

U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C. 20250

DEPARTMENTAL REGULATION	NUMBER: DR 2570-002
SUBJECT: Waiver of Employee Overpayments	DATE: August 27, 2021
OPI: Office of the Chief Financial Officer, Fiscal Policy Division	EXPIRATION DATE: August 27, 2026

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1. PURPOSE

This Departmental Regulation (DR) establishes the United States Department of Agriculture (USDA) policy for the waiver of employee claims resulting from erroneous payments of pay and allowances to employees.

2. SPECIAL INSTRUCTION/CANCELLATIONS

- a. This DR supersedes DR 2570-002, *Waiver of Employee Claims from Erroneous Payments of Pay and Allowances*, dated January 5, 2001.
- b. This DR will be in effect until it is superseded or expires.
- c. All Mission Areas, agencies, and staff offices must align their policies and procedures with this DR within 3 months of the publication date.

3. SCOPE

- a. This DR applies to USDA Mission Area, agency, and staff office accountable officials who are responsible for managing their respective office debt collection programs.
- b. In addition, this DR provides the USDA policy on waiver of employee claims from erroneous payments of pay and allowances which were caused by an error in the process or procedure used to determine the payment amount. While the erroneous payment must be directed to a current employee (i.e., compensation for service as an employee) in order for [5 United States Code \(U.S.C.\) § 5584](#), *Claims for overpayment of pay and allowances, and of travel, transportation and relocation expenses and allowances*, to apply, a former employee may pursue waiver of collection of a covered erroneous payment.
- c. Also, an employee's surviving beneficiary or estate that is liable for repayment of an erroneous payment directed to the employee (based on service performed before death) may also seek a waiver.

4. BACKGROUND

- a. The Office of Personnel Management (OPM) Pay and Leave Administration provides that per 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).
- b. The Director of the Office of Management and Budget (OMB) has delegated authority (including the 5 U.S.C. § 5584(a)(2)(B) authority to prescribe standards) to the head of each Executive agency to waive overpayment debts owed to their respective agency regardless of the amount of the debt. USDA is responsible for establishing waiver policies and standards and determining levels of approval. See OPM [Fact Sheet: Waiving Overpayments](#).
- c. USDA Mission Area, agency, and staff office accountable officials are delegated the authority to waive erroneous overpayments of pay and allowances not exceeding \$50,000 per employee.

5. POLICY

- a. The USDA will comply with the standards for waiver of claims identified in 5 U.S.C. § 5584 and ensure employee requests for waiver of overpayment of pay and allowances are settled by investigating the overpayment, with the exception noted below in Section 5c, and coordinating the resolution of the employee's waiver claim.

- b. USDA Mission Area, agency, and staff office accountable officials are delegated the authority to waive erroneous overpayments of less than \$50,000. The delegation includes payments to or on behalf of employees, or former employees, in full or in part, as long as the amount does not exceed \$50,000. Redelegations should be held to the highest administrative level possible.
- c. An investigation will not be required in claims for overpayments of pay or allowances involving amounts of less than \$1,500 when 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.
- d. Waiver request amounts exceeding \$50,000 must be elevated to USDA Chief Financial Officer (CFO) for further consideration.
- e. Employees who receive a payment notice from the National Finance Center (NFC) will be advised of their rights to a hearing with an Administrative Law Judge (ALJ).

6. RECORDS

- a. Each Mission Area, agency, and staff office accountable officer will maintain a register showing the disposition of each claim considered for waiver.
- b. A written case file will be established for each claim. The case file must include the report of investigation, a detailed account of the corrective action where a problem was identified, an account of the waiver action taken, and any other pertinent, information.
- c. The registers and case files will be available for review by the Office of the Chief Financial Officer (OCFO), the Office of the Inspector General (OIG), and OMB.
- d. All records pertaining to employee waivers should be maintained for a minimum of 5 years.

