


Approved for Release

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Date

**DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT
HUMAN RESOURCES (HR) BULLETIN #238, FY20**

SUBJECT: Waivers of Pay and/or Allowances Overpayments, for Clients of Human Capital Client Services

EFFECTIVE DATE: Upon release

EXPIRATION DATE: Effective until cancelled or superseded

SUPERSEDES: Not applicable

BACKGROUND: The Office of Human Resources Management (OHRM) has background material on the Department of Commerce-wide policy guidance on “Waivers of Overpayment,” found at <https://www.commerce.gov/hr/practitioners/compensation-policies/general-pay/waivers-of-overpayment>. However, there was no specific written guidance and procedures for clients serviced by OHRM, Human Capital Client Services (HCCS).

PURPOSE: This HR Bulletin provides policy and procedural guidance on employee requests to waive overpayment of pay and/or allowances, including guidance on any subsequent review or analysis.

COVERAGE: The bulletin applies to employees (current and former) who are clients of the bureaus/operating units (OU) serviced by the HCCS, Office of Human Resources Management (which includes employees from the Office of the Secretary, International Trade Administration, Bureau of Industry and Security, National Telecommunications and Information Administration, Economic Development Administration, and Minority Business Development Agency).

DELEGATED AUTHORITY: Title 5, United States Code (U.S.C.) 5584(a) – A claim of the United States that arises “out of erroneous payment of pay...the collection of which would be against equity and good conscience...” may be waived by an agency head, when the aggregate amount is not more than \$1,500.

Public Law 104-316, Section 10, transferred this function to the Director of the Office of Management and Budget (OMB). Subsequently, OMB delegated its waiver authority to executive branch agency heads through a memorandum (dated December 17, 1996) that

provided authority to waive the overpayment debts owed to their agency regardless of the amount of the debt.

Department Organization Order (DOO), 10-5, "Chief Financial Officer and Assistant Secretary for Administration," delegates administrative management authorities vested in the Secretary by law to the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA) and allows the CFO/ASA to re-delegate his/her authority to any officer or employee of the Department of Commerce (Department).

The CFO/ASA delegates authority for human resources management to the Director for Human Resources Management (Director) in DOO 20-8, "Director for Human Resources Management," with the authority to re-delegate to appropriate officials of the Department.

The Director delegates this authority to heads of bureaus/OU's to waive (in whole or in part) the collection of a claim for overpayment of pay and allowances to their employees, and to further re-delegate the authority to appointing officers consistent with Department Administrative Order 202-250, "Delegations of Authority for Human Resources Management."

DEFINITIONS:

- **Aggregate** – The gross amount of the claim against the individual from whom collection is being sought.
- **Allowances** – Subsistence, quarters, uniforms, and overseas allowances, etc.¹
- **Deciding Official** – Head of the bureau/operating unit, or designee
- **Employee** – An individual as defined in 5 U.S.C. 2105 who is or was employed by the Department, including the Foreign Service and NOAA Corps members.
- **Group Waiver Authority** – When a group of individual employees receive the same type of erroneous payment.
- **Pay** – Basic pay, premium pay; pay for training, incentive awards, retirement pay, severance pay, lump sum leave settlements, locality-comparability pay, paid benefits, e.g., hospitalization, life insurance, and leave²
- **Recommending Official** – Director for Human Resources Management and Chief Human Capital Officer
- **Waiver** – The cancellation, forgiveness, or non-recovery of a debt owed to the Federal Government by an employee.

¹ Although not defined in law, this term has been broadly interpreted to encompass all types of employee compensation for services, including paid leave. (See former GAO regulations in effect before Public Law 104-316, 4 CFR parts 91 and 92).

² Same as above.

POLICY:

- An employee who has received notification that a payment may be erroneous is expected to make provisions for eventual repayment.
- Even when the deciding official (head of bureau/OU or designee) finds no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, the employee is not automatically entitled to a waiver. Before a waiver can be granted, the deciding official must also determine that collection of the claim against an employee would be against equity and good conscience and not in the best interests of the United States.
- An individual may not request a waiver until the Government has made its claim. An employee who discovers an erroneous payment or who is told to expect a bill must be billed before requesting a waiver.
- An employee must receive a Notice of Intent to Offset Salary (Form NFC 1100D), generated from the National Finance Center's (NFC) Administrative Billings and Collections Section (ABCO) prior to requesting a waiver of the bill.
- A waiver request must be received by the Enterprise Services Center (ESC) within **3 years**, immediately following the date on which the erroneous payment of pay/allowance was discovered (5 U.S.C. 5584).
- In order for a waiver of overpayment to be considered at any level, it must be received within the specified time period above, and there must be no indication of technical fault on the part of the employee or anyone else with an interest in the waiver, and collection must not be against equity or good conscience.
- OHRM will review the employee's request and the Report of Investigation submitted from the ESC. The Director for Human Resources Management and Chief Human Capital Officer will issue a written recommendation, in a Decision Memorandum, to the bureau/OU head or designee.
- If the bureau/OU head re-delegates decision authority, employees within that bureau/OU can appeal the designee's decision to the bureau/OU head. The decision rendered by the bureau/OU head is final; there is no further appeal process.
- An individual who has repaid all or part of the amount of a claim, for which a waiver is granted, is entitled to a refund (to the extent of the waiver) by the agency for that refund within 2 years following the effective date of the waiver.

Employees have no right or entitlement to a waiver of a pay/allowance overpayment.

RESPONSIBILITIES:

Employee – The employee is responsible for requesting a waiver of overpayment to the Enterprise Services Center (ESC), through the ES Portal, once he/she receives an actual bill. The employee must complete the waiver request by following the required steps in the ES Portal and provide the supporting documentation (listed under Report of Investigation) for the request.

