ORDER

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2770.2F

3/7/00

SUBJ: WAIVER OF CLAIMS FOR ERRONEOUS PAYMENTS

1. PURPOSE. This order provides procedures for waiving the Government's claims against Federal Aviation Administration (FAA) employees to recover erroneous payments of pay or allowances, or of travel, transportation, or relocation allowances.

2. DISTRIBUTION. This order is distributed to the division level in Washington headquarters, regions, and centers with a limited distribution to all field offices and facilities and copies to addresses on the accounting offices distribution list.

3. CANCELLATIONS. Order 2700.34A, Claim or Waiver Responsibilities, December 14, 1993, and Order 2770.2E, Waiver of Claims for Erroneous Payments, March 26, 1993, are canceled.

4. BACKGROUND.

a. Section 5584 of title 5, United States Code, generally governs waiving claims of the United States for recovering erroneous overpayments of pay and allowances. Section 347 of the Department of Transportation and Related Agencies Appropriations Act, 1995, Public Law 104-50, November 15, 1995, as amended, authorizes the FAA Personnel Management System (PMS). The PMS took effect April 1, 1996, by approval of the Administrator on March 28, 1996, as established by Personnel Reform Implementation Bulletin (PRIB) No. 0001, April 1, 1996. Section 347 provides, *inter alia*, that 5 U.S.C. §5584 does not apply to the PMS. A December 9, 1998, amendment to the PMS document authorizes the Assistant Administrator for Financial Services to issue policies and other guidance regarding waivers of claims of the United States Government for the recovery of erroneous overpayments of pay and allowances. This order is issued pursuant to that authority, and generally parallels the provisions of 5 U.S.C. §5584. Further, the PMS document subjects PMS to 5 U.S.C. §5514, which governs debt recovery by salary offset.

b. Formerly, under 5 U.S.C. § 5584(a)(2)(A), FAA's authority to waive claims was limited to amounts aggregating not more than $1,500, and was subject to certain conditions under the Comptroller General's control. The Comptroller General's authority to waive claims was not limited to this amount. Section 103(d) of the General Accounting Office Act of 1996, Public Law No. 104-316, Oct. 19, 1996, amended § 5584(a)(2)(A) to transfer the Comptroller General's authority to the Office of Management and Budget (OMB), regarding waivers involving employees in the Executive branch. OMB delegated this function to the agency that made the erroneous payment (OMB Determination of December 17, 1996). FAA now has authority to grant waivers regardless of the amount involved.

5. EXPLANATION OF CHANGES. This revision:

a. Establishes the procedures for addressing requests for waivers of recovery of erroneous payments of pay or allowances, or of travel, transportation, or relocation allowances that may be submitted by FAA employees.

b. Authorizes Regional Administrators, Center Directors, and the Director of Performance Management (APF-1) to grant requests for waivers of claims involving amounts under $5,000.

c. Authorizes the Deputy Assistant Administrator for Financial Services (ABA-2) to grant requests for waivers of claims involving amounts of $5,000 or more.

d. Establishes that an appeal from a denied waiver request may be made only once to the next higher level of authority, and identifies that level.

e. Documents the transfer of coordination of waiver processing to the Office of Performance Management.

f. Assigns to the Management Programs Division (APF-200) in the Office of Performance Management, under the Assistant Administrator for Financial Services, responsibility for processing requests for waivers submitted in the Washington headquarters.

g. Establishes the FAA Intranet Waiver Site. **http//www.FIIS.FAA.gov/waivers**

6. DELEGATION OF AUTHORITY. On December 9, 1998, the Administrator approved an amendment to the PMS, which states, *inter alia,* that:

> The Assistant Administrator for Financial Services is authorized to issue policies and other guidance regarding waivers of claims of the United States Government for the recovery of erroneous overpayments of pay and allowances....

7. STANDARDS FOR GRANTING WAIVER.

a. A waiver may be granted only when collection would be against equity and good conscience, and not in the best interests of the United States. Generally, this criterion will be met by a finding that the erroneous payment 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. Fault includes more than a proven overt act or omission by the employee. Fault is considered to exist if, in light of all the facts, it is determined that the debtor requesting the waiver knew or should reasonably have known that an error occurred, and fails to make inquiries or bring the mater to the attention of the appropriate officials.

b. Generally, a waiver is precluded when an employee receives a significant unexplained increase in pay or allowances, or otherwise knows, or reasonably should have known, that an erroneous payment has occurred, and fails to bring the matter to the attention of the appropriate officials.

c. When an FAA official doubts whether a waiver is proper, he or she should deny the waiver request. The debtor may appeal this denial in accordance with the procedure set forth in paragraph 8d.

d. Recommendations in administrative reports and decisions of deciding officials should be consistent with decisions of the Comptroller General and previous FAA decisions to the extent practicable.

8. **RESPONSIBILITIES AND PROCEDURES.**

a. General. Appendices 1, 2, 3, and 4 provide an overview of the contents of this order. It is highly recommended that these appendices be reviewed before reading the body of the order.

(1) Appendix 1, Debt Collection and Waiver Process, contains a flow chart of the debt collection and waiver process.

(2) Appendix 2, Steps in the Waiver Process, lists the steps in the waiver process.

(3) Appendix 3, Notice of Procedural Rights Regarding Collection of a Debt Owed to the United States Government, sets forth procedural rights regarding debt collection.

