use of Overtime Within the FDIC*  
(Audit Report No. 01-005)

The Office of Inspector General (OIG) has completed an audit of the use of overtime within the FDIC. The audit covered overtime payments made to employees during the period of January 1, 1999 through March 31, 2000. The need for overtime and other forms of premium pay can result from both controllable and uncontrollable factors. Management can influence the controllable factors through staff resource allocation, special assignments, time and attendance practices, and other techniques. During the period audited, FDIC employees were paid \$6.8 million for overtime. The period audited included the time that FDIC employees worked on year 2000 computer-related efforts.

## **BACKGROUND**

Full-time federal employees are generally scheduled for a 40-hour work week consisting of 5 8-hour days, exclusive of any lunch or meal period. Employees who work more than 8 hours on a given day or 40 hours during a week are entitled by federal statute to premium pay, including overtime, that is subject to certain limitations. Similarly, FDIC employees participating in the Alternative Work Schedule Program who work more hours in one day or in a given week than the hours established in their regular work schedules are also entitled to overtime pay.

The entitlement to, and monetary limits for, overtime pay are established in two statutes applicable to the FDIC. Title 5 of the United States Code (USC) generally covers managerial, supervisory and professional employees of the federal government. Title 5 limits overtime to 1½ times the hourly rate paid to a federal employee at the General Schedule (GS) grade 10, step 1 level. Further, the biweekly total of an employee's basic pay plus premium pay cannot exceed the biweekly pay of a federal employee at the GS grade 15, step 10 level, including locality pay. The Fair Labor Standards Act (FLSA), codified at 29 USC, covers other types of employees, both federal and nonfederal. At the FDIC, for example, clerical employees and noncommissioned examiners at or below the grade 9 level are covered by the FLSA. Employees covered under FLSA earn overtime at 1½ times their normal rate of pay and have no hourly rate

or biweekly pay total limitations. The Division of Administration's Personnel Services Branch is responsible for designating whether FDIC occupational positions are covered by title 5 or by the FLSA. Employees covered by title 5 are classified as "exempt" from the FLSA; the remaining employees are "non-exempt."

To be properly earned, overtime work must be officially ordered or approved and performed by the employee. The ordering or requesting of overtime should be in writing and approved by an official who has the appropriate delegated authority. In 1995, the then Deputy to the Chairman and Acting Chief Operating Officer of the FDIC was concerned over the amounts of overtime being paid throughout the Corporation. He asked the Division of Finance to start preparing reports to track individual division and office expenditures for overtime on a quarterly basis. In 1999, he issued a memorandum emphasizing the need for divisions and offices to recognize the importance of reviewing and approving overtime and to more closely monitor employees working overtime. It was his intention to have employees throughout the FDIC working overtime only when approved, and only when necessary to accomplish organizational goals and objectives.

Subsequently, on August 19, 1999, the Director, Division of Administration, communicated to all division and office directors that a task force was to be formed for the express purpose of clarifying and communicating corporate policy on overtime use and approval. This task force convened its first meeting in March 2000 with an objective to consolidate corporate policies and procedures on pay administration, including overtime. The envisioned new corporate directive would establish a consistent approach for requesting and approving overtime and communicate a clear understanding that overtime is only to be approved and worked based on a compelling corporate need. An additional objective included the issuance of a standardized form as the vehicle for requesting and approving overtime to be worked. On the face of the form a pre-printed block will require that a justification statement be entered for the overtime to be worked.

## **OBJECTIVES, SCOPE, AND METHODOLOGY**

The objectives of this review were to determine whether overtime was: (1) approved in advance at the required supervisory level per delegated authority, (2) worked as directed, and (3) used for compelling needs. During audit fieldwork, we learned of legislation affecting coverage under FLSA of certain computer occupations. Consequently, we added a fourth audit objective to determine whether the provisions of the legislation had been incorporated into the Personnel Services Branch's procedures for classifying similar FDIC occupations. The audit scope included overtime payments of \$6,823,800 made from January 1, 1999 through March 31, 2000. The Division of Information Resources Management (DIRM), the Division of Resolutions and Receiverships (DRR), and the Division of Administration (DOA), paid the highest amounts of overtime at \$1,959,708, \$1,278,444, and \$879,470, respectively.

Our audit methodology included the following:

- Identifying overtime transactions from FDIC payroll information listed in records of the National Finance Center.

