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REPORT TO THE CONGRESS



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Operation Of The Law  
Permitting Waiver Of  
Erroneous Payments  
Of Pay

B-152040  
B-158422

BY THE COMPTROLLER GENERAL  
OF THE UNITED STATES

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SEPT. 13, 1972



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-152040  
B-158422

To the President of the Senate and the  
Speaker of the House of Representatives

This is our report on the operation of the law-- Public Law 90-616-- which permits the waiver of erroneous payments of pay. This act became effective October 21, 1968.

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the Director, Office of Management and Budget, and to the heads of Federal departments and agencies.

A handwritten signature in cursive script, appearing to read "A. G. Kellner".

Acting Comptroller General  
of the United States

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D I G E S T

WHY THE REVIEW WAS MADE

The Congress authorized in 1968 the waiver of claims of the United States arising out of erroneous pay to employees of executive agencies. Standards were prescribed by the Comptroller General. For a claim to be waived

- the payment must have occurred through administrative error and
- there must be no indication of fraud, misrepresentation, fault, or lack of good faith.

The General Accounting Office (GAO) made reviews in 20 executive agencies to see if the waiver statute and standards were being equitably and uniformly applied.

FINDINGS AND CONCLUSIONS

Much progress has been made toward accomplishing both objectives of the waiver statute.

- Innocent employees have been relieved of liability for overpayments, under certain conditions.
- Congress has been relieved of the burdensome and time-consuming task of considering private relief bills. (See p. 29.)

From enactment through the end of the fiscal year 1971

- 11,056 requests for waiver had been considered by GAO and 41 executive agencies,
- 9,425 requests representing \$1,820,993 were waived, and
- \$664,561 was refunded by the agencies for overpayments previously collected. (See pp. 7 and 29.)

Most errors were caused by premature within-grade increases. (See pp. 15 and 19.)

Generally waiver procedures and operations complied with the act and the standards. However:

- Some agencies misinterpreted the standards to include hardship as a factor in determining whether to waive an overpayment. (See p. 23.)
- Some agencies had misunderstandings about GAO and agency jurisdiction over waiver cases. (See p. 24.)
- Some agencies were confused in computing overpayments resulting from payment for accumulated and accrued leave. (See p. 24.)

Inequity in the statute

The law provides that the Comptroller General or the head of the agency waive a claim within 3 years after the error is discovered or within 3 years after date of the act, whichever is later. Although employees requested waivers within the 3-year period, in some cases there was not sufficient time after the request was filed to investigate the circumstances under which the erroneous payment of pay was made and to act on the request before the end of the 3-year period. (See p. 31.)

There are 16 cases in this category pending in GAO and others are bound to occur. House bill 7614, whose primary purpose is to extend waiver benefits to members of the uniformed services, would

- clarify the law and
- resolve the inequity by allowing waivers to be considered if filed within 3 years after the error was discovered.

This bill was passed by the House and is pending in the Senate. (See p. 31.)

RECOMMENDATIONS OR SUGGESTIONS

During the review GAO stressed the importance of

- determining the reason for the erroneous payment,
- taking corrective action to prevent similar errors in the future,
- fully documenting the file to show what corrective action was taken, and
- following waiver guidelines and the Comptroller General's decisions.

GAO advised agencies of ways to improve operations and also pointed out omissions in agency regulations and changes which the agencies should make. (See p. 26.)

Copies of this report are being transmitted to the heads of all agencies to inform them of the areas causing the most overpayments and to assist them in achieving uniformity in applying the waiver statute and standards.

AGENCY ACTIONS AND UNRESOLVED ISSUES

Officials in the 20 agencies agreed to be more diligent in taking corrective action and to take steps to prevent future overpayments. (See p. 26.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

This report calls attention to an inequity in the language of the waiver statute caused by the 3-year limitation. If House Bill 7614 is not enacted, GAO suggests that a more limited bill be enacted to clarify the law and to resolve this inequity. (See p. 32.)

BEST DOCUMENT AVAILABLE

## CHAPTER 1

### INTRODUCTION

Public Law 90-616, approved October 21, 1968, amended subchapter VIII, chapter 55, title 5, of the United States Code by adding section 5584. The law provides that a claim of the United States arising out of an erroneous payment of pay to an employee of an executive agency on or after July 1, 1960, may be waived in whole or in part if the collection of such erroneous payment would be against equity and good conscience and would not be in the best interests of the United States.

The law required the Comptroller General to prescribe standards for executive agencies to follow in exercising their authority to waive Government claims arising from erroneous payments of pay. The regulations (standards) of the Comptroller General were published initially in the Federal Register (F.R.) on December 31, 1968, as 33 F.R. 20001 and currently appear in the Code of Federal Regulations (4 CFR 91.1-93.3) and in 34 F.R. 19967, December 20, 1969.

The law grants waiver authority to:

1. The Comptroller General of the United States regardless of the amount of the erroneous payment of pay.
2. The head of the executive agency when
  - the claim is in an amount aggregating not more than \$500,
  - the claim is not the subject of an exception made by the Comptroller General in the account of any accountable official, and
  - the waiver is made in accordance with the Comptroller General's implementing standards.

Neither the Comptroller General nor the head of an executive agency may exercise his authority to waive a claim under section 5584

--if, in his opinion, there is 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; or

--after 3 years immediately following the date on which the erroneous payment of pay was discovered or 3 years immediately following the effective date of this section, whichever is later.

#### PURPOSE OF THE LEGISLATION

Prior to enactment of Public Law 90-616 (hereinafter referred to as the act), there was no statutory authority applicable throughout the executive branch of the Government which would permit the waiver of an erroneous payment of pay made to a civilian employee, even though such payment was made through administrative error and was received by the employee in good faith. The fact that the erroneous payment was made without fault on his part or the fact that the employee had every reason to believe that the payment was proper was immaterial.

Frequently, the erroneous payment was not discovered until a considerable period of time elapsed, which resulted in a large overpayment and which caused undue hardship on the employee when he was required to refund the money. An employee could obtain relief only through a special act of Congress for his "private relief."

The legislative history of the act disclosed that it was originally drafted to waive claims of the United States arising out of erroneous payments of pay in six specific categories or situations. Numerous private bills which relieved specified employees from liability resulting from their having received erroneous payments of pay were introduced in the Ninetieth Congress.

Many of the beneficiaries of such private bills were erroneously paid under circumstances identical with those



existing in one or more of the six categories for which relief would have been provided had the bill been enacted in its original draft form. However, many other civilian employees who had been overpaid under like circumstances did not have private bills introduced in their behalf. Enacting private bills which relieved one or several employees without relieving all employees similarly situated gave preferential treatment to those employees who were fortunate enough to obtain Congressional relief.

After the House of Representatives held hearings on the original draft bill to grant relief in six specific categories only, the House decided to substitute a general waiver bill to establish a uniform procedure for waiving erroneous payments of pay made because of administrative error either in construing applicable provisions of law or in computing the amount of pay to which an employee was entitled. This approach was deemed appropriate because it would afford the same relief to all employees who received erroneous payments of pay.

Through the end of fiscal year 1971, the General Accounting Office (GAO) and 41 executive agencies which reported on their waiver activities considered 11,056 requests for waiver. Of these requests, 9,425, having a value of \$1,820,993, were waived, and a total of \$664,561 was refunded by the executive agencies because of waiver action.

The purpose of the act, in addition to providing an equitable and speedy administrative process under which relief from liability for the receipt of erroneous payments of pay could be granted, was to relieve the Congress of the increasingly heavy burden of considering numerous private relief bills introduced because employees had been improperly paid through administrative error.

#### APPLICATION OF PUBLIC LAW 90-616

We recognize that the remedial nature of the legislation and the purpose for which it was enacted permit a liberal interpretation of the statute and ordinarily resolve doubts concerning waiver of the erroneous payment in favor of the applicant. This basic concept has been the dominant factor in promulgating the standards for waiver, in construing the

law in numerous decisions, in advising and assisting executive agencies, and in applying the standards to requests for waivers considered by us.

2025 RELEASE UNDER E.O. 14176

CHAPTER 2

GENERAL CRITERIA CONCERNING

WAIVER STATUTE

The act authorizes the waiver, in certain cases, of claims of the United States arising out of erroneous payments of pay to employees of executive agencies. The standards issued pursuant to the act define the terms "executive agency" and "employee" by referring to 5 U.S.C. 105 for a definition of an executive agency and to 5 U.S.C. 5581 for a definition of an employee. Under section 105, an executive agency means an executive department, a Government corporation, or an independent establishment.