(4) Appendix 4, Waiver – Sample Notice, provides information regarding waiver requests.

b. Debtor.

(1) When an erroneous payment is discovered, the debtor will receive from the *servicing accounting office, in one communication to the extent practicable*, the following documents:

(a) a notice of indebtedness, captioned "Letter of Indebtedness," stating the amount of the debt and the basis of the debt;

(b) a demand for payment containing a payment due date, captioned "Bill for Collection". The Letter of Indebtedness and the Bill for Collection trigger various timetables for making a repayment agreement, requesting a review of the claim, petitioning for a hearing on the claim, or requesting a waiver of the claim (see paragraph 2 of Appendix 3, Notice of Procedural Rights Regarding Collection of a Debt Owed to the United States Government, below);

(c) a notice of procedural rights under 49 C.F.R. Part 92, "Recovery of Debts to the United States by Salary Offset" (see appendix 3, below);

(d) instructions for requesting a waiver of the Government's claim, which include notice that if a debtor submits a waiver request before the final agency determination of the validity of the debt, validity will be considered to have been conceded (see Appendix 4, Waiver – Sample Notice, below); and

(e) a copy of any communication regarding the nature of the erroneous payment originated by the servicing human resources organization.

(2) The debtor may:

(a) reserve the right to request a waiver of the Government's claim, and contest the validity of the debt using the procedures in 49 C.F.R. Part 92, summarized in appendix 3, below. If validity is contested, a waiver request should not be submitted until final agency action determining the validity of the debt, as defined in paragraph 8b(6), below). A waiver request submitted before then will be interpreted as a concession that the payment is due;

(b) pay the debt in full, or arrange in writing for a schedule of payments, on or before the payment due date as described in appendix 3, below; or

(c) acknowledge the debt and request a waiver, as described in appendix 4, below. If the debt is acknowledged, the waiver request must be submitted on or before the payment due date specified in the Bill for Collection. When the debt is acknowledged, a waiver request submitted after the payment due date will not be considered.

(3) The debtor is responsible for requesting the waiver, with appropriate documentation, at his or her servicing accounting office, or, if employed by the Washington headquarters, at APF-200. If a waiver is requested, FAA will suspend debt collection proceedings under 49 C.F.R. Part 92 until final agency action on the waiver request . No penalties or administrative charges will accrue during the period in which the waiver request is pending final agency action. However, interest on the debt will accrue from the issue date of the Bill for Collection, unless the waiver request is granted.

(4) If the debtor contests the validity of the debt, the servicing accounting office shall arrange for a hearing, if requested.

(5) The office in which the waiver request was submitted will provide the debtor with written notice as to whether the waiver has been granted or denied in whole or in part, including the decision on an appeal.

(6) Appeal from a denied waiver request may be made only once to the next higher level of authority within the FAA. The debtor may submit an appeal to the servicing accounting office to which he or she submitted the original waiver request, within 30 days of the date of notice that the original waiver request was denied. The debtor must provide reasons why the appeal should be granted, with appropriate documentation. (The servicing accounting office will forward the appeal to APF-200.) If no appeal is timely submitted, the decision on the waiver is the final agency action. If an appeal is timely submitted, the decision on the appeal is the final agency action.

c. Refunds.

(1) When the debtor has paid all or part of the Government's claim and all or part of the claim is subsequently waived, the request for waiver shall be construed as an application for a refund. A refund shall be paid from the account into which the FAA deposited the collection.

(2) No refund shall be paid when the debtor cannot reasonably be located within 3 years following a waiver's effective date. When no refund is made because a debtor cannot be located, the written record should document the attempts made to locate the debtor.

d. Processing Waiver Requests and Appeals (see appendices 1 and 2, below).

(1) Human resource organizations shall:

(a) Report erroneous payments to the payroll office.

(b) Provide assistance requested by the servicing accounting office.

(2) The payroll office, having discovered an erroneous payment or having received notice of such discovery from the servicing human resource organization, shall send a Letter of Indebtedness to the servicing accounting office for forwarding to the debtor.

(3) The servicing accounting office shall:

(a) Send the debtor the following to the extent practicable:

1. Letter of Indebtedness;

2. Bill for Collection;

3. Notice of Procedural Rights (appendix 3);

4. Instructions for Requesting a Waiver (appendix 4); and

5. Any communication from the servicing human resources organization regarding the nature of the erroneous payment.

(b) review waiver requests for compliance with the provisions of this order (review will take place on the written record only, because this is normally an adequate means to correct prior mistakes);

(c) determine the reason for an erroneous payment and document the corrective action required to prevent similar errors (the responsible office should take corrective action);

(d) prepare the required administrative report (see paragraph 8d(4), below) and other documentation;

(e) obtain concurrence of regional or center counsel;

(f) submit the administrative report to the appropriate deciding official (as specified in paragraph 8e, below) if the amount involved in the waiver request is under $5,000, or to APF-200 if it is $5,000 or more;

(g) provide the debtor requesting a waiver with written notice as to whether the request has been granted or denied in whole or in part together with notice of applicable appeal rights in last paragraph (appendix 4);

(h) submit to APF-200 appeals from debtors whose waiver requests have been denied;

(i) provide an appellant with written notice as to whether the appeal was granted or denied in whole or in part; and

(j) submit to APF-200 an electronic copy of the final administrative report described in paragraph 8d(4), below, for filing on the FAA Intranet waiver site.

