

SUBCHAPTER G—STANDARDS FOR WAIVER OF CLAIMS FOR ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES, AND OF TRAVEL, TRANSPORTATION, AND RELOCATION EXPENSES AND ALLOWANCES

PART 91—STANDARDS FOR WAIVER

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AUTHORITY: 31 U.S.C. 711. Interpret or apply 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, as amended by Pub. L. 99–224, 99 Stat. 1741, December 28, 1985, Title X, sec. 1009, Pub. L. 100–702, 102 Stat. 4667, November 19, 1988, and Title VI, sec. 657, Pub. L. 102–190, 105 Stat. 1290, December 5, 1991.

SOURCE: 56 FR 49583, Sept. 30, 1991, unless otherwise noted.

§ 91.1 Purpose and scope of subchapter.

This subchapter implements 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716. It prescribes the effect of and the standards and procedures for waiver of claims of the United States arising out of erroneous payments of pay and allowances, and erroneous payments of travel, transportation, and relocation expenses and allowances, made to or on behalf of employees of an agency or members of the uniformed services, including the National Guard, the collection of which would be against equity and good conscience and not in the best interests of the United States. These regulations do not affect any authority under any other statute to litigate, settle, compromise, or waive any claim of the United States.

§ 91.2 Definitions.

- (a) *Agency* means—
- (1) An executive agency as defined in 5 U.S.C. 105, including the General Accounting Office,
 - (2) The Government Printing Office,
 - (3) The Library of Congress,
 - (4) The Office of the Architect of the Capitol,
 - (5) The Botanic Garden, and

(6) The Administrative Office of the United States Courts, the Federal Judicial Center, and any of the courts set forth in section 610 of title 28, U.S. Code. Section 610 defines “courts” to include the courts of appeals and district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the United States Claims Court and the Court of International Trade.

(b) *Secretary concerned* shall have the same meaning as it does in section 101(5) of title 37, U.S. Code.

(c) *Head of an agency* means the head of each agency listed in paragraphs (a) (1) through (5) of this section and the Director, Administrative Office of the United States Courts, for the agencies and courts listed in paragraph (a)(6) of this section.

(d) *Uniformed services* means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

(e) *National Guard* means the Army National Guard, the Air National Guard, the Army National Guard of the United States, and Air National Guard of the United States.

(f) *Employee* means an officer or employee as defined in 5 U.S.C. 2104 and 2105 who is or was employed in a civilian capacity by an agency.

(g) As it relates to employees, the term—

(1) *Pay* means salary, wages, pay, compensation, emoluments, and remuneration for services. It includes but is not limited to overtime pay; night, standby, irregular and hazardous duty differential; pay for Sunday and holiday work; payment for accumulated and accrued leave; and severance pay.

(2) *Allowances* includes but is not limited to payments for quarters, uniforms, and overseas cost of living expenses.

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(3) *Travel, transportation or relocation expenses and allowances* includes but is not limited to items referred to in 5 U.S.C. 5701-5709 and 5721-5734, 22 U.S.C. 4081, and other comparable provisions, payment of which is made on or after December 28, 1985.

(h) *Member* means a member or former member of the uniformed services, or member or former member of the National Guard.

(i) As it relates to members, the term—

(1) *Pay* includes but is not limited to base and longevity pay, basic pay, training duty pay, special and incentive pays, readjustment pay, severance pay, mustering-out pay, retainer pay, retired pay, retirement pay, lump-sum leave pay, and equivalent pay.

(2) *Allowances* includes but is not limited to payments in lieu of subsistence, quarters, uniforms, clothing, personal money allowance, family separation allowance, and overseas station allowance.

(3) *Travel and transportation allowances* includes but is not limited to items referred to in 37 U.S.C. 404-411 and other comparable provisions, payment of which is made on or after December 28, 1985.

(j) *Aggregate amount* means the gross amount of the claim against the employee, member, or other person from whom collection is sought.

§ 91.3 Exclusions.

This part does not apply to:

(a) Employees of the District of Columbia Government,

(b) Employees of the legislative branch of the Government, except employees of the Architect of the Capitol, the Government Printing Office, the Library of Congress, the Botanic Garden, and the General Accounting Office.

§ 91.4 Authority to waive.

