

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Public Health Service

Chapter CC42--Pay and Allowance Administration  
Subchapter CC42.7--Collections and Deductions  
Personnel INSTRUCTION 2--Waiver of Claims for Erroneous Payment of Pay and Allowances

CONTENTS

<u>Section</u>	<u>Subject</u>	<u>Page</u>
A.	Purpose and Scope . . . . .	1
B.	Standards for Waiver of Claims for Erroneous Payment of Pay and Allowances . . .	1

Section A. Purpose and Scope

The regulations set forth in Section B of this INSTRUCTION prescribe the standards for the waiver of claims of the United States against a person arising out of the erroneous payment of pay and allowances to an employee of an agency and a member of the uniformed services, the collection of which would be against equity and good conscience and not in the best interests of the United States. This material is reprinted from 4 CFR 91 which are the regulations published by the General Accounting Office to implement the statutory waiver provisions of 5 U.S.C. 5584 and 10 U.S.C. 2774.

Section B. Standards for Waiver of Claims for Erroneous Payment of Pay and Allowances

<b>SUBCHAPTER G-STANDARDS FOR WAIVER OF CLAIMS FOR ERRONEOUS PAYMENT OF PAY AND ALLOWANCES</b>	91.1 Prescription of standards. 91.2 Definitions. 91.3 Exclusions.
<b>PART 91-STANDARDS FOR WAIVER</b>	91.4 Waiver of claims for erroneous payment of pay and allowances. 91.5 Conditions for waiver of claims.
Sec.	

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.

§ 91.1 Prescription of standards.

These regulations are issued by the Comptroller General of the United States in implementation of section 5584 of title 5, United States Code, as added by Pub. L. 90-616, approved October 21, 1968, as amended by Pub. L. 92-453, approved October 2, 1972, and Pub. L. 93-359, approved July 25, 1974, and also in implementation of new section 2774 added to Title 10, United States Code, and new section 716 added to Title 32, United States Code, by said Pub. L. 92-453. These regulations prescribe standards for the waiver of claims of the United States against a person arising out of an erroneous payment of pay or allowances to an employee of an agency and a member 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.

§ 91.2 Definitions.

In this subchapter:

- (a) "Employee" means an employee as defined in 5 U.S.C. 2105 who is or was employed in a civilian capacity by an agency.
- (b) "Agency" means –
- (1) An executive agency as defined in 5 U.S.C. 105,
  - (2) The Government Printing Office,
  - (3) The Library of Congress,
  - (4) The Office of the Architect of the Capitol, and
  - (5) The Botanic Garden.
- (c) "Pay" as it relates to an employee means salary, wages, pay, compensation, emoluments, and remuneration or services. It includes but is not limited to overtime pay, night, Sunday standby, irregular and hazardous duty differential, pay for Sunday and holiday work; payment for accumulated and accrued leave; and severance pay. It does not include travel and transportation

expenses and allowances, and relocation allowances payable under 5 U.S.C. 5724a.

(d) "Allowances" as they relate to an employee include but are not limited to payments for quarters, uniforms, and overseas cost of living expenses, but exclude travel and transportation allowances, and relocation expenses payable under 5 U.S.C. 5724a.

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

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

(g) "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.

(h) The term "Secretary concerned" is that as defined in section 101(5) of Title 37, United States Code.

(i) "Pay" as it relates to members includes but is not limited to base and longevity pay, basic pay, training duty pay, special and incentive pays, readjustment pay, severance pay, musterling-out pay, retainer pay, retired pay, retirement pay, lump sum leave pay, and equivalent pay. It does not include travel or transportation allowances.

(j) "Allowances" as they relate to members include but are not limited to payments in lieu of subsistence, quarters, uniforms, clothing, personal money allowance, family separation allowance, and overseas station allowance. They do not include travel or transportation allowances.

(k) "Aggregate amount" means gross entitlement due employee or member.

[37 FR 26095, Dec. 8, 1972, as amended at 40 FR 36099, Aug. 19, 1975]

§ 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 United States Botanic Garden, and the General Accounting Office.

(c) Employees of the Administrative Office of the U.S. Courts, the Federal Judicial Center and other employees of the judicial branch.

[37 FR 26095, Dec. 8, 1972. as amended at 40 FR 36099, Aug. 19, 1975]

**§ 91.4 Waiver of claims for erroneous payment of pay and allowances.**

(a) The Comptroller General of the United States may waive in whole or in part a claim of the United States in any amount arising out of erroneous payment or pay or allowances, to an employee or member when all of the conditions set out in 191.5 are present. 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 permission from the Attorney General.

(b) The head of *the agency* or the Secretary concerned, as appropriate, may waive in whole or in part a claim of the United States in an amount aggregating not more than \$500, without regard to any repayments, against any person arising out of an erroneous payment of pay or allowances to or on behalf of an employee or member when all of the conditions set out in 191.5 are present, except that he may not waive such a claim which is the subject of an exception made by the Comptroller General in the account of any accountable official, or which has been transmitted to the General Accounting Office for collection or to the Attorney General for litigation. He may deny an application for waiver of a claim in any amount, provided that in those cases where the claim is in an amount aggregating more than \$500 the employee or member must be advised of his right to appeal the denial to the Comptroller General of the United States.

