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FINANCIAL MANAGEMENT  
ERRONEOUS OVERPAYMENTS TO EMPLOYEES

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8. Purpose. This chapter provides procedures for the recovery of erroneous payments to employees by deductions from current salary and for the waiver, in certain cases, of claims of the United States arising out of erroneous payments to employees.

8.1 Collection of Erroneous Payments. 5 U.S.C. 5514 provides for the recovery of erroneous overpayments to employees by deductions from current salary.

8.1.1 Delegation of Authority. Pursuant to 205 DM 6.4A, the Director of Management Services; the Chief, Division of Financial Management; the Executive Officer, Indian Affairs Data Center; Area Directors; Assistant Area Directors (Administration); Area Administrative Officers; Officers in Charge of independent accounting offices, and those acting in their stead, are hereby authorized to:

A. Determine whether an erroneous payment has been made to an employee,

B. Determine whether the employee is indebted to the United States as a result of such payment, and

C. Establish a plan under which the indebtedness shall be recovered.

8.1.2 Notification to Employee. An official who, pursuant to 42 BIAM 8.1.1 above, determines that an employee is indebted by reason of an erroneous payment shall inform the employee in writing of the amount of indebtedness and the nature of the error. The employee shall be requested to make prompt repayment in cash, but he should also be advised that if such repayment would result in undue hardship, a plan will be established under which the indebtedness shall be recovered by deductions from salary.

8.1.3 Plan of Repayment. The following procedures will be followed in establishing a plan of repayment:

A. Small Indebtedness. If the amount of the indebtedness is relatively small, as would be the case if an appropriate deduction were not made for retirement, insurance, bonds, withholding tax, or short periods of leave without pay, the employee should be informed that the amount of indebtedness will be recovered by an adjustment on the next payroll.

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B. Large Indebtedness. If the amount of indebtedness is relatively large, the official who made the determination shall consult with the employee for the purpose of establishing a written plan to liquidate the indebtedness within a reasonable time either by cash payments or by deductions from salary. The circumstances of employment should be taken into account so that repayment will be made as promptly as possible without creating an undue hardship upon the employee. However, the plan must provide for repayment within the known anticipated period of employment.

C. Repayment Schedule. When it is determined that the indebtedness will be liquidated by salary deductions rather than by cash payments, the following repayment schedule shall be followed (larger amounts may be deducted if requested by the employee):

<u>Amount Owed:</u>	<u>Amount Deducted Per Pay Period</u>
\$ 1.00 - 10.00	All
10.01 - 50.00	\$10.00
50.01 - 100.00	15.00
100.01 - 200.00	20.00
200.01 - 500.00	25.00
Over 500.00	50.00

D. Maximum Deductions. A plan for the collection of indebtedness shall not provide for a deduction from salary during any period in excess of two-thirds of the gross pay from which the deduction is made, unless the deduction of a greater amount is necessary to effect collection within the known or anticipated period of employment. If the employee retires, resigns, or his employment is otherwise terminated before full repayment has been made, any subsequent payment of whatever nature that is due the employee shall be reduced to the extent necessary to satisfy the indebtedness.

E. Distribution. A copy of any plan of repayment requiring salary deductions will be furnished the Officer in Charge of the servicing payroll office.

8.1.4 Employee's Right to Protest. Each employee to whom a determination of indebtedness has been made shall be advised of his right to question the determination or the plan of liquidation proposed and to seek a review by an authorized official. The review of any objections of the employee involved to the determination of indebtedness or to the proposed

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plan of repayment shall not be made by the same individual exercising the authority delegated in 42 BIAM 8.1.1. The employee shall also be informed of his right to submit a claim against the Government for refund of any amount deducted from his salary if he believes that the determination of indebtedness was incorrect. Such a claim may be asserted in the General Accounting Office or the United States Court of Claims.

8.1.5 Applicability of the Statute. The authority contained in the statute provides for recovery only to the Department in which the erroneous payment occurred. Where an employee transfers to another bureau or office within the Department, before liquidation of the indebtedness, efforts should be made to effect collection before the employee transfers, and if unsuccessful, a copy of the liquidation plan shall be furnished the receiving bureau or office which will be requested to proceed according to plan. Where an erroneous payment is discovered after an employee has left the Department, either by transfer or separation, appropriate action shall be taken to effect recovery. In the event of transfer, the employee shall be billed for the amount of the erroneous payment and the employee's new agency shall be promptly informed of the amount of the erroneous payment and requested to assist in the recovery of the amount due. In the event of separation, the employee shall be promptly billed for the amount of the erroneous payment; and if applicable, advice shall be furnished the Civil Service Commission to effect offset against the employee's retirement benefits.