- Selecting a judgmental sample of 89 overtime payments made to 65 employees in DIRM, DRR, and DOA. The transactions selected involved payments to employees who had received relatively large amounts of total overtime during the audit period.
- Interviewing DOA Personnel Services Branch staff; supervisory staff in DIRM, DRR, and DOA who approved overtime requests; and an attorney from the Legal Division.
- Obtaining and reviewing documentation to support the overtime requested, approved, and worked for the transactions tested.
- Performing calculations to test the accuracy of overtime payments.
- Identifying division and office procedures in effect to direct, approve, and administer overtime as well as identifying all capture sheets designed to record overtime that had been approved and worked.
- Monitoring the activities of the Operating Committee's Overtime Policy Task Force on March 16 and April 19, 2000.
- Reviewing information on a grievance filed on June 7, 1993, by the National Treasury Employees Union on behalf of certain FDIC employees concerning position classification and FLSA overtime pay entitlements.
- Reviewing Office of Internal Control Management reports for the period of our audit scope (January 1, 1999 through March 31, 2000) in order to assess that office's results of review for payroll transaction testing. This transaction testing is ongoing and is conducted on a semiannual basis.

We performed fieldwork at the FDIC's offices in Washington, D.C., and at the Seidman Center located in Arlington, Virginia. We conducted the audit from February through August 2000 in accordance with generally accepted government auditing standards.

## **RESULTS OF AUDIT**

Our review found that, generally, overtime incurred from January 1, 1999 through March 31, 2000 was properly approved in advance at the required level of delegated authority. We also determined that overtime was worked as directed and that the overtime was necessary to meet the business needs of the Corporation. These business needs included performing year 2000 computer-related work and essential computer back-up work, participating in institution closings, and monitoring high priority projects performed under contract for the Corporation. However, we concur with the Overtime Policy Task Force that there is a need for revised procedures for the administration of overtime, coupled with a need for a standardized overtime request/approval form that contains a written justification block on the face of the form. We also identified that 31 computer specialists included in our audit sample may be erroneously classified by the FDIC as non-exempt under the FLSA. Legislation enacted in 1996 amended the FLSA and stipulated

that certain occupations were to be exempted from the overtime provisions of FLSA. If it is determined that the 31 non-exempt computer specialists contained in our sample are now misclassified under the amendment, the FDIC in 1999 alone would have overpaid these employees more than \$145,000 in overtime.

### **WRITTEN JUSTIFICATION MISSING FROM OVERTIME REQUEST/AUTHORIZATION FORMS**

Our review showed that 56 of the 89 transactions, 63 percent of our audit sample tested, did not have the overtime justification clearly identified on the various written request/authorization forms that we reviewed. However, we were subsequently able to determine for these 56 transactions that there was proper justification for the overtime worked. This was determined through the review of additional supporting documentation or through contact with the appropriate approving officials. Our review found that there is no standardized overtime request/authorization form in use throughout the Corporation. In addition, only the form used by the Personnel Services Branch has specific wording on the face of the form that requires a justification statement for the overtime worked. Also, no current written policy within the FDIC directives states specifically that overtime is to be authorized only in those instances where a compelling business need exists to require its use.

Consequently, the absence of a standardized form coupled with the identified shortcomings in the existing policy leads to a weakened control environment over the administration of overtime within the FDIC. Standardized policies and procedures along with a standardized request/authorization form that requires justification for the overtime worked are controls to help ensure that overtime is incurred in the best interests of the Corporation. The Operating Committee's task force on overtime is aware of the shortcomings with the multiple overtime request/approval forms in use throughout the FDIC that also lack a clearly labeled justification block on the face of the forms. Accordingly, it is considering adopting a standardized request/authorization form. The overtime task force has also drafted a policy for requesting, approving, and working overtime within the FDIC. One of the policy's requirements directs that overtime only be authorized where it is clearly in the Corporation's best interest. Another provision of the draft policy is that overtime shall be kept to the minimum essential to accomplish mission requirements.

Accordingly, we recommend that the Director, DOA:

- (1) in conjunction with the Operating Committee's task force on overtime policy, finalize the draft policy and procedures on overtime use and issue them throughout the Corporation as soon as possible. In addition, we recommend that a standardized overtime request/authorization form, such as the one being considered by the task force, be adopted and issued as an attachment to the finalized directive.

## **DIRM COMPUTER SPECIALISTS MAY HAVE BEEN PAID OVERTIME IN NON-EXEMPT STATUS CONTRARY TO THE PROVISIONS OF THE FAIR LABOR STANDARDS ACT**

Our audit sample for DIRM contained 31 computer specialist, computer operator, and telecommunications specialist positions which, according to DOA, were re-classified, effective April 30, 1995, along with many other FDIC positions, as non-exempt under FLSA. This re-classification occurred after a lawsuit was filed June 7, 1993, by the National Treasury Employees Union (NTEU) on behalf of non-supervisory bank liquidation specialists grade 9 and above, non-supervisory liquidation specialists/assistants grade 9 and above, and bank examiners at grade levels 9 and above in the Boston, New York, and Chicago regions. The lawsuit successfully argued that the Corporation had improperly exempted these positions from the higher overtime compensation provisions of FLSA.

