

~~ADMINISTRATIVE - INTERNAL USE ONLY~~(b) (1)
(b) (2)
(b) (3)~~ADMINISTRATIVE - INTERNAL USE ONLY~~**Date:** 06/05/2003**Category:** 20 - Human Resources **OPR:** HR**Title:** AR 20-33 WAIVER OF CLAIMS FOR ERRONEOUS PAYMENTS

--

REVISION SUMMARY: 05 June 2003

This regulation supersedes AR 20-33, dated 10 May 2002.

AR 20-33 is revised to incorporate all of the provisions of FR 20-33, and to add clarity to Agency policy regarding overpayments to Department of State integrees.

FR 20-33 is hereby rescinded.

Boldfaced text in this regulation indicates revisions.

This revision was written by Human Resources , Central and Deployed Human Resources, Policy, at HR Policy@DA.

33. (U) WAIVER OF CLAIMS FOR ERRONEOUS PAYMENTS

(U) SYNOPSIS. This regulation describes the policy and procedures for the waiver of claims for erroneous payments of pay, allowances, CIA retirement payments, and/or travel, transportation, and relocation expenses.

a. (U) AUTHORITIES. The authority for the policy described in this regulation is derived from the following:

- (1) 5 U.S.C. 5584, 8347(n) and 8461(j).
- (2) The CIA Retirement Act of 1964 for Certain Employees, as amended.
- (3) The Civil Service Retirement Act, as amended.
- (4) The Federal Employees' Retirement System Act of 1986.
- (5) General Accounting Office Act of 1996, Public Law 104-316, sections 103(d), 105(b),

~~ADMINISTRATIVE - INTERNAL USE ONLY~~APPROVED FOR RELEASE
DATE: JAN 2008

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

and 116.

- (6) OMB Determination with Respect to Transfer of Functions pursuant to Public Law 104-316, dated 17 December 1996.
- (7) OPM Transfer Concept of Operations document, dated 11 July 2000.
- (8) The CIA Act of 1949, as amended.

b. (U//AIUO) DEFINITIONS

- (1) **PAY.** Pay means salary, compensation, and other payments for services subject to Federal income taxes. Pay also includes, but is not limited to:
 - (a) Overtime,
 - (b) Night differentials,
 - (c) Hazardous duty differentials,
 - (d) Sunday premium pay,
 - (e) Holiday pay,
 - (f) Lump sum payment for accumulated and accrued leave,
 - (g) Severance pay,
 - (h) Post differential,
 - (i) Annual premium pay for regularly scheduled standby duty,
 - (j) Administratively uncontrollable overtime work,
 - (k) Language Incentive Program payments, and
 - (l) Not Used
 - (m) Flight pay.
- (2) **ALLOWANCES.** Allowances include, but are not limited to those for:
 - (a) Living quarters,
 - (b) Post,
 - (c) Foreign transfer,
 - (d) Home service transfer,
 - (e) Separate maintenance,
 - (f) Education,
 - (g) Cost-of-living, and
 - (h) Clothing.

Allowances do not include "travel payments" as defined in the next paragraph.

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

- (3) **TRAVEL PAYMENTS.** Travel payments means all payments of travel, transportation, and relocation expenses and allowances authorized under Agency regulations that are not included in the definition of allowances in the preceding paragraph.
- (4) **CIA RETIREMENT PAYMENTS.** CIA retirement payments means all payments made from the CIA Retirement and Disability System (CIARDS) and FERS Special Category and all payments made from the Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) on or after 1 January 1987.
- (5) **LANGUAGE INCENTIVE PROGRAM PAYMENTS.** Language Incentive Program payments means all payments associated with the "Language Maintenance Program" and the "Language Use Award Program."
- (6) **EMPLOYEE.** Employee means an individual within any of the categories of personnel as defined in AR 20-2, "Categories of Personnel," (excluding consultants and independent contractors) as listed below:
- (a) Staff career employees.
 - (b) Staff reserve employees.
 - (c) Staff temporary employees.
 - (d) Contract employees.
 - (e) Detailed personnel.
 - (f) FBIS foreign national employees.
- (7) **DIRECTOR OF CENTRAL INTELLIGENCE (DCI)-CERTIFIED FUNDS.** DCI-certified funds refers to expenditures for pay, allowances, and/or travel payments of a confidential, extraordinary, or emergency nature where security, operational, or cover concerns exist. These funds are accounted for solely on the certification of the DCI.
- c. (U) **ERRONEOUS PAYMENT PARAMETERS.** The following identifies the parameters within which claims for erroneous payments may be made under this regulation.
- (1) **ERRONEOUS PAYMENTS OF PAY, ALLOWANCES, AND/OR TRAVEL PAYMENTS.** Agency claims for erroneous payments of pay, allowances, and/or travel payments may be considered for waiver in whole or in part, provided the claims are for:
 - (a) Erroneous payments of pay or allowances made to an employee on or after 1 July 1960 or for
 - (b) Erroneous travel payments made on or after 28 December 1985.
 - (2) **ERRONEOUS PAYMENT OF CIARDS BENEFITS UNDER THE CIA RETIREMENT ACT.** Claims for erroneous payment of benefits under the CIA Retirement Act may be considered for waiver in whole or in part if the erroneous payments were made on or after 30 June 1974.
 - (3) **ERRONEOUS PAYMENT OF CSRS, FERS, AND FERS SPECIAL CATEGORY BENEFITS.** Claims for erroneous payments of CSRS, FERS, and FERS Special

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

Category benefits may be considered for waiver in whole or in part under this regulation if such payments were made on or after 1 January 1987.

