

Hugo Flourens

# Rules and Regulations

## Title 4—ACCOUNTS

### Chapter III—Standards for Waiver of Claims for Erroneous Payment of Pay (General Accounting Office)

#### ESTABLISHMENT OF CHAPTER

Pursuant to 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, Title 4 of the Code of Federal Regulations is amended to issue regulations prescribing standards for the waiver of claims for the 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 by adding a new Chapter III as follows:

#### PART 201—STANDARDS FOR WAIVER

- Sec.
- 201.1 Prescription of standards.
- 201.2 Definitions.
- 201.3 Exclusions.
- 201.4 Waiver of claims for erroneous payment of pay.
- 201.5 Conditions for waiver of claims.

**AUTHORITY:** The provisions of this Part 201 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.

##### § 201.1 Prescription of standards.

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

##### § 201.2 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.

##### § 201.3 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.

##### § 201.4 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 § 201.5 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 \$500,000 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 § 201.5 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.

##### § 201.5 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 § 201.4 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, misrep-

resentation, 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 § 202.6.

#### PART 202—PROCEDURE

- Sec.
- 202.1 Referral of requests for waiver or applications for refund to head of executive agency—Claims pending before General Accounting Office.
- 202.2 Investigation—Report of investigation.
- 202.3 Procedure of head of executive agency after receiving report of investigation.
- 202.4 Notification of waiver action.
- 202.5 Refund of amounts repaid and waived.
- 202.6 Written record.
- 202.7 Register of waivers—Report.
- 202.8 Referral of claims for collection or litigation.

**AUTHORITY:** The provisions of this Part 202 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.

##### § 202.1 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.

**§ 202.2 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 voucher 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.

**§ 202.3 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 section 202.2 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 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.

**§ 202.4 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.

**§ 202.5 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.

**§ 202.6 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.

**§ 202.7 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 202.6 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.

**§ 202.8 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 203—EFFECT OF WAIVER**

Sec.

203.1 Credit in accounts.

203.2 Waived payment deemed valid.

203.3 Effect on other authority.

**AUTHORITY:** The provisions of this Part 203 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

**§ 203.1 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.

**§ 203.2 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.

**§ 203.3 Effect on other authority.**

The provisions of these regulations do not affect any authority under any statute, other than 5 U.S.C. 5584, to litigate, settle, compromise, or waive any claim of the United States.

These regulations shall be effective upon filing with the Director, Office of the Federal Register.

Dated: December 26, 1968.

[SEAL]

ELMER B. STAATS,  
Comptroller General  
of the United States.

[F.R. Doc. 68-15603; Filed, Dec. 30, 1968; 8:49 a.m.]

**Title 5—ADMINISTRATIVE  
PERSONNEL**

**Chapter I—Civil Service Commission**

**PART 890—FEDERAL EMPLOYEES  
HEALTH BENEFITS PROGRAM**

**Cooperative Work-Study Student-  
Employees**

On October 31, 1968, the following was published in the FEDERAL REGISTER as proposed rule-making. The purpose is to eliminate requirements as to type of appointment for health benefits coverage of cooperative work-study student-employees. No comments, objections, or suggestions on the proposal have been received by the Civil Service Commission.