(a) The Comptroller General of the United States, or his designee, may grant waiver in whole or in part of a claim of the United States in any amount arising out of an erroneous payment of pay or allowances made to employees on or after July 1, 1960, and to members on or after October 2, 1972, or an erroneous payment of travel,

transportation or relocation expenses or allowances made on or after December 28, 1985, to an employee or member, when all of the requirements for waiver are met. Claims referred to the Attorney General for litigation will not be considered for waiver by the Comptroller General of the United States without first having obtained the agreement of the Attorney General.

(b) The Director of the Administrative Office of the United States Courts may grant waiver in whole or in part of a claim of the United States in an amount aggregating not more than \$10,000 arising out of an erroneous payment of pay or allowances or an erroneous payment of travel, transportation or relocation expenses or allowances to an officer or employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or any of the courts listed in § 91.2(a)(6). This authority applies with respect to any claim arising before November 19, 1988, that was pending on that date and to any claim which arose on or after that date.

(c) The head of an agency or the Secretary concerned, or his designee—

(1) May grant waiver in whole or in part of a claim of the United States in an amount aggregating not more than \$1500, when all the requirements for waiver are met, except that the Director of the Administrative Office of the United States Courts may grant waiver in whole or in part of a claim in an amount aggregating not more than \$10,000;

(2) May deny waiver of a claim in any amount, provided that the employee, member, or other person from whom collection is sought must be advised of the right to appeal the denial to the General Accounting Office pursuant to the procedures set forth in part 92 of this subchapter; and

(3) May not grant waiver of any claim that is the subject of an exception made by the Comptroller General in the account of any accountable officer, or that has been referred to the General Accounting Office or to the Attorney General.

(d) The Government's claim against an employee or member for repayment

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of an advance of funds for travel or relocation expenses may be considered for waiver if—

(1) The advance was made to cover expenses erroneously authorized;

(2) The employee or member actually spent the advance in reliance on the erroneous travel authorization; and

(3) The employee or member is indebted to the Government for repayment of all or part of the amounts advanced after the advance is applied against any legitimate expenses incurred by the employee or member.

[56 FR 49583, Sept. 30, 1991, as amended at 56 FR 67467, Dec. 31, 1991]

§ 91.5 Conditions for waiver.

(a) Three-year application period.

(1) An application for waiver must be received in the General Accounting Office or in the agency or department which made the erroneous payment within 3 years immediately following the date on which the erroneous payment was discovered, or in the case of certain applications received prior to July 25, 1977, as provided in 5 U.S.C. 5584(b).

(2) The employee, member, or other person from whom collection is sought shall be promptly notified of the discovery of an erroneous payment. In determining the date of discovery of an erroneous payment, all doubts are to be resolved in favor of the applicant.

(b) Waiver may be granted only when collection would be against equity and good conscience and not in the best interests of the United States. Generally, these criteria will be met by a finding that the erroneous payment occurred through administrative error and that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, member, or other person having an interest in obtaining a waiver of the claim. Generally, waiver is precluded when an employee, member, or other person having an interest in obtaining waiver receives a significant unexplained increase in pay or allowances, or otherwise knows, or reasonably should know, that an erroneous payment has occurred, and fails to make inquiries or bring the matter to the attention of the appropriate officials. Waiver under this standard must nec-

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essarily depend upon the facts existing in the particular case. The facts upon which waiver is based should be recorded in detail and made a part of the written record in accordance with the provisions of part 92 of this subchapter.

§ 91.6 Effect of waiver.

(a) In the audit and settlement of the accounts of any accountable officer or official, full credit shall be given for any amounts with respect to which collection by the United States is waived.

(b) An erroneous payment, the collection of which is waived pursuant to this subchapter, is deemed a valid payment for all purposes.

PART 92—PROCEDURE

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92.1 Who may apply for waiver.

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92.9 Referral of claims for collection or litigation.

AUTHORITY: 31 U.S.C. 711. Interpret or apply 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, as amended by Pub. L. 99-224, 99 Stat. 1741, December 28, 1985, Title X, sec. 1009, Pub. L. 100-702, 102 Stat. 4667, November 19, 1988, and Title VI, sec. 657, Pub. L. 102-190, 105 Stat. 1290, December 5, 1991.

SOURCE: 56 FR 49584, Sept. 30, 1991, unless otherwise noted.

§ 92.1 Who may apply for waiver.

An application for waiver may be initiated by an employee, member, or other person from whom collection is sought, or by an authorized official of the agency or department that made the erroneous payment, or by the Comptroller General of the United States.

§ 92.2 Where to apply.

(a) An application for waiver filed by an employee, member, or other person from whom collection is sought shall be submitted to the agency or department that made the erroneous payment.