Basically, to be considered an employee, an individual must be (1) appointed in the civil service by an appropriate official acting in an official capacity, (2) engaged in performing a Federal function under authority of law or of an Executive act, and (3) subject to an appropriate official's supervision while performing his duties.

"Civil service," as defined in 5 U.S.C. 2101(1), consists of all appointive positions in the executive, judicial, and legislative branches of the Government, except positions in the uniformed services. However, the standards also exclude from waiver consideration claims for erroneous payments of pay made to the Architect of the Capitol, to employees of the District of Columbia Government, of the Government Printing Office, of the U.S. Botanic Garden, and of the legislative branch of the Government, except employees of our Office. The standards also exclude from waiver consideration claims from employees of the Administrative Office of the United States Courts, of the Federal Judicial Center, and of the judicial branch.

The waiver of erroneous payments of pay statute did not define the term "pay," but the legislative history indicated that it was intended to have its broadest meaning. Section 91.2(b) of the standards defines "pay" as "\*\*\* salary, wages, pay, compensation, emoluments, and remuneration for services. It includes overtime pay; night, Sunday standby, irregular and hazardous duty differential; pay for

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Sunday and holiday work; payment for accumulated and accrued leave; and severance pay. It does not include expenses of travel and transportation or expenses of transportation of household goods." In line with the foregoing standards, the Comptroller General by decision has added to the items which may be considered as pay within the meaning of the act and which would thus be proper for waiver consideration. Some of these are discussed below.

An award in connection with, or related to, employment may reasonably be considered an element of pay. Since incentive awards recognize superior accomplishment or a special act or service by an employee, such awards may be viewed as emoluments within the definition of pay.

The fact that a person is not a U.S. citizen has no bearing on his status as an employee, provided that he meets the criteria contained in the statutory definition of the term employee. Also, employment later determined to be void ab initio is considered to be employment for waiver purposes. Such an example would be an employee appointed in violation of the antinepotism law, which prohibits a public official from appointing or promoting any relative. Other examples which may be considered as employment for waiver purposes include an employee's receiving dual salary payments, in violation of statute, holding two offices, or appointing an annuitant without reducing the necessary amount of his annuity from his salary.

Because the Senate report on the statute referred to a claim against the employee or his survivor, the Comptroller General decided that erroneous payments of pay made to the widow or widower of a deceased employee might be considered for waiver.

Under certain circumstances overpayments resulting from a failure to withhold appropriate deductions for health and insurance benefits, for retirement, etc., may be considered for waiver under authority of the act.

Section 91.5 of the standards prescribes conditions for waiving a claim in whole or in part whenever collection action would be against equity and good conscience and would not be in the best interests of the United States. Generally

these conditions are met if the erroneous payment of pay occurred through administrative error and if 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.

The standards specify that any significant unexplained increase in an employee's pay which would require a reasonable man to make inquiry concerning the correctness of his pay ordinarily would preclude a waiver if the employee failed to bring the matter to the attention of appropriate officials.

Through various decisions, the Comptroller General has formulated guidelines to assist administrative agencies in determining whether the employee acted as a reasonable man and whether it would be against equity and good conscience to collect the overpayment. Decisions under such circumstances must necessarily be flexible and must depend on the facts existing in the particular case but must weigh such factors as irregular overtime hours, changes in work schedules, length of service, job responsibility, etc.

If an employee is aware that the payment he received is in error, he cannot in equity and good conscience expend the overpayment for his personal use without reasonably expecting the overpayment to be collected from him, even though he had notified appropriate officials of the error and they had not taken immediate action to correct it.

To ascertain if an employee who received an erroneous payment of pay is free from fault, it should be determined whether he reasonably could have been aware that an error had been made. If it is determined that, under the circumstances, a reasonable man would have questioned the correctness of the payment, but in fact he did not, then, under the decisions of this Office, the employee is not free from fault.

Federal employees are periodically furnished with personnel and payroll documents describing their pay entitlements. These documents afford an employee the opportunity to verify his pay and, if necessary, to report any omissions and/or errors to appropriate officials. Some agencies

include such information as bond balances, annual and sick leave accruals, and cumulative retirement.

Although the information shown on these statements varies among the administrative agencies, the statements must show all deductions. For example, if an earnings and leave statement fails to show a deduction for health benefits, when in fact the employee knows he is covered under such a benefit, he normally would be at fault if he took no action to obtain correction of the error.

The authority contained in the waiver act relates only to an erroneous payment of pay. This term is not defined in either the act or the standards. Questions have arisen in the executive agencies in connection with payments which, although proper when made, later have become overpayments. Generally in these cases, payments which were valid and legal when made but which later became debts due the United States solely because of the employee's action cannot be considered as erroneous payments of pay under the act and the standards.

A few examples of such claims include an employee's:

- Voluntary retirement prior to liquidation of advanced sick leave.
- Return to Government employment prior to the expiration of the period for which a lump-sum payment for annual leave had been made.
- Election to substitute leave without pay for annual and/or sick leave in order to receive compensation under the Federal Employee's Compensation Act. This situation could result from retroactive approval for such compensation after the employee had used and had been paid for annual and/or sick leave. Repayment for the leave would be necessary prior to re-crediting the leave, and the amount previously paid for the leave could not be classified as an erroneous payment of pay.

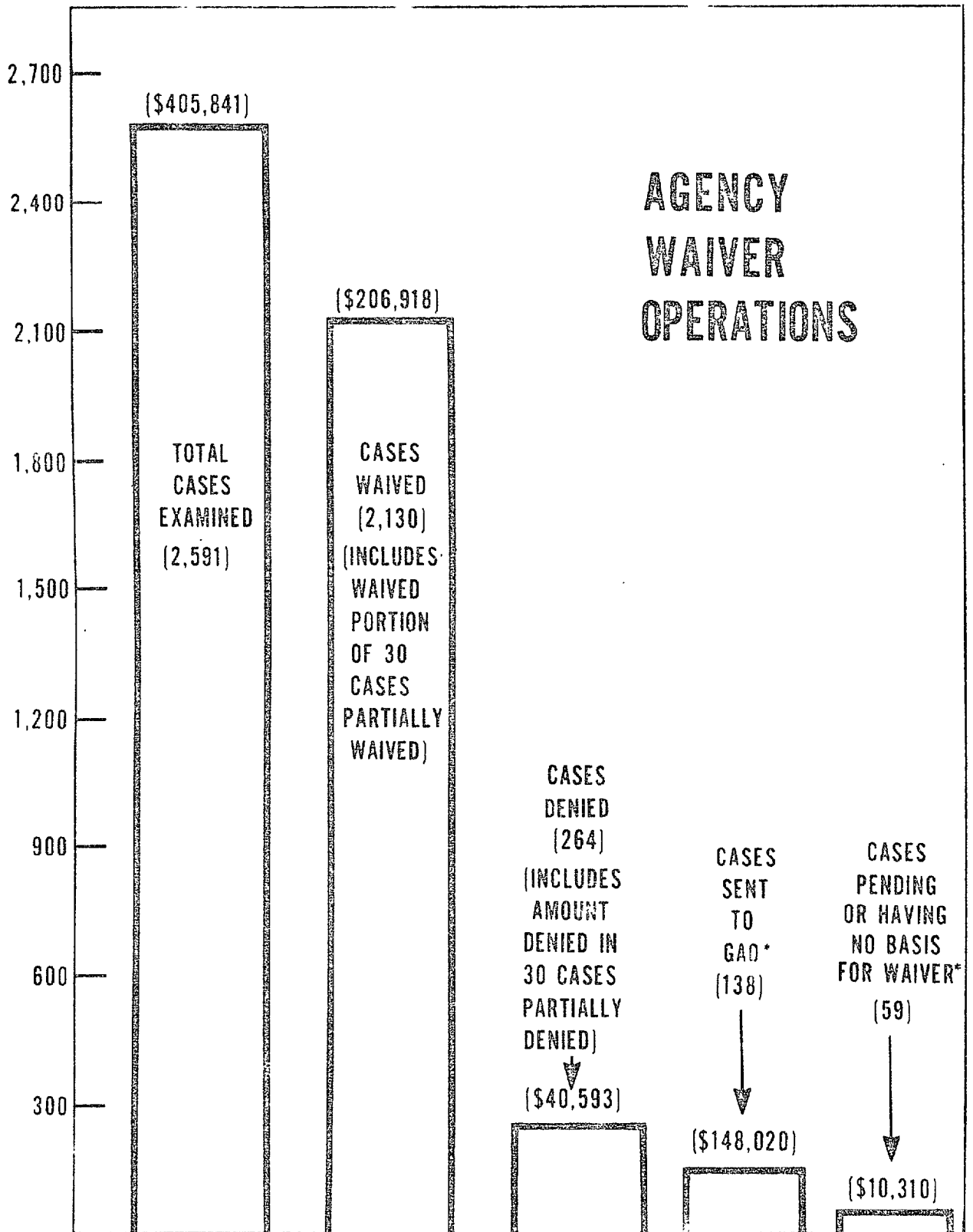
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ANALYSES OF REQUESTS FOR WAIVER PROCESSEDBY EXECUTIVE AGENCIES

