

MANUAL: Personnel
Chapter Series CC--Commissioned Corps Personnel Manual
Part 2--Commissioned Corps Personnel Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service

Chapter CC22--Pay and Allowance Administration
Subchapter CC22.7--Collections and Deductions
Personnel INSTRUCTION 7--Waiver of Claims for Overpayment of Pay and Allowances

CONTENTS

<u>Section</u>	<u>Subject</u>	<u>Page</u>
A.	Purpose and Scope.....	1
B.	Authority.....	1
C.	Policy and Guidelines.....	2
D.	Procedures.....	3

Section A. Purpose and Scope

This INSTRUCTION states the procedures for initiating and processing requests for waiver of claims for erroneous payment of pay and allowances, other than travel and transportation allowances, paid to or on behalf of a commissioned officer or former commissioned officer of the Public Health Service (PHS). These procedures are similar to those established for civil service employees of the Department of Health and Human Services (DHHS) which were developed in cooperation with the DHHS Claims Officer and Division of Central Payroll and Reports Processing (see Department Personnel Manual Instruction 550-8).

Section B. Authority

1. The waiver of claims of the United States arising out of erroneous payment of pay and allowances made to members of the uniformed services, including the PHS Commissioned Corps, is authorized by 10 U.S.C. 2774. Note: Parallel coverage for civil service employees is under 5 U.S.C. 5584.

2. The provisions of law are implemented by regulations issued by the General Accounting Office (GAO) which are published in Subchapter CC42.7, INSTRUCTION 2, of this Manual.
3. The authority under this Act has been delegated to the Department Claims Officer (the Assistant General Counsel, Business and Administrative Law Division). This authority, except with respect to the authority to issue regulations, has been redelegated to the following authorized delegates:
 - a. To the Deputy Assistant General Counsel, Business and Administrative Law Division, who acts as a deputy for the Department Claims Officer.
 - b. To the Chief, Litigation and Claims Branch, Business and Administrative Law Division, to perform the duties of the Department Claims Officer, which includes the authority to waive claims under the Act.

Section C. Policy and Guidelines

1. The Department will approve or recommend approval of a request for waiver of a claim and a refund of an amount repaid when the facts show that the conditions set forth in Section 91.5 of the GAO regulations (Subchapter CC42.7, INSTRUCTION 2, of this Manual) are met in accordance with the following DHHS guidelines:
 - a. A basic presumption in the Federal Government is that a PHS commissioned officer or annuitant who receives an overpayment of pay or allowances should refund the overpayment. The law permits the waiver of the Government's claim under certain limited conditions. However, the existence of this law should not lead to an assumption that if an overpayment was due to administrative error it entitles the officer or annuitant to a waiver.
 - b. An overpayment of one pay period will not be considered for a waiver since it is too short a time to raise the issue of equity and good conscience.
 - c. An overpayment where an officer or annuitant is at fault will not be considered for waiver. "Fault" means that an officer or annuitant knew, or should have known, that an error was made. (Currently, each officer and annuitant receives an earnings statement from the Commissioned Personnel Operations Division (CPOD), Office of Personnel Management (OPM), Office of Management (OM), PHS. An officer or annuitant is responsible for reviewing the statement and notifying the appropriate administrative office of any unexplained changes in pay.)
 - (1) If an officer or annuitant is aware of an overpayment, a waiver of the claim is not appropriate and will be denied. This

interpretation is clarified in a decision of the Comptroller General, B-195889 dated February 14, 1980. This decision emphasizes that when an individual knows of an overpayment, he or she is precluded from waiver because it cannot be said that the individual is without fault in continuing to accept the erroneous payments.

- (2) If an officer or annuitant should have known that an error was made, though he or she did not, a waiver of the claim is not appropriate. This point is clarified in the regulations of the Comptroller General as well as in Comptroller General decision, B-188822 dated June 1, 1977. This decision stipulates that, if under the circumstances, a reasonable person would have made inquiry as to the correctness of payment but the employee did not, then the employee is not free from fault, and the claim against him or her may not be waived.
- d. The applicability of these waiver provisions to an overpayment of pay resulting from a failure to make either a mandatory or authorized deduction from pay has been clarified by a series of unpublished Comptroller General decisions (B-165663 dated June 11, 1969 and October 7, 1969):
- (1) An overpayment resulting from failure to make a deduction for a statutory benefit program may be considered for a waiver. Statutory benefit programs include: social security, life insurance, and retired officer's survivor benefit coverage.
 - (2) An overpayment resulting from failure to make a deduction for other purposes may not be considered for a waiver. Such other deductions include: Federal taxes, state taxes, bonds, insurance, savings, or charitable allotments.

Section D. Procedures

1. Initiation of Requests for Waiver and/or Refunds.

- a. CPOD will not initiate a waiver request.
- b. Any person who becomes aware that an overpayment of pay and allowances has been made to an officer or annuitant shall report the overpayment immediately to:

Chief, Compensation Branch
Commissioned Personnel Operations Division, OPM/OM
Room 4-50, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857
Telephone: FTS 443-6132 (Area Code 301 for non-FTS calls)

