

Audit of Living Quarters Allowance FAQs (Revised 04/11/2013)

Q1 – Why is an audit of LQA files being conducted?

A1 – Historically, employees recruited outside of the United States into Federal civilian employment from a U.S. firm were considered eligible for LQA, if they otherwise met all of the other Department of State, Department of Defense, and Command LQA policy requirements for the grant. This included employees, who were originally recruited in the United States by the Armed Forces or U.S. firms **and** who subsequently accepted employment with other U.S. firms under conditions that provided for return transportation to the United States, thus being considered to be in substantial continuous employment, prior to accepting Federal employment.

The Office of Personnel Management (OPM) has since emphasized in recent compensation decisions that “substantially continuous employment in the Department of State Standardized Regulations (DSSR), section 031.12b, must be with an employer (**singular**) which recruited the employee in the United States and induced the employee to accept overseas employment.”

Since May 2011, locally hired employees’ LQA eligibility determinations have been made consistent with the OPM decisions. However, a significant number of locally hired employees, whose determinations were made prior to May 2011, are estimated to be erroneously receiving the LQA. Consequently, DOD has directed the Military Departments, Defense Agencies, and Field Activities to complete an audit of the pay accounts of all locally hired overseas employees who are currently receiving LQA.

Q2 – When and by whom will employees be notified if they are found to have been collecting LQA erroneously?

A2 – Headquarters Department of Army (HQDA), AG1, has tasked the Civilian Human Resources Agency (CHRA) to complete the audit no later than 3 April 2013. CHRA will notify any employees identified as having erroneously received LQA of that fact, through their employing commands, no later than 5 business days after completion of the audit. Projected notification date will take place on 8 April 2013.

Q3 – Will employees who are notified that they have been collecting LQA erroneously have to repay any debt resulting from this error?

A3 - The DOD must collect all indebtedness due to the United States promptly and in accordance with applicable laws and regulations. If a final determination is adverse to the employee, the affected employee may seek a waiver of indebtedness through established procedures in accordance with section 0805 of DOD 1400.14-R.

Q4 – Will DOD grant a waiver for all affected employees?

A4 – The Department is not able to provide a blanket waiver for all affected employees. However, DOD has determined that it is in the best interests of the Department to support any such employee's request for a waiver of indebtedness in these unique circumstances, provided the employee was not aware of the fact that they were not entitled to the payment of LQA, and there is no evidence of misrepresentation, fraud, or deception by the employee to acquire LQA in the first place.

Q5 – When and by whom will affected employees be notified of the amount of the debt and the process to request a waiver of indebtedness?

A5 – CHRA will notify the Defense Finance and Accounting Service (DFAS) of the employees identified as having erroneously received LQA no later than 5 business days after completion of the audit. DFAS will subsequently send notifications to affected employees once they have completed an audit of the pay records and calculated the amount of the debt. The DFAS notifications will include specific instructions on the process to request a waiver of indebtedness.

Q6- Can I request that my debt is held in abeyance?

A6-The DFAS will not hold any debt in abeyance. The employee will be required to pay the debt, even if contesting the debt or requesting a debt waiver. DFAS will automatically collect 15% of the employees overall pay each pay check. It is recommended that employee submit hardship requests in order to reduce this amount to \$25.00 per paycheck.

Q7-How do I protest my debt?

A7- For appropriated fund (APF) employees-You will need to submit a letter that includes your name, social security or account number, and a detailed description of why you are protesting the debt, as well as documentation to support your protest (see examples under Active Component below). All documents must have your SSN/account number listed on each page and the packet must be submitted in its entirety. Please ensure that all required documentation is submitted or your protest will be returned.

For Non-Appropriated Fund (NAF) employees- Payroll does not accept a "refusal" of payment response from an active NAF employee. If they are still active and have any funds due them, NFS will recoup the debt from those funds. However, if they depart NAF service and if any funds have been recovered on the debt (as stated on the original debt letter), then the only recourse payroll has is to send another debt letter showing an outstanding debt balance.