We reviewed waiver operations in 20 executive agencies covering fiscal years 1969, 1970, and 1971. We examined 2,591 files and found that 138 requests for waiver had been forwarded to us because they were over \$500 or there was doubt as to the propriety of the waiver action. Also 59 such requests were being considered by the agency at the time of our review or the administrative offices found no basis for granting waiver. The chart on page 14 shows the number of files which we examined, the amount of pay involved, and the action taken by the 20 executive agencies on the 2,591 waiver requests. Of the cases which the agencies actually considered, 89 percent were waived.

We have categorized the types of administrative errors which led to waiver requests. The chart shows the total number of waiver requests examined in the first column and the number examined counting each class request as a single request in the second column. For the purposes of this report a "class request" may be defined as a group of waiver requests resulting from a common administrative error. For example, in one agency a misinterpretation of a regulation on night differential caused erroneous payments in 482 individual cases. In the 20 executive agencies, there was a total of 587 overpayments resulting from the payment of night differential. Inclusion of the 482 class requests covering overpayments of night differential in a breakdown of errors would lend a disproportionate weight to the payment of night differential as a cause of erroneous payments of pay. Therefore we eliminated such class requests to the extent that we counted each such request as having resulted from a single

# AGENCY WAIVER OPERATIONS



\* THESE CASES NOT ACTED UPON BY THE AGENCIES



error. The number of waiver requests counting each class request as a single case is 1,554, as shown below.

Reasons for Overpayments

REASON FOR OVERPAYMENT AVAILABLE	<u>Actual number</u>	<u>Number with classes eliminated</u>
Step increases	369	369
Erroneous pay rate	228	228
Overtime	388	121
Leave	123	112
Night differential	587	95
Saved pay	81	81
Premium pay	108	43
Violation of Whitten amendment	40	40
Wage board conversions	40	33
Special rate	62	29
All others	<u>565</u>	<u>403</u>
 Total	 <u>2,591</u>	 <u>1,554</u>

Granting premature within-grade step increases was the most common error, accounting for 369 of the cases examined. Periodic step increases may be granted to an employee who has not attained the maximum rate of compensation for his grade only in accordance with and subject to the conditions specifically prescribed by statute. The requirements for advancement to the next step in each grade have been changed several times by the Congress since 1941.

Under the present law relating to within-grade step increases, there are 10 steps in grades 1 through 15. Steps 2, 3, and 4 may be granted to an employee after 52 weeks of service; steps 5, 6, and 7 may be granted after 104 weeks of service; and steps 8, 9, and 10 may be granted after 156 weeks of service. The majority of the 369 errors in the cases examined resulted from administrative failure to recognize and to apply the waiting period when employees were advancing from either step 4 or step 7 in their grades. Thus, in most of these 369 claims, the employees were granted step increases 52 weeks before they were eligible for such advancement. In a few instances, premature step increases resulted

from administrative failure to recognize that a period of leave without pay would extend the waiting period for advancement to the next within-grade step or that a promotion to a higher grade would start a new waiting period for the next within-grade increase.

Errors in establishing an employee's basic rate of pay accounted for 228 overpayments. The errors usually occurred when a new employee's rate was fixed or when an employee's rate was determined after a statutory pay increase, a promotion, or a transfer. These errors were caused by typographical errors, incorrect use of pay tables, misinterpretation of regulations, or erroneous computer inputs.

Overtime was erroneously paid in 121 of the cases examined. Many employees were paid for overtime when they were traveling on official business. Under section 5542(b) (2) (B) of title 5 of the United States Code, time spent in a travel status away from an employee's official station is not considered hours of employment unless the travel (1) involves the performance of work while traveling, (2) is incident to travel that involves the performance of work while traveling, (3) is carried out under arduous conditions, or (4) results from an event which could not be scheduled or controlled administratively. In addition, we noted some erroneous overtime payments made in violation of 5 U.S.C. 5547, which limited the aggregate rate of pay for any pay period to the maximum rate of pay for grade 15 of the General Schedule.

Leave constituted the fourth largest category of overpayments--112. Accrual of annual leave is based on an employee's creditable Government service. Our review revealed that some employees were placed in the wrong leave accrual categories, usually after their status was changed, and thus were credited with more leave than they were entitled to have. In other cases employees were granted annual leave before they had completed the 90-day waiting period. This is contrary to 5 U.S.C. 6303(b) which provides that an employee be entitled to annual leave only after he is currently employed for a continuous period of 90 days under one or more appointments without a break in service. Other employees either were erroneously paid while on leave without pay or were erroneously paid for unearned sick or annual leave.

Section 5545 of title 5 of the United States Code authorizes a night differential of 10 percent of employees' basic pay for any regularly scheduled work performed between 6 p.m. and 6 a.m. We found 95 overpayments which resulted from administering this statute, the majority of which were caused by administrative failure to terminate the differential after employees had transferred from the night shift to the day shift. Other overpayments resulted from erroneous computations of the applicable rate.

Section 5337 of title 5 of the United States Code provides that employees who are demoted through no fault of their own may retain a higher rate of pay for a period of 2 years after the effective date of the demotion, provided that they meet certain criteria. Employees usually are entitled to basic pay at the rate to which they were entitled immediately before the reduction in grade, but this rate is subject to limitations if the demotion involves the reduction in pay of several grades or if there is further downgrading. Misinterpretation or miscalculation of the saved pay formula caused most of the 81 errors in this category. The remainder of the overpayments in this category were caused by failure of the administrative office to terminate the saved pay after the 2-year retention period.

There were 43 overpayments involving premium pay. Employees are allowed premium pay for standby duty, for duty in a position in which the hours cannot be administratively controlled, for some Sunday and holiday work, and in some cases for work in which physical hardship or hazard is involved. Sometimes applicable premium pay rates were miscalculated; in other situations employees continued to receive premium pay after they changed from jobs in which they were entitled to receive premium pay to jobs in which they were not.

The so-called Whitten amendment provides, with few exceptions, that no person in any executive department or agency whose position is subject to the Classification Act of 1949, as amended, be promoted or transferred to a higher grade without having served at least 1 year in the next lower grade. (See Historical and Revision Notes under 5 U.S.C. 3101 for background.) We discovered 40 overpayments caused by employees' being promoted before serving the required time in grade.

The conversion of a wage board employee to a classification act position caused administrative problems which resulted in 33 erroneous payments. The Civil Service Commission issued regulations to provide departments with a method for computing an employee's highest previous rate if he had served in a position not subject to the classification act. The method was to be used in converting an employee's rate so that the employee could receive the greatest possible benefit. Misinterpretation of the regulations led to most of these errors.

The President of the United States has authority under 5 U.S.C. 5303, which he delegated to the Civil Service Commission, to establish special minimum rates of basic pay for positions normally subject to statutory pay schedules, when such statutory pay rates (1) are substantially less than the rates in private enterprise and (2) significantly handicap the Government in recruiting and in retaining well-qualified personnel. Errors in administering special pay caused 29 overpayments of pay.

The types of errors leading to erroneous payments of pay discussed above accounted for the majority of the overpayments of pay. Of the remaining 403 overpayments, listed on page 15, the frequency of each type of error diminished. These errors were due to failure to deduct payments made for health benefits, life insurance, and the Federal Insurance Contributions Act; erroneous payments for quarters and cost-of-living allowances; demotions without reduction in pay; failure to reduce the pay of annuitants reemployed by the Federal Government; and erroneous payments of severance pay.