(4) APF-200 is responsible as follows.

(a) Washington headquarters. APF-200 shall process waiver requests received from debtors in Washington headquarters as follows:

1 review waiver requests for compliance with this order (review will take place on the written record only, because this is normally an adequate means to correct prior mistakes);

2 determine the reason for an erroneous payment and document the corrective action required to prevent similar errors;

3 prepare the required administrative report (see paragraph 8d(4), below) and other documentation;

4. obtain concurrence of the Chief Counsel;

5. submit this to APF-1 if the amount involved in the waiver request is under $5,000, or to ABA-2 if it is $5,000 or more;

6. provide debtors in Washington Headquarters requesting a waiver with written notice as to whether the waiver request was granted or denied in whole or in part along with notice of appeal rights (appendix 4, last paragraph);

7. evaluate all appeals fairly and thoroughly, to recommend a decision to the deciding official, ABA-1 or ABA-2 (see paragraph 8e(2), below):

a forward to ABA-2 an appeal memorandum with APF-200's evaluation and recommendation, when a debtor submits an appeal involving less than $5,000;

b forward to ABA-1 an appeal memorandum with APF-200's evaluation and recommendation when a debtor submits an appeal involving $5,000 or more. The APF-200 staff person who prepares the appeal recommendation will not be the APF-200 staff person who prepared the administrative report and recommendation on the waiver request;

8. provide appellant with written notice as to whether the appeal was granted or denied in whole or in part; and

9. maintain an FAA waiver database by entering into the FAA Intranet waiver site an electronic copy of:

a the decision on the request, and the administrative report regarding the waiver request described in paragraph 8d(4), below; and

b the appeal memorandum (see paragraph 8d(3)(a)7, above) and the decision on the appeal, in the same file as the administrative report on the original waiver request, when an appeal has been submitted; and

10. insure that the destruction date for the hard copy file is included in the file (see paragraph 8(1)(c) and Appendix 6, Records Retention below); and

(b) Regions and Centers. APF-200 shall process waiver requests and appeals received from regions and centers as follows:

1 transmit all waiver requests involving amounts of $5,000 or more, together with administrative reports received from the region or center, to ABA-2;

2 notify in writing the servicing accounting office whether waiver requests have been granted or denied in whole or in part (see paragraph 8d(2)(g);

3 evaluate all appeals fairly and thoroughly, to recommend a decision to the deciding official (see paragraph 8e), as follows:

a forward to ABA-2 an appeal memorandum with APF-200's evaluation and recommendation; when a debtor files an appeal involving less than $5,000; and

b forward to ABA-1 an appeal memorandum with APF-200's evaluation and recommendation when debtor files an appeal involving $5,000 or more,

4 notify in writing the servicing accounting office of decisions on appeals (see paragraph 8d(2)(g) below;

5 maintain an FAA waiver database by entering into the FAA Intranet waiver site an electronic copy of:

a the administrative report regarding the waiver request and the decision on the report described in paragraph 8d(4), below; and

b the appeal memorandum (see paragraph 8d(3)(a)7a, above) and the decision on the appeal in the same file as the administrative report on the original waiver request, when an appeal has been submitted

(c) Access to the FAA Intranet waiver site is restricted. Authorized persons needing access must submit a written request to APF-200.

(5) Administrative Report.

(a) Except as provided in paragraph 8d(4)(b), below, a written administrative report must be submitted to the appropriate deciding official, identified in paragraph 8e, below, with each waiver request. The report format is shown in Appendix 5, Administrative Report. The report should contain:

1 a report number which includes the region, center or headquarters routing symbol, the fiscal year in which the report was prepared, and the sequential number of the report for the region, center, or headquarters (*e.g.*, AAL99-1, APF99-3);

2 the name and mailing address of the debtor;

3 the gross amount of the waiver request;

4 the date the erroneous payment was discovered, and by whom;

5 the date on which the debtor from whom collection is sought was notified of the error, and a statement of the erroneous amounts paid before and after issuance of such notice;

6 statements of the debtor

7 a statement by a knowledgeable FAA official as to the circumstances under which the erroneous payment was made; the debtor 's knowledge of the erroneous payment; the date when the debtor acquired that knowledge; the steps the debtor took, if any, to bring the matter to the attention of the appropriate FAA official; and that official's response;

8 a statement by a knowledgeable FAA official as to why he or she believes the erroneous payment occurred, and the corrective action required to prevent similar errors;

9 a determination as to whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the debtor, and the factual basis for such determination;

10 pertinent law, and precedents from the Comptroller General or prior FAA decisions (cite FAA decisions by case number (see paragraph 8d(4)(a)1, above) and decision date;

11 a recommendation for the deciding official;

12 an appendix consisting of:

a legible copies or the originals of supporting documents, such as earnings and leave statements, travel authorizations, and vouchers;

b a pay-period by pay-period listing of the overpayment; and

c correcting SF 50(s).

(b) A written report is not required if the erroneous payment involves $250 or less and there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the debtor or any other interested person having an interest in obtaining a waiver of the Government's claim. Waiver requests involving $250 or less will be submitted through the Servicing Accounting Office or APF-200, without a written report to Regional Administrators, Center Directors, or APF-1, and will be processed in accordance with this order.

