

§91.5

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.

92.2 Where to apply.

92.3 Report of the agency or department.

92.4 Action by the agency or department.

92.5 Initial action by the General Accounting Office and appeals to the Comptroller General.

92.6 Refund of amounts repaid and waived.

92.7 Written record.

92.8 Register of waivers.

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.