CHAPTER 4WAIVER OF ERRONEOUS PAYMENTS BY GAO

The illustration on page 20 shows that, during fiscal years 1969, 1970, and 1971, the Comptroller General, or his designees, considered for waiver 1,452 cases having a value of \$1,034,973. These claims either were over \$500 or were transmitted to this Office because the agency had doubt as to the waiver action to be taken.

This chapter categorizes the erroneous payments prevalent in the cases we handled during fiscal years 1970 and 1971. Our findings indicate that premature within-grade increases were the most common error. For the most part, the remaining cases fell into several categories in descending order of occurrence: leave, saved pay, wage board, special pay, severance pay, failure to deduct health and life insurance premiums, and failure to reduce pay of reemployed annuitants. Only those categories not discussed in chapter 3 will be included here.

The basic purpose of severance pay is to provide compensation to an employee who has been currently employed for a continuous period of at least 12 months and who is involuntarily separated from the service, not caused by misconduct, delinquency, or inefficiency. The amount of severance pay is computed on the basis of the number of years of service and the age of the recipient with the maximum amount not to exceed 1 year's pay at the rate received by the employee immediately prior to his separation. Overpayments of severance pay resulted from errors in computing the correct amount due, errors in determining eligibility, payments in excess of the 1-year limitation, and failure to discontinue severance payments promptly when a separated employee was reemployed by another installation or Federal agency.

Other overpayments arose when separated employees who received severance pay were later awarded annuities retroactive to the date of separation. Under the provisions of 5 U.S.C. 5595(a)(2)(iv), employees subject to civil service or any other retirement statute or system applicable to employees or members of the uniformed services, who at the

time of separation from the service have fulfilled the requirements for immediate annuities, are not entitled to receive severance pay. Erroneous payments of severance pay occurred most frequently when employees were receiving disability annuities or military retired pay.

Government employees have options to obtain life and health insurance coverage, purchased for them by the Civil Service Commission as the contracting authority with the insurance carriers. Employees normally pay their portion of the insurance premium through payroll deductions. Overpayments in this area occurred mostly through administrative failure to deduct the necessary premiums or through failure to deduct the correct amounts.

A civil service annuitant who is reemployed by the Government on or after October 1, 1956, must have his salary reduced by the employing agency by the amount of annuity he was receiving if his retirement was based on voluntary separation, involuntary separation for cause, or age.

The annuitant's salary must also be reduced by the amount of his annuity if he was a disability annuitant reemployed after reaching age 60 or if he was a disability annuitant not found recovered or restored to earning capacity and temporarily reemployed before reaching age 60.

Overpayments occurred in this area through miscalculations of the pay due after deduction of the annuity, through failure to deduct any annuity, or through failure to adjust the annuitant's salary after he received an annuity increase.

CHAPTER 5AGENCY MISCONCEPTIONS

There was some initial confusion in formulating and administering procedures after the waiver act was passed on October 21, 1968. This act, which made it relatively easy to remove a substantial number of overpayments from the accounts of accountable officers, caused some concern that administrative efforts to avoid errors might be diminished. This was a possibility even though the standards promulgated under the act required that the head of an executive agency determine the reason for the erroneous payment after receiving a report of investigation and take such corrective action as required to prevent similar occurrences.

We believe that the Comptroller General's decisions and this Office's advice and assistance on representative types of waiver requests have materially contributed toward a common understanding among agencies concerning the statute and regulations. This information, in turn, has produced greater consistency and uniformity among the various agencies in interpreting and applying the statute and standards. Since the law involves judgmental decisions, however, there are, and will be, differences of opinion among agencies concerning the propriety of granting waivers under substantially similar circumstances.

Although we seek to insure maximum uniformity among the various Government agencies in administering the statute, we recognize that, under the terms of the statute, the head of each agency has concurrent, yet independent, jurisdiction with respect to claims not in excess of \$500. Therefore this Office will neither modify nor set aside an administrative determination on a request for waiver when the amount involved does not exceed \$500, unless such administrative action is inconsistent with the law or standards or is arbitrary or capricious. Examples of agency determinations and policies which this Office advised agencies to correct because they were contrary to the law or standards are discussed below.

Under section 91.5 (b) of the standards, a claim may be waived whenever collection action would be against equity

and good conscience and would not be in the best interests of the United States. One agency construed this section to mean that, unless an overpaid employee could show that repayment would impose a definite hardship, collection would not be against equity and good conscience. Four additional agencies were using the criterion of financial hardship to determine the propriety of granting waiver.

Nowhere in the act or in the legislative history is there any indication that Congress intended the ability or inability of an employee to refund the amount he was overpaid to be a factor in determining whether the claim against him should be waived. To use such a factor would be inconsistent with 5 U.S.C. 5584(c) which authorizes refunds of amounts repaid by employees whenever a claim is waived. Clearly the law does not contemplate penalizing the conscientious employee who liquidates his debt prior to requesting waiver.

We found that the implementing regulations of three agencies specifically excluded from waiver consideration overpayments resulting from administrative failure to make mandatory or authorized deductions for health premiums, life insurance, retirements, and allotments. Such agency regulations were in irreconcilable conflict with the waiver statute as construed by the Comptroller General's decisions. Another agency's regulations did not specifically exclude these nondeductions from waiver consideration. In its actual operations, however, it did not consider overpayments resulting from nondeductions as pay and therefore deemed waiver consideration improper.

There is no authority for an agency not to consider for waiver overpayments resulting from underdeductions for organization dues, taxes, bonds, savings, social security assessments, or charitable contributions. Each case must be considered on its particular merit. An underdeduction does not necessarily result in an overpayment. For example, in an underdeduction for a bond, no overpayment occurs if the bond has not been purchased. Also, in an underdeduction for Federal and State income taxes, no overpayment has resulted if the amount of such underdeduction has not been transmitted to the tax authorities.



We encountered various methods of computing overpayments for accumulated and accrued leave. If employees are erroneously placed in higher leave-earning categories than that to which they are entitled, the errors normally are corrected merely by adjustments in their leave credits. Only when, as a result of such excess credit, employees are carried in annual leave statuses for periods in excess of the total annual leave properly creditable as of the close of the leave year does an erroneous payment exist which may be considered for waiver. Certain agencies were granting waivers when leave had been erroneously credited although no erroneous payments of pay had been made. We apprised the agencies of their errors and advised them to make appropriate adjustments in the employees' accounts.

Also some agencies had misunderstandings concerning GAO and agency jurisdiction over waiver cases. Section 92.3(c) of the standards prescribes that the head of an executive agency shall refer the investigation report, together with his recommendation, to the Comptroller General for determination if the claim of the United States is in an amount aggregating more than \$500.

In one agency the discretionary "may" was substituted in its regulations for the mandatory "shall." Another agency referred to our Office only those requests over \$500 which it believed should be waived. Thus, this agency exercised authority expressly reserved for our Office. Such action was plainly inconsistent with both the statute and the regulations.

Some agencies were also confused about the amount of money to be waived. Several agencies believed that only the net amount that actually was received by the employee in his paycheck could be waived. The law, however, provides that an erroneous payment, if waived, be deemed a valid payment for all purposes. Thus the gross amount of any erroneous payment must be considered for waiver.

Some agencies used the term "equity and good conscience" to issue regulations which precluded waiver consideration for claims under specified minimum amounts or for those claims which arose from certain classes of errors. One agency precluded waiver consideration of all claims under \$10, whereas

another felt collection was equitable when the overpayment was less than 10 percent of an employee's net biweekly pay. One agency waived all overpayments under \$10 unless the error was mechanical or clerical. Two other agencies precluded waiver consideration for all overpayments resulting from mechanical or clerical errors.

During the development of the existing standards, 4 CFR 91-93, consideration was given to whether a special provision should be included with respect to small overpayments. Although such a provision was not then adopted, on the basis of experience now gained, we have determined that the cost of a full investigation of all cases such as now contemplated by the standards may reasonably be assumed to exceed the amount to be considered for waiver. Therefore, in the interest of economy and uniformity of operation, the standards for waiver of erroneous payments of pay have been revised to permit optional waivers of certain items less than \$25 without investigation. The revisions were made in parts 91 and 92.

Section 91.5 was revised by the addition of a new paragraph (c) as follows:

"§ 91.5 Conditions for waiver of claims.

\* \* \* \* \*

(c) The claim is in the gross amount of \$25 or less and there is no evidence that such erroneous payment occurred through 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. See § 92.2(c)."