- c. A supervisor or personnel official who becomes aware that an officer or annuitant has received an overpayment of pay and allowances due to an administrative error must report the overpayment.
 - d. An officer or annuitant who believes that the circumstances involved in the overpayment meet the criteria for a waiver may request that the matter be investigated and considered for a waiver. The waiver request must be in writing and be signed by the officer or annuitant. The following information must be included in the request:
 - (1) Officer or annuitant identification which should include, where applicable, name, present home address, pay grade (e.g., 0-5), and social security number;
 - (2) The time period covered by the overpayment and the apparent amount of overpayment. (The precise amount will be computed by the Compensation Branch, CPOD);
 - (3) The officer's duty station or stations during period of incorrect payments;
 - (4) When and how the overpayment was discovered and what steps were taken to correct it;
 - (5) A narrative on the circumstances and why there is reason to believe that the case meets the criteria for waiver and/or refund; and
 - (6) Any pertinent documents or correspondence which are not a part of the officer's official personnel file should be furnished at this time.
 - e. The request should be forwarded to the Chief, Compensation Branch, CPOD, at the address specified in Section D.1.b, above.
2. Report of Investigation. The Chief, Compensation Branch, CPOD, will be responsible for conducting an investigation and preparing a report which meets all the requirements of Section 92.2(b) and Section 92.3 of the GAO regulations (Subchapter CC42.7, INSTRUCTION 2, of this Manual). The following points must be included in the report:

- a. Verification or modification of the factual points submitted in the request for waiver;
- b. When and how the officer or annuitant first became aware that he/she had received an overpayment;
- c. The steps taken by the officer or annuitant to inform the Compensation Branch, CPOD, program administrative office, or other appropriate office and to correct the overpayment;
- d. Whether the officer or annuitant had received any factual information, such as personnel and payroll documents, employment contracts and agreements, or any instructional information which would indicate that the officer or annuitant possessed knowledge of the possibility of having received an erroneous payment of pay or allowances;
- e. A narrative of the circumstances which resulted in the overpayment;
- f. Information on whether the administrative error involved in the case affected a group or class of officers or annuitants. If it did, the other cases shall be treated consistently;
- g. A statement whether, in the judgment of the person conducting the investigation, the officer or annuitant was at "fault," that is:
 - (1) Was the officer or annuitant aware that he/she had received or was receiving overpayments?
 - (2) Should the officer or annuitant have been aware of overpayments by virtue of a significant unexplained increase in pay which would require a reasonable person to make inquiry or by reading the notices received affecting the pay?

A favorable recommendation for waiver may be made upon a negative response to items (1) and (2), above, provided that the erroneous payment of pay occurred through administrative error and that there is no indication of fraud, misrepresentation, or lack of good faith on the part of the officer, annuitant, or any other person having an interest in obtaining a waiver of the claim.

- h. A statement as to whether the request meets the standards established by law, the GAO regulations, and this INSTRUCTION;
- i. A clear recommendation for approval or disapproval;
- j. The following statement, if appropriate:

"There is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the officer (or annuitant, if applicable) or any person having an interest in obtaining a waiver of the claim. The collection of this claim would be against equity and good conscience and not in the best interest of the United States.";

- k. A statement as to whether the claim is subject to an exception made by the Comptroller General of the United States;
 - l. What corrective action has been taken or recommended to prevent similar erroneous payments;
 - m. Copies of pertinent personnel orders and earnings statements (two documents before and after the period of overpayment), employment contract or agreement, any other supporting documents or correspondence, and documentation of corrective action taken; and
 - n. A signed and dated certification setting forth the period of audit, the precise amount to include the gross and net amounts, with a copy of the audit sheets, a copy of the pay data covering the entire period of overpayment, and if pertinent, the amount the officer or annuitant has repaid.
3. Designated Reviewing Official. The Director, CPOD, who is the designated reviewing official for the PHS Commissioned Corps, will review the case to insure that the package is complete and ready for submission. The completed case will include:
- a. The officer's or annuitant's request for the waiver and/or refund;
 - b. The report of investigation as outlined in Section D.2, above; and
 - c. Copies of documents received by the officer or annuitant as outlined in Sections D.2.d and m, above.

The Director, CPOD, will sign and date the investigative report and forward the completed case to:

Chief, Litigation and Claims Branch
Business and Administrative Law Division
Office of General Counsel
Department of Health and Human Services
330 Independence Avenue, S. W.
Washington, D.C. 20201

4. Action by DHHS Claims Officer.

- a. Every decision will identify the officer or annuitant by name and social security number.
- b. The DHHS Claims Officer will send a copy of every decision to the Chief, Compensation Branch, CPOD, for appropriate action. If the waiver covers overpayments which the officer or annuitant has already repaid, the Compensation Branch will refund those amounts, provided the waiver is approved.
- c. If the amount of the claim is \$500 or less, the DHHS Claims Officer will make the final decision to approve or disapprove the waiver request. The DHHS Claims Officer will, in case of:
 - (1) Denials of waiver - send a denial letter to the officer or annuitant involved setting forth the basis of the denial. A copy of the signed decision will be sent to the Director, CPOD, who will be responsible for notifying other officials who are concerned;
 - (2) Approvals of waivers - forward a copy of the decision to the Director, CPOD, who will be responsible for notifying the officer involved and the other officials who are concerned.
- d. If the amount of the claim is over \$500:
 - (1) The DHHS Claims Officer may deny the waiver request. The procedures outlined in Section D.4.c.(1), above, will be followed. The denial letter will inform the officer or annuitant of his/her right to appeal to the Comptroller General through the DHHS Claims Officer. (Note: The DHHS Claims Officer, through the Chief, Litigation and Claims Branch, is the only official in the Department to forward appeals to the Comptroller General.)
 - (2) The DHHS Claims Officer may recommend that the waiver request be approved. In this case, the completed case with the recommendation is sent to the Comptroller General.
 - (3) When the decision of the Comptroller General is received, the DHHS Claims Officer will send this decision (approval or denial) to:
 - (a) The Director, CPOD, who will be responsible for informing others as set forth in Section D.4.c.(2), above; and
 - (b) The Chief, Compensation Branch, CPOD, for appropriate action as set forth in Section D.4.b, above.