

the employee has been denied arbitrarily, capriciously or in violation of applicable regulation.

(c) Such orders of the Board shall be final, subject to judicial review as provided for in section 694 of the Act, except that reinstatement of former officers who have filed grievances under § 16.1(c)(7) shall be presented as Board recommendations, the decision on which shall be subject to the sole discretion of the agency head or designee, who shall take into account the needs of the Service in deciding on such recommendations, and shall not be subjected to judicial review under section 694 of the Act. The reason(s) for the agency head's (or designee's) decision will be conveyed in writing to the Board and the grievant.

(d) If the Board finds that the grievance is meritorious and that remedial action should be taken that directly relates to promotion or assignment of the grievant, or to other remedial action, including additional step increases, not provided for in paragraph (b) of this section, or if the Board finds that the evidence before it warrants disciplinary action against any officer or employee, it shall make an appropriate recommendation to the head of the agency, and forward to the head of the agency the record of the Board's proceedings, including the transcript of the hearing, if any. The head of the agency (or designee, who shall not have direct responsibility for administrative management) shall make a written decision to the parties and to the Board on the Board's recommendation within 30 days from receipt of the recommendation. A recommendation of the Board may be rejected in part or in whole if the action recommended would be contrary to law, would adversely affect the foreign policy or security of the United States, or would substantially impair the efficiency of the Service. If the decision rejects the Board's recommendation in part or in whole, the decision shall state specifically any and all reasons for such action. Pending the decision, there shall be no ex parte communications concerning the grievance between the agency head, or designee, and any person involved in the grievance proceeding.

§ 16.14 Reconsideration of a grievance.

A grievant whose grievance is found not to be meritorious by the Board may obtain reconsideration by the Board only upon presenting newly discovered or previously unavailable material evidence not previously considered by the Board and then only upon approval of the Board.

§ 16.15 Judicial review.

Any aggrieved party may obtain judicial review of these regulations, and revisions thereto, and final actions of the agency head (or designee) or the Grievance Board hereunder, in the District Courts of the United States, in accordance with the standards set forth in chapter 7 of title 5 of the United States Code. Section 706 of title 5 shall apply without limitation or exception.

PART 17—OVERPAYMENTS TO ANNUITANTS UNDER THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

Sec.

- 17.1 Definitions.
- 17.2 General provisions.
- 17.3 Notice to annuitants.
- 17.4 Initial determination.
- 17.5 Standards.
- 17.6 Notice of decision and right of appeal.
- 17.7 Appeal.

AUTHORITY: 22 U.S.C. 842; 22 U.S.C. 1061; 22 U.S.C. 2658; and E.O. 10897 (25 FR 12439).

SOURCE: 44 FR 47928, Aug. 16, 1979, unless otherwise noted.

EFFECTIVE DATE NOTE: At 71 FR 16229, March 31, 2006, part 17 was revised, effective May 1, 2006. For the convenience of the user, the revised text is set forth following the text currently in effect.

§ 17.1 Definitions.

(a) *Act* means the Foreign Service Act of 1946, as amended.

(b) *Annuitant* has the meaning set forth in section 804(1) of the Act (22 U.S.C. 1064(1)).

(c) *Foreign Service Grievance Board* means the Board established by 22 CFR 16.10 under sections 691 and 692 of the Act (22 U.S.C. 1037–1037c).

(d) *Overpayments* has the same meaning as in § 822(d) of the Act (22 U.S.C. 1076a(d)).

(e) *Secretary* means the Secretary of State.

§ 17.2 General provisions.

Section 822(d) of the Act (22 U.S.C. 1076(d)) provides recovery of overpayments by the Department of State of benefits to annuitants may not be made when, in the judgment of the Secretary, the individual recipient is without fault and recovery would be against equity and good conscience or administratively infeasible. This part establishes procedures for notification to annuitants of their rights, for administrative determination of those rights and for appeals of negative determinations. This part also establishes procedures by which an annuitant can contest a determination that the annuitant has been overpaid.

§ 17.3 Notice to annuitants.