Section 92.2 was amended by revising paragraph (a) and by adding a new paragraph (c), as follows:

"§ 92.2 Investigation--Report of Investigation

(a) Except as provided in paragraph (c) of this section, all claims of the United States considered for waiver under the provisions of

these regulations shall be investigated by the executive agency which made the erroneous payment of pay.

\* \* \* \* \*

(c) An investigation will not be required in those cases of overpayment of pay involving amounts of \$25 or less where there is no indication in the record of fraud, misrepresentations, 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."

These amendments were published in the Federal Register on June 20, 1972, as 37 F.R. 12135.

Generally the 20 executive agencies' waiver procedures and operations which we reviewed complied with the act and the standards. Only two agencies failed to include any reference to corrective action in their implementing regulations. Section 92.6 of the standards requires that an account of the corrective action taken be included in the file record. Many of the files that we examined failed to show what action had been taken but agency officials agreed to include this information in the files in the future.

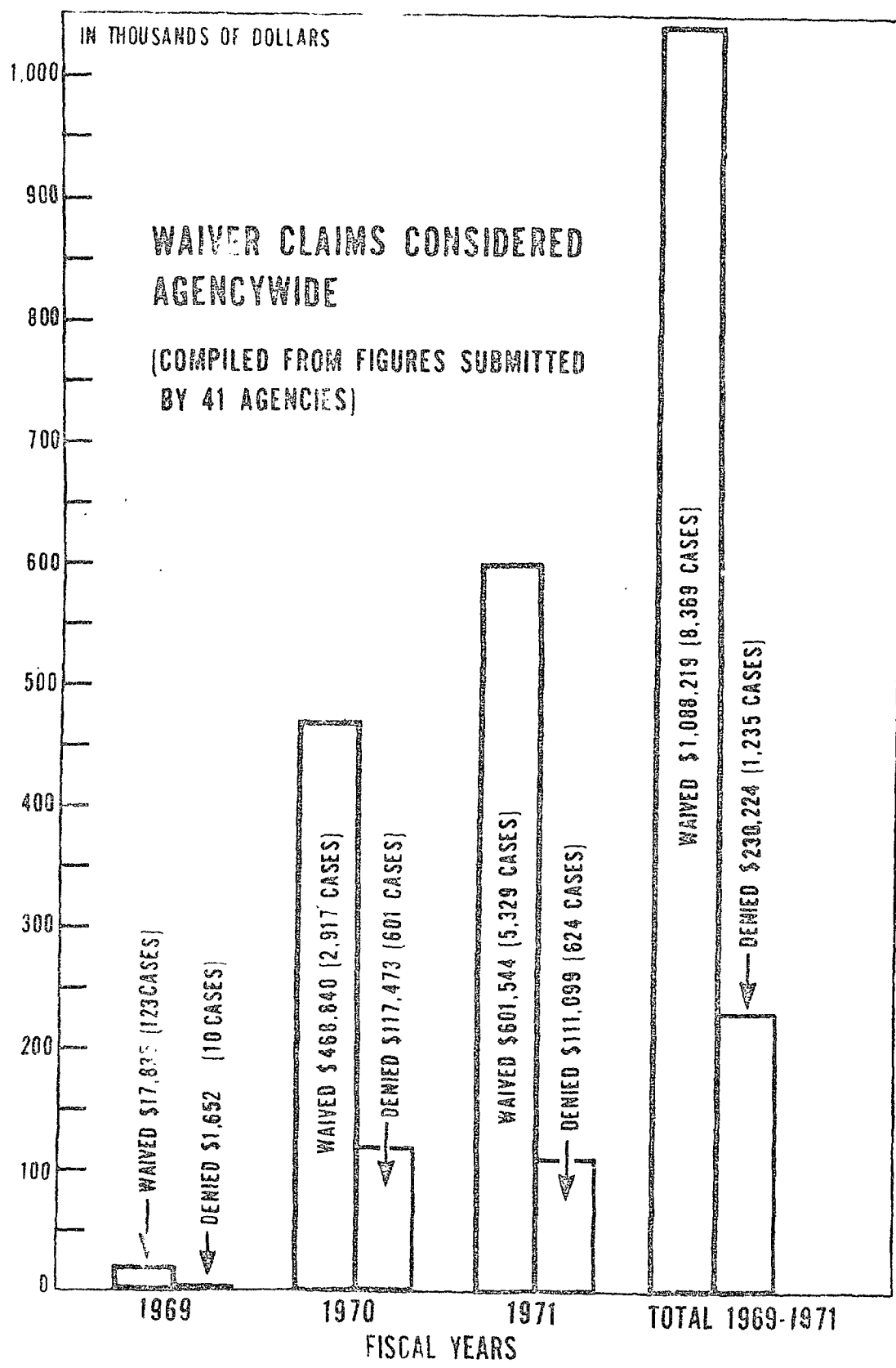
We informally advised the agencies of ways to improve their operations and also pointed out omissions in their implementing regulations and suggested changes. We stressed the importance of (1) determining the reason for the erroneous payment, (2) taking necessary corrective action to prevent similar errors in the future, (3) fully documenting the file to show what corrective action was taken, and (4) following general guidelines set forth in GAO decisions. All agencies agreed to be more diligent in this area, and one agency issued an agencywide memorandum reminding all appropriate officials that effective corrective action was required.

CHAPTER 6

REPORT REQUIREMENTS

Section 92.7(b) of the standards requires that each agency which exercises waiver authority under the provisions of the act and the standards report to the Comptroller General within 60 days after the close of each fiscal year the total amount of money waived and the total amount refunded during the preceding fiscal year. We have requested agencies to furnish additional statistics concerning the number of waivers denied and the dollar value involved so that we may have a full accounting.

The chart on page 28 shows that, of the 9,604 claims considered for waiver by the 41 agencies which furnished information, 8,369, or 87 percent, were waived during fiscal years 1969, 1970, and 1971. As shown in chapter 3, 89 percent of the cases considered by the 20 agencies reviewed were waived.



