

MS 778 Waiver of Claims for Erroneous Payments

Effective Date: January 7, 2013

Responsible Office: OCFO

Supersedes: Partial revision 11/23/2007; 7/14/2006; Partial Revision 6/1/06; 4/15/99; 6/23/87; 9/22/83

Issuance Memo (01/07/2013)

Issuance Memo

Table of Contents

- 1.0 Purpose
 - 2.0 Policy and Authorities
 - 3.0 Applicability
 - 4.0 Definitions
 - 5.0 Standard for Waivers
 - 6.0 Procedures
 - 6.1 Application for Waiver
 - 6.2 Review and Report
 - 6.3 Submission and Processing of Application and Report
 - 6.4 Waiver Decision
 - 6.5 Notification of Decision
 - 7.0 Accounting Transactions
 - 8.0 Recordkeeping
 - 9.0 Effective Date
-

1.0 Purpose

This Manual Section sets forth the policy and procedures for the waiver of claims arising out of erroneous payments of pay or allowances to Peace Corps employees and Volunteers.

2.0 Policy and Authorities

Pursuant to 5 USC 5584 and 22 USC 2504, the Peace Corps may waive claims, in whole or in part, arising out of erroneous payments to its employees and Volunteers. Under section (h) of 22 USC 2504, Volunteers are considered employees for purposes of 5 USC 5584.

Agency waiver authority was once limited to \$1,500, with the Government Accountability Office (GAO) having the authority to waive claims over \$1,500. However, under section 103(d) of Public Law 104-316 (1996), the authority for claims over \$1,500 was transferred to the Director of the Office of Management and Budget (OMB) as the "authorized official" under 5 USC 5584(a)(1). In OMB Determination of December 17, 1996, the Director of OMB transferred that authority to the claimant's agency.

3.0 Applicability

This Manual Section applies to claimants who are current or former Peace Corps employees, including personal services contractors, or Volunteers. It does not apply to employees of independent contractors or personnel detailed to Peace Corps from other government departments, agencies, or foreign governments (if such detailed personnel are not being paid directly by Peace Corps).

4.0 Definitions

4.1 *Pay and Allowances* means salary, wages, compensation, and other payments from Peace Corps including, but not limited to:

- (a) Allowances, including volunteer readjustment and evacuation allowances;

- (b) Overtime, night, Sunday, holiday and standby pay;

- (c) Hazardous duty differential pay;

- (d) Accumulated and accrued leave pay; and

- (e) Travel and transportation, including transportation of household goods.

4.2 *Office Director*, for the purposes of this Manual Section, includes the Deputy Director; the Chief of Staff; Associate Directors; the Chief Financial Officer; the Chief Information Officer; Regional Directors; the Director of Peace Corps Response; the Director of the Center for Field Assistance and Applied Research; the Chief Acquisition Officer, and the Director's Office staff heads, which consist of the General Counsel, the Director of Communications, the Press Director, the Director of Congressional Relations, the Manager of the Office of Civil Rights and Diversity, the Director of Planning, Policy, and Analysis, and the Director of the Office of Private Sector Initiatives. *See MS 114, Section 3.1.*

5.0 Standard for Waivers

The Peace Corps may waive claims in whole or in part arising out of an erroneous payment of pay or allowances when collection of erroneous payment by the Agency would be against equity and good conscience and not in the best interest of the United States.

Generally, this standard is met by a finding that the erroneous payment was caused by an administrative error, and there is no evidence that the erroneous payment occurred through fraud, misrepresentation, fault, or lack of good faith on the part of the claimant or any other person having an interest in obtaining a waiver of the claim. "Good faith" may be assumed absent any evidence to the contrary and if a reasonable person under the circumstances involved would not have been aware of the error.

6.0 Procedures

6.1 Application for Waiver

An application for waiver is a written request for the waiver of a claim that can be made by the claimant; the claimant's supervisor; or the applicable Office Director. An application for waiver must be received by the CFO within 3 years of the date on which the erroneous payment was discovered.

6.2 Review and Report

Upon receipt of an application for waiver, the CFO will forward the application to the applicable Office Director who will review the information and prepare a report and submit it, along with the application for waiver, to the CFO. The report is a written report that should include:

- (a) The date the erroneous payment was discovered and name of the individual or office that discovered it;
- (b) The date the erroneous payment was made and the payment amount;
- (c) The payment type;
- (d) The reason the payment was made and circumstances under which it was made;
- (e) Statement as to whether or not there is an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the claimant or any other person having an interest in obtaining a waiver of the claim; and
- (f) The Office Director's recommendation of whether to approve or disapprove the claimant's application for waiver. The Office Director must provide all documents (e.g., payment vouchers, etc.) used as the basis for making a recommendation, including the Office Director's statement of any corrective actions taken or planned to preclude similar erroneous payments.

When available facts and/or documents are insufficient to make a recommendation, the Office Director will provide all data available.

A review is not required in those cases of overpayment of \$100 or less and where there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the claimant or any other person having an interest in obtaining a waiver of the claim. However, the Office Director must still provide a recommendation of whether to approve or disapprove the waiver.

If there is any indication of fraud, misrepresentation, fault or lack of good faith, the information shall be promptly forwarded to the Peace Corps Inspector General by the applicable office director.

6.3 Submission and Processing of Application and Report

Once the review and report are complete, the Office Director shall submit the application and report to the OCFO.

6.4 Waiver Decision

The CFO shall review the application for waiver and the report and determine either to:

- (a) Waive the claim in whole or in part and record the date and the reasons for the waiver; or
- (b) Refuse to waive the claim and record the date and the reason for refusal.

The CFO will then prepare a decision memorandum and submit it with the application and report to the Office of General Counsel for legal clearance.

6.5 Notification of Decision

Once the CFO receives legal clearance from the General Counsel, the CFO will notify the claimant of the decision. If the request for waiver is approved and the claimant has already repaid the claim, in whole or in part, the OCFO will notify the employee of his or her right to apply for a refund within two years following the date of the approved waiver.

7.0 Accounting Transactions

Both the payment or refund of a claim will be paid from the appropriation from which the erroneous payment was made. The open accounts receivable balance will be credited in the amount of the approved waiver, and the case file will be transferred to the inactive files. If the amount waived does not eliminate the entire accounts receivable balance, then collection of the balance will be pursued in the normal manner by the OCFO, as outlined in *MS 777, Billing and Collection Procedures, Debts and Claims*.

8.0 Recordkeeping

The OCFO will maintain all application for waiver case files. All case files shall consist of the application for waiver; the report; all applicable supporting documents, e.g., payment vouchers, etc.; the CFO's decision memorandum; OGC's legal clearance; and the financial management system transaction records.

9.0 Effective Date

This Manual Section shall take effect on the date of issuance.