7. ROLES AND RESPONSIBILITIES

- a. Mission Area, Agency, and Staff Office Accountable Officials will:
 - (1) Grant waiver appeals only if it is determined that collection of the overpayment debt would be against equity and good conscience, and not in the best interest of the USDA or the United States;
 - (2) Approve overpayment waiver requests for not greater than \$50,000:
 - (a) Agency Chief Financial Officers may be delegated authority to approve waiver requests not to exceed \$10,000; and

- (b) Agency and Staff Office Heads may approve waiver requests not to exceed \$50,000;
- (3) Perform a Report of Investigation (ROI) when the overpayment is greater than \$1,500. If the overpayment is greater than \$50,000, then the ROI should be forwarded to the OCFO. The following information should be included:
 - (a) A statement of the aggregate amount of the erroneous payment supported by relevant payment record(s) and/or voucher(s) for each;
 - (b) A statement showing the circumstances under which the erroneous payment was made, and the date it was discovered;
 - (c) 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;
 - (d) A copy of the statement written by the employee as to his or her knowledge of the overpayment and if the employee made any effort to make reasonable inquiry concerning the validity of the payment; and
 - (e) Any other factual information in the possession of the Mission Area, agency, or staff office such as payroll change slips, personnel action forms, leave and earnings statements, or other information indicating knowledge on the part of the employee that he or she may have received an erroneous payment;
- (4) Notify employees of the overpayment via:
 - (a) Form [NFC-1100](#), *Notice of Overpayment of Salary and Demand for Payment*; or
 - (b) Invoices from Financial Management System (FMS) or Central Receivables Services (CRS); or
 - (c) Other Mission Area, agency, or staff office notifications;
- (5) Inform employees of their rights to request a Waiver of Employee Claims of Repayment through Financial Management Bulletins, Travel Bulletins, and Human Resources Manuals;
- (6) Refund to the employee the amount of erroneous payment recovered that is later waived, but not later than 2 years following the effective date of the waiver;
- (7) Recover those erroneous payments that are not waived; and

- (8) Deny waiver appeals received more than 3 years after the date on which the erroneous payment was discovered.
- b. Employees requesting an appeal from a denial of waiver will:
- (1) Submit a waiver appeal letter to the CFO along with a copy of the denial decision letter from the Mission Area, agency, or staff office; and
 - (2) Submit an appeal letter that should be received by OCFO no later than 6 months after the date of denial. The employee that is denied a waiver by the Mission Area, agency, or staff office can send an appeal letter to USDA OCFO, Fiscal Policy Division (FPD), Rm 143-W Washington, D.C. 20250 or email to SM.OCFO.FPDOFCFO@usda.gov.
- c. OCFO FPD Analysts will:
- (1) Assemble documents with a decision memorandum for the USDA CFO for approval or disapproval within 3 business days of receipt of salary waiver appeal; and
 - (2) Mail the signed decision memo to the debtor and email the decision to the Mission Area, agency, or staff office contact provided on the ROI within 3 business days.
- d. The USDA CFO will:
- (1) Sign decision memorandums approving, or disapproving waiver appeals of overpayments greater than \$50,000;
 - (2) Refer waiver appeals for overpayments greater than \$75,000 to the Deputy Secretary for approval;
 - (3) Grant waiver appeals only if its determined that collection of the overpayment debt would be against equity and good conscience, and not in the best interest of the USDA or the United States;
 - (4) Disapprove waiver appeals if there is an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person with an interest in obtaining a waiver in connection with the overpayment debt; and
 - (5) Deny waiver appeals received more than 3 years after the date on which the erroneous payment was discovered.

8. INQUIRIES

- a. Mission Area, agency, and staff office accountable officials must direct questions and inquiries regarding this DR to the OCFO, FPD at SM.OCFO.FPDOCFO@usda.gov.
- b. Employees may submit waiver appeal requests and required documents to the above email address.