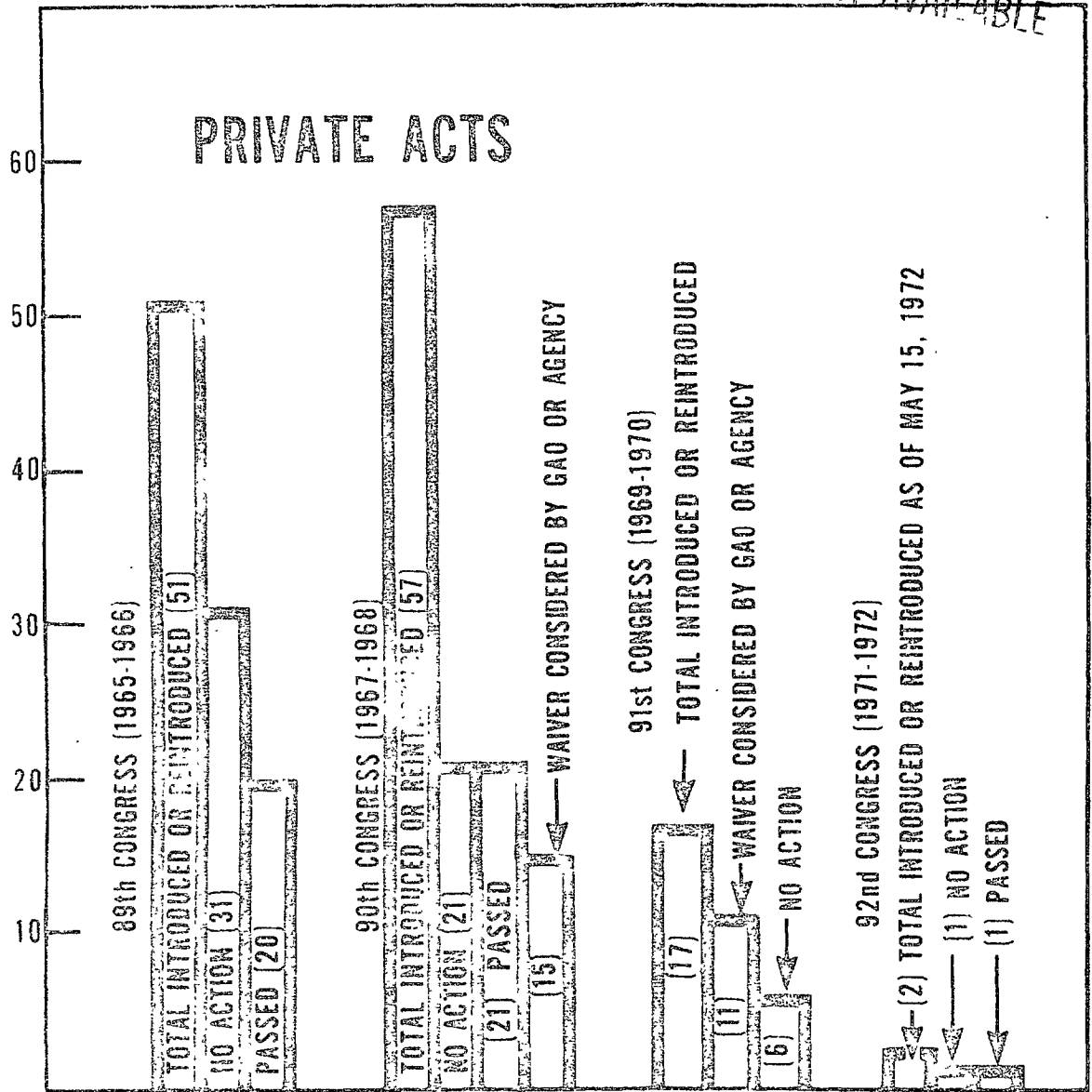
CHAPTER 7APPRAISAL OF THE WAIVER STATUTE

Public Law 90-616 was designed not only to relieve innocent employees from liability to repay erroneous payments of pay if collection would be inequitable and would not be in the best interests of the United States but also to relieve Congress of the burdensome and time-consuming task of considering private bills for relief of individuals who innocently received erroneous payments of pay. Much progress has been made toward accomplishing both objectives.

The relief afforded to Congress is evidenced by the decrease in private bills introduced or reintroduced after the waiver statute was enacted. During the Eighty-ninth and Ninetieth Congresses, 108 bills were introduced for the relief of employees who received erroneous payments. (See chart, p. 30.) In the Ninety-first Congress, only 17 bills were introduced and in the first session of the Ninety-second Congress, only two bills were introduced. Our report refers only to private bills for civilian employees in executive agencies.

Our Office and the 41 executive agencies reporting to us considered 11,056 waiver requests from enactment through the end of fiscal year 1971. Of these 11,056 requests, 9,425, approximately 85 percent, amounting to \$1,820,993 were waived. During the same period 1,631 requests amounting to \$532,422 were denied.

The number of waiver requests granted clearly demonstrates that many more employees were released from liability by administrative action than possibly could have been afforded relief had the only source of relief been enactment of private legislation. Undoubtedly the objective of granting relief on a reasonably uniform basis in erroneous pay situations has been achieved to a large degree. The 41 agencies refunded a total of \$664,561 during fiscal years 1969, 1970, and 1971.



In one respect, however, the language of the waiver statute indicates an inequity. That law specifically provides that neither the Comptroller General nor the head of an agency may exercise his authority to waive any claim

"(2) after the expiration of three years immediately following the date on which the erroneous payment of pay was discovered or three years immediately following the effective date [October 21, 1968] of this section, whichever is later."

Although we do not know the exact number of cases existing throughout the Government, we do know that in our Office there are 16 cases pending in which the employees submitted waiver requests within the 3-year limitation period but on which waiver action could not be taken prior to the expiration date of October 21, 1971. Ten of these cases were forwarded to us by the agencies after this date, four were forwarded in August and September 1971, and two in October 1971, but prior to the expiration date.

In order to comply with the standards' requirement that an investigation be made of the circumstance: under which the erroneous payment of pay was made, an examination of records is necessary in all cases considered for waiver. In many of the cases involving erroneous payments of pay dating back to July 1, 1960, obtaining records was not only difficult but also was time consuming.

In 15 of the 16 cases mentioned above, the error was discovered before the act was enacted. One was in 1961. In 10 of the 15 cases, the employees did not request waivers until 1970 or 1971. In one case an indebtedness of \$1,700 was discovered in October 1966 but request for waiver was not made until October 8, 1971, two weeks before waiver consideration was barred. Thus, while the request for waiver in this particular case was filed within the 3-year limitation period, it was impossible to investigate the circumstances under which the erroneous payment of pay was made and to take action on the request before the expiration date. Under the present language of the statute, similar instances are bound to occur.

#### MATTER FOR CONSIDERATION BY THE CONGRESS

We invite attention to House Bill 7614, Ninety-second Congress, which was passed on May 17, 1971, and which is pending in the Senate. That bill's primary purpose is to extend to members of the uniformed services waiver benefits comparable with those authorized to be granted civilian employees under 5 U.S.C. 5584. It also would amend subsection (b)(2) of section 5584 to authorize waiving Government claims arising from erroneous payments of pay whenever requests for waiver are filed with our Office or the agency involved, as appropriate, within 3 years after the error



has been discovered, or 3 years immediately following October 21, 1968, whichever is later. If this bill is enacted in its present form, it will clarify the law and will resolve the inequity to which we refer. On the other hand, if the Congress does not deem it appropriate to enact House bill 7614, we suggest that a more limited bill be enacted designed solely to clarify the law and to resolve the inequity discussed above.

Our Office will cooperate in drafting such a bill should the Congress decide upon this course of action.

## CHAPTER 8

### PURPOSE AND SCOPE OF REVIEW

In order to promote maximum uniform procedures for processing claims for waiver consideration within the executive departments and to apprise the Congress of Public Law 90-616's effectiveness in the 3 years since its enactment, GAO conducted reviews in 20 executive agencies covering fiscal years 1969, 1970, and 1971. Our principal objectives were to determine the

- adequacy of administrative regulations and operations,
- nature of salary overpayments considered for waiver action,
- number of waiver requests administratively granted or denied and the dollar value thereof, and
- corrective action taken to prevent similar errors.

In accordance with section 92.7 of the standards, administrative agencies are required to maintain a register which shows the disposition of each claim of the United States for erroneous payment of pay considered for waiver under the act. We therefore reviewed the required registers and examined the claims on which administrative actions had been completed. This examination was necessary to ascertain whether the files contained reports of investigations, accounts of corrective actions taken, and other pertinent information.



Public Law 90-616  
90th Congress, S. 4120  
October 21, 1968

*An Act*

To amend title 5, United States Code, to authorize the waiver, in certain cases, of claims of the United States arising out of erroneous payments of pay to employees of the executive agencies, and for other purposes.

82 STAT. 1212

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) subchapter VIII of chapter 55 of title 5, United States Code, is amended by adding at the end thereof the following new section:

Federal employ. es.  
U. S. claims for  
overpayment,  
waiver.  
80 Stat. 495.  
5 USC 5591-  
5593.

“§ 5594. Claims for overpayment of pay

“(a) A claim of the United States against a person arising out of an erroneous payment of pay, on or after July 1, 1960, to an employee of an executive agency, the collection of which would be against equity and good conscience and not in the best interests of the United States, may be waived in whole or in part by—

“(1) the Comptroller General of the United States; or

“(2) the head of the executive agency when—

“(A) the claim is in an amount aggregating not more than \$500;

“(B) the claim is not the subject of an exception made by the Comptroller General in the account of any accountable official; and

“(C) the waiver is made in accordance with standards which the Comptroller General shall prescribe.

“(b) The Comptroller General or the head of the executive agency, as the case may be, may not exercise his authority under this section to waive any claim—

“(1) if, in his opinion, 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; or

“(2) after the expiration of three years immediately following the date on which the erroneous payment of pay was discovered or three years immediately following the effective date of this section, whichever is later.

Time limitation.

“(c) A person who has repaid to the United States all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the employing agency at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that employing agency for that refund within two years following the effective date of the waiver. The employing agency shall pay that refund in accordance with this section.

Refunds.

“(d) In the audit and settlement of the accounts of any accountable official, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.

“(e) An erroneous payment, the collection of which is waived under this section, is deemed a valid payment for all purposes.

“(f) This section does not affect any authority under any other statute to litigate, settle, compromise, or waive any claim of the United States.”

Savings  
provision.

APPENDIX I

Pub. Law 90-616

- 2 -

October 21, 1968

22 STAT. 1212

81 Stat. 495.  
5 USC 5581-  
5583.

(b) The table of contents of subchapter VIII of chapter 55 of title 5, United States Code, is amended by inserting the following new item immediately below item 5533:

"5584. Claims for overpayment of pay."

Approved October 21, 1968.