[37 FR 26095, Dec. 8, 1972. as amended at 44 FR 18639, Mar. 29, 1979]

**§ 91.5 Conditions for waiver of claims.**

Claims of the United States arising out of an erroneous payment of pay or allowances may be waived in whole or in part in accordance with the provisions of 191.4 whenever:

(a) The claim arises out of an erroneous payment of pay and allowances made to or in behalf of an employee on or after July 1, 1960, except that waiver action may not be taken (1) unless application is received either in the General Accounting Office or agency concerned within 3 years immediately following the date on which the erroneous payment of pay was discovered, or within 3 years after October 21, 1968, whichever is later, or (2) unless application is received either in the General Accounting Office or agency concerned within 3 years immediately following the date on which the erroneous payment of allowances was discovered, or October 2, 1975, whichever is later, or (3) in the case of employees of the Government Printing Office, the Library of Congress, the Office of the Architect of the Capitol, or the Botanic Garden unless application is received either in the General Accounting Office or in the office of the head of the agency concerned within 3 years immediately following the date on which the erroneous payment of pay or allowances was discovered or July 25, 1977, whichever is later.

(b) The claim arises out of an erroneous payment of pay or allowances made to or in behalf of a member except that waiver action may not be taken unless application is received either in the General Accounting Office or the office of the Secretary concerned within 3 years immediately following the date on which the erroneous payment of pay or allowances was discovered.

(c) Collection action under the claim 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 of pay or allowances 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 member or any other person having an interest in obtaining a waiver of the claim, Any significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily would preclude a waiver when the employee or member fails to bring the matter to the attention of appropriate officials. Waiver of overpayments of pay and allowances under this standard necessarily must depend upon the facts existing in the particular case. The facts upon which a waiver is based should be recorded in detail and made a part of the written record in accordance with the provisions of 192.6 of this subchapter.

[37 FR 26095, Dec. 8, 1972, as amended at 40 PR 36099, Aug. 19, 1975]

## PART 92-PROCEDURE

Sec.

92.1 Referral of applications for waiver or refund to the head of the agency or the Secretary concerned.

92.2 Investigation-Report of Investigation.

92.3 Procedure of head of agency or Secretary concerned after receiving report of investigation.

92.4 Notification of waiver action.

92.5 Refund of amounts repaid and waived.

92.6 Written record.

92.7 Register of waivers-Report.

92.8 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. 116.

### § 92.1 Referral of applications for waiver or refund to the head of the agency or the Secretary concerned.

All applications for waiver or refund shall be submitted to the head of the agency or the Secretary concerned of the department which made the erroneous payment of pay or allowances. Any such application which has not previously been considered for waiver shall be considered for waiver provided it was received within the time limitations of 191.5 of this subchapter. In the absence of other request, either the Comptroller General of the United States, the Secretary concerned or the head of the agency which made the erroneous payment of pay or allowances may initiate the waiver procedure prescribed in these regulations.

[31 FIX 26096, Dec. 6, 1972, as amended at 40 FR 36099, Aug. 19, 1975]

### § 92.2 Investigation-Report of Investigation.

(a) Except as provided in paragraph (c) of this section, all claims of the United States considered for waiver shall be investigated by the agency which made the erroneous payment of pay or allowances.

(b) The report of Investigation will be made to the head of the agency or the Secretary concerned and should include:

(1) A statement of the aggregate amount of the erroneous payment supported by a citation to the pay record or voucher or vouchers upon which the erroneous payment was made together with a showing as to the part of the erroneous payment made on each pay record or voucher.

(2) A statement showing the circumstances under which the erroneous payment was made, the date it was discovered and whether it was subject to an exception made by the Comptroller General of the United States.

(3) A statement as to whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or member or any other person having an interest in obtaining a waiver of the claim.

(4) A statement by the employee or member, as to his knowledge of the overpayment.

(5) Any other factual information in possession of the agency such as payroll change slips, personnel action forms, leave and earnings statements, indoctrination or other instruction indicating knowledge on the part of the employee or member concerning the possibility of having received an erroneous payment of pay or allowances.

(c) An Investigation will not be required in those cases of overpayment of pay or allowances involving amounts of \$100 or less where there is no indication in the record of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or member or any other person having an interest in obtaining a waiver of the claim. \*

[37 FR 26096, Dec. 8, 1972, as amended at 40 FR 36099, Aug. 19, 1975; 47 FR 12607, Mar. 24, 1982]

**§ 92.3 Procedure of head of agency or Secretary concerned after receiving report of investigation.**

After the head of the executive agency or Secretary concerned receives the report of investigation made in accordance with the provisions of 192.2 he shall:

(a) Determine the reason for the erroneous payment of pay and allowances, take such corrective action as may be required to prevent similar erroneous payments, and make a written report thereof (see j 92.6).