A 1996 amendment to FLSA stipulated that computer programmers, software engineers, computer systems analysts, or any other similarly skilled workers, were to be classified as exempt from the FLSA provisions if the majority of their primary duties included certain activities. The primary duty test for computer positions is defined by 5 CFR Chapter 1 § 551.207 (a)(3) "as work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, software engineering or other similar work in the computer software field." The work must consist of one or more of the following: (1) the application of systems analysis techniques and procedures, including consultation with users to determine hardware, software, or system functional specifications; or (2) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or (3) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or (4) a combination of the [above described] duties, the performance of which requires the same level of skills.

Accordingly, any FDIC employee, classified as non-exempt under FLSA, whose position description met the test of the 1996 FLSA amendment and worked any overtime since the amendment was codified may have been overcompensated in the overtime pay received. This is because employees classified as non-exempt under FLSA are paid overtime at time and one-half their hourly rate with no limitations on the total amount earned. However, exempt employees' overtime compensation is capped to not exceed the time and one-half hourly rate of a GS grade 10 step 1. In addition, biweekly and annual caps limit the maximum amount earned in addition to the amount of hours which can be worked to that of a GS grade 15 step 10.

Our review of the 31 computer and computer-related position descriptions contained in our audit sample identified many of the same responsibilities that are described in the regulations at 5 CFR 551.207. Accordingly, we further determined that if the duty and responsibility provisions of the codified regulations are applicable to those of the 31 computer specialists, operators, and other employees identified in our audit sample, these employees, in 1999 alone, may have received more than \$145,000 in excess overtime compensation. This amount was determined by dividing the 1999 total overtime payments to these 31 employees by their full time and one-half hourly rate in order to determine the total overtime hours worked during 1999. These hours were then multiplied by the capped rate for exempt employees. The difference

between the total amount earned at the non-exempt rate less the capped rate was the potential excess compensation received.

We were advised by a Legal Division attorney that in the midst of two lawsuits relative to FLSA, a meeting was held in 1996 between Legal, DOA, and DIRM to discuss the 1996 amendment to FLSA. The lawsuits contended that certain employees were improperly determined to be exempt from the provisions of FLSA. Also, the lawsuits, regarding exemption determinations, did not include computer-specialist type positions. In light of this context, coupled with the perception that there were not many employees in the FDIC who would have been affected by the 1996 amendment, it was administratively easier to consider all DIRM positions other than executives, managers, and supervisors as non-exempt under FLSA. Hence, there was no action taken to review the FLSA classifications in DIRM.

Accordingly, we recommend that the Director, DOA:

- (2) in conjunction with the Operating Committee's task force on overtime policy, review the 1996 amendment to the FLSA (as codified at 5 CFR 551.207) and determine which jobs within the FDIC have primary duties which meet the test of the amendment as it applies to computer and computer-related positions. Once identified, these positions would need to be reclassified as exempt from the provisions of FLSA.
- (3) identify any overpayments in overtime which may have been made to employees in computer or computer-related positions as a result of misclassification as non-exempt under the FLSA. Once calculated, we recommend that the Director, DOA, take action to collect or waive any actual overpayments.

## **CORPORATION COMMENTS AND OIG EVALUATION**

On January 16, 2001, the Director, DOA, provided a written response to the draft report. The Director, DOA, agreed with recommendations 1 and 2. However, the Director, DOA, did not concur with recommendation 3 to identify any overpayments of overtime and to collect or waive the amounts. Instead, DOA, with the Legal Division's advice, has decided to deal with the issues on a prospective basis by identifying and reclassifying affected positions.

The OIG made recommendation 3 to help ensure that all the issues related to the potential misclassification of employees were resolved. While we believe it would be better to resolve the issue of overpayments, we understand management's unwillingness to do so in this instance. Therefore, we accept management's decision. DOA's response provided us the requisite elements of a management decision for our three recommendations.



**FDIC**

Federal Deposit Insurance Corporation  
550 17th Street, NW, Washington, DC 20429

**CORPORATION COMMENTS**

**APPENDIX I**

Division of Administration

January 16, 2001

**MEMORANDUM TO:** David H. Loewenstein  
Assistant Inspector General

**FROM:** Arleas Upton Kea *Arleas Upton Kea*  
Director, Division of Administration

**SUBJECT:** Management Response to Draft Report: *Audit of the Use of Overtime Within the FDIC*

The Division of Administration (DOA) has completed its review of the draft report issued by the Office of the Inspector General (OIG) entitled *Audit of the Use of Overtime Within the FDIC*. DOA appreciates the intensive study performed by the OIG.

We generally agree with the conclusions of the OIG study (exceptions are noted in the responses below). The DOA, Personnel Services Branch will move promptly to finalize policy and procedures on overtime and implement a standardized request/authorization form. The report provides us with the necessary information to continue our efforts to perform effective improvements to existing controls.