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LEGISLATIVE HISTORY:

HOUSE REPORT No. 1863 accompanying H. R. 17954 (Comm. on Post Office and Civil Service).

SENATE REPORT No. 1607 (Comm. on Post Office and Civil Service).

CONGRESSIONAL RECORD, Vol. 114 (1968):

Oct. 4: Considered and passed Senate.

Oct. 11: Considered and passed House in lieu of H. R. 17954.

**SUBCHAPTER G—STANDARDS FOR WAIVER OF CLAIMS FOR  
ERRONEOUS PAYMENT OF PAY**

**PART 91—STANDARDS FOR WAIVER**

- Sec.  
91.1 Prescription of standards.  
91.2 Definitions.  
91.3 Exclusions.  
91.4 Waiver of claims for erroneous payment of pay.  
91.5 Conditions for waiver of claims.

**AUTHORITY:** The provisions of this Part 91 issued under Sec. 311, 42 Stat. 25, as

amended, 31 U. S. C. 52 Interpret or apply, 82 Stat. 1212, 5 U.S.C. § 5584.

**SOURCE:** The provisions of this Part 91 appear at 33 F.R. 20001, Dec. 31, 1968, unless otherwise noted. Redesignated at 34 F.R. 19967, Dec. 20, 1969.

**§ 91.1 Prescription of standards.**

The regulations in this chapter issued by the Comptroller General of the United

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**§ 91.2****Title 4—Chapter I**

States under Public Law 90-616, approved October 21, 1968, 82 Stat. 1212, which amended subchapter VIII of chapter 55 of title 5, United States Code by adding a new section, section 5584, prescribe standards for the waiver of claims of the United States against a person arising out of an erroneous payment of pay, on or after July 1, 1960, to an employee of an executive agency, the collection of which would be against equity and good conscience and not in the best interests of the United States.

**§ 91.2 Definitions.**

In this chapter:

(a) "Employee" means an employee as defined in 5 U.S.C. 5581 who is or was employed in a civilian capacity by an executive agency as defined in 5 U. S. C. 105.

(b) "Pay" means salary, wages, pay, compensation, emoluments, and remuneration for services. It includes overtime pay; night, Sunday standby, irregular and hazardous duty differential; pay for Sunday and holiday work; payment for accumulated and accrued leave; and severance pay. It does not include expenses of travel and transportation or expenses of transportation of household goods.

**§ 91.3 Exclusions.**

This chapter does not apply to:

(a) Members of the uniformed services as defined in 5 U.S.C. 2101(3).

(b) Employees of the District of Columbia Government.

(c) Employees of the Architect of the Capitol, the Government Printing Office, the U.S. Botanic Garden and other employees of the legislative branch of the Government except employees of the General Accounting Office.

(d) Employees of the Administrative Office of the U.S. Courts, the Federal Judicial Center, and other employees of the judicial branch.

**§ 91.4 Waiver of claims for erroneous payment of pay.**

(a) The Comptroller General of the United States may waive in whole or in part a claim of the United States in any amount arising out of an erroneous payment of pay to an employee when all of the conditions set out in § 91.5 are present. Claims referred to the Attorney General for litigation will not be considered for waiver by the Comptroller General of the United States without

first having obtained permission from the Attorney General.

(b) The head of an executive agency may waive in whole or in part a claim of the United States in an amount aggregating not more than \$500, without regard to any repayments, against any person arising out of an erroneous payment of pay to an employee of such agency when all of the conditions set out in § 91.5 are present except that he may not waive such a claim which is the subject of an exception made by the Comptroller General in the account of any accountable official, or, which has been transmitted to the General Accounting Office for collection or to the Attorney General for litigation.

[33 F.R. 20001, Dec. 31, 1968; 34 F.R. 303, Jan. 9, 1969]

**§ 91.5 Conditions for waiver of claims.**

Claims of the United States arising out of an erroneous payment of pay may be waived in whole or in part in accordance with the provisions of § 91.4 whenever:

(a) The claim arises out of an erroneous payment of pay made to an employee of an executive agency on or after July 1, 1960, except that waiver action may not be taken under the provisions of these regulations after the expiration of 3 years immediately following the date on which the erroneous payment of pay was discovered or after October 21, 1971, whichever is later.

(b) Collection action under the claim 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 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 which would require a reasonable man to make inquiry concerning the correctness of his pay ordinarily would preclude a waiver when the employee fails to bring the matter to the attention of appropriate officials. Waiver of overpayments of pay 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 a part of the written record in accordance with the provisions of § 92.6.

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**PART 92—PROCEDURE**

- Sec. 92.1 Referral of requests for waiver or applications for refund to head of executive agency—Claims pending before General Accounting Office.
- 92.2 Investigation—Report of Investigation.
- 92.3 Procedure of head of executive agency after receiving report of investigation.
- 92.4 Notification of waiver action.
- 92.5 Refund of amount repaid and waived.
- 92.6 Written record.
- 92.7 Register of waivers—Report.
- 92.8 Referral of claims for collection or litigation.

**AUTHORITY:** The provisions of this Part 92 issued under sec. 311, 42 U.S.C. 26, as amended, 31 U.S.C. 82. Interpret. of apply, 82 Stat. 1212, 5 U.S.C., § 5504.

**SOURCE:** The provisions of this Part 92 appear at 33 F.R. 20001, Dec. 31, 1968, unless otherwise noted. Rec. signed at 34 F.R. 10907, Dec. 20, 1969.

**§ 92.1 Referral of requests for waiver or applications for refund to head of executive agency—Claims pending before General Accounting Office.**

(a) All requests for waiver and all applications for refund within the provisions of these regulations shall be submitted to the executive agency which made the erroneous payment of pay. All such applications for refund which have not previously been considered for waiver shall be considered for waiver in accordance with the provisions of these regulations. In the absence of other request, either the Comptroller General of the United States or the head of the executive agency which made the erroneous payment of pay may initiate the waiver procedure prescribed in these regulations.

(b) Claims of the United States for erroneous payment of pay which (1) prior to the prescribing of these regulations have been referred to the General Accounting Office for collection, (2) which are still pending, and (3) which appear to be for consideration under these regulations, will be returned to the executive agency for processing in accordance with the procedure prescribed in these regulations unless they are found to contain sufficient information for waiver action by the Comptroller General of the United States.

**§ 92.2 Investigation—Report of Investigation.**

(a) All claims of the United States considered for waiver under the provisions of these regulations shall be investigated by the executive agency which made the erroneous payment of pay.

(b) The report of investigation will be made to the head of the executive agency and should include:

(1) A statement of the aggregate amount of the erroneous payment of pay supported by a citation to the vouchers or vouchers upon which the erroneous payment of pay was made together with a showing as to the part of the erroneous payment of pay made on each voucher.

(2) A statement showing the circumstances under which the erroneous payment of pay was made, the date it was discovered and whether it was subject to an exception made by the Comptroller General of the United States.

(3) A statement 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; and

(4) Such other information as may assist the Comptroller General of the United States, or the head of the executive agency, as the case may be, to determine whether collection action under the claim would be against equity and good conscience and not in the best interests of the United States.

**§ 92.3 Procedure of head of executive agency after receiving report of investigation.**

After the head of the executive agency receives the report of investigation made in accordance with the provisions of § 92.2 of these regulations he shall:

(a) Determine the reason for the erroneous payment of pay and take such corrective action as may be required to prevent similar erroneous payments of pay;

(b) Waive the claim of the United States in whole or in part, if it is an amount aggregating not more than \$500, without regard to any repayment, and he determines that waiver would be proper under these regulations, and record the date and reasons for the waiver, unless the claim has been referred to the Comptroller General for collection or the Attorney General for litigation in

§ 92.4

Title 4—Chapter 1

which case the report of investigation together with his recommendation will be referred to the Comptroller General of the United States.

(c) Refer the report of investigation together with his recommendation to the Comptroller General of the United States for determination if the claim of the United States is in an amount aggregating more than \$500, or

(d) Refer the report of investigation together with his recommendation to the Comptroller General of the United States if the claim of the United States is in an amount aggregating \$500 or less without regard to any repayment, and the head of the executive agency has doubt as to whether waiver action is proper.