(c) If a deciding official grants or denies a waiver request which is not consistent with the recommendation for the deciding official in the Administrative Report required in paragraph 8d(4)(a)11 above, the deciding official must provide a written, signed and dated statement explaining why the deciding official's decision is different from the recommendation in the Administrative Report.

e. Deciding Officials.

(1) Waiver request

(a) Regional Administrators, Center Directors, and APF-1 are authorized to grant or deny, under standards established in this order and with the concurrence of the Office of the Chief Counsel, or the Regional/Center Counsel, a request for a waiver of a claim against an FAA debtor for erroneous overpayment of pay and allowances, when the waiver request involves an amount under $5,000.

(b) ABA-2 is authorized to grant or deny, under standards established in this Order and with the concurrence of the Office of the Chief Counsel, a request for a waiver of a claims against an FAA debtor for erroneous overpayment of pay and allowances, when the waiver request involves an amount of $5,000 or more.

(2) Appeals.

(a) ABA-2 is authorized to grant or deny an appeal with the concurrence of the Office of the Chief Counsel, when an appeal involving an amount under $5,000 is submitted.

(b) ABA-1 is authorized to grant or deny an appeal with the concurrence of the Office of the Chief Counsel, when an appeal involving an amount of $5,000 or more is submitted.

f. Collection Procedures. If the final agency action denies the waiver request, the FAA shall collect the debt as follows. PMS provides that FAA shall conform to 5 U.S.C. §5514, "Installment Deduction for Indebtedness to the United States." Section 5514 is implemented by 49 C.F.R. Part 92, "Recovering Debts to the United States by Salary Offset." (See also the Federal Claims Collections Standards, 4 C.F.R. Parts 101 - 105 and 5 C.F.R. Part 550, Subpart K, "Collection of Offset from Indebted Government Employees.") The servicing accounting office will follow the debt collection procedures set forth in 49 C.F.R. Part 92. (The Notice of Procedural Rights required by Part 92 (set forth in appendix 3, below) will have been transmitted by the servicing accounting office along with the Letter of Indebtedness and the other items identified in paragraph 8b(1).

g. Written Record.

(1) Filing System for Documents.

(a) The original administrative report on the waiver request, including an account of the action taken and the reasons therefor, and other pertinent information, such as any action taken to refund amounts that were repaid, will constitute the written record in each case.

(b) APF-200 will send the original appeal memorandum, if any, and other pertinent information to the organization that prepared the administrative report, for filing in the written record.

(c) Records retention schedules provided in the National Archives and Records Administration General Records Schedule 6, Transmittal No. 8, (December 21, 1998) should be followed. See Appendix 6, Record Retention. The organization that prepared the administrative report should specify on the file the file's destruction date before closing the file

(2) Filing System for Electronic Copies.

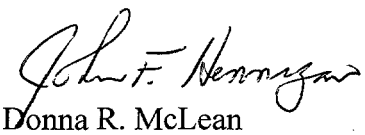
(a) The FAA Intranet waiver site address is **http//FIIS.FAA.gov/waivers**

(b) APF-200 will enter into the FAA Intranet waiver site:

1 the final administrative report described in paragraph 8d(4), above, and the decision on the waiver request; and

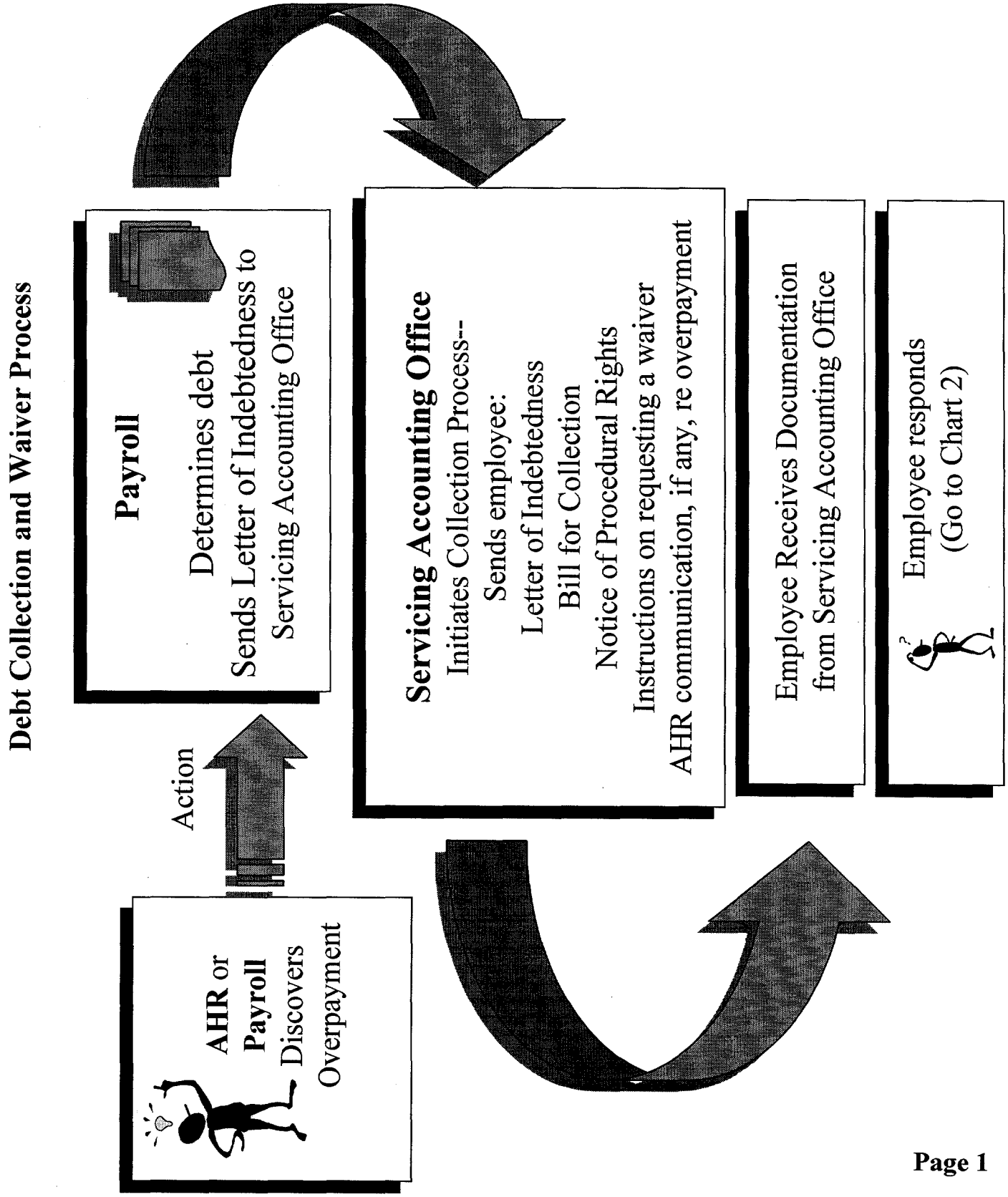
2 the appeal memorandum and the decision on the appeal (see paragraph 7d(3)(a)5, above).

