

**TITLE 32 - NATIONAL GUARD****CHAPTER 7 - SERVICE, SUPPLY, AND PROCUREMENT****§ 716. Claims for overpayment of pay and allowances, and travel and transportation allowances**

(a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances, to or on behalf of a member or former member of the National Guard, the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—

- (1) the Director of the Office of Management and Budget; or
- (2) the Secretary concerned, as defined in section 101 (5) of title 37, when—
  - (A) the claim is in an amount aggregating not more than \$10,000; and
  - (B) the waiver is made in accordance with standards which the Director of the Office of Management and Budget shall prescribe.

(b) The Director of the Office of Management and Budget or the Secretary concerned, as the case may be, may not exercise his authority under this section to waive any claim—

- (1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim; or
- (2) if application for waiver is received in his office after the expiration of five years immediately following the date on which the erroneous payment was discovered.

(c) A person who has repaid to the United States all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the department concerned at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that department for that refund within two years following the effective date of the waiver. The Secretary concerned shall pay from current applicable appropriations that refund in accordance with this section.

(d) In the audit and settlement of accounts of any accountable officer or official, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.

(e) An erroneous payment, the collection of which is waived under this section, is considered a valid payment for all purposes.

(f) This section does not affect any authority under any other law to litigate, settle, compromise, or waive any claim of the United States.

(Added Pub. L. 92–453, § 2(1), Oct. 2, 1972, 86 Stat. 759; amended Pub. L. 96–513, title V, § 515(9), Dec. 12, 1980, 94 Stat. 2937; Pub. L. 99–224, § 3(a), Dec. 28, 1985, 99 Stat. 1742; Pub. L. 102–190, div. A, title VI, § 657(c), Dec. 5, 1991, 105 Stat. 1393; Pub. L. 104–316, title I, § 116, Oct. 19, 1996, 110 Stat. 3835; Pub. L. 109–364, div. A, title VI, § 671(b), Oct. 17, 2006, 120 Stat. 2270.)

**Amendments**

2006—Subsec. (a)(2)(A). Pub. L. 109–364, § 671(b)(1), substituted “\$10,000” for “\$1,500”.

Subsec. (b)(2). Pub. L. 109–364, § 671(b)(2), substituted “five” for “three”.

1996—Subsec. (a)(1). Pub. L. 104–316, § 116(1)(A), substituted “Director of the Office of Management and Budget” for “Comptroller General”.

Subsec. (a)(2). Pub. L. 104–316, § 116(1)(B), inserted “and” at end of subpar. (A), redesignated subpar. (C) as (B) and substituted “Director of the Office of Management and Budget” for “Comptroller General”, and struck out