- d. **(U//AIUO) WAIVER AUTHORITY.** The Chief, Pay & Benefits (C/P&B) or designee serves as the authorizing official for review and decision of all claims submitted for waiver of erroneous payment except retirement payments that fall under the jurisdiction of the Office of Personnel Management (OPM) as described below. C/P&B and designee's authority includes claims in which either DCI-certified or non-DCI-certified funds were used. Refer to "definitions" in this regulation for an explanation of DCI-certified funds. The C/P&B is not restricted to any dollar amount limit in his/her capacity as authorizing official.
- (1) **RETIREMENT BENEFITS.** [redacted] OPM pays retirement benefits for Agency personnel and their survivors and/or former spouses. OPM is the initial *point of contact* and decisionmaker for retirement overpayments pertaining to all Agency annuitants [redacted]. Following an initial determination by OPM, administrative procedures for a reconsideration/appeal will differ depending on the annuitant's retirement plan as described below.
- (a) **FERS and CSRS.** OPM makes the initial determination on a FERS or CSRS overpayment, but consults with C/P&B if the annuitant requests a reconsideration. After consultation with C/P&B, OPM provides a final decision to the annuitant and advises him/her of his/her right to appeal the decision to the Merit Systems Protection Board (MSPB).
- (b) **CIARDS and FERS Special.** OPM makes the initial determination on an erroneous CIARDS or FERS Special payment. After an initial decision, OPM will inform the annuitant of the overpayment and schedule collection of the overpayment. OPM will also advise the annuitant to contact the Agency C/P&B if he/she elects to pursue reconsideration. C/P&B will serve as the decision making authority on such claims submitted for reconsideration and will notify OPM that the annuitant has requested reconsideration and provide OPM with a copy of the subsequent reconsideration decision.
- (c) **Decisionmaking Authority on Retirement Payments Prior to the OPM Transfer.** If the erroneous retirement payment occurred prior to the transfer of retirement payments to OPM, C/P&B is the decisionmaking authority.
- (2) C/P&B is the waiver authority for all erroneous payments pertaining to NOCs.
- e. **(U) APPLICATION TIMEFRAME.** Applications for waiver of an Agency claim for erroneous payment are submitted to the C/P&B or to OPM in the case of applicable retirement payments. The application must be received within three years immediately following the date on which the erroneous payment of pay and allowances and travel payments is discovered and within 30 calendar days of the date of notice that an overpayment has occurred for erroneous retirement payments.
- (1) Even though Federal law prescribes a three-year statute of limitations for the Agency to consider a request for waiver of erroneous payments of pay and allowances and travel payments, approval of all waivers will depend upon the facts existing in the particular

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

case and whether the requester followed the responsibilities described below.

- (2) Individuals are responsible for reviewing/verifying documents such as his/her time and attendance record and earnings statement and other relevant documents such as a bank statement to ensure that no erroneous payments are made.
- (3) If the employee, annuitant, or other person having an interest in obtaining a waiver discovers an erroneous payment, the individual is responsible for providing prompt notification to the appropriate officials as soon as possible. He/she should not spend or rely on such payment, but should set aside these funds. An informal verbal approval from a pay clerk that a payment was valid will not satisfy this requirement.
- (4) If the employee, annuitant, or other person having an interest in obtaining a waiver is notified of an erroneous payment by Agency or OPM officials and elects to file an application for waiver of the erroneous payment, the individual is responsible for providing prompt application of a request for waiver to the appropriate officials as soon as possible.

f. (C) CONDITIONS UNDER WHICH A WAIVER MAY OR MAY NOT BE GRANTED.

- (1) **CONDITIONS UNDER WHICH A WAIVER MAY BE GRANTED FOR OVERPAYMENT OF PAY, ALLOWANCES, AND/OR TRAVEL PAYMENTS.** A request for waiver of overpayment of pay, allowances, and/or travel payments may be granted if collection would be against equity and good conscience and not in the best interests of the U.S. and

(a) **there is a finding that:**

- (1) The overpayment is due to an administrative error, and
- (2) No indication of fraud, misrepresentation, fault, or lack of good faith exists on the part of the employee, the annuitant, or any other person who has an interest in obtaining a waiver of the claim.

-
- (2) **CONDITIONS UNDER WHICH A WAIVER MAY BE GRANTED FOR CIA RETIREMENT OVERPAYMENTS.** Waivers of CIA retirement overpayments may be granted if the recipient is without fault, and recovery would be against equity and good conscience, as described in 5 CFR subsection 831.1401, et seq. and subsection 845.301, et seq. Waiver of an overpayment cannot be granted when the overpayment was made to an estate.