#### § 92.1 Notification of waiver action.

The Comptroller General of the United States or the head of the executive agency, as the case may be, to the extent practicable, shall send written notification to all concerned as to the final action taken upon a claim of the United States for erroneous payment of pay considered for waiver. If he reasonably can be located, any person who has repaid to the United States all or part of a claim which has been waived in whole or in part under the provisions of these regulations, and who has not previously made application for refund, in addition to being informed as to the waiver action shall also be informed of his right to make application to the employing agency for refund within 2 years following the date of the waiver action.

#### § 92.5 Refund of amounts repaid and waived.

The employing agency at the time of the erroneous payment shall refund any amounts to a person who has repaid to the United States all or part of the claim which has been waived in whole or in part under the provisions of these regulations providing application is made to the employing agency for the refund within 2 years following the date of the waiver. Refunds shall be charged to the appropriation from which the erroneous overpayment of pay was made.

#### § 92.6 Written record.

The report of investigation, an account of the corrective action taken, an account of the waiver action taken and the reasons therefor, and other pertinent information such as the action taken upon an application for refund shall

constitute the written record in each case considered under the provisions of these regulations.

#### § 92.7 Register of waivers—Report.

(a) Each executive agency shall maintain a register which shall show the disposition of each claim of the United States for erroneous payment of pay considered for waiver under the provisions of these regulations, which register, together with the written record as described in section 92.6 of these regulations shall be available for review by the General Accounting Office.

(b) Within 60 days after the close of each fiscal year, each agency exercising waiver authority under the provisions of these regulations shall report to the Comptroller General of the United States the total amount waived during the preceding fiscal year and the total amount refunded.

#### § 92.8 Referral of claims for collection or litigation.

(a) If the administrative agency has considered waiver and has denied waiver in whole or in part it shall so advise the General Accounting Office when referral for collection is made to it pursuant to 31 U.S.C. 71.

(b) No claim for the recovery of an erroneous payment of pay shall be referred to the Attorney General for litigation until it has first been considered for waiver, unless the time remaining for suit within the applicable period of limitations does not permit such waiver consideration prior to referral.

### PART 93—EFFECT OF WAIVER

Sec.

93.1 Credit in accounts.

93.2 Waived payment deemed valid.

93.3 Effect on other authority.

**AUTHORITY:** The provisions of this Part 93 issued under sec. 311, 42 Stat. 26, as amended, 31 U.S.C. 52. Interpret or apply, 62 Stat. 1212, 5 U.S.C., § 5524.

**SOURCE:** The provisions of this Part 93 appear at 33 F.R. 20602, Dec. 31, 1968, unless otherwise noted. Redesignated at 34 F.R. 19967, Dec. 20, 1969.

#### § 93.1 Credit in accounts.

In the audit and settlement of the accounts of any accountable official, full credit shall be given for any amounts with respect to which collection by the United States is waived under the provisions of these regulations.

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Title 4—Chapter 1

§ 93.3

#### § 93.2 Waived payment deemed valid.

An erroneous payment of pay, the collection of which is waived under the provisions of these regulations is deemed a valid payment of pay for all purposes.

#### § 93.3 Effect on other authority.

The provisions of these regulations do not affect any authority under any statute, other than 5 U.S.C. 5564, to litigate, settle, compromise, or waive any claim of the United States.

# Rules and Regulations

## Title 4—ACCOUNTS

### Chapter I—General Accounting Office SUBCHAPTER G—STANDARDS FOR WAIVER OF CLAIMS FOR ERRONEOUS PAYMENT OF PAY PART 91—STANDARDS FOR WAIVER

#### PART 92—PROCEDURE Optional Waiver Without Investigation

The standards for waiver of erroneous payments of pay are revised to permit optional waivers of certain items less than \$25 without investigation.

The following revisions are made in Parts 91 and 92:

1. Section 91.5 is revised by the addition of a new paragraph (c) as follows:

#### § 91.5 Conditions for waiver of claims.

(c) The claim is in the gross amount of \$25 or less and there is no evidence that such erroneous payment occurred through 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. See § 92.2(c) of this chapter.

2. Section 92.2 is amended by revising paragraph (a) and by the addition of a new paragraph (c), as follows:

#### § 92.2 Investigation—Report of Investigation.

(a) Except as provided in paragraph (c) of this section, all claims of the United States considered for waiver under the provisions of these regulations shall be investigated by the executive agency which made the erroneous payment of pay.

(c) An investigation will not be required in those cases of overpayment of pay involving amounts of \$25 or less where there is no indication in the record of fraud, misrepresentations, 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.

(Sec. 311, 42 Stat. 25, as amended, 31 U.S.C. 52. Interpret or apply, 52 Stat. 1212, 5 U.S.C. sec. 556.)

[SEAL] ELMER B. STAATS,  
Comptroller General  
of the United States.

[FR Doc 72-9238 Filed 6-19-72, 8:49 am]

## Title 7—AGRICULTURE

### Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

#### SUBCHAPTER B—FAPMA MARKETING QUOTAS AND ACREAGE ALLOTMENTS [Amdt. 2]

#### PART 711—MARKETING QUOTA REVIEW REGULATIONS

##### Miscellaneous Amendments

##### Correction

In F.R. Doc. 72-9066 appearing on page 10656 of the issue for Friday, May 26, 1972, and corrected on page 11465 of the issue for Thursday, June 8, 1972, the fourth county in Area II of Alabama, now reading "Hilton", should read "Chilton".

##### [Amdt. 19]

#### PART 725—FLUE-CURED TOBACCO

##### Flue-Cured Tobacco, 1970-71 and Subsequent Marketing Years

On pages 7805 through 7807 of the FEDERAL REGISTER of April 20, 1972, there was published a notice of proposed rule making to issue amendments to lease and transfer of allotments and marketing quotas, the identification of marketings of tobacco and the records and reports incident thereto for flue-cured tobacco. Interested persons were given 30 days after publication of such notice in which to submit written data, views, or recommendations with respect to the proposed regulations. The data, views, and recommendations which were submitted pursuant to said notice were duly considered within the limits of the Agricultural Adjustment Act of 1938, as amended. The proposed regulations are adopted with the following changes and two additions:

1. It has been determined that the allowable rate of floor sweepings will remain at 0.005 and will not be reduced as stated in the notice of proposed rule making. Also, first sales at auction to the warehouse will be included in total first sales for the purpose of computing allowable floor sweepings. A study will be made during the 1972-73 marketing year to determine the reasonableness of the 0.005 rate. This will be accomplished on a random spot check basis by weighing the scraps or leaves of tobacco which accumulate on the warehouse floor during the regular course of business.

2. Paragraph (f) of § 725.92 is added to provide the rate of penalty for ex-

cess tobacco marketed during the 1972-73 marketing season. The determination of the penalty rate is purely a mathematical calculation.

3. The proposed requirement in § 725.99(m) is expanded to permit warehousemen to prepare and maintain a daily summary journal sheet to reflect daily transactions in lieu of maintaining copies of the bill-out invoices to the purchaser.

4. For clarification, the words "quota and nonquota" have been inserted in the beginning of §§ 725.99 and 725.100. Also, wording is added to specify that a warehouseman shall not weigh in any tobacco for sale unless identified by Form MQ-76 or MQ-79-2 or the tobacco is represented to be a nonquota kind, and that each nonauction purchase of tobacco from a flue-cured producing area shall be identified by Form MQ-76 issued for the farm on which the tobacco was produced unless prior to purchase an AMS inspection certificate is obtained to show that the tobacco is a nonquota kind.

5. In § 725.92 (4), the proposed requirement for filing of basket tickets in an orderly manner by sale days has been expanded to permit filing of basket tickets by numerical order, if so desired by the warehouseman.

6. Grammatical and spelling errors in the text have been corrected.

7. An authority clause has been added.

Since the 1972 crop of flue-cured tobacco is nearing the marketing stage, it is essential that farmers, warehousemen, and dealers know the provisions of this amendment as soon as possible. Accordingly, this amendment shall become effective upon publication in the FEDERAL REGISTER (6-20-72).

The amendments are as follows:  
1. Section 725.72 (p) (1) is amended by adding a sentence at the end to read as follows:

§ 725.72 Lease and transfer of tobacco marketing quotas.

(p) Cancellation, dissolution or revision of transfer—(1) Cancellation. . . . The provisions of this subparagraph (1) shall not preclude application of the erroneous notice provisions under § 725.70 where such provisions are applicable.

2. Section 725.85 is revised to read as follows:

§ 725.85 Identification of kinds of tobacco.

Any tobacco that has the same characteristics and corresponding qualities, colors, and lengths of a kind and type shall be considered such kind and type