**Management Decision:**

**Recommendation 1:** We recommend that the Director, DOA, in conjunction with the Operating Committee's task force on overtime policy, finalize the draft policy and procedures on overtime use and issue them throughout the Corporation as soon as possible. In addition, we recommend that a standardized overtime request/authorization form, such as the one being considered by the task force, be adopted and issued as an attachment to finalized directive.

**Management Response 1:** DOA Management concurs with this recommendation. DOA, Personnel Services Branch (PSB) will issue policy and procedures on overtime use and issue a standardized overtime request/authorization form for use throughout the Corporation. DOA, PSB will finalize the policy and procedures including the request/authorization form by the end of the second quarter 2001.

**Recommendation 2:** We recommend that the Director, DOA, in conjunction with the Operating Committee's task force on overtime policy, review the 1996 amendment to the FLSA (as codified at 5 CFR 551.207) and determine which jobs within the FDIC have primary duties which meet the test of the amendment as applies to computer and computer related positions. Once identified, these positions would need to be re-classified as exempt from the provisions of FLSA.



**Management Response 2:** DOA concurs with the OIG's recommendation. DOA, PSB will review the 1996 amendment to the FLSA (as codified at 5 CFR 551.207), determine the positions covered, notify employees and NTEU, and re-classify affected positions by the end of the second quarter 2001.

**Recommendation 3:** We recommend that the Director, DOA, identify any overpayments in overtime which may have been made to employees in computer and computer related positions as a result of misclassification as non-exempt under the FLSA. Once calculated, we recommend that the Director, DOA, take action to collect or waive any actual overpayments.

**Management Response 3:** DOA concurs with a portion of this recommendation. At this point in time, now that some case law has emerged concerning the computer specialist exemption, DOA, PSB is able to identify all current affected employees and will do so by the end of the second quarter 2001. DOA, PSB and CAS believe that a prospective reclassification of employees at certain grade levels is warranted. We plan to complete this by Pay Period 14.

Prior to the 1996 amendment to the FLSA and acting on advice from our Legal staff, the positions were classified as "Non-Exempt." Given the limited body of case law concerning the computer specialist exemption and the fact that this exemption is relatively new, we do not conclude that the agency has knowingly made any overpayments in past years. Therefore, we do not concur with the recommendation to calculate the "overpayment amount" or to collect or waive the "overpayments." Moreover, given the extensive litigation which has been generated between the agency and the National Treasury Employees Union concerning FLSA exemptions, any attempt by the agency to collect these "overpayments" would certainly result in further litigation. Accordingly, no retroactive action is prudent in our view.

If you have any questions regarding the response, our point of contact for this matter is Andrew Nickle, Audit Liaison for the Division of Administration. Mr. Nickle can be reached at (202) 942-3190.

cc: Cindy Medlock  
Mr. Deshpande

**MANAGEMENT RESPONSES TO RECOMMENDATIONS**

The Inspector General Act of 1978, as amended, requires the OIG to report the status of management decisions on its recommendations in its semiannual reports to the Congress. To consider FDIC’s responses as management decisions in accordance with the act and related guidance, several conditions are necessary. First, the response must describe for each recommendation

- the specific corrective actions already taken, if applicable;
- corrective actions to be taken together with the expected completion dates for their implementation; and
- documentation that will confirm completion of corrective actions.

If any recommendation identifies specific monetary benefits, FDIC management must state the amount agreed or disagreed with and the reasons for any disagreement. In the case of questioned costs, the amount FDIC plans to disallow must be included in management’s response.

If management does not agree that a recommendation should be implemented, it must describe why the recommendation is not considered valid. Second, the OIG must determine that management’s descriptions of (1) the course of action already taken or proposed and (2) the documentation confirming completion of corrective actions are responsive to its recommendations.

This table presents the management responses that have been made on recommendations in our report and the status of management decisions. The information for management decisions is based on management’s written response to our report.

<b>Rec. Number</b>	<b>Corrective Action: Taken or Planned/Status</b>	<b>Expected Completion Date</b>	<b>Documentation That Will Confirm Final Action</b>	<b>Monetary Benefits</b>	<b>Management Decision: Yes or No</b>
1	DOA, Personnel Services Branch (PSB), will issue policy and procedures on overtime use and issue a standardized overtime request/authorization form for use throughout the Corporation.	June 30, 2001	Revised Directive	N/A	Yes
2	DOA,PSB, will review the 1996 amendment to the Fair Labor Standards Act (FLSA) (as codified at 5 CFR 551.207), determine the positions covered, notify employees and the NTEU, and re-classify affected positions.	June 30, 2001	Copies of Letters/Memoranda to affected employees and the NTEU and revised SF 50's	N/A	Yes
3	DOA, PSB, plans no action in connection with this recommendation.	N/A	N/A	N/A	Yes