The Office of Finance, Department of State, shall give written notification to any person who has received an overpayment, the cause of the overpayment, the intention of the Department to seek repayment of the overpayment, and the basis for that action, the right of the annuitant to contest the alleged overpayment or to request a waiver of recovery, and the procedure to follow in case of such contest or appeal. The notification shall allow at least 30 days from its date within which the annuitant may file a written response, which may include evidence, argument, or both.

§ 17.4 Initial determination.

(a) The Director of the Office of Finance will be responsible for preparing an administrative file as a basis for determination in each case where an annuitant contests a claim to recover overpayment or requests waiver of recovery. This file shall include: all correspondence with the annuitant; documentation on the computation of the annuity or annuities in question; and any information available to the Department which bears on the application of the standards of waiver of recovery to the particular case.

(b) On the basis of the administrative file, the Director, after consultation with and review of the preliminary findings by the Office of the Legal Ad-

viser and Office of Employee Relations, Bureau of Personnel, shall prepare a preliminary finding. This preliminary finding shall contain a positive or negative determination on all material issues raised by the contest or request for waiver. In the latter case, there shall be a determination of the applicability or non-applicability of each of the standards set forth in § 17.5.

(c) The Director shall make the final administrative determination.

(d) At any time before the final administrative decision, the Director may request the annuitant to supplement his or her submission with additional factual information and may request that the annuitant authorize the Department of State to have access to bank and other financial records bearing on the application of these regulations.

§ 17.5 Standards.

(a) *General.* (1) Waiver of overpayment will not be allowed in any case prior to receipt and evaluation of a statement of financial responsibility, duly sworn by the recipient of the overpayment, except in those cases where the facts make it obvious that the individual has no capacity to repay. Such statement will be waived in the latter case.

(2) Waiver of overpayment will not be allowed when overpayment has been made to an estate.

(b) *Fault.* (1) Determinations of "fault" or the absence thereof, will be made according to the commonly understood and standard concepts of equity applicable thereto.

(2) A prerequisite to waiver of overpayment shall be clear and convincing showing that the person from whom recovery would otherwise be made did not cause, or was not otherwise responsible for the overpayment, *i.e.*, he or she performed no act of commission or omission that resulted in the overpayment. Pertinent consideration to be made in this area are:

(i) Whether payment resulted from the individual's incorrect (not necessarily fraudulent) statement.

(ii) Whether he or she knew the payment was erroneous and, if so, whether his or her subsequent failure to act resulted from desire or ignorance.

(iii) Whether he or she failed to disclose material facts in his or her possession.

(iv) Whether he or she could have determined that the payment was erroneous.

(c) *Equity and good conscience.* (1) “Equity and good conscience” as defined in equity and the commonly understood meaning thereof shall be attached to waiver determinations. In addition, the decision must be made whether the exercise of waiver of overpayment would be in opposition to the basic purpose of title VII of the Foreign Service Act (22 U.S.C. 1061, *et seq.*) and would injure the administration of such title.

(2) The following guides will also be applied, as appropriate:

(i) Waiver of overpayment may be granted when an individual by reason of receipt of the overpayment has: (a) Relinquished a valuable right; or (b) changed his or her position for the worse.

(ii) Waiver of overpayment may be granted when the individual has consistently acted in good faith regarding the overpayment.

(iii) Waiver of overpayment cannot be granted when the individual has been found to be at fault or if the overpayment has been obtained by fraud.

§ 17.6 Notice of decision and right of appeal.

If the annuitant, without good cause shown, fails or refuses to produce the requested additional information or authorization, the Department of State is entitled to make adverse inferences with respect to the matters sought to be amplified, clarified, or verified.

(a) The final administrative decision shall be reduced to writing and the Director shall send it expeditiously to the annuitant.

(b) If the decision is adverse to the annuitant, the notification of the decision shall include a written description of the annuitant’s rights of appeal to the Foreign Service Grievance Board, including time to file, where to file, and applicable procedure.

§ 17.7 Appeal.

The Foreign Service Grievance Board shall entertain any appeal under this

part in accordance with the regulations of the Board set forth in 22 CFR part 16. The Director of the Office of Finance, with such assistance as may be necessary, shall represent the Department in proceedings before the Board. The decision of the Board is final.

