

Office of the Secretary of the Treasury

§ 6.3

(5) Whether failure to make restitution would result in unfair gain to the employee;

(6) Whether recovery of the claim would be unconscionable under the circumstances.

d. The burden is on the employee to demonstrate that collection of the claim would be against equity and good conscience and not in the best interest of the United States.

10. Authorities

a. 5 U.S.C. § 5584, "Claims for Overpayment of Pay and Allowances, and of Travel, Transportation and Relocation Expenses and Allowances."

b. 31 U.S.C. § 3711, "Collection and Compromise."

c. 31 U.S.C. § 3716, "Administrative Offset."

d. 31 U.S.C. § 3717, "Interest and Penalty on Claims."

e. 5 CFR Part 550, subpart K, "Collection by Offset from Indebted Government Employees."

f. 31 CFR Part 5, subpart B, "Salary Offset."

g. Determination with Respect to Transfer of Functions Pursuant to Public Law 104-316, OMB, December 17, 1996.

11. Cancellation

TD 34-01, "Waiver of Claims for Erroneous Payments," dated October 25, 1995, is superseded.

12. Office of Primary Interest

Office of Accounting and Internal Control.

PART 6—APPLICATIONS FOR AWARDS UNDER THE EQUAL ACCESS TO JUSTICE ACT

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AUTHORITY: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

SOURCE: 47 FR 20765, May 14, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 6.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before agencies of the Government of the United States. An eligible party may receive an award when it prevails over an agency, unless the agency's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Treasury Department will use to make them.

§ 6.2 When the Act applies.

The Act applies to any adversary adjudication pending before an agency at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981, if final agency action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final agency action occurs.

§ 6.3 Proceedings covered.

The Act applies to adversary adjudications required to be conducted by the Treasury Department under 5 U.S.C. 554. Within the Treasury Department, these proceedings are:

(a) Bureau of Alcohol, Tobacco and Firearms: (1) Permit proceedings under the Federal Alcohol Administration Act (27 U.S.C. 204); (2) Permit proceedings under the Internal Revenue Code of 1954 (26 U.S.C. 5171, 5271, 5713); (3) License and permit proceedings under the Federal Explosives Laws (18 U.S.C. 843).