

Department of the Interior Departmental Manual

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Series: Financial Management
Part 344: Debt Collection
Chapter 9: Waiver of Claims for Erroneous Payments

Originating Office: Office of Hearings and Appeals

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9.1 **Purpose.** This chapter sets forth the standards and procedures for waivers of claims of the U.S. Department of the Interior (Department) arising out of erroneous payments of pay and allowances, travel, transportation, and relocation expenses and allowances, made to or on behalf of employees of the Department, the collection of which would be against equity and good conscience and not in the best interests of the United States. The Director of the Office of Hearings and Appeals (OHA) intends to use the standards and procedures which were applicable to waiver of debts before the effective date of the transfer of authority, December 18, 1996, which are published at 4 C.F.R. Chapter 1, Parts 91 and 92 (1997), with the exceptions specified in this chapter.

9.2 **Authorities.**

A. 5 U.S.C. § 5584, “Claims for overpayment of pay and allowances, and of travel, transportation and relocation expenses and allowances.”

B. Memorandum of the Office of Management and Budget, “Determination with Respect to Transfer of Functions Pursuant to Public Law 104-316,” December 17, 1996.

C. Reorganization Plan No. 3 of 1950 as ratified by P.L. 98-532, “To prevent disruption of the structure and functioning of the Government by ratifying all reorganization plans as a matter of law.”

D. 112 DM 13, “Office of Hearings and Appeals, Organization.”

E. 43 C.F.R. § 4.1, “Department Hearings and Appeals Procedures, Scope of Authority.”

9.3 **Authority to Waive.**

A. Amounts totaling \$4,000 or more. The Director of OHA, or his/her designee, shall be the “authorized official” for the purposes of 5 U.S.C. § 5584 with respect to requests for waivers of a claim arising out of an erroneous payment of pay or allowances made to employees

on or after July 1, 1960, or an erroneous payment of travel, transportation, or relocation expenses or allowances made on or after December 28, 1985 for amounts totaling \$4,000 or more.

B. Amounts totaling less than \$4,000. The head of a Bureau, or his/her designee (Bureau head), or the Payroll Operations Division (POD), shall be the “authorized official” for the purposes of 5 U.S.C. § 5584 with respect to requests for waivers of a claim arising out of an erroneous payment of pay or allowances made to employees on or after July 1, 1960, or an erroneous payment of travel, transportation, or relocation expenses or allowances made on or after December 28, 1985, for amounts totaling less than \$4,000.

C. Authorized Official. The “authorized official,” as determined by the parameters set forth above in this section, may:

(1) grant a waiver, in whole or in part, of a claim consistent with the amounts listed above; or

(2) deny a waiver, in whole or in part, of a claim, consistent with the amounts listed above.

D. Right to Appeal. If a request for a waiver is denied by the Bureau head or the POD, the employee or other person from whom collection is sought (employee) must be advised of the right to appeal the denial to the Director of OHA pursuant to the procedures provided in this chapter.

9.4 **Conditions for Waivers.**

A. Three-year application period. A request for a waiver must be received in the Bureau that made the erroneous payment, or by the POD, within 3 years immediately following the date on which the erroneous payment was discovered by the Bureau or the POD.

B. Employee Notification. The employee shall be promptly notified of the discovery of an erroneous payment by the Bureau or the POD. In determining the date of discovery of an erroneous payment, all doubts are to be resolved in favor of the employee.

C. General Criteria for Granting Waivers. A 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, or other person having an interest in obtaining a waiver of the claim. Generally, a waiver is precluded when an employee, or other person having an interest in obtaining a 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. A waiver under this standard must necessarily depend upon the facts existing in the particular case. The facts upon which a waiver is based shall be recorded in detail in the decision granting the waiver and made a part of the written record in accordance with the provisions of

this chapter (see paragraph 9.5).

9.5 **Filing a Request for a Waiver.**

A. Who May Request a Waiver. A request for a waiver shall be initiated by an employee of the Department, another person from whom collection is sought (e.g., a former employee or a survivor of an employee), an authorized official of the Bureau that made the erroneous payment, the POD in appropriate situations, the Director of OHA, or his/her designee. The individual requesting a waiver may also be referred to as an applicant.

