

(6) Comply with any other requirements established by an advance decision authority outside DoD.

(e) *Advance Decisions.* The General Counsel of the Department of Defense, or designee, must take action under paragraphs (e)(1), (e)(2), or (e)(3) of this Appendix, whichever applies.

(1) If the request is described in paragraph (b)(1) of this Appendix, the General Counsel of the Department of Defense, or designee, must review the request and issue an advance decision, unless the General Counsel of the Department of Defense, or designee, elects to proceed under paragraph (e)(3) of this Appendix.

(i) The General Counsel of the Department of Defense, or designee, must send the decision, through the General Counsel of the Component concerned, to the requester, and must send a copy of the decision to the Director, Defense Office of Hearings and Appeals.

(ii) The decision is controlling in the case; the reliance of certifying and disbursing officials on it in their disposition of the case is evidence that those officials have exercised due diligence in the performance of their duties.

(iii) An advance decision is precedent in similar claims under this Instruction unless otherwise stated in the decision.

(2) If the request is not described in paragraph (b)(1) of this Appendix, the General Counsel of the Department of Defense, or designee, must review the request and either:

(i) forward the request to the appropriate advance decision authority and notify the requester of that action; or

(ii) Return the request, through the General Counsel of the Component concerned, to the requester, with a memorandum explaining that under existing legal authorities a request for an advance decision is not necessary. After considering the memorandum, the requester may resubmit the request, through the General Counsel of the component concerned, to the General Counsel of the Department of Defense, or designee. The General Counsel of the Department of Defense, or designee, must forward the request to the appropriate advance decision authority, and notify the requester of that action.

(3) If the request is described in paragraph (b)(1) of this Appendix, and the claim is for not more than \$250, the General Counsel of the Department of Defense, or designee, may refer the request to the General Counsel of the Department of Defense, or designee, may refer the request to the General Counsel, Defense Finance and Accounting Service (DFAS). The General Counsel, DFAS, shall review the request and issue an advance decision.

(i) The General Counsel, DFAS, must send the decision, through the General Counsel of the Component concerned, to the requester, and must send a copy of the decision to the General Counsel of the Department of Defense, or designee.

(ii) The decision is controlling in the case; the reliance of certifying and disbursing officials on it in their disposition of the case is evidence that those officials have exercised

due diligence in the performance of their duties.

(iii) An advance decision issued by the General Counsel, DFAS, under this paragraph is not precedent in similar claims under this part.

Dated: November 4, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 283

**RIN 0790-AG90**

#### Waiver of Debts Resulting From Erroneous Payments of Pay and Allowances

**AGENCY:** Defense Office of Hearings and Appeals, Office of the General Counsel of the Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes policy and assigns responsibilities for considering applications for the waiver of debts resulting from erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services and civilian Department of Defense (DoD) employees. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense. Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding \$1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignment of the Comptroller General's former duties within the Department of Defense with little impact on the public.

**DATES:** Consideration will be given to all comments received on or before January 13, 2003.

**ADDRESSES:** Send comments to the Defense Office of Hearings and Appeals, ATTN: Claims Division, P.O. Box 3656, Arlington, VA 22203-1995.

**FOR FURTHER INFORMATION CONTACT:** Michael Hipple, 703-696-8510.

#### **SUPPLEMENTARY INFORMATION:**

#### **Executive Order 12866, "Regulatory Planning and Review"**

The Director of the Defense Office of Hearings and Appeals has determined that this rule is not a significant rule because it does not: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact on entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

#### **Public Law 96-354, "Regulatory Flexibility Act"**

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have a significant economic impact on a substantial number of small entities because this rule affects members of the Uniformed Services and Federal employees and provides procedures by which their claims against the United States will be adjudicated.

#### **Public Law 96-511, "Paperwork Reduction Act"**

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not impose information collection requirements.

#### **Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"**

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not involve a Federal Mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

**Executive Order 13132, "Federalism"**

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

**List of Subjects in 32 CFR part 283**

Administrative practice and procedure, Armed forces, Wages.

Accordingly, 32 CFR part 283 is proposed to be added to subchapter M to read as follows:

**PART 283—WAIVER OF DEBTS RESULTING FROM ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES**

Sec.

283.1 Purpose.

283.2 Applicability.

283.3 Definitions.

283.4 Policy.

283.5 Responsibilities and functions.

**Authority:** 5 U.S.C. 5584; 10 U.S.C. 2774; 32 U.S.C. 716.

**§ 283.1 Purpose.**

This part establishes policy and assigns responsibilities for considering applications for the waiver of debts resulting from erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services and civilian Department of Defense (DoD) employees under 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584.

**§ 283.2 Applicability.**

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all organizational entities within the Department of Defense (hereafter referred to collectively as "the DoD Components").

(b) The Coast Guard, when it is not operating as a Service in the Navy, and the Commissioned Corps of the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA), to the extent of the authority provided by law or delegated by the Director, Office of Management and Budget (hereafter referred to collectively as "the non-DoD Components").

**§ 283.3 Definitions.**

(a) *Debt.* An amount an individual owes the government as the result of erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services or civilian DoD employees.

(b) *Erroneous Payment.* A payment that is not in strict conformity with applicable laws or regulations.

(c) *Uniformed Services.* The Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Commissioned Corps of the PHS and the NOAA.

(d) *Waiver Application.* A request that the United States relinquish its claim against an individual for a debt resulting from erroneous payments of pay or allowances (including travel and transportation allowances) under 10 U.S.C. 2774, 32 U.S.C. 716, or 5 U.S.C. 5584.

**§ 283.4 Policy.**

It is Department of Defense policy that:

(a) The officials designated in this Directive exercise waiver authority that, by statute or delegation, is vested in the Department of Defense.

