



UNITED STATES DEPARTMENT OF AGRICULTURE
 Agricultural Marketing Service
 Washington, D.C. 20250

FG IS 2570.1
 AMS INSTRUCTION 491-2
 Rev. 1

ACTION BY: All Divisions and Offices

Waiver of Claim for Erroneous Payment
 of Pay or Allowances

I PURPOSE

This Instruction sets forth:

A Conditions under which waivers of claims against employees of the Agricultural Marketing Service (AMS) for erroneous payments of pay or allowances may be considered.

B The procedures to be followed in submitting and processing:

1 A request for a waiver of a claim for erroneous payment of pay or allowances, and

2 An application for a refund when a waiver is allowed on a claim previously paid.

II AUTHORITY

The conditions under which waivers of claims for erroneous payments of pay or allowances may be allowed and the procedures prescribed herein have been established in accordance with provisions of Public Law 90-616, Public Law 92-453, GAO Regulations, and Administrative Regulations of the Department.

III GENERAL PROVISIONS

A Definitions.

1 Employee means an employee or former employee of AMS under a Federal appointment, with duties controlled by AMS.

DISTRIBUTION:
 A,M,O,S

MANUAL MAINTENANCE INSTRUCTIONS:
 Revised to include procedures for
 waiver of claims for erroneous pay-
 ments of allowances. Remove AMS Instr.
 491-2 (8-30-72). File this Instr.

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(III A)

2 Pay means salary, wages, and other compensation for services. It includes pay for regular time, overtime, standby time, travel time, and differentials; pay for accumulated and accrued annual leave; Sunday and holiday premium pay; and severance pay. It does not include expenses for travel and transportation or expenses of transportation of household goods, and other allowances provided by Public Law 89-516.

3 Allowances mean 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.

B Settlement Authority.

1 By GAO. The Comptroller General may waive in whole or in part a claim in any amount arising out of the erroneous payment of pay and allowances when all the conditions set forth in Section IV, below, are present. Claims which have been referred to the Attorney General for litigation will not be considered without having obtained permission from the Attorney General.

2 By AMS. The Director, Financial Services (FS) Division, AMS, may waive in whole or in part a claim in an amount totaling not more than \$500, without regard to any repayments arising from erroneous payments of pay and allowances to employees or former employees, when all the conditions set forth in Section IV, below, are present. However, he may not waive a claim which is the subject of an exception made by the Comptroller General in the account of an accountable official, or which has been transmitted to GAO for collection or the Attorney General for litigation.

IV CONDITIONS FOR WAIVER OF CLAIMS

Claims against employees arising from erroneous payments of pay or allowances may be waived in whole or in part by the Agency head or his designee whenever all of the following conditions exist:

A The amount of the claim is \$500 or less exclusive of any repayments by the employee (i.e., the original claim must not be greater than \$500).

(IV)

B The erroneous payment of pay or allowance was made to an AMS employee on or after July 1, 1960, except that waiver action may not be taken as follows:

1 For Pay - after October 21, 1971, or the expiration of three years immediately following the date on which the erroneous payment was discovered, whichever is later.

2 For Allowances - after October 2, 1975, or the expiration of three years immediately following the date on which the erroneous payment was discovered, whichever is later.

C 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 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 any other person having an interest in obtaining a waiver of the claim. Any significant unexplained increase in an employee's 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 fails to bring the matter to the attention of the appropriate officials. Waiver of overpayment of pay or 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 part of the written record in accordance with Section VI, below. Collections for minor adjustments involving erroneous payments of pay or allowances which do not exceed 10 percent of the employee's normal take home pay will ordinarily be considered as being in the best interests of the United States and not against equity and good conscience.

V REQUIRED INVESTIGATION OF CLAIM

A A claim for \$25 or less will not require an investigation where there is no indication in the record 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.

B A claim for more than \$25 requires investigation of the facts and circumstances under which the erroneous payment of pay or allowances was made prior to considering a claim for waiver action. The information required to be submitted, as outlined in Sections VI and VII below, shall constitute the mandatory investigation report.

VI PROCEDURES FOR FILING REQUEST FOR WAIVER AND/OR REFUND

A Initiating Request for Waiver and/or Refund.

1 By Employee. When the conditions for waiver are present, an employee may file a written request for waiver with the office in which he was employed at the time the erroneous payment was made. A request for refund of amounts previously repaid may be filed simultaneously with the request for waiver. Otherwise, a request for refund must be filed within two years from the date a waiver is granted.

2 By Other Than Employee. The Personnel (PE) Division or the Division or Staff Administrative Officer may initiate a request for a waiver of an erroneous payment of pay or allowances made to an employee or group of employees when it is apparent that the erroneous payment was the result of an administrative error.