B. Where to Submit a Request for a Waiver.

(1) A request for a waiver filed by an employee or other person from whom collection is sought must be submitted to the POD or the Bureau that made the erroneous payment.

(2) After the Bureau or the POD has prepared an Administrative Report and issued a determination or recommendation, as required by paragraphs 9.5 and 9.6, the employee may request that the Bureau or the POD forward an appeal to the Director of OHA for further review.

(3) Waiver requests where the gross original amount of the claim is more than \$4,000 and the Bureau or the POD recommends approval of the waiver, shall be forwarded by the Bureau or the POD for consideration by the Director of OHA or his/her designee, at: Director, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203.

(4) The employee or other person from whom collection is sought will be notified by the Bureau or the POD where to file a request for waiver.

C. How to Request a Waiver. Any request for waiver, or an appeal of a Bureau's or the POD's denial of a waiver request, shall be filed with the appropriate Bureau or POD, in accordance with filing procedures, that the appropriate Bureau or POD shall provide to the employee. No specific form is required to request a waiver or to appeal a Bureau or POD denial of a waiver request, but the employee should state in writing that a waiver is being requested and provide the following information: full name of the employee or other person from whom collection is being sought along with a mailing address and telephone number, the Bureau that made the erroneous payment, and a copy of the Bill for Collection or a copy of the notification of collection. When denial of a waiver request is appealed to OHA, the employee should also state the basis of the appeal; i.e., the reasons for challenging the POD's or the Bureau's decision on the waiver request.

9.6 **Administrative Report of the Bureau.** Upon receipt of any request for waiver, the Bureau that made the erroneous payment or the POD shall prepare a written Administrative Report that includes all of the information specified below. The Director of OHA or his/her designee will promptly notify the Bureau or the POD if the Administrative Report is incomplete.

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A. Contents of the Report and Action by the Bureau. When a Bureau or POD receives either a request for a waiver of a claim or an appeal to be submitted to the Director of OHA, the Bureau or POD shall prepare a written Administrative Report containing a chronological summary of the facts and circumstances, including:

(1) The names and mailing addresses of each employee or other person from whom collection is sought, or a statement that the person cannot reasonably be located;

(2) The gross original amount of the claim;

(3) The date the erroneous payment was discovered;

(4) The date the employee was notified of the error and a statement of the erroneous amounts paid before and after the date of such notice;

(5) A statement as to the circumstances under which the erroneous payment was made, the approximate date of the employee's knowledge or awareness of the erroneous payment and steps the employee took, if any, to bring the matter to the attention of the appropriate official and the Bureau's response;

(6) A determination as to whether there is any indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee, or other interested person, and the factual basis for such determination;

(7) A statement as to whether or not the erroneous payment is of a type that was subject to an exception made by the Comptroller General of the United States;

(8) Legible copies or originals of supporting documents such as leave and earnings statements, travel authorizations and vouchers, or other relevant official documents;

(9) Statements of the employee, or other interested persons;

(10) A statement as to the reason the Bureau or the POD believes the erroneous payment occurred and the corrective action taken to prevent the occurrence of similar erroneous payments; and

(11) A statement of the recommendation of the Bureau or POD, if applicable.

B. Maintenance of the Report. The Administrative Report shall be maintained in the Bureau or POD waiver file. If a request for a waiver or an appeal of a Bureau or POD decision on a waiver is submitted to OHA for consideration, then a copy shall be provided to the Director of OHA or the Director's designee.

9.7 Waiver Determinations and Appeals.

A. Bureau Determinations. Upon receipt of a request for waiver of a claim, the Bureau or POD shall complete the Administrative Report, and shall grant or deny waiver of a claim in a gross original amount of less than \$4,000, if authorized by law and the applicable standards. The Bureau or POD may deny waiver of a claim in any amount, but if the Bureau or the POD recommends granting a waiver of a claim in a gross original amount in excess of \$4,000, the waiver request and recommendation by the Bureau or POD, including the complete Administrative Report, (see paragraph 9.5), shall be forwarded to the Director of OHA. The Bureau or the POD shall provide the employee written notice as to whether the waiver request has been granted, denied, or forwarded to the Director of OHA. When a waiver request is denied, the written notice shall state the basis for the decision and inform the employee of the right to appeal the Bureau's or the POD's decision to the Director of OHA.