Enterprise Services Center (ESC) – Upon receiving the overpayment waiver request, the ESC will submit a request to the National Finance Center (NFC) to place a hold on the debt during the waiver consideration process. The ESC shall provide the signed, written waiver request from the employee, along with the Report of Investigation and all supporting documentation to the Director for Human Resources Management and Chief Human Capital Officer for review.

Upon receipt of the decision from the bureau/OU head, or designee, the ESC shall process the appropriate action (waiver approval, or removal of the hold on the bill).

Office of Human Resources Management – OHRM reviews the request, the Report of Investigation, and supporting documentation, and issues a written recommendation to the head of the bureau/OU or designee, in a Decision Memorandum, on whether the collection of the debt would be against equity and good conscience, and not in the best interests of the United States.

Bureau/Operating Unit Head, or Designee – Reviews the OHRM-issued recommended Decision Memorandum, and approves/denies the employee's request for a waiver. It provides the signed Decision Memorandum to the ESC, as well as to the employee, for approval action.

PROCEDURES:

I. Upon receipt of a Bill of Collection and an employee's written request to waive the bill, a waiver package must be prepared by the ESC and submitted to OHRM, which includes the following:

Report of Investigation

1. The signed Waiver Request submitted by the employee, which should include as much information about the overpayment as possible;
2. The Bill of Collection;
3. A statement of the gross overpayment; a statement of the circumstances under which the overpayment occurred, that is, the duration, the date it was discovered and by whom, the action taken by the employee to get the situation corrected, and whether or not the payment is subject to an "exception";
4. Copies of earnings and leave statements relevant to the waiver request; SF-50s relevant to the waiver request; and any employee-orientation material that would indicate the employee's knowledge of the overpayment;
5. A statement as to whether or not there is any indication of fraud, misrepresentation, fault, lack of good faith on the part of the employee (or any other person) having an interest in obtaining a waiver;
6. A statement outlining repayment to the employee for the total amount deducted, should the waiver claim be granted; and

7. Any other information that would assist the deciding official in determining whether collection would be against equity and good conscience.

II. Upon a completed analysis of the overpayment waiver request, OHRM issues a Decision Memorandum to the head of the bureau/OU, or designee, which provides OHRM's analysis of the request and recommended decision. The memorandum shall include decision blocks for the bureau/OU head, or designee, to indicate approval or denial of the request.

III. The bureau/OU head, or designee, provides his/her final decision to the ESC, and notifies the employee of the final decision.

IV. The ESC processes the appropriate action upon receiving the decision from the head of the bureau/OU, or designee, and maintains the case file for the appropriate period of retention.

OHRM POLICY REVIEW:

OHRM will conduct a review/analysis of the Report of Investigation, and issue a written recommendation, in the form of a recommended Decision Memorandum, to the bureau/OU head, or designee, for his/her decision.

The following conditions shall be considered in the review/analysis:

- The authorized official, or the head of the agency, may not waive the claim if the application for waiver is received after the expiration of 3 years immediately following the date on which the erroneous payment of pay was discovered (5 U.S.C. § 5584(b)(2)).
- As cited in the United States Code (U.S.C.), even when an overpayment waiver is requested in a timely fashion, it may not be exercised when, in the opinion of the head of the agency, where "...there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim" (5 U.S.C. § 5584(b)(1)).
- Generally, if it is found that a reasonable person, under the circumstances, would have inquired about the correctness of a payment, but the employee did not, then the employee is not free from fault, and a waiver is ruled out (69 Comptroller General 573 (1989); B-198933). Employees are expected to have a general understanding of the Federal pay system applicable to them.
- If an employee has records that, if reviewed, would indicate an overpayment, and the employee fails to review these documents for accuracy or fails to take corrective action, then the employee is not without fault and a waiver should be denied (68 Comptroller General (1980); B-195472).
- Factors to consider when determining if collection of a claim against an employee would be against equity and good conscience and not in the best interests of the United States include, but are not limited to Title 22, CFR § 34.18.

- Whether collection of the claim would cause serious financial hardship to the employee from whom collection is sought³.
- Whether, because of the erroneous payment, the employee either has relinquished a valuable right or changed positions for the worse, regardless of the employee's financial circumstances.
- The time elapsed between the erroneous payment and discovery of the error and notification of the employee.
- Whether failure to make restitution would result in unfair gain to the employee.
- Whether recovery of the claim would be unconscionable under the circumstances.

REFERENCES:

Waivers of Overpayment link on DOC OHRM Website

<https://www.commerce.gov/hr/practitioners/compensation-policies/general-pay/waivers-of-overpayment>; 5 U.S.C. 2105, 5514, and 5584; Section 103(d) of the General Accounting Office Act of 1996, Public Law 104-316, October 19, 1996; Office of Management and Budget's memorandum "Determination with Respect to Transfer of Functions Pursuant to Public Law 104-316," December 17, 1996, at

https://obamawhitehouse.archives.gov/omb/foia_transfer_gao_auth/; GAO regulatory action (65 FR 33737, May 25, 2000) to remove its § 5584 waiver regulations formerly found in 4 CFR parts 91-92; Salary offset law and regulations: 5 U.S.C. 5514 and 5 CFR part 550, subpart K; Federal Claims Collection Law: 31 U.S.C. 3711-3720E; Federal Claims Collection Standards: 31 CFR parts 900-904

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³ Comptroller General Decision B-165908, July 9, 1969, denied a reconsideration request for a previously denied waiver of erroneous payment. The reason for the denial is, "you were aware of such errors at the time or shortly after the erroneous payments were received. Knowing that the payments were in error you could not in equity and good conscience have expended the overpayments for your personal use. You should have held such overpayments for refunding to the Government. If you had so held such overpayments there would have been no hardship on you when the collection by salary withholding occurred."