



U.S. Department of
Transportation
Office of the Secretary
of Transportation

ORDER

DOT 2730.1G

date: May 3, 2019

Subject: WAIVER OF CLAIMS FOR SALARY OVERPAYMENT

1. PURPOSE. This Order establishes policy and responsibilities of Department of Transportation (DOT) Operating Administrations (OAs), with the exception of the Federal Aviation Administration (FAA) and the Saint Lawrence Seaway Development Corporation (SLSDC), in managing the waiver claim process rising from erroneous payment of salary to DOT employees. It describes the practices to be followed by DOT personnel to seek repayment of debts created as a result of a salary overpayment.
2. CANCELLATION. DOT Policy for Waivers of Claims for Overpayment of Pay and Allowances, 10/03/07.
3. BACKGROUND. It is the Department's policy to comply with the standards for waiver of claims identified in 5 U.S.C. § 5584 and ensure that employee requests for waiver of overpayment of pay and allowances are resolved by investigating the overpayment and coordinating the resolution of the employee's waiver claim. 5 U.S.C. § 5584 authorizes the waiver of claims by the United States in whole or in part against an employee arising out of erroneous payments of pay and allowances, and relocation expenses. A waiver may be considered when collection of the claim would be against equity and good conscience and not in the best interest of the United States provided that there does not exist, 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.
4. REFERENCES. This Order is issued pursuant to the following provisions of law and regulations:
 - a. 5 U.S.C. § 5514, "Installment Deduction for Indebtedness to the United States."
 - b. 5 U.S.C. § 5584, "Claims for Overpayment of Pay and Allowances, and of Travel, Transportation and Relocation Expenses and Allowances."

- c. 31 U.S.C. § 3711, "Collection and Compromise."
- d. 31 U.S.C. § 3716, "Administrative Offset."
- e. 5 C.F.R. Part 550, Subpart K, "Collection by Offset from Indebted Government Employees."
- f. 31 CFR Chapter IX, Parts 900 – 904, "Federal Claims Collection Standards."
- g. 41 C.F.R. Part 105-55, "Collection of Claims Owed the United States."
- h. 49 CFR 1.81, "Delegation to all Administrators."
- i. 49 CFR Part 92, "Recovering Debts to the United States by Salary Offset."
- j. 4 CFR Part 102, "Standards for the Administrative Collection of Claims."
- k. Chief Financial Officers Act of 1990, Public Law 101-576, (November 15, 1990).
- l. Office of Management and Budget (OMB) Circular A-123 Management's Responsibility for Enterprise Risk Management and Internal Control revised 7/15/2016.
- m. Debt Collection Act of 1982, Public Law 97-365, (October 25, 1982);
- n. Debt Collection Improvement Act (DCIA) of 1996, § 31001 of Public Law 104-134, the Omnibus Consolidated Rescission and Appropriations Act of 1996 (April 26, 1996).
- o. Federal Debt Collection, Public Law 101-647 (November 29, 1990).

5. DEFINITIONS.

- a. Accounts Receivable – An amount of money, funds, or property that has been determined by an agency official to be due the United States Government from any person, organization, or entity, except another federal agency (see Federal Claims Collection Standards, 31 CFR Chapter IX, part 900.2).
- b. Administrative Law Judge (ALJ) – A federal administrative judge appointed under Title 5, U.S.C.
- c. Administrative Offset – The act of withholding money payable by the government to, or held by the government for, a person or entity to satisfy a debt that the person or entity owes the government.