B. OHA Action on Waiver Requests and Appeals.

(1) Upon receipt of a recommendation to grant a request for a waiver for a gross original amount greater than \$4,000, the Director of OHA, or the Director's designee, shall send a Notice to the Bureau acknowledging receipt of the matter and notifying the Bureau or POD if the Administrative Report is incomplete. Upon receipt of the complete Administrative Report, the Director of OHA or the Director's designee shall make a determination to deny or grant the waiver, in whole or in part, and indicate the reasons for the decision. A copy of the decision will be sent to the employee and the Bureau or the POD.

(2) When OHA receives an appeal of a waiver decision by the Bureau or POD, the Director of OHA or the Director's designee, shall send a Notice to the Bureau or POD and the employee, acknowledging receipt of the matter and notifying the Bureau or POD if the Administrative Report is incomplete. Upon receipt of the complete Administrative Report, the Director of OHA or the Director's designee will issue a decision on the appeal and will send a copy of the decision to the Bureau or POD and to the employee. The Director or his/her designee will consider the appeal in accordance with applicable standards and law.

C. Petition for Reconsideration. The employee may petition for reconsideration of an OHA decision on a request for a waiver or a waiver appeal. The written request for reconsideration shall be sent to the Director, Office of Hearings and Appeals, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203, within 15 business days of receipt of the OHA decision. The request for reconsideration must demonstrate that the Director of OHA has committed a material error of law or policy. The Director of OHA, or his/her designee, will issue an Order on Reconsideration within 60 business days of receipt of the request. A copy of the Order on Reconsideration will be provided to the employee and the Bureau or the POD.

9.8 Refunds of Amounts Repaid and Waived.

A. When an employee or other person from whom collection is sought has repaid all or part of a claim to the United States and all or part of the claim is subsequently waived, the

request for a waiver shall be construed as a request for a refund and the Bureau, or the POD shall, to the extent of the waiver, refund the amount paid. However, no refund shall be paid when the employee cannot reasonably be located within 2 years after the effective date of the waiver.

B. When no refund is made to an otherwise eligible person, the written record should include information as to the attempts made to locate the person and other pertinent information.

9.9 **Written Record.**

A. The written record in each waiver case will contain the Administrative Report of the Bureau or the POD, any written comments submitted by the employee or other interested person, an account of the waiver action taken and the reasons therefor, and the action taken to refund amounts paid.

B. The Bureau or the POD shall retain a written record for 6 years and 3 months from final Agency action on the waiver request.

C. Upon request by an employee or other person against whom collection is sought, the Bureau or the POD shall make the written record of the waiver request available to the individual for inspection.

D. If an individual other than the employee requests access to the written record of the waiver request, the Bureau or the POD will analyze the request in accordance with the Privacy Act and Freedom of Information Act (FOIA).

9.10 **Referral of Claims for Collection or Litigation.** No claim for recovery of an erroneous payment that is under consideration for waiver shall be referred to the Attorney General under the provisions of the Debt Collection Act (31 U.S.C. 3711) unless the time remaining for suit within the applicable limitation does not permit such waiver consideration prior to referral.

9.11 **Publication.** The OHA shall make copies of OHA Orders, Decisions, and Orders on Reconsideration available for public inspection and copying. Where appropriate, OHA will make any necessary redactions in accordance with the Privacy Act and FOIA.

9.12 **Register of Waivers.**

A. The Bureau or the POD and the OHA shall each maintain a register of the information listed below, showing the disposition of each waiver application they considered pursuant to this chapter. The registers shall be retained for review in the event of an audit. The registers shall contain the following information:

- (1) The total amount waived by the Bureau or the POD or OHA;
- (2) The number and dollar amount of waiver requests granted in full;

- (3) The number of waiver requests granted in part, denied in part, and the dollar amount of each;
- (4) The number and dollar amount of waiver requests denied in their entirety;
- (5) The number of waiver requests referred to OHA for action;
- (6) The dollar amount refunded as a result of waiver action by the Bureau or the POD; and
- (7) The dollar amount refunded as a result of waiver action by taken by OHA.

9.13 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 chapter, is deemed a valid payment for all purposes.