

## § 17.4

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 Financial 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

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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;