3 hard copies and electronic records are covered by a Privacy Act System of Records, DOT/A11-10, Debt Collection File.



Donna R. McLean
For Assistant Administrator for
Financial Services

APPENDIX 1. DEBT COLLECTION & WAIVER PROCESS



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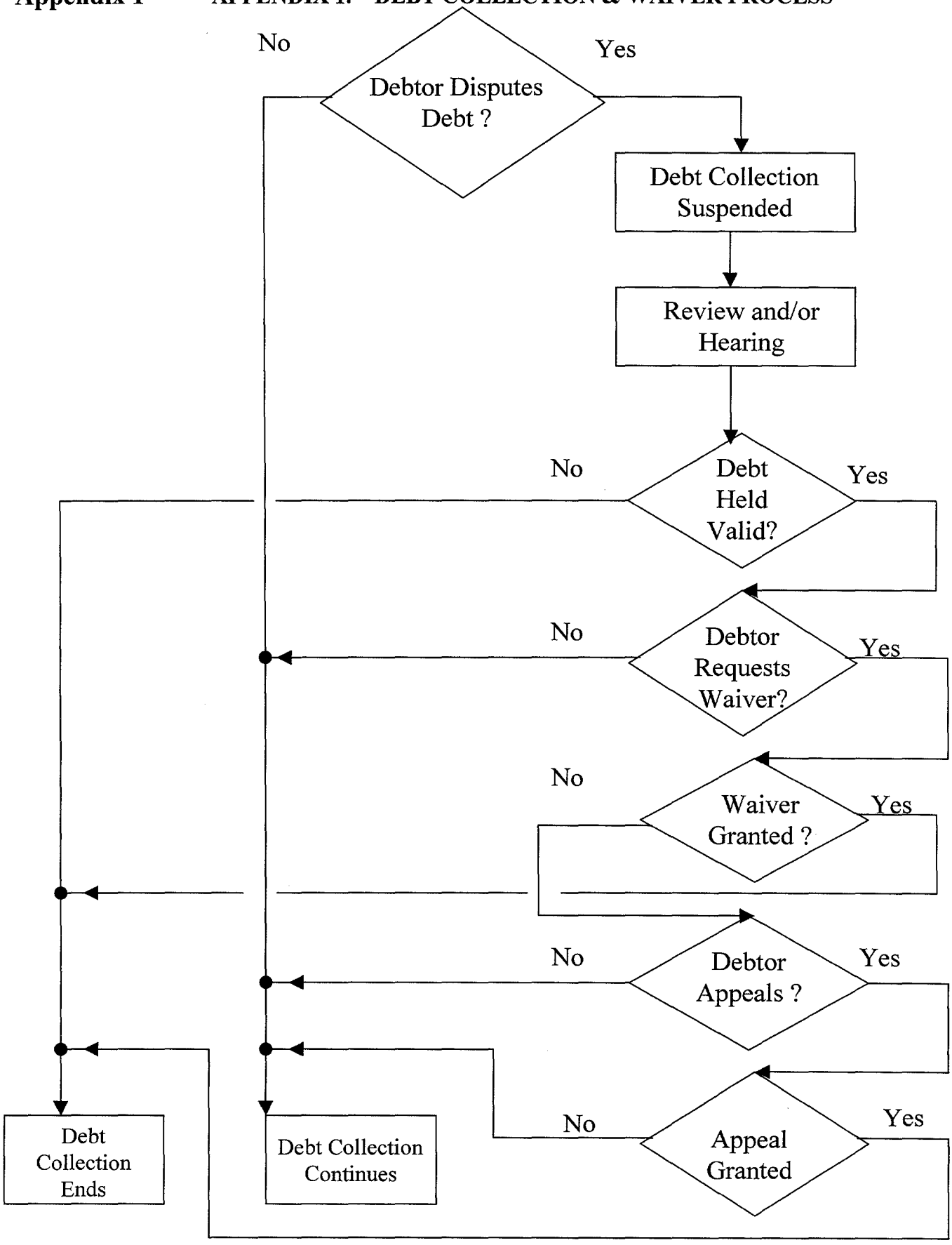

APPENDIX 2 . STEPS IN THE WAIVER PROCESS

Page 2 of the appendix contains a chart showing steps in the waiver process.