(b) Waive the claim of the United States in whole or in part without regard to any repayment, if it is in an amount aggregating not more than \$500, and he determines that waiver would be proper, and record the date and reasons for the waiver, unless the claim has been referred to the Comptroller General for collection or the Attorney General for litigation in which case the report of Investigation together with his

recommendation will be referred to the Comptroller General of the United States. He may deny an application for waiver of a claim in any amount, provided that in those cases where the claim is in an amount aggregating more than \$500 the employee or member must be advised of his right to appeal- the denial to the Comptroller General of the United States.

(c) Refer the report of investigation to the Comptroller General of the United States for determination if he recommends waiver and the claim is in an amount aggregating more than \$500, or

d) Refer the report of investigation to the Comptroller General of the United States in any case in which he can take final action if he has doubt as to whether waiver action is proper, setting forth the basis for his doubt.

[37 PR 26096, Dec. 8, 1972, as amended at 44 FR 18639, Mar. 29, 1979]

**§ 92.4 Notification of waiver action.**

The Comptroller General of the United States or the head of the agency or the Secretary concerned, as the case may be, to the extent practicable, shall send written notification to all concerned as to the final action taken upon a claim of the United States for erroneous payment of pay and allowances considered for waiver. If he reasonably can be located, any person who has repaid to the United States all or part of a claim which has been waived in whole or in part and who has not previously made application for refund, in addition to being informed as to the waiver action shall also be informed of his right to make application to the employing agency or department concerned at the time of erroneous payment for refund within 2 years following the date of the waiver action.

[37 FR 26096, Dec. S. 1912, as amended at 40 FR 36099, Aug. 19, 1975]

**§ 92.5 Refund of amounts repaid and waived.**

The employing agency or department concerned at the time of the erroneous payment shall refund any amounts to a person who has repaid to the United States all or part, as appropriate, of the claim which has been waived in whole or in part to the extent waived, provided application is made to the employing agency or department concerned for the refund within 2 years following the date of the waiver. Refunds shall be charged to the appropriation from which the erroneous payment was made.

**§ 92.6 Written record.**

The report of investigation, a detailed account of the corrective action taken, an account of the waiver action taken and the reasons therefor, and other pertinent information such as the action taken upon an application for refund shall constitute the written record in each case.

[37 M 26097, Dec. 8, 1972]

**§ 92.7 Register or waivers--Report.**

(a) Each agency or department concerned shall maintain a register, and where appropriate separate registers, one for employees and one for members. Each register shall show the disposition of each claim of the United States for erroneous payment of pay and allowances considered for waiver. The registers, together with the written record as described in 92.6, shall be available for review by the General Accounting Office.

(b) Within 60 days after the close of each fiscal year, the head of each agency or the Secretary concerned exercising waiver authority shall furnish a consolidated report to the Comptroller General of the United States showing the total amount waived by the agency including the number of waiver requests granted in full and the dollar amount waived, number of waiver requests denied in entirety and the amount thereof, number of claims which have been waived in part include the aggregate amount waived and the aggregate amount denied in this category; and the number of

requests transmitted to the General Accounting Office for waiver action. There should also be furnished a report of the amount refunded as a result of waiver action by, the head of the agency or Secretary concerned and the amount refunded as a result of waiver action by the Comptroller General.

[37 FR 26096, Dec. 8, 1972, as amended at 40 FR 36099, Aug. 19, 1975]

**§ 92.8 Referral of claims for collection or litigation.**

(a) If the head of the agency or Secretary concerned has considered waiver and has denied waiver in whole or in part he shall so advise the General Accounting Office when referral for collection is made to it pursuant to 31 U.S.C. 3702.

(b) No claim for the recovery of an erroneous payment of pay and allowances, which is under consideration for waiver shall be referred to the Attorney General unless the time remaining for suit within the applicable limitation does not permit such waiver consideration prior to referral.

[37 FR 26096, Dec. 8, 1972, as amended at 40 FR 36099, Aug. 19, 1975; 43 FR 56011, Nov. 30, 1978; 47 FR 56980, Dec. 22, 1982]

**PART 93-EFFECT OF WAIVER**

Sec.

93.1 Credit in accounts.

93.2 Waived payment deemed valid.

93.3 Effect on other authority.

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.

SOURCE: 37 FR 26097, Dec. 8, 1972, unless otherwise noted.

**§ 93.1 Credit in accounts.**

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.

**§ 93.2 Waived payment deemed valid.**

An erroneous payment of pay or allowances, the collection of which is waived is deemed a valid payment for all purposes.

**§ 93.3 Effect on other authority.**

The provisions of these regulations do not affect any authority under any statute, other than 5 U.S.C. 5584, 10 U.S.C. 2774 and 32 U.S.C. 716, to litigate, settle, compromise, or waive any claim of the United States.