(b) Waiver applications shall be processed in accordance with all pertinent statutes and regulations, and after consideration of other relevant authorities.

**§ 283.5 Responsibilities and functions.**

(a) *The Head of a Non-DoD Component,* concerning debts resulting from the Component's activity:

(1) Pursuant to 10 U.S.C. 2774, has the authority to deny or grant all or part of a waiver application, if the aggregate amount of the debt is \$1,500 or less.

(2) If the aggregate amount of the debt is more than \$1,500, may:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that all or part of the application be granted, in accordance with procedures promulgated under paragraph (e)(3) of this section.

(b) *The Under Secretary of Defense (Comptroller),* concerning debts (except those described in paragraphs (c) and (d) of this section) resulting from DoD Component activity:

(1) Pursuant to enclosure 2 of DoD Directive 5118.3<sup>1</sup>, has the authority to deny or grant all or part of a waiver

application, if the aggregate amount of the debt is \$1,500 or less.

(2) If the aggregate amount of the debt is more than \$1,500, may:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that all or part of the application be granted, in accordance with procedures promulgated under paragraph (e)(3) of this section.

(c) *The Director, Department of Defense Dependents Schools,* concerning debts of civilian employees resulting from that Component's activity:

(1) Pursuant to enclosure 2 of DoD Directive 1342.6<sup>2</sup>, has the authority to deny or grant all or part of a waiver application, if the aggregate amount of the debt is \$1,500 or less.

(2) If the aggregate amount of the debt is more than \$1,500, may:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that all or part of the application be granted, in accordance with procedures promulgated under paragraph (e)(3) of this section.

(d) *The Director, National Security Agency,* concerning debts resulting from that Component's activity:

(1) May deny or grant all or part of a waiver application, if the aggregate amount of the debt is \$1,500 or less.

(2) If the aggregate amount of the debt is more than \$1,500, may:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that all or part of the application be granted, in accordance with procedures promulgated under paragraph (e)(3) of this section.

(e) *The General Counsel of the Department of Defense:*

(1) May deny or grant all or part of a waiver application, if the aggregate amount of a debt is more than \$1,500.

(2) May decide appeals in accordance with procedures promulgated under paragraph (e)(3) of this section.

(3) Shall develop overall waiver policies; and promulgate procedures for considering waiver applications, including an initial determination process and a process to appeal an initial determination.

(f) *The Head of a DoD Component* shall:

(1) Consistent with procedures promulgated under paragraph (e)(3) of this section, establish procedures within

<sup>1</sup> Availability at <http://www.dtic.mil/whs/directives>.

<sup>2</sup> See footnote to § 283.5(b)(1).

the Component for the submission of waiver applications relating to debts resulting from the component's activity, which shall be referred to the appropriate official for consideration as set forth in paragraphs (b), (c), (d), or (e) of this section.

(2) Ensure compliance with this part and policies and procedures promulgated under paragraph (e)(3) of this section.

Dated: November 4, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 284

RIN 0790-AG91

#### Waiver Procedures for Debts Resulting From Erroneous Payments of Pay and Allowances

**AGENCY:** Defense Office of Hearings and Appeals, Office of the General Counsel of the Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes policy and prescribes procedures for considering waiver applications. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense. Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding \$1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignment of the Comptroller General's former duties within the Department of Defense with little impact on the public.

**DATES:** Consideration will be given to all comments received on or before January 13, 2003.

**ADDRESSES:** Send comments to the Defense Office of Hearings and Appeals, ATTN: Claims Division, P.O. Box 3656, Arlington, VA 22203-1995.

**FOR FURTHER INFORMATION CONTACT:** Michael Hipple, 703-696-8510.

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866, "Regulatory Planning and Review"

The Director of the Defense Office of Hearings and Appeals has determined that this rule is not a significant rule because it does not: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact on entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

#### Public Law 96-354, "Regulatory Flexibility Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have a significant economic impact on a substantial number of small entities because this rule affects members of the Uniformed Services and Federal employees and provides procedures by which their claims against the United States will be adjudicated.

#### Public Law 96-511, "Paperwork Reduction Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not impose information collection requirements.

#### Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not involve a Federal Mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

#### Executive Order 13132, "Federalism"

The Director of the Defense Office of Hearings and Appeals has certified that

this rule does not have federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### List of Subjects in 32 CFR Part 284

Administrative practice and procedure, Armed Forces, Wages.

Accordingly, 32 CFR part 284 is proposed to be added to subchapter M to read as follows:

#### PART 284—WAIVER PROCEDURES FOR DEBTS RESULTING FROM ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES

Sec.

- 284.1 Purpose.
- 284.2 Applicability and scope.
- 284.3 Definitions.
- 284.4 Policy.
- 284.5 Responsibilities and functions.
- 284.6 Standards for waiver determinations.
- 284.7 Submitting a waiver application.
- 284.8 Processing a waiver application when the debt is \$1500 or less.
- 284.9 Processing a waiver application when the debt is more than \$1500.
- 284.10 Appeals.
- 284.11 Refund of repaid debts that are subsequently waived.
- 284.12 Publication.
- Appendix A to Part 284—Standards for Waiver Determinations.
- Appendix B to Part 284—Submitting a Waiver Application.
- Appendix C to Part 284—Processing a Waiver Application When the Debt is \$1500 or less.
- Appendix D to Part 284—Processing a Waiver Application When the Debt is More Than \$1500.
- Appendix E to Part 284—Appeals.

**Authority:** 5 U.S.C. 552a; 2104, 2105, 5584; 10 U.S.C. 2774; 32 U.S.C. 716

#### § 284.1 Purpose.

This part implements policy under 32 CFR part 283 and prescribes procedures for considering waiver applications under 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584.

#### § 284.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the Department of Defense Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as "the DoD Components").