- d. Allowances – Allowances refer to payments made for subsistence, quarters, uniforms, family separate maintenance allowances, and overseas station allowances. Specifically, it may, but is not limited to, health and life insurance, post cost of living, post hardships, differentials, home leave and Rest and Relaxation (R&R), danger pay, temporary quarters, separate maintenance allowance, and home service transfer allowance. Allowance does not include travel expenses or expenses to transport household goods.
- e. Appeal – The right of the employee to request a reconsideration of a decision to deny the initial request for waiver.
- f. Bill of Collection (BOC) – A document issued by the Department of the Interior (DOI), Interior Business Center (IBC), Payroll Office Division, Debt Management Branch that certifies the amount of money that is owed to the Department due to an erroneous payment.
- g. Compromise – Accepting less than the full amount of the debt owed by the debtor in satisfaction of the debt. The debt is satisfied in accordance with the Federal Claims Collection Standards, 31 CFR Chapter IX, part 9023.
- h. Claim or Debt – Under 31 U.S.C. § 3701(b) and 31 C.F.R. § 900.2(a), the term debt refers to an amount of money, funds, or property an official has determined to be due the United States from any person, organization, or entity, except another Federal agency. The terms claim and debt are synonymous and interchangeable. A claim includes, but is not limited to, direct loans, guaranteed loans, overpayments, fines, fees, and penalties. See 31 U.S.C. § 3701(b).
- i. Disposable Pay – The part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or other authorized pay remaining after the deduction of any amount required by law to be withheld such as federal, state, or local income taxes; such deductions include Old Age Survivors Disability Insurance (OASDI) also known as social security, health insurance premiums, normal retirement contributions, basic life insurance premiums (optional life insurance is excluded); Thrift Savings Plan (TSP) contributions (TSP Catch Up is excluded), Medicare; and any other deductions required by law to be withheld, i.e., other debts owed to the United States.
- j. Employee – For the purposes of this Order, employee is defined consistent with 5 U.S.C. § 2105, and is a person who is currently or was formerly employed by DOT.
- k. Enterprise Services Center (ESC) – ESC is the Department's financial management shared service provider. ESC is organizationally under the FAA located at the Mike Monroney Aeronautical Center in Oklahoma City.

- l. **Erroneous Payment** – An overpayment caused by an error in the process or procedure used to determine the payment amount. It does not include estimated payments determined by applying a pre-established method, e.g., withholding tax allowance and government bills of lading. It is a payment that is not in compliance with applicable laws or regulations
 - i. For example, erroneous payments could occur toward retirement benefits, health benefits, promotions, and Within Grade Increases, among others.
- m. **Fault** – Fault exists if, in light of all the circumstances, it is determined that the employee knew or should have known that an error existed but failed to take action to have it corrected. Fault can derive from an act or a failure to act. Unlike fraud, fault does not require a deliberate intent to deceive. Whether an employee should have known about an error in pay is determined from the perspective of a reasonable person.
- n. **Hearing** – an opportunity to determine the validity of the erroneous payment. The hearing official will be an ALJ or a mediation official, as determined by the agency's counsel.
- o. **Interior Business Center (IBC)** – Department of Interior's IBC is DOT's payroll provider and DOT has contracted with them to perform certain payroll and personnel processing functions.
- p. **Legal and proper payments** – Payments that were legal and proper at the time the government made the payment, but later become an overpayment due to changed circumstances. Examples of legal and proper payments by the government that may become overpayments that have to be repaid by the employee include lump sum leave payments that must be refunded if the person is re-employed; advanced annual or sick leave unearned at the time of separation; advanced uniform allowances not earned at the time of separation or upon transfer from the work unit that required the uniforms; Voluntary Separation Incentive Program repayment if the employee returns to Federal Government service; Federal Employee Health Benefits (FEHB) insurance premium payments made on behalf of the employee while in an extended period of leave without pay (LWOP) when an employee has elected to continue FEHB coverage while on LWOP; as well as other similar payments.
- q. **Pay** – Basic pay, special pay, incentive pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay. Pay does not include travel expenses or expenses to transport household goods.
- r. **Repayment Agreement** – An agreement establishing the terms and conditions governing the recovery of a debt. A repayment agreement must be written or reduced in writing after such an agreement is reached.