- (3) **CONDITIONS UNDER WHICH A WAIVER MAY NOT BE GRANTED.** Generally, a waiver is not permissible in the following situation:

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

- (a) An employee, annuitant, or other person having an interest in obtaining a waiver receives a significant unexplained increase in pay, retirement benefits, or allowances. This individual 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. The individual is responsible for reviewing/verifying documents such as his/her time and attendance record and earnings statement and other relevant documents such as a bank statement to ensure that no erroneous payments are made.
- g. **(U//AIUO) PROCEDURES.** An application for waiver of an Agency claim for erroneous payment should be made promptly following the date the erroneous payment is discovered.
- (1) **WHERE TO SEND THE REQUEST.** A request for waiver of an erroneous payment should be sent to the appropriate official – C/P&B or OPM in the case of applicable retirement payments. Refer to paragraph d above for specifics on applicable retirement payments.
- (2) **WHO MAY SUBMIT A WAIVER REQUEST.** Requests that the Agency waive its claim for reimbursement for erroneous payments may be initiated by:
- (a) The individual who received the erroneous payment, or by
- (b) An authorized Agency official on the individual's behalf.
- (3) **INFORMATION TO INCLUDE IN THE WAIVER REQUEST.** Each waiver request to the Agency must be in writing and include the following:
- (a) Supporting documentation such as copies of prior correspondence;
- (b) A written explanation of the circumstances surrounding the overpayment, and
- (c) A written explanation of why the requester believes he or she may qualify for a waiver.
- (4) **DECISION ON REQUEST FOR WAIVER OF ERRONEOUS PAYMENT.** All requests for waivers submitted to C/P&B will be reviewed and responded to within sixty days. The C/P&B will notify the requester in writing of the decision.
- (5)
- h. **(U) APPEALS.** Except for retirement payments that are addressed separately in paragraph (1) below, the requester may appeal a decision in which a request for waiver of an erroneous payment has been denied. The Chief Human Resources Officer reviews and makes decisions on all such cases submitted for appeal.
- (1) **ERRONEOUS RETIREMENT PAYMENTS.** The appeal process/authority for erroneous retirement payments differs depending on the annuitant's retirement plan as described below.

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

- (a) A FERS or CSRS annuitant has the right to appeal a reconsideration decision made by OPM as described in paragraph d above to the MSPB.
- (b) A CIARDS or FERS Special annuitant has the right to appeal a decision made by C/P&B as described in paragraph d above to the Chief Human Resources Officer.
- (2) **CASES THAT CANNOT BE APPEALED.** The requester may not appeal a decision to the Chief Human Resources Officer that was denied because the request did not meet the requirements of an eligible type of claim for consideration within the scope and conditions for waiver described in this regulation. An ineligible type of claim generally includes, but is not necessarily limited to, an advance or debt incurred because of a breach of a service agreement.
- (3) **TIMEFRAME FOR SUBMISSION.** An appeal to the Chief Human Resources Officer must be made in writing within thirty days of the Agency's written notification that the request for waiver/reconsideration was denied. (Regulations and information pertaining to appeals to the MSPB are found at 5 C.F.R. part 1201). Appeals to the Chief Human Resources Officer must be based on questions involving the interpretation of facts about the erroneous payments.
- (4) **DECISIONS ON APPEALS BY THE CHIEF HUMAN RESOURCES OFFICER.** Decisions on appeals are made in writing within sixty days after receipt of the appeal to the Chief Human Resources Officer. If a decision on an appeal cannot be made within sixty days after receipt, the requester will be informed of the delay in writing. This explanation should include reasons for the delay and a projected decision date.

I. (U//AIUO) REPORTING

- (1) **REPORT DATA.** The C/P&B will develop procedures to ensure that a sufficient written record of each case is maintained and readily available for reporting purposes if so required. In addition to retaining the actual request, a written record for reporting purposes should be maintained to include the following information:
 - (a) Requester name. In cases involving NOCs, the NOC name vs. the true name will be used.
 - (b) Date of request.
 - (c) The amount requested for waiver of repayment
 - (d) Date of C/P&B's decision.
 - (e) Specifics of C/P&B's decision – whether the request was approved or denied (in full or partial). If approved, include the specific amount approved. If denied, include the specifics of the case including reason for denial.
 - (f) If applicable, the date an appeal was filed, date of decision, and the results.
- (2) **REPORT DISTRIBUTION**
 - (a) Reporting purposes include reporting the amount waived on the W-2 or Form 1099 for current employees and U.S. citizen assets unless previously reported. This

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

necessitates a report to the Chief Financial Officer, Finance, Accounting Operations (FIN/AO). FIN/AO is also responsible for generating the Form 1099 to report where applicable, the amounts waived for former employees.

- (b) For any travel overpayments, the Director of Finance will receive a copy of the reported information described in paragraph i(1) above.

~~ADMINISTRATIVE - INTERNAL USE ONLY~~