EFFECTIVE DATE NOTE: At 71 FR 16229, March 31, 2006, part 17 was revised, effective May 1, 2006. For the convenience of the user, the revised text is set forth as follows:

PART 17—OVERPAYMENTS FROM THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND UNDER THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM (FSRDS) AND THE FOREIGN SERVICE PENSION SYSTEM (FSPS)

Sec.

- 17.1 General.
- 17.2 Conditions for waiver of recovery of an overpayment.
- 17.3 Fault.
- 17.4 Equity and good conscience.
- 17.5 Financial hardship.
- 17.6 Ordinary and necessary living expenses.
- 17.7 Waiver precluded.
- 17.8 Burdens of proof.
- 17.9 Procedures.

AUTHORITY: 22 U.S.C. 4047(d); 22 U.S.C. 4071(b); 5 U.S.C. 8470(b); 5 CFR 845.301–07.

§ 17.1 General.

This part establishes procedures for notifying individuals of their rights if they have received an overpayment from the Foreign Service Retirement and Disability Fund under Chapter 8 of the Foreign Service Act of 1980, as amended, including their right to contest the determination that there has been an overpayment and the right to request a waiver of recovery of the overpayment. This part also provides the procedures for administrative determination of these rights and for appeals of negative determinations.

§ 17.2 Conditions for waiver of recovery of an overpayment.

(a) *Foreign Service Retirement and Disability System.* Recovery of an overpayment from the Foreign Service Retirement and Disability Fund under the Foreign Service Retirement and Disability System may be waived pursuant to section 4047(d), of title 22, United States Code when the individual is without fault and recovery would be against equity and good conscience or administratively infeasible.

(b) *Foreign Service Pension System.* Recovery of an overpayment from the Foreign Service Retirement and Disability Fund under the Foreign Service Pension System may be

waived pursuant to section 4071(b) of title 22, United States Code and section 8470(b) of title 5, United States Code when the individual is without fault and recovery would be against equity and good conscience.

(c) When it has been determined that the recipient of an overpayment is ineligible for waiver, the individual is nevertheless entitled to an adjustment in the recovery schedule if he or she shows that it would cause him or her financial hardship to make payment at the rate scheduled.

§ 17.3 Fault.

A recipient of an overpayment is without fault if he or she performed no act of commission or omission that resulted in the overpayment. The fact that the Department of State or other agency may have been at fault in initiating an overpayment will not necessarily relieve the individual from liability.

(a) *Considerations.* Pertinent considerations in finding fault are—

(1) Whether payment resulted from the individual's incorrect but not necessarily fraudulent statement, which he/she should have known to be incorrect;

(2) Whether payment resulted from the individual's failure to disclose material facts in his/her possession which he/she should have known to be material; or

(3) Whether he/she accepted a payment which he/she knew or should have known to be erroneous.

(b) *Mitigation factors.* The individual's age, physical and mental condition or the nature of the information supplied to him or her by the Department of State or a Federal agency may mitigate against finding fault if one or more contributed to his or her submission of an incorrect statement, a statement which did not disclose material facts in his or her possession, or his or her acceptance of an erroneous overpayment.

§ 17.4 Equity and good conscience.

(a) *Defined.* Recovery is against equity and good conscience when—

(1) It would cause financial hardship to the person from whom it is sought;

(2) The recipient of the overpayment can show (regardless of his or her financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment either he/she has relinquished a valuable right or changed positions for the worse; or

(3) Recovery could be unconscionable under the circumstances.

(b) [Reserved]

§ 17.5 Financial hardship.

(a) Waiver of overpayment will not be allowed in any case prior to receipt and evaluation of a completed Statement of Finan-

cial Status, duly sworn by the recipient of the overpayment.

(b) Financial hardship may be deemed to exist in, but not limited to, those situations where the recipient from whom collection is sought needs substantially all of his or her current income and liquid assets to meet current ordinary and necessary living expenses and liabilities.

(1) *Considerations.* Some pertinent considerations in determining whether recovery would cause financial hardship are as follows:

(i) The individual's financial ability to pay at the time collection is scheduled to be made.

(ii) Income to other family member(s), if such member's ordinary and necessary living expenses are included in expenses reported by the individual.

(c) *Exemptions.* Assets exempt from execution under State law should not be considered in determining an individual's ability to repay the indebtedness, rather primary emphasis shall be placed upon the individual's liquid assets and current income in making such determinations.