8.1.6 Applicability of Regulations. These regulations do not apply to debts which are not the result of erroneous payments to employees. For indebtedness of employees which is not the result of erroneous payments, including debts due the Government, the procedures, including disciplinary actions, prescribed in 43 CFR 20.735-17 should be followed.

8.2 Waiver of Claims for Erroneous Payments of Pay. The Act of October 21, 1968 (82 Stat. 1212; 5 U.S.C. 5584), authorizes the waiver, in certain cases, of claims of the United States arising out of erroneous payments of pay to Federal employees.

8.2.1 Delegations of Authority.

A. Authority to Waive Claims. Pursuant to 205 DM 6.5 the Director of Fiscal Plans and Management; the Chief, Division of Financial Management; the Executive Officer, Indian Affairs Data Center; and Officers in Charge of independent accounting stations (Red Lake Agency, Flathead Irrigation Project, and San Carlos Irrigation Project), or anyone acting in their stead, are authorized to exercise the authority delegated to the Commissioner in 205 DM 6.5A to waive

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claims arising out of the erroneous payment of pay to an employee in accordance with the provisions of 5 U.S.C. 5584, 4 CFR 201-203, and these regulations.

B. Authority to Refer Reports to Comptroller General. The Chief, Division of Financial Management, or anyone acting in his stead, is authorized to exercise the authority delegated to the Commissioner in 205 DM 6.5B to refer to the Comptroller General a report of investigation with a recommendation on any waiver of claim case arising out of an erroneous payment to an employee in accordance with the provisions of 5 U.S.C. 5584 and the regulations of the Comptroller General. (See 344 DM 9 and 205 DM 6.5B.)

8.2.2 Limitation. The officials designated in 42 BIAM 8.2.1 may waive in whole or in part a claim of the United States in an amount aggregating not more than \$500.00, without regard to any repayments, against any person arising out of an erroneous payment of pay to an employee of the Bureau when all of the conditions set out in 42 BIAM 8.2.3 are present, except that they may not waive such a claim which is the subject of an exception made by the General Accounting Office, or which has been submitted to the General Accounting Office for collection or to the Attorney General for litigation.

8.2.3 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 42 BIAM 8.2 whenever:

A. The claim arises out of an erroneous payment of pay made to an employee discovered after October 21, 1968, 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.

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, 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. Any significant unexplained increase in an employee's pay which would require a reasonable person 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

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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 42 BIAM 8.2.9.

8.2.4 Referral of Requests for Waiver or Applications for Refund.

All requests for waiver and all applications for refund shall be submitted through appropriate channels to the applicable official mentioned in 42 BIAM 8.2.1.

8.2.5 Investigation. The official authorized to waive claims arising out of erroneous payments to an employee shall cause an investigation to be made of all such claims. A report of the investigation shall be submitted to that official. The report should include:

A. 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.

B. 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.

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. Such other information as may assist the General Accounting Office, or the officials designated in 42 BIAM 8.2.1, 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.

8.2.6 Action on Report Investigation. After the official authorized to waive a claim receives the report of investigation, 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 provided (1) the amount does not exceed \$500.00 without regard to any repayment and (2) he determines the waiver would be proper under

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these regulations; and record the date and reasons for the waiver.  
EXCEPTION: When the claim has been referred to the General Accounting Office for collection or the Department of Justice for litigation, he will transmit the report of investigation with his recommendations to the Chief, Division of Financial Management, for referral to the Comptroller General.

C. Transmit the report of investigation with his recommendation to the Chief, Division of Financial Management, for referral to the Comptroller General for determination if the claim of the United States

(1) Exceeds \$500; or

(2) Amounts to \$500 or less without regard to repayment, and the official authorized to waive the claim has doubt as to whether waiver action is proper.

8.2.7 Notification of Waiver Action. The official taking the action prescribed above, 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 the waiver action shall also be informed of his right to make application to the Bureau for refund within 2 years following the date of the waiver action.

8.2.8 Refund of Amounts Repaid and Waived. The official taking the action above 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 provided the person was employed by the Bureau at the time of the erroneous payment, and provided further that application is made to the Bureau 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.

