

e. A statement regarding the assessment of interest, administrative expenses, and penalties;

f. A reminder of the employee's right to request waiver of the overpayment.

2. If the hearing official's determination upholds the employee's position as to the existence of the debt, the civilian payroll office shall inform the employee that the debt is no longer considered valid under 5 U.S.C. 5514 (reference (b)). The hearing official's decision is final as to the issue of involuntary offset, but not final as to the issue of whether the debt is owed. If the hearing official reduces the amount of the debt, the civilian payroll office shall inform the employee, and begin collection action for the new amount by issuing a letter that states this.

E. Hearings Versus Reconsiderations.

An employee who disputes the existence or amount of a debt has a right to request reconsideration and/or a hearing. Since hearings are a more formal and costly means of resolving these disputes, every effort shall be made to use the reconsideration right as an alternative to a hearing. However, the employee has a statutory right to a hearing and must be granted this right whether or not the employee has attempted and failed to seek reconsideration of the debt. See paragraph 080304. for a discussion on reconsiderations.

080306. Waivers of Erroneous Payments of Pay and Allowances

A. General. Authority is provided by 5 U.S.C. 5584 (reference (b)) and 4 C.F.R. Parts 91 and 92 (reference (bb)) for the waiver of claims of the United States against a civilian employee arising out of an erroneous payment of pay or allowances made after June 30, 1960. The Comptroller General of the United States has issued implementing standards authorizing the head of an executive agency to waive such claims in an amount aggregating not more than \$1500. The Under Secretary of Defense (Comptroller) has delegated this waiver authority to the Director of DFAS by letter dated January 29, 1992 (reference (bd)). The DFAS

Director has redelegate this authority to the Directors of the DFAS Centers. See DFAS Regulation Number 005 (reference (be)). The Defense Debt and Claims Management office of each DFAS Center has been designated as a waiver authority. Waiver authority has been delegated to the Director of DoDEA for DoDEA employees by DoD Directive 1342.20 (reference (bf)). Note: Concurrent waiver authority exists with Components under DoD Directive 7045.13 (reference (v)).

1. Under 4 C.F.R. 91.5 (reference (bb)), a waiver may be granted only when the 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 there is no indication of fraud, misrepresentation, fault, or lack of good faith by the employee or any other person having an interest in obtaining a waiver of the claim.

2. 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 depends upon the facts existing in each particular case. However, the Comptroller General has long held that a waiver shall not be granted if it appears the employee had records (such as LESs) which, if reviewed, would have indicated an overpayment, and the employee failed to review such documents for accuracy or otherwise failed to take corrective action. Such failure on the part of the employee renders the employee partially at fault. See Comp. Gen. B-253969, November 1, 1993 (reference (p)) and Comp. Gen. B-226465, March 23, 1988 (reference (p)).

3. Economic or financial considerations play no role in the determination of a waiver request.

4. Application for waiver must be received by the Office of the Comptroller

General or the DFAS Center concerned (normally the civilian payroll office) within 3 years from the date the erroneous payment was discovered. Date of discovery, for the purposes of starting the 3-year period, is the date that an appropriate official first determines that an erroneous payment has been made.

5. An employee must apply to the employing agency for a refund of the amount collected within 2 years following the date of the waiver approval. See 5 U.S.C. 5584(c) (reference (b)).

B. Manner of Submission. Indebted employees shall be notified of overpayments of pay and allowances by the civilian payroll office. A copy of the waiver request instructions shall be included in the debt notification letter the civilian payroll office sends to the employee. The submission of waiver requests must be limited to cases in which all doubt regarding the validity or amount of a debt has been resolved. If an employee decides to apply for a waiver, the employee shall prepare an application for waiver of erroneous payments and send it to the civilian payroll office. The civilian payroll office shall provide additional information as necessary, attach copies of pertinent records, and forward the complete package to the Defense Debt and Claims Management office of the appropriate DFAS Center.

C. Suspension of Collection. Collection of a debt should not be routinely suspended pending waiver determination per 4 C.F.R. 104.2(c)(2) (reference (bb)). The civilian payroll office shall determine in each case (per Comp. Gen. Decision B-185466, August 19, 1976) (reference (p)) whether suspension of collection would be appropriate based on the following criteria:

1. Waiver will probably be granted.
2. Erroneous payment can be recovered if waiver is not granted.
3. Collection of the debt would cause undue hardship.