§ 17.6 Ordinary and necessary living expenses.

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, food, clothing, insurance (life, health and accident), taxes, installment payments, medical expenses, support expenses when the individual is legally responsible, and other miscellaneous expenses which the individual can establish as being ordinary and necessary.

§ 17.7 Waiver precluded.

(a) Waiver of an overpayment cannot be granted when:

(1) The overpayment was obtained by fraud; or

(2) The overpayment was made to an estate.

(b) [Reserved]

§ 17.8 Burdens of proof.

(a) *Burden of the Department of State.* The Bureau of Resource Management, Department of State, must establish by the preponderance of the evidence that an overpayment occurred.

(b) *Burden of individual.* The recipient of an overpayment must establish by substantial evidence that he or she is eligible for waiver or an adjustment in the recovery schedule.

§ 17.9 Procedures.

(a) *Notice.* The Bureau of Resource Management, Department of State, shall give written notification to any individual who has received an overpayment promptly by first-class mail to the individual at the individual's most current address in the records of

the Bureau of Resource Management. The written notice shall inform the individual of:

- (1) The amount of the overpayment;
- (2) The cause of the overpayment;
- (3) The intention of the Department to seek repayment of the overpayment,
- (4) The date by which payment should be made to avoid the imposition of interest, penalties, and administrative costs;
- (5) The applicable standards for the imposing of interest, penalties, and administrative costs;
- (6) The department's willingness to discuss alternative payment arrangements and how the individual may offer to enter into a written agreement to repay the amount of the overpayment under terms acceptable to the Department; and

(7) The name, address and telephone number of a contact person within the Bureau of Resource Management. The written notice also shall inform the individual of their right to contest the overpayment, their right to request a waiver of recovery of the overpayment, and the procedures to follow in case of such contest or request for waiver of recovery. The notification shall allow at least 30 days from its date within which the individual may contest in writing the overpayment or request a waiver of recovery, including with their submission all evidence and arguments in support of their position.

(b) *Administrative file.* The Bureau of Resource Management will prepare an administrative file as a basis for determination in each case where an individual contests a claim to recover overpayment or requests waiver of recovery of the overpayment. On the basis of the administrative file, the Chief Financial Officer or his or her delegate, shall make the final administrative determination.

(c) *Additional information.* At any time before the final administrative decision, the Department may request the individual to supplement his or her submission with additional factual information and may request that the individual authorize the Department of State to have access to bank and other financial records bearing on the application of these regulations. If the individual, without good cause shown, fails or refuses to produce the requested additional information or authorization, the Department of State is entitled to make adverse inferences with respect to the matters sought to be amplified, clarified, or verified.

(d) *Decision and right of appeal.* The final administrative decision shall be reduced to writing and sent to the individual. If the decision is adverse to the individual, the notification of the decision shall include a written description of the individual's rights of appeal to the Foreign Service Grievance Board. The Foreign Service Grievance Board shall consider any appeal under this part in ac-

cordance with the regulations of the Board set forth in 22 CFR part 901.

PART 18—REGULATIONS CONCERNING POST EMPLOYMENT CONFLICT OF INTEREST

Subpart A—General Provisions

Sec.

- 18.1 Scope.
- 18.2 Definitions.
- 18.3 Director General.
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- 18.6 Authority to prohibit appearances.
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- 18.8 Institution of proceeding.
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- 18.11 Answer.
- 18.12 Motions and requests.
- 18.13 Representation.
- 18.14 Hearing examiner.
- 18.15 Hearings.
- 18.16 Evidence.
- 18.17 Depositions.
- 18.18 Proposed findings and conclusions.
- 18.19 Decision of the hearing examiner.
- 18.20 Appeal to the Board of Appellate Review.
- 18.21 Decision of the Board of Appellate Review.
- 18.22 Notice of disciplinary action.

AUTHORITY: 18 U.S.C. 207, as amended, 92 Stat. 1864.

SOURCE: 46 FR 2608, Jan. 12, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 18.1 Scope.

This part contains rules governing disciplinary action against a former officer or employee of the Department of State, including the Foreign Service, because of a violation of the post employment conflict of interest prohibitions. Such disciplinary action may include prohibition from practice before the Department of State and any component thereof as defined in this part.