8.2.9 Written Record. The report of investigation, an account of the corrective action taken, an account of the waiver action taken and the reason 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. In

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addition the written record should at least cover

- A. When and how the erroneous payment(s) was discovered.
- B. When and how the employee was first made aware of the erroneous payment(s).
- C. When and how the employee was notified of the erroneous payment(s).
- D. Internal procedures in effect to notify employees of their gross and net pay; leave status; periodic step increase date(s); effective date(s) of change in pay in downgrading actions, etc.
- E. A statement from the employee covering the above and as to why he did not question apparent amount of erroneous pay.

8.2.10 Register of Waivers. The officials authorized to waive claims for erroneous payments of pay 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 42 BIAM 8.2.9 above, shall be available for review by the General Accounting Office, or by appropriate Departmental and Bureau officials. The register should contain sufficient data from which to prepare the annual reports mentioned below.

8.2.11 Annual Report.

A. As soon as possible after the close of each fiscal year, each official exercising waiver authority shall submit to the Chief, Division of Financial Management, a report on waiver of claims for erroneous payments of pay and total amount refunded in the format illustrated below:

Memorandum

To: Chief, Division of Financial Management

From: (Official exercising waiver authority)

Subject: Report on Waiver of Claims for Erroneous Payments of Pay and Total Amount Refunded, Fiscal Year 19\_\_.

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Section I. Waiver of Claims:

	Number	\$ Value
1. Claims considered for waiver. . . . .		
2. Claims approved for waiver * . . . . .		
3. Claims disapproved or denied for waiver * .		
4. Claims pending action . . . . .		
5. Claims forwarded for referral to GAO . . .		
6. Claims forwarded for referral to Attorney General for litigation. . . . .		

\* Include parts of claims approved and disapproved or denied under both columns.

Section II. Applications for Refund:

	Number	\$ Value
1. Applications considered for refund. . . . .		
2. Applications approved for refund. . . . .		
3. Applications disapproved or denied for refund. . . . .		
4. Applications pending action for refund. . .		

(Signature and title of official  
authorized to waive claims).

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B. Within 30 days after the close of each fiscal year the Central Office will submit a consolidated report to the Department on the total amounts waived and refunded during the preceding fiscal year in the format shown as Illustration 1.

8.2.12 Referral of Claims for Collection or Litigation. If the Bureau has considered waiver and has denied waiver in whole or in part, the General Accounting Office should be so informed when referral for collection is made to it pursuant to 31 U.S.C. 71. 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.

8.2.13 References.

- A. 82 Stat 1212
- B. 5 U.S.C. 5514
- C. 5 U.S.C. 5584
- D. 4 C.F.R. 201-203
- E. 205 DM 6.4A and 6.5
- F. 344 DM 9
- G. Departmental Fiscal Management Memoranda 69-16, 69-68, and 70-3.
- H. GAO Memorandum B-152040, B-158422, dated August 4, 1969.

Bureau of \_\_\_\_\_

REPORT ON WAIVER OF CLAIMS FOR ERRONEOUS PAYMENTS OF PAY AND TOTAL AMOUNT REFUNDED

Fiscal Year \_\_\_\_\_

SECTION I. WAIVER OF CLAIMS

	(1) Considered for Waiver by Bureau (2+3+4)	(2) Approved for Waiver by Bureau*	(3) Disapproved or Denied for Waiver by Bureau*	(4) Pending Action by Bureau
<b>A. <u>Bureau</u></b>				
Claims (Number)				
Claims (\$ Value)				
<b>B. <u>General Accounting Office</u></b>	Forwarded to GAO (2+3+4)	Approved for Waiver by GAO	Disapproved or Denied by GAO	Pending Action by GAO
Claims (Number)				
Claims (\$ Value)				
<b>C. <u>Attorney General</u></b>	Referred to Att. Gen. for Litigation (2+4)	Action Completed by Att. Gen.		Pending Action by Att. Gen.
Claims (Number)			////////////////////	
Claims (\$ Value)			////////////////////	

SECTION II. APPLICATIONS FOR REFUND

	Considered for Refund (2+3+4)	Approved for Refund	Disapproved or Denied for Refund	Pending Action for Refund
Number - Bureau				
Number - GAO				
Total No. Applications				
\$ Value - Bureau				
\$ Value - GAO				
Total \$ Value				

\*Parts of claims which are approved are to be included as an approved claim under number approved and \$ Value and also under number denied and \$ Value for the portion of the same claims which is disapproved or denied.

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Signature and Title of Bureau  
Official Delegated Waiver Authority