D. Final Action

1. After the waiver approval authority adjudicates the waiver, he or she will notify the civilian payroll office that submitted the waiver package. This notification authorizes refund of a collection if a claim for refund is included in the waiver application and refund is due for an amount waived. The civilian payroll office is responsible for processing refunds. If the application for waiver did not include a claim for refund, the civilian payroll office must immediately inform the employee of the right to make application for refund within 2 years following the date of the waiver decision.

2. When informed of a waiver denial and collection action has been suspended, the civilian payroll office shall immediately initiate further collection action.

E. Action By The Designated Waiver Authority

1. **General.** The designated waiver authorities receive and review each request for waiver or application for refund and the associated reports for claims; make a determination as to whether claims aggregating not more than \$1500 will be waived or whether a claim in any amount will be denied; and notify the involved civilian payroll office of the determination.

2. **Referral Of Claims.** The designated waiver authorities shall refer the following types of claims to the Comptroller General /GAO for decision:

- a. Requests for waiver and requests for waiver and refund which indicate favorable consideration, with an appropriate report of circumstances, if the claim of the United States is in an amount aggregating more than \$1500;
- b. All doubtful cases;
- c. Claims, together with the reports of circumstances and recommendations, from civilian payroll offices for referral to the Comptroller General/GAO for litigation;

d. Each case which is the subject of an exception made by the Comptroller General/GAO in the accounts of an accountable officer.

080307. Collections Under 5 U.S.C. 5514. The procedures in this paragraph can apply at any stage of the debt collection process. The employee may elect to repay the debt after receiving the initial demand letter, after receiving a further explanation of the debt from the civilian payroll office, after a determination by a hearing official, or after a decision on a request for waiver of the overpayment. Repayment of the debt, subject to refund, can also be accomplished while any of the above actions are pending.

A. Voluntary Repayment

1. Cash Repayment. The term “cash repayment” encompasses payments by personal check, money order, or other negotiable instrument. The collection will be recorded on a DD Form 1131. The accounting data shall include the appropriation or fund that funded the overpayment.

2. Payroll Deductions

a. One-Time Deduction. If an employee wants to have the indebtedness repaid voluntarily, the civilian payroll office shall arrange for the employee to sign a completed agreement as shown in Figure 8-2. The civilian payroll office shall retain the original signed agreement. If requested by the employee, and agreed to by the civilian payroll office, the remittance can be deferred for up to 2 pay periods and the agreement adjusted accordingly. Also, a one-time deduction can be combined with a cash payment as a means of liquidating an indebtedness. For example, a \$500 indebtedness can be liquidated by a cash payment of \$200 and a one-time deduction of \$300. If the one-time deduction does not fully liquidate the deficit, the agreement should be adjusted appropriately.

b. Installment Deductions

(1) Employees may spread their repayments over more than 1 pay

period for other than minor indebtedness amounts. Although employees are permitted to make a series of cash payments at regularly established intervals, the preferred method of liquidation is by deductions each payday in the same amount until the indebtedness is liquidated. Any amount remaining unpaid at the time of separation or retirement will be collected from final payments of any nature, such as final salary payments, lump-sum leave, and bonuses. The employee consents to installment liquidation by signing an agreement such as illustrated in Figure 8-4. The civilian payroll office shall retain the original signed agreement.

(2) In determining a suitable repayment schedule, the civilian payroll office is permitted a certain degree of discretion. While the civilian payroll office’s primary concern must always be to ensure that the U.S. Government recovers the debt within the shortest practical period of time, this consideration must be influenced to some degree by the financial impact on the employee. The employee should not be required to suffer undue deprivation by having to repay the debt. On the other hand, some degree of sacrifice should be expected, and the employee’s obligation to repay the debt should be given equal status to other financial obligations that the employee may have incurred. Generally, the debt should be at least 5 percent of the employee’s disposable pay (defined in subparagraph 080307.B.2.) in order to qualify for installment liquidation. Installment payments will be at least \$25 per pay period and will be sufficient to liquidate the debt within 3 years.

B. Involuntary Repayment

1. General. Recovery of an indebtedness by involuntary salary offset is reserved for those instances in which the employee has failed either to make a cash remittance, authorize a voluntary one-time payroll deduction, or enter into an agreement with the civilian payroll office for installment deductions. Before executing an involuntary repayment, the civilian payroll office must ensure that the employee has been given a written statement required by paragraph 080303; and that the employee either failed to exercise the rights