1. Waivers Involving Amounts Under $5,000
   - Debtor submits waiver request to servicing accounting office/APF-200
   - Regional or Center Accounting office or APF-200 prepares administrative report and makes recommendations
   - Regional or Center Counsel or Office of the Chief Counsel (Region, Center or Headquarters) concurrence
   - Regional Administrator, Center Director, or APF-1 grants or denies waiver request in whole or in part
   - Regional or Center Accounting office or APF-200 advises debtor of decision

2. Waivers Involving Amounts of $5,000 or more
   - Debtor submits waiver request to servicing accounting office/APF-200
   - Regional or Center Accounting office or APF-200 prepares administrative report and makes recommendations
   - Regional or Center Accounting office sends administrative report to APF-200
   - APF-200 prepares transmittal to ABA-2, with Office of the Chief Counsel's concurrence
   - ABA-2 grants or denies waiver request in whole or in part
   - APF-200 returns decision on waiver request to the Regional or Center Accounting office
   - Regional or Center Accounting Office or APF-200 advises debtor of decision

3. Appeals from Denied Waiver Requests Involving Amounts under $5,000
   - Debtor submits appeal to the office in which the waiver request was submitted
   - Regional or Center Accounting offices sends appeal to APF-200
   - APF-200 evaluates appeal and makes recommendation with Office of the Chief Counsel's concurrence
   - ABA-2 grants or denies appeal
   - APF-200 returns decision on appeal to the Regional or Center Accounting office
   - Regional or Center Accounting office or APF-200 advises debtor of decision

4. Appeals from Denied Waiver Requests Involving Amounts of $5,000 or more
   - Debtor submits appeal to the office in which the waiver request was submitted
   - Regional or Center Accounting office sends appeal to APF-200
   - APF-200 evaluates appeal and makes recommendation with Office of the Chief Counsel's concurrence
   - ABA-1 grants or denies appeal
   - APF-200 returns decision on appeal to the Regional or Center Accounting Office
   - Regional or Center Accounting Office or APF-200 advises debtor of decision

This chart shows the responsibilities based on the dollar amount.

Amount & Action	Region/Center	Washington Headquarters
Waiver ≤ $5,000		
Prepare Report & Recommendation	Servicing Accounting Office	APF-200 **1/**
Legal Review	Region or Center Counsel	AGC-1
Grant or Deny	Region Administrator/Center Director	APF-1
Appeal < $5,000		
Prepare Recommendation	APF-200	APF-200 **2/**
Legal Review	Region or Center Counsel	AGC-1
Grant/Deny	ABA-2	ABA-2
Waiver ≥ $5,000		
Prepare Report of Recommendation	Servicing Accounting Office	APF-200 **1/**
Legal Review	Region or Center Counsel	AGC-1
Grant or Deny	ABA-2	ABA-2
Appeal ≥ $5,000		
Prepare Recommendation	APF-200	APF-200 **2/**
Legal Review	Region or Center Counsel	AGC-1
Grant or Deny	ABA-1	ABA-1

1/, 2/. The APF-200 staff person who prepares the appeal recommendation will not be the APF-200 staff person who prepared the administrative report and recommendation on the waiver request.

APPENDIX 3. NOTICE OF PROCEDURAL RIGHTS REGARDING COLLECTION OF A DEBT OWED TO THE UNITED STATES GOVERNMENT

Pursuant to 49 C.F.R. 92.11(b), you are advised, regarding your debt to the United States Government in the amount of $_____, for which payment is demanded in the Bill for Collection issued on __[date]__, as follows.

1. Interest, Penalties, and Charges. If payment is not received by the payment due date specified in the Bill for Collection:

(a) interest on the debt will accrue from the issue date of the Bill for Collection at the rate published by the Secretary of the Treasury;

(b) a penalty at the rate of 5 per cent will be charged on any portion of a debt that is more than 90 days past due;

(c) administrative charges may be assessed to cover additional costs necessary to processing the debt beyond the payment due date specified in the Bill for Collection; and

(d) FAA may waive the penalty and administrative charges relating to the time elapsed pending review of the claim or a hearing on the claim, and pending review of waiver request and pending consideration of an appeal from a waiver denial.

2. Salary Offset.

(a) FAA may collect the debt through salary offset, unless —

(1) you do not dispute the validity of the Government's claim and you have, on or before the payment due date specified in the Bill for Collection:

a paid the debt in full;

b made a satisfactory repayment arrangement (see paragraph 7, below); or

c submitted a request for the Government to waive collection of this claim (see *Information Regarding Requesting the Government to Waive Recovery of an Amount Erroneously Paid*, attached); or

(2) you dispute the validity of the Government's claim and you have:

a filed a petition for a hearing on the claim within 15 calendar days of receipt of the Bill for Collection (see paragraph 5, below); or

b requested a review of this claim on or before the payment due date specified in the Bill for Collection (see paragraph 6, below); or

(3) within 15 days of the date of mailing of the final agency action on a petition for a hearing or on a request for review, when that action is unfavorable to you, you have —

a paid the debt in full;

b made a satisfactory repayment arrangement (see paragraph 7, below); or

c submitted a request for the Government to waive collection of this claim (see *Information Regarding Requesting the Government to Waive Recovery of an Amount Erroneously Paid*, attached).