-END-

APPENDIX A

ACRONYMS AND ABBREVIATIONS

ALJ	Administrative Law Judge
CFO	Chief Financial Officer
CRS	Central Receivables Services
DG	Departmental Guidebook
DR	Departmental Regulation
FPD	Fiscal Policy Division
FMS	Financial Management Services
NFC	National Finance Center
OCFO	Office of the Chief Financial Officer
OIG	Office of the Inspector General
OMB	Office of Management and Budget
OPM	Office of Personnel Management
P.L.	Public Law
ROI	Report of Investigation
U.S.C.	United States Code
USDA	United States Department of Agriculture
USGGIAT	United States Government Glossary of Interagency and Associated Terms

APPENDIX B

DEFINITIONS

Agency. Organizational units of the Department, other than staff offices, whose Heads report to officials within the Office of the Secretary, Deputy Secretary, Under Secretaries, Assistant Secretaries, and Assistant to the Secretary. (Source: USDA, [Departmental Guidebook \(DG\) 0100-002](#), *USDA Departmental Directives Definitions Glossary*, January 4, 2018).

Allowance. An allowance refers to money or equivalent value, furnished or made available, in addition to prescribed rates of pay, to cover such items as housing expenses, educational expenses, or travel. (Source: *United States Government Glossary of Interagency and Associated Terms* ([USGGIAT](#)))

Overpayment. A payment in excess of what is due. An overpayment caused by an error in the process or procedure used to determine the payment amount. It does not include estimated payments which were determined by applying a pre-established method, e.g. withholding tax allowances and government bills of lading. (Source: OMB, [Circular A-123](#), Appendix C, *Requirements for Payment Integrity Improvement*, dated March 5, 2021)

Overpayment Identification. Examples of overpayment identification methods used includes but are not limited to reviews, audits, data analytics, reports, and reconciliations. Each agency must determine the most cost-effective method for their particular circumstance. (Source: OMB, Circular A-123, Appendix C)

Executive Agency. An executive department (as specified in [5 U.S.C. § 101](#), *Executive Departments*), a military department, or any independent establishment and any wholly owned Government corporation. (Source: USGGIAT)

Pay. Basic pay, special pay, retainer pay, incentive pay, retired pay, and equivalent pay, but does not include allowances. It includes, but is not limited to, overtime pay; night, Sunday standby, irregular and hazardous duty differential; pay for Sunday holiday work; payment for accumulated and accrued leave; and severance pay. It does not include travel and transportation expenses and allowances or relocation allowances payable under [5 U.S.C. § 5724a](#), *Relocation expenses of employees transferred or reemployed*. (Source: USGGIAT)

Mission Area. A group of agencies with related functions that report to the same Under or Assistant Secretary. Research, Education, and Economics (REE) is an example of a Mission Area. (Source: USDA, DG 0100-002)

Staff Office. Departmental administrative offices whose heads report to officials within the Office of the Secretary. (Source: USDA, DG 0100-002)

APPENDIX C

AUTHORITIES AND REFERENCES

Claims for overpayment of pay and allowances, and of travel, transportation and relocation expenses and allowances, [5 U.S.C. § 5584](#)

Executive Departments, [5 U.S.C. § 101](#)

General Accounting Office Act of 1996, [Public Law \(P.L.\) 104-316](#), October 19, 1996

Legislative Branch Appropriations Act, 1992, [P.L. 102-90](#), August 14, 1991

OMB, [Circular A-123](#), Appendix C, *Requirements for Payment Integrity Improvement*, March 5, 2021

OPM, [Fact Sheet: Waiving Overpayments](#) web page

Relocation expenses of employees transferred or reemployed, [5 U.S.C. § 5724a](#)

USDA, [DG 0100-002](#), *USDA Departmental Directives Definitions Glossary*, September 26, 2018

USDA, OCFO, CRS, *Notice of Overpayment via Invoice for Travel Payment*

USDA, OCFO, FMS, *Notice of Overpayment via Invoice for Travel Payment*

USDA, OCFO, NFC, Form [NFC-1100](#), *Notice of Overpayment of Salary and Demand for Payment* web page

United States Government Glossary of Interagency and Associated Terms ([USGGIAT](#)), July 2017