- s. Reschedule – To establish new terms and conditions (i.e., modify the existing terms for the repayment agreement) to facilitate the repayment of a debt.
 - t. Salary Offset – The process of collecting a debt by deductions (at one or more officially established pay intervals) from the current disposable pay of a Federal employee with or without the employee's consent based on the Debt Collection Improvement Act of 1996.
 - u. Waiver – For purposes of debt management, waiver means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to an agency.
 - v. Waiver requests – A request that the United States relinquish its claim against an individual for a debt resulting from erroneous payments of pay or allowances, U.S.C. 5584. A waiver request acknowledges the existence of the debt.
6. APPLICABILITY. This Order addresses erroneous payment of pay or allowances to DOT employees. The Order does not affect authority to litigate, settle, compromise, or waive any claim of the United States under any other statute. In cases where an overpayment concerns a debt that clearly does not fall within the provisions of 5 U.S.C. § 5584 as amended, the DOT Chief Financial Officer (CFO), or the Director of Human Resources shall advise the applicant that a waiver will not be considered because the debt does not fall within the provisions of the law.
- a. Hearings. A request for a waiver of a claim shall not affect an employee's opportunity under 5 U.S.C. § 5514(a)(2)(D) for a hearing on the determination of the agency concerning the existence or the amount of the debt, or the terms of the repayment schedule. The determination whether to waive a claim may be made at the discretion of the deciding official either before or after a final decision is rendered in a hearing pursuant to 5 U.S.C. § 5514(a)(2)(D) concerning the existence or the amount of the debt, or the terms of the repayment schedule.
 - b. Legal and Proper Payments. Ordinarily, a legal and proper payment will not be considered for waiver and must be repaid by the employee.
7. DELEGATION OF AUTHORITY.
- a. The CFO of DOT has delegated to IBC the authority to waive, in whole or in part, claims of the United States against DOT employees for erroneous payment of pay and allowances up to \$500. This delegation does not include waivers for FAA or SLSDC employees.

b. 49 CFR 1.81(a) (12) and (13) delegates authority to the Head of each DOT Operating Administration (OA) to:

- i. Determine the existence and amount of indebtedness and the method of collecting repayments from employees within their respective OA and collect repayments accordingly, as provided by 5 U.S.C. 5514. Re-delegation of this authority may be made only to the principal official responsible for financial management within the OA.
- ii. Waive claims of the United States arising out of an erroneous payment to an employee of the OA of pay or allowance, or relocation expenses, and deny requests for waivers of such claims, as authorized by 5 U.S.C. 5584 and the OMB memorandum, "Determination with Respect to Transfer of Functions Pursuant to Public Law 104-316" (December 17, 1996). But for claims arising from erroneous payments to current employees, this delegation of authority is limited to claims greater than \$500. For claims arising from erroneous payments to former employees, this delegation of authority is not limited by claim amount. Re-delegation of this authority may be made only to the principal officials responsible for financial management within the OA.
- iii. The CFO has delegated to the Office of the Secretary (OST) Chief Financial Officer the same authority as in section 7(b), above, for claims arising out of OST.

8. **RESPONSIBILITIES.** All employees have the responsibility to review their Leave and Earnings Statement (LES) each pay period and to review personnel documents to ensure the accuracy of their pay, deductions, and leave. If an employee could have detected an error by reviewing and verifying the information provided, the employee is responsible for repaying the debt. If an employee knows or suspects that an error has occurred, the employee should immediately report the error to their supervisor, timekeeper, and either the personnel office or payroll office. The reporting of the error does not relieve the employee of the responsibility to reimburse the government for this error. Any overpaid funds should be set aside for reimbursement to the government when a bill of collection is issued.

- a. The employee to whom the erroneous payment was made is responsible for initiating a request for waiver. Employees requesting a waiver must file the request for waiver within three years of the date the error was discovered by the agency. Employees must include the following in their waiver request:
 - i. A clear and concise signed statement indicating that the employee is requesting a Waiver of Indebtedness and the reason for doing so;
 - ii. The date and manner in which the employee became aware of the overpayment(s);