3 Information To Be Submitted. An employee making a request for a waiver of an erroneous payment of pay or allowances should provide as many of the facts and details as he can. The office initiating or receiving a request for a waiver should confirm the facts and supply additional information and facts that are available. Basically, the investigation report should include:

a Employee's name, Social Security number, and home address.

b A statement of the gross amount of the overpayment identified by the amount of overpayment for each pay period or voucher involved.

c A statement of the circumstances under which the erroneous payment was made.

d A statement explaining when (the date) and how the employee became aware of the erroneous payment.

e A statement by the employee as to his knowledge of the erroneous payment.

f A statement by the office initiating or receiving the request for waiver as to whether there is any 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.

(VI A 3)

g When available, a copy of the pay change slip(s) or any other document(s) that will provide evidence of the amount of the overpayment and how it occurred.

h If the erroneous payment was previously repaid and a refund is requested:

(1) Include evidence to show that the erroneous payment was previously paid, and

(2) Indicate the fiscal year and Subcenter Number(s) from which the erroneous payment was made. (If erroneous payment was made prior to July 1, 1971, indicate the accounting code chargeable.)

i Any other information that would be helpful in determining the appropriate action to be taken on the request.

4 Where To Submit Request. Send the case file, including the request, required documents, and information to:

Employment and Qualifications Branch
Personnel Division, AMS
U.S. Dept. of Agriculture
Washington, D. C. 20250

B Action To Be Taken by PE Division. The PE Division shall investigate and report the circumstances of the erroneous payment as follows:

1 Review the employee's personnel record documents pertaining to the erroneous payment of pay or allowances.

2 Review the employee's request to determine if the facts are consistent with the personnel records.

3 In case of differences, explain the facts surrounding the erroneous payment as reflected by the personnel records.

4 Supply copies of documents, if available, when the employee has not furnished them.

5 Advise what action has been taken to preclude the recurrence of similar errors in the future.

(VI B)

6 Transmit the file and report of investigation with any additional facts and documentation that may be pertinent to the case to the FS Division for further action.

VII PROCEDURES FOR PROCESSING A REQUEST FOR A WAIVER - FISCAL SERVICES
BRANCH, FS DIVISION

Upon receipt of a request for waiver and the report of investigation, the Fiscal Services Branch, FS Division, shall:

A Maintain a register showing the disposition of each claim considered for waiver. A case file shall be established for each such claim containing the report of investigation, an account of corrective action taken, waiver action taken and reasons therefor, and other pertinent information such as action taken concerning refunds, and related correspondence.

B Conduct any further investigation that is appropriate.

C Refer the request for waiver and report of investigation together with a recommendation to the Comptroller General when:

1 The total amount of the erroneous payment, without regard to any repayment, is more than \$500; or

2 The claim is the subject of an exception made by the Comptroller General in the account of an accountable officer; or

3 The claim has been referred to the Comptroller General for collection or the Attorney General for litigation; or

4 There is doubt as to whether waiver action by AMS is proper.

D If the total amount of the erroneous payment, without regard to any repayment, is \$500 or less, the Director, FS Division, or authorized official shall determine whether the request for a waiver may be granted.

E Notify the employee and/or Division or Staff Administrative Officer of the decision on the request for waiver. If the waiver is granted, advise the employee of his right to request a refund (if due) within two years from the date of the waiver.

(VII)

F Notify the PE Division of the decision. When appropriate, request the PE Division to arrange for the payment of a refund to the employee in accordance with MODE regulations.

G Retain case files for review by GAO either:

1 Until notice of audit completion has been received for the fiscal year in which the waiver was approved or refund made, or

2 For three years after the fiscal year in which the waiver was approved or refund was made, whichever occurs first.

H Submit an annual summary report by August 15, each year, to the Office of Budget and Finance showing:

1 Number of waiver requests granted in full by AMS and the dollar amount waived.

2 Number of waiver requests denied in entirety by AMS and the amount thereof.

3 Number of claims which have been waived in part by AMS including the aggregate amount waived and the aggregate amount denied in this category.

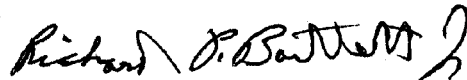
4 Number of requests transmitted to GAO for waiver consideration.

5 Amount refunded as a result of AMS waiver action.

6 Amount refunded as a result of GAO waiver action.

7 Number of waiver requests barred prior to completion of waiver action.

8 Number of waiver requests pending in AMS at the close of the fiscal year and the date when the waiver action on each such request will be barred.



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