

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
WASHINGTON, DC

FSIS DIRECTIVE

3730.2
Revision 3

4/22/14

WAIVER OF CLAIMS AGAINST EMPLOYEES ARISING FROM ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES

I. PURPOSE

This directive provides instructions to FSIS employees on how to request a waiver from having to pay back extra money they received erroneously in their pay or when being reimbursed. FSIS has revised this directive to update the process for employees, the Human Resource Office (HRO), and the Office of the Chief Financial Office (OCFO). The updates include changes in the roles of program offices based on the Agency's organization. In addition, this directive provides information on the basis and conditions of the waiver process.

II. CANCELLATION

FSIS Directive 3730.2, Revision 2, *Waiver of Claims Against Employees Arising From Erroneous Payments of Pay and Allowances*, dated 9/18/07.

III. BACKGROUND

A. Under [5 U.S.C. 5584\(a\)\(2\)](#), the head of an Executive agency is authorized to waive an amount not more than \$1,500 (per individual claim). Higher amounts are to be waived by an "authorized official," which under [5 U.S.C. 5584\(g\)\(2\)](#) is the Director of the Office of Management and Budget (OMB).

B. The Director of OMB has delegated OMB's waiver authority (including the [5 U.S.C. 5584\(a\)\(2\)\(B\)](#) authority to prescribe standards) to the Executive agency that made the erroneous payment in question. OMB also delegated to the CFO the authority to waive erroneous overpayments of pay and allowance under the provisions of [Public Law 104-316](#) and [Departmental Regulation 2570-002](#).

IV. BASIS OF A WAIVER

HRO is to send an employee a Notice of Intent to Offset Salary (a bill that informs employees of the National Finance Center's [NFC's] intent to collect the debt by means of deduction from the employee's current disposable pay until the debt and all accumulated interest are paid in full). The Notice of Intent to Offset Salary would include notice of the employee's right to file for a waiver from repayment. An offset of salary notification can result from overpayment of pay and allowances. Overpayment can occur for base pay, overtime, Sunday and night differentials, holiday pay, severance pay, pay for accumulated and accrued leave, travel and transportation expenses, and relocation expenses.

V. CONDITIONS OF WAIVER

A. OCFO approves or denies a waiver from repayment of erroneous pay and allowances based on the merits of the individual case. Before issuing a waiver decision, the Accounts Payable Management Branch (APMB) in the Financial Management Division, within OCFO, conducts an examination of all pertinent facts, particularly facts indicating the possibility of fraud, misrepresentation, fault, or lack of good faith on the part of the employee who is requesting a waiver.

B. OCFO may approve a waiver request, in whole or in part, regardless of the amount when:

1. HRO receives a waiver request from an employee within 3 years following the date of discovery of the erroneous overpayment; and
2. Collection of debt would not be fair, in good conscience, or in the best interest of the United States. APMB makes recommendations to OCFO concerning whether to approve a waiver request to the OCFO; or
3. The debt resulted from an erroneous overpayment that occurred through an administrative error, such as National Finance Center (NFC) incorrectly entered locality codes resulting in salary overpayment; or
4. There is no 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.

C. OCFO may deny a waiver request for repayment when:

1. The claim was sent to the Department of the Treasury for collection or to the Attorney General for litigation;
2. The claim was not submitted within 3 years of the discovery of the error;
3. There is an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee seeking a waiver;
4. The employee received notice of the overpayment or was made aware of the overpayment when it occurred; or
5. The employee fails to bring any significant unexplained increase in pay or allowances to the attention of the appropriate officials.

VI. INVESTIGATION REQUIREMENT

When a claim is \$100 or less, HRO can waive the claim without investigation so long as the record does not show fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person with an interest in the waiver.

VII. RESPONSIBILITIES

A. An employee is to initiate a request for a waiver and forward the waiver request to HRO in Minneapolis, MN at:

USDA-FSIS
100 North Sixth Street, Butler Square West
Suite 420-C
Minneapolis, MN 55422

B. The employee is to provide a written request to HRO for the waiver that addresses the circumstances surrounding the overpayment including the following:

1. Full name, home and office address, and home and office telephone numbers;
2. A statement explaining when he or she became aware of the overpayment;
3. A description of the action taken at the time of the discovery of the error; and
4. Pertinent information (example: earnings and leave statements, travel vouchers, NFC's Notice of Intent to Offset Salary, and other documentation).

C. HRO is to contact NFC to request a suspension of a debt collection pending the OCFO determination of the waiver request. The human resource specialist is to forward the following information along with the employee's request for waiver to APMB:

1. The total amount of the overpayment, the date of discovery, and the date the employee was notified;
2. To the extent possible, a chronological summary of the facts and circumstances of the overpayment, including documentation that explains how the overpayment occurred, and the corrective action taken; and
3. A statement documenting whether the claim indicates fraud, misrepresentation, fault, or lack of good faith on the part of the employee.

D. OCFO is to serve as a final authority regarding the disposition of waivers. During the review of all waiver requests, the OCFO, APMB is to:

1. Conduct an investigation of the facts leading to the overpayment when the waiver request is greater than \$100;
2. Extend the suspension of collections when additional time is needed to complete the investigation of the facts leading to the overpayment and notify HRO that it is extending the suspension;
3. Prepare the administrative report that contains sufficient information for a waiver decision;
4. Prepare form [AD-3041](#), Waiver/Cancellation Request;
5. Determine whether to grant or deny the waiver; and
6. Provide notification of the decision to the:

- a. Employee;
- b. HRO; and
- c. OCFO, APMB, which will send NFC notification that includes instructions for collection action or repayment of waived amount to the claimant.

VIII. APPEALS

An employee can appeal the Agency's decision to the OCFO. An appeal is to be submitted to the OCFO, which must receive the appeal within 6 months of the date of the denial. A decision will not be overturned unless it is arbitrary, capricious, or contrary to law or regulation. Appeals are to be sent to the following address for processing:

USDA FSIS Financial Services Center - APMB Branch Chief
4520 114th Street
Urbandale, IA 50322

IX. RECORDS MAINTENANCE

A. APMB maintains:

1. A register of disposition of each claim for a waiver; and
2. A written case file that includes the report of investigation showing:
 - a. Documentation of events leading to overpayment;
 - b. Request for a waiver from an employee; and
 - c. Decision on the waiver.

B. Records are available for viewing by:

1. OCFO;
2. Office of Inspector General; and
3. OMB.

X. QUESTIONS

Refer questions regarding this directive to HRO at (800) 370-3747 or APMB at 800-949-3964.



Assistant Administrator
Office of Policy and Program Development