- iii. What efforts were taken by the employee, if any, to resolve the overpayment;
- iv. Employee's mailing address, email address, and phone number (email address and phone number may be work or personal);
- v. The amount for which the waiver is requested;
- vi. The Employee's OA;
- vii. Debt ID from IBC BOC;
- viii. A Point of Contact who is familiar with the case, if any;
- ix. Copies of documents or correspondence that supports the employee's request for waiver such as emails, copies of Notices of Personnel Actions (SF-50s), copies of pay and leave statements, etc.

b. The IBC Debt Management Branch is responsible for the following:

- i. Sending a BOC to notify the employee of their indebtedness due to an overpayment of pay or allowance.
- ii. Collecting overpayments following procedures outlined in the DCIA for current employees.
- iii. Receiving waiver requests from employees for salary and allowance overpayments.
- iv. Suspending debt collection proceedings under 49 CFR Part 92 until a final determination is made on a waiver request.
- v. For all overpayments \$500 or less:
 - 1. Preparing an administrative report containing a chronological summary of the facts regarding the overpayment for OA where such authority has been delegated,
 - 2. Reviewing the facts of the administrative report and making waiver decision based on the report.
 - 3. Providing the debtor written notification as to whether the waiver has been granted or denied in whole or in part.
- vi. Forwarding waiver requests:
 - 1. To OST's B-30: request for waivers for all amounts over \$500 and all FAA employee waiver requests in any amount.
 - 2. To SLSDC's Director of Financial Management and Administration all requests for waivers for SLSDC employees.
- vii. Forwarding all employee appeals of IBC waiver decisions to B-30.
- viii. Updating employee W-2 information if necessary.

c. OST's B-30 is responsible for:

- i. Receiving waiver requests from IBC or ESC.
- ii. Preparing for the OAs, with the exception of FAA and SLSDC, the Administrative Report for all waiver requests not handled by the IBC. The Administrative Report should follow the format provided in Attachment 1.

- iii. Conducting the waiver investigation and making a recommendation on the approval or denial of the request for waiver. Guidelines for conducting a waiver investigation are provided in Attachment 2.
 - iv. Forwarding the Administrative Report and recommendation to the appropriate OA offices for action.
 - v. For OST employee waivers, coordinating concurrence on the recommendation with the Office of General Counsel and obtaining sign off from the OST CFO on decision.
 - vi. For OST employee waivers, notifying the OST employee and IBC Debt Management, or for former employees the ESC, of final decision.
- d. The Operating Administrations are responsible for:
 - i. Coordinating concurrence on the recommendation with OA Chief Counsel on and obtaining sign off from the OA CFO on the recommendation and decision.
 - ii. Providing the debtor written notification as to whether the waiver has been granted or denied in whole or in part.
 - iii. Providing a copy of written notification of the final decision to B-30.
- e. The ESC Accounts Receivable is responsible for:
 - i. Receiving debts transferred from IBC's Debt Management Branch for employees who:
 - 1. Separate prior to full repayment of debt;
 - 2. Have debt identified at the time of separation from the Department or becomes indebted based on the separation from the Department; or
 - 3. Have requested a waiver of overpayment or hearing, and no decision has been issued
 - ii. Seeking repayment from those former employees who separated prior to full repayment of their debt, and upon full repayment, notifying IBC's Debt Management Branch that the full debt has been repaid.
 - iii. Seeking repayment from those former employees whose debt was identified at the time of separation or who became indebted based on the separation from the Department.
 - 1. Notifying the former employee of their indebtedness due to an overpayment of pay or allowance.
 - 2. Collecting overpayments following procedures outlined in DCIA for former employees.
 - 3. Receiving waiver requests from former employees for salary and allowance overpayments and suspending debt collection proceedings under 49 CFR Part 92 until a final determination is made on a waiver request.
 - iv. Forwarding requests for waivers to B-30 for all amounts.