(b) Deductions for salary offset may be made from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay. The amount deducted for any period may not exceed 15 percent of disposable pay, except that a greater percentage may be deducted upon your written consent. If you retire or resign, or if your employment or period of active duty otherwise ends, before collection of the amount of the indebtedness is completed, deduction shall be made from subsequent payments of any nature due you from the agency concerned. Disposable pay means that part of any remaining after the deduction from those earnings of any amounts required by law to be withheld.

3. Refunds. Amounts paid on or deducted from the debt that are later waived or found not owed to the United States will be promptly refunded to you unless there are applicable contractual or statutory provisions to the contrary.

4. Inspection. You may inspect and copy FAA records related to this claim. Any reasonable costs associated with the inspection and copying of these records will be at your expense. You must give FAA reasonable advance notice of the date when you intend to inspect and copy the records involved. Please direct any requests to inspect and copy records related to the claim to —

Manager, FAA Servicing Accounting Office
(Insert address)

5. Hearing. You may, dispute the claim in whole or in part by petitioning for a hearing to be based on a written submission to be conducted by an administrative law judge or by a hearing official not under the control of the Secretary of Transportation, pursuant to 49 C.F.R. § 92.13. Section 92.13 provides that—

(a) You may file a written petition within fifteen (15) calendar days of receiving the Bill for Collection regarding this claim. You will be presumed to have received the Bill for Collection within seven business days of its issue date. Please address the petition to —

Director of Financial Management (AFM-1)
Federal Aviation Administration
800 Independence Ave., SW
Washington, D.C. 20591

(b) The petition must state the grounds upon which you dispute the proposed collection of the alleged debt. The petition must identify and explain with specificity the facts and evidence which, and identify the witnesses who, you believe support your position.

(c) The timely filing of a petition stays any further collection proceedings. A decision will be issued at the earliest practical date, but no later than sixty days after the petition is filed, unless a delay is granted at your request.

(d) Unless final agency action on the petition cancels the debt, FAA will notify you of its intent to collect by salary offset, unless within fifteen (15) days of the date of mailing of that action you have paid in full, made a satisfactory repayment arrangement, or submitted a request for waiver of the Government's claim.

6. Review. You may dispute this claim in whole or in part, by requesting a review of the claim in writing on or before the payment due date specified in the Bill for Collection. Your written response must state the basis of your dispute. If you dispute only part of the claim you must pay the undisputed part on or before the payment due date specified in the Bill for Collection. FAA will acknowledge receipt of the request for review, and upon completing the review will notify you whether FAA's claim has been sustained, amended, or withdrawn, within fifteen (15) days of receiving the review request. Unless final agency action on the review results in FAA's withdrawing the Government's claim, FAA will notify you of its intent to collect by salary offset, unless within fifteen (15) days of the date of mailing of that action you have paid in full, made a satisfactory repayment arrangement, or submitted a request for waiver of the Government's claim.

Please direct the review request to –

Manager, FAA Servicing Accounting Office
(Insert Address)

7. Repayment Agreement. You may offer to make a written agreement to repay the debt, the acceptance of which is discretionary with FAA. If you request a repayment arrangement because a payment of the amount due would create a financial hardship, the FAA servicing accounting office will analyze your financial condition. Depending on the evaluation of your financial strength, the servicing accounting office may agree to a written installment repayment schedule. You will be required to execute a confession of judgment note that specifies all of the terms of the arrangement. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the your ability to pay. Interest, penalties and administrative charges will be specified in the note (see 49 C.F.R. § 92.35). You will be provided with a written explanation of the consequences of signing a confession of judgement note. You will be required to sign a statement acknowledging receipt of the written explanation, which will recite that the statement was read and understood before execution of the note and that the note is being signed knowingly and voluntarily. Some form of evidence of these facts will be maintained in the FAA's file on the debt.

8. Penalties. The consequences of any knowingly false statements, representations, or evidence provided by you may include —

- disciplinary action;
- criminal penalties under 18 U.S.C. § 286, 287, 1001, or 1002, or any other applicable statute; or
- civil penalties under the False Claims Act, 31 U.S.C. § 3729 et seq.

9. Referral. FAA may refer this claim to a collection agency, to the General Accounting Office, or to the Department of Justice for litigation, under 4 C.F.R. Part 105.

10. Authority. 49 C.F.R. Part 92, which implements 5 U.S.C. 5514 (relating to salary offset) has been approved by the Office of Personnel Management. Although section 347 of Public Law 104-50, which authorizes the FAA Personnel Management System (PMS), does not require compliance with section 5514, the PMS (approved by the Administrator on March 28, 1996, effective April 1, 1996), subjects the FAA to section 5514.

11. Concession. A waiver request submitted before the payment due date will be interpreted as a concession that the payment is due.

APPENDIX 4. WAIVER – SAMPLE NOTICE

Information Regarding Requesting the Government to Waive Recovery of an Amount Erroneously Paid

Standards

According to 4 C.F.R. § 91.5, a waiver of the recovery of an amount erroneously paid by the Government may be granted only when recovery would be against equity and good conscience, and not in the best interests of the United States. Generally, this criterion will be met by finding that the erroneous payment 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. Fault includes more than a proven overt act or omission by the employee. Fault is considered to exist if, in light of all the facts, it is determined that the debtor knew or should reasonably have known that an error occurred, and fails to make inquiries or bring the mater to the attention of the appropriate officials.

Procedure

The debtor is responsible for submitting a written waiver request stating the basis for the request, with appropriate documentation, to his or her servicing accounting office, or, if employed by Washington Headquarters, to APF-200.

More detailed information about waivers, including the relationship of waiver procedures to debt collection procedures, is set forth in Order 2770.2F.

A debtor seeking a waiver must submit the request by the following deadlines –

(a) if the validity of the Government's claim *is not disputed*:
no later than the payment due date specified in the Bill for Collection that demands payment of the debt; or

(b) if the validity of the Government's claim *is disputed*:
no later than thirty (30) days following final agency action on a petition for a hearing on the validity of the Government's claim or on a request for review of the Government's claim, when that action is unfavorable to the debtor.

If validity of the Government's claim is disputed, a waiver request should not be submitted before final agency action determining the validity of the debt. **A waiver request submitted before the payment due date will be interpreted as a concession that the payment is due.**

If a waiver is requested, FAA will suspend debt collection proceedings under 49 C.F.R. Part 92 until final agency action on the waiver request (as defined in Order 2770.2F).

Waiver requests will be reviewed on the written record only.

The office in which the waiver request was submitted will provide the debtor requesting the waiver with written notice as to whether the waiver has been granted or denied in whole or in part, as well as the decision on an appeal.

Appeal from a denied waiver request may be made only once to the next higher level of authority within the FAA. The debtor who requested the waiver may submit the appeal in the servicing accounting office within 30 days of the date of notice that the original waiver request was denied. Appeals from waiver denials will be considered on the written record only. The debtor must provide reasons why the appeal should be granted, with appropriate documentation.

If no appeal is timely submitted, the decision on the waiver is the final agency action on the waiver request. If an appeal is timely submitted, the decision on the appeal is the final agency action on the waiver request.

APPENDIX 5. ADMINISTRATIVE REPORT

Name of Waiver Applicant :

Mailing Address:

Report Number:

Region where waiver decision made:

Organization of debtor requesting waiver:

Gross Amount of Request:

SUMMARY OF WAIVER REQUEST:

Facts

- the date the erroneous payment was discovered and by whom;
- the date the debtor was notified of the error and a statement of the amounts erroneously paid before and after receipt of such notice;
- statements of the debtor or other interested parties;
- a statement by a knowledgeable FAA official as to the circumstances under which the erroneous payment was made, the debtor 's knowledge of the erroneous payment and the date when the debtor acquired that knowledge; the steps the debtor took, if any, to bring the matter to the attention of the appropriate FAA official; and the official's response;
- a statement by a knowledgeable official of the reason as to why the erroneous payment occurred and the corrective action required to prevent the occurrence of similar erroneous payments; and
- a determination as to whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the debtor , and the factual basis for such a determination.

Criteria

- pertinent law, and precedents in the form of Comptroller General's decisions or prior FAA decisions (to be cited by case number and decision date).

Recommendation

- for approving official.

List of Attachments, including:

- legible copies or the originals of supporting documents, such as an earnings and leave statements, travel authorizations, and vouchers;
- a pay-period by pay-period listing of the overpayments; and
- correcting SF 50(s).

Grant ☐	Deny ☐
Amount _____	
Deciding Official Signature	
_____	_____
Name	Date
_____	
Title	

APPENDIX 6. RECORD RETENTION

The National Archives and Records Administration's General Records Schedule, Transmittal No. 8, Schedule 6 (Dec. 21, 1998) sets document retention standards. In effect, these are as follows.

1. If the debtor challenges the validity of the Government's claim, and the challenge is upheld, destroy the file when it is 6 years and 3 months old. (Schedule 6, par. 10b(3).)

2. If the debtor does not challenge the Government's claim, or if the challenge is rejected —

a. If a waiver was requested and was granted in full, destroy the file 6 years and three months after the end of the fiscal year in which the waiver was granted. (Schedule 6, par. 11a.)

b. if the waiver was requested and was granted only in part or denied, or if no waiver was requested —

(1) If the claim was paid in full or paid under a compromise, destroy the file when it is 6 years and 3 months old. (Schedule 6, par 10b(1); or

(2) If the claim was not paid in full or paid under a compromise, but the Government terminated collection action under 4 C.F.R.. Part 104 —

(a) if the bases (in 28 U.S.C. 24) for an extension of time for the government to commence a collection action in a court under 28 U.S.C. 2415(d) do not apply, destroy the file 10 years and 3 months after the end of the calendar year in which the government's right to collect first accrued. (Schedule 6, par. 10b(2)(a).)

(b) if the basis do apply, destroy the file 3 months after the end of the extended period. (Schedule 6, par. 10b(2)(b).)

(c) If the Government's claim is subject to pending litigation or is affected by a court Order, destroy the file when the court Order, litigation is concluded, or the file is 6 years and 3 months old, whichever occurs last. (Schedule 6, par. 10c.)