- If an employee disputes a debt or obligation, or requests waiver of repayment, the garrison commander will make the final decision based upon information made available by both the NAFI and the employee. The employee will be notified in writing of the determination and a copy of the notification will be forwarded to NFS for collection in accordance with procedures stated above. These involuntary deductions will not exceed 15 percent of net pay. (See AR 215-1 and AR 215-3.)

Q8-How do I apply for a debt waiver?

A8- To apply for a waiver, submit a completed [Waiver Remission of Indebtedness Application, DD Form 2789](#) (PDF 354KB - 5/19/2008) to your civilian payroll office.

You must file a waiver application within 3 years after the erroneous payment was discovered.

You may also submit your waiver request in memo format. Your written memo must contain your:

- Full Legal Name
- Daytime Telephone
- E-mail Address
- Mailing Address
- Social Security Number
- Signature and Date

It must also include:

- A statement indicating that you are requesting a Waiver of Indebtedness and your reason for doing so
- The type of debt you want waived
- The date and manner in which you became aware of the overpayment(s)
- A clear, concise signed statement that you were not aware that you were overpaid
- A statement detailing your efforts to resolve the overpayment
- Your refund request for any collection(s) made on the debt, including why you feel your waiver request should be approved
- A statement as to whether you received Leave and Earnings Statements (LES)

Required Documentation

All waiver requests also require:

- Completed [Waiver Remission of Indebtedness Application, DD Form 2789](#) (PDF 354KB - 5/19/2008) or memo

- Copies of each LES for the three pay periods prior to the overpayment(s) through and including three pay periods after the overpayment(s). If you are unable to obtain all required LES, you must include a statement indicating each specific pay period's LES is unavailable and the reason why they are unavailable.
- Photocopies of all supporting documentation for the indebtedness. (This is in addition to the above documents.) Required supporting documentation varies by the type of debt you have. Below is a required documentation list by debt type:
 - **Foreign Entitlement Debt:** Foreign Allowances Application, Grant and Report, Standard Form 1190 (SF-1190) and Military Orders, if applicable. Your SF-1190 must be signed by an official.

For Non-Appropriated Fund employees-

Request for waiver may be authorized in accordance with DFAS IN Regulation 37-1, Chapter 32, para 32081903.

- . Erroneous Overpayments. In overpayments resulting from payroll processing and administrative errors, NFS will notify the employee in writing of such overpayment. Notification will provide total amount of indebtedness, amount of biweekly repayment deductions, and dates of deductions. Deductions will not exceed 15 percent of net pay. Copies of notification will be furnished to CAO. In the event these overpayments are subsequently waived by the garrison commander, the employing NAFI is liable for employee's indebtedness to third parties, and not NFS. Likewise, if an employee terminates prior to liquidation of a debt or obligation being repaid, the employing NAFI is liable for the unpaid amount.
- If an employee disputes a debt or obligation, or requests waiver of repayment, the garrison commander will make the final decision based upon information made available by both the NAFI and the employee. The employee will be notified in writing of the determination and a copy of the notification will be forwarded to NFS for collection in accordance with procedures stated above. These involuntary deductions will not exceed 15 percent of net pay. (See AR 215-1 and AR 215-3.)

You may submit your waiver request in memo format. Your written memo must contain your:

- Full Legal Name
- Daytime Telephone
- E-mail Address
- Mailing Address
- Social Security Number
- Signature and Date

Q9- What if I don't pay my debt?

A9- APF-DFAS reports to commercial credit bureaus when an account becomes delinquent. Accounts with no payments within 30 days of the initial debt notice are considered delinquent for payment purposes. We will report a delinquent account to the credit bureau if we do not receive a payment within 62 days of the date of the initial debt notification letter. We attempt to notify you using your last known mailing address.

All delinquent accounts are reported as a "collection account" on the consumer credit report. The debt will remain as a collection account while on the credit bureau report; however, any subsequent payment activity is reported to the credit bureaus on a monthly basis. If you believe the information reported by the credit bureau is incorrect, contact the credit bureau.

NAF- The NAFI will become responsible for collecting the amount of the debt from the employee through a collection agency.

Q10- What appeal process will be annotated on the Letter of Indebtedness for Non-Appropriated fund employees?

A10- The employee may file an appeal in memo format to the Installation Commander or equivalent Head of Command. The written memo must contain your:

- Full Legal Name
- Daytime Telephone
- E-mail Address
- Mailing Address
- Social Security Number
- Signature and Date
- Justification for requesting the Appeal

The Garrison Commander will make a determination based on the documentation provided by the employee. There is no further appeal determination above the Garrisons Commander or equivalent Head of Command.

Q11 – Will the LQA of affected employees be immediately stopped?

A11 – No. DOD is concerned about the immediate financial impact that loss of LQA would have on morale and retention, and has considered that employees who have been receiving LQA have made life choices based upon their continued receipt of it. Consequently, DOD has waived the provisions of DSSR section 031.12b due to unusual circumstances in these particular cases, and authorized LQA, for up to 1 year, for the affected group of employees.

This authorization applies only to employees who, before being recruited from outside of the United States by DOD, had been in substantially continuous employment by more than 1 employer. In addition, these employees must meet all other LQA eligibility criteria contained in DSSR section 031.12b.

Q12 – When will the 1 year period of LQA commence for eligible employees?

A12 – The 1 year authorization for payment of LQA will commence on the date affected employees are notified they were found to be ineligible for LQA. Again, the projected date of this notification will occur on the 25th of April, 2013. The 1 year of LQA authorized under the January 3rd memo from OSD will not be counted as a debt.

Q13 – Once notified, who should affected employees contact to discuss their specific situations and options?

A13 - Employees may discuss their specific situations and options with their immediate supervisor, other designated command point-of-contact, or servicing Civilian Personnel Advisory Center (CPAC) HR Specialist/ NAF Human Resource Office.

Q14-Are NAF/AAFES and contracting positions considered as "substantially continuous employment" in regards to eligibility requirement for LQA?

A14-Yes, AAFES NAF employees are subject to DODI 1400.25. Volume 1401, contains General Information Concerning Nonappropriated Fund (NAF) Personnel Policy" and it applies to all DOD NAFs. Provisions can be found at the following link: <http://www.dtic.mil/whs/directives/corres/pdf/1400.25-V1401.pdf>

Q15 - How does the "substantially continuous employment" "singular employment concept eligibility requirement affect military members or civilian who separate while in an overseas location and take a NAF position?

A15 - DoD Response "Executive Order 11137, dated January 10, 1964 declared employees of NAF activities to be employees of the United States for the purposes of the Overseas Allowances and Differential Act (now codified in 5 U.S.C. section 5921 - 5928). The provisions of DoDI 1400.25 Volume 1250, operate accordingly:

"Nonappropriated fund employees who were eligible for a living quarters and related allowances upon their initial hire, and who are appointed to an appropriated fund position without a break in service, continue to be eligible for allowances in accordance with Comptroller General Decision B-184972, provided they had received the allowances for at least 1 year."

For the purposes of Overseas Allowances and Differentials NAF employees are Federal employees (or treated as such). The referenced Comp Gen decision affirms the status

of NAF Employees as employees of the United States as enacted by the Executive Order.

Q16 - If an employee is registered in PPP and applies and is selected for position in CONUS other than position to which he may have return rights, can PCS be paid?

A16 -If an employee has return rights then generally they were recruited from the U.S. and have a return transportation entitlement (unless they've violated the terms of the agreement) no further then home of record or place from which last recruited. The employee's transportation agreement specifies the terms for which return transportation (losing activity) is afforded. The remaining PCS expenses (e.g., TQSE, Real Estate, miscellaneous) are contingent upon the approval of the gaining activity..

Q17 - May the losing Agency pay return transportation if the employee does not have a return transportation entitlement (i.e., transportation agreement.)

A17 - APF -No, the losing agency may not pay return transportation costs.

NAF -Employee will NOT be eligible for return travel and transportation at Non appropriated Fund expense for self, dependents, or household effects to place of actual residence stated above (reference DA Form 3440) for purposes of separation from the service until employee has completed the prescribed period of service in the Transportation Agreement unless the reason for earlier return is beyond employee's control and acceptable to the employing activity.

Q18 - Status of moving returning employees from Pri 3 to Pri 2. (APF only)

A18 – Once the audit is complete, DoD will review our results prior to making a decision on this request.

Q19 -Can individuals who are eligible to return CONUS and are erroneously receiving LQA register early in PPP? How soon after notification? (APF Only)

A19 - Once the employee has been notified that they are erroneously receiving LQA the employee will need to make a decision as to whether or not they wish to remain in the foreign area. If the employee decides that they no longer wish to remain in the foreign area then the employee should request a tour curtailment. Once the commander approves the tour curtailment then the employee is eligible for PPP registration.

Please note: A tour curtailment will "not" release an employee from a transportation agreement. (i.e., employee PCSed from one overseas location to another).

Q20- How can a NAF employee return CONUS?

A20. Employee may request a noncompetitive reassignment to positions for which he/she qualifies and should be breast of the NAF positions that may be available through competitive measures within DoD through the following links:

Army Civilian Online: <http://acpol.army.mil/employment/naf.htm>

Army Career Referral Program: <http://www.mwrjobs.army.mil/>

Army and Air Force Exchange Services: <http://odin.aafes.com/Employment/default.asp>

Air Force Services Career Program: <http://www-p.afsv.af.mil/CR/>

Navy Morale, Welfare and Recreation:
<http://www.mwr.navy.mil/mwrprgms/personnel.html>

Marine Corp Community Services: <http://www.usmc-mccs.org/employ/index.cfm>.

Q21 - If an LQA debt is waived by DOHA, will this forgiveness of debt be considered taxable income by the IRS?

A21 -Section 5584 of Title 5, United States Code, provides authority for the waiver of collection of a debt owed to the Government if the debt arises from an erroneous payment of pay or allowances. The LQA is a housing allowance, and therefore, a waiver of repayment could be requested if an employee receives an erroneous payment of LQA. It is my understanding that a determination has been made that several employees were erroneously paid LQA while stationed overseas. Thus, as you know, these employees may request a waiver under section 5584.

Section 5584(e) provides that an "erroneous payment, the collection of which is waived under this section, is deemed a valid payment for all purposes." Thus, if a waiver application is approved, the erroneous LQA payments would be treated as valid payments for all purposes. As "valid" payments of LQA, the erroneous payments would not constitute taxable income to the employees. See DoDFMR, Vol. 7A, table 44-1, note 9 (an overpayment of a nontaxable military pay or allowance should not be reported as taxable income if the resulting debt is waived).

The other issue relates to civilian employees who may have used their LQA payments to purchase a home. The issue raised is whether the employees would be considered to have an unjust enrichment if their LQA debts are waived because they will still own their homes. As discussed above, the waiver of the LQA debts means that the LQA payments are considered to be valid for all purposes. Thus, the employees would be treated similar to other employees who receive valid LQA payments; they would be entitled to retain their homes, there would not be any legal implications, and

they would not be required to sell their homes to reimburse the Government because they would not owe a debt to the Government.

Q22- Three part question:

(1)- How will the erroneous payment of LQA affect the employees in regards to tax purposes?

(2)- Will they be required to pay back taxes or will the payment of the LQA be considered a gift?

(3)- If total amount of debt is forgiven (through a waiver) how would the employee be affected in regards to taxes?

A22-Per Diane Roberts, Engineer Technician, Nonappropriated Fund Financial Services (NFS): LQA is Non-Taxable Income, and as such has no impact on taxes.