9. CONCURRENCES AND DECISIONS: All authorized parties in the approval chain must concur on the recommendation before the applicable deciding official in the OA or OST can sign the waiver request as the final decision.
 - a. Decisions should be consistent with decisions of the Government Accountability Office (GAO) Comptroller General (CG) and previous agency decisions. A list of relevant CG decisions on waiver of overpayments of pay and benefits is provided in Attachment 3.
 - b. If the OA does not concur with the recommendation of the Administrative Report it will raise its objection with B-30 to discuss its concerns.
 - c. If the OA and OST cannot come to an agreement after discussing the OA's concerns, the OA will document its objection, which must set forth the legal basis for its position. The legal basis should include supporting case law, including but not limited to GAO CG or previous agency decisions. After such documentation is complete, the OA will then issue its final decision on the case.
10. HEARINGS: An employee who desires a hearing concerning the existence or amounts of the debt or the proposed repayment must send the request to the designated administrative office as listed on the BOC. The request for a hearing must be received no later than 15 calendar days following the employee's receipt of the BOC from IBC, or ESC for separated employees.
 - a. The employee requesting a hearing must include the following in their hearing request:
 - i. A clear and concise signed statement indicating that the employee is requesting a hearing and the reason for doing so;
 - ii. The date and manner in which, the employee became aware of the overpayment(s);
 - iii. What efforts were taken by the employee, if any, to resolve the overpayment;
 - iv. Employee's mailing address, email address, and phone number – (email address and phone number can be work or personal);
 - v. The amount of the overpayment;
 - vi. The employee's OA;
 - vii. Debt ID from IBC BOC;
 - viii. A Point of Contact who is familiar with the case, if any;
 - ix. Copies of documents or correspondence that supports the employee's request for waiver such as emails, copies of Notices of Personnel Actions (SF-50s), copies of pay and leave statements, etc.

- b. The IBC Debt Management Branch is responsible for the following:
 - i. Forwarding DOT requests for hearings it receives to B-30, with the exception of SLSDC. Requests for SLSDC are sent to its Director of Financial Management.
 - ii. Suspending debt collection proceedings under 49 CFR Part 92 until a final determination is made on a hearing request.
 - c. Department of Transportation, Office of the Secretary, Office of Financial Management (B-30) is responsible for:
 - i. Receiving hearing requests from IBC or ESC, and
 - ii. Forwarding hearing requests to appropriate OA offices for action.
 - iii. For OST employees, scheduling a hearing with an ALJ after coordinating with the Office of General Counsel.
 - iv. Notifying the employee and IBC Debt Management, or for former employees the ESC, of final decision.
 - d. The Operating Administration is responsible for:
 - i. Coordinating concurrence with OA Chief Counsel to schedule a hearing with ALJ or mediation official.
 - ii. Providing the debtor written notification as to the decision of the ALJ or arbitrary mediation official.
 - iii. Providing a copy of written notification of the final decision to Office of Financial Management.
 - e. The ESC's Accounts Receivable is responsible for:
 - i. Forwarding requests for hearings that it receives to B-30.
11. APPEALS. The debtor may appeal a denied waiver to the next higher level of authority within the OA or the DOT Deputy CFO, if the OA Administrator was the deciding official on the waiver request. The debtor must submit the appeal to B-30 within 30 days of the date of notice that the original waiver request was denied. The appeal will be forwarded to the appropriate official. The debtor must provide new evidence or evidence not considered as part of the original decision to support why the appeal should be granted and provide appropriate documentation. If no appeal is submitted, the waiver decision is the final agency action. If an appeal is timely submitted, the appeal decision is the final agency action.

12. REFUND OF OVERPAYMENT COLLECTED. When the debtor has paid all or part of the Government's claim and all or part of the claim is subsequently waived, the request for waiver shall be construed as an application for a refund. A refund shall be paid from the account into which the collection was deposited.
- a. No refund shall be paid when the debtor cannot reasonably be located within three (3) years following a waiver's effective date. When no refund is made because a debtor cannot be located, the written record should document the attempts made to locate the debtor.
13. IMPLEMENTATION. The policy and responsibilities set forth in this Order, including procedural requirements are for uniform application throughout the Department, excluding FAA and SLSDC.

FOR THE SECRETARY OF TRANSPORTATION:



Jennifer Funk
Deputy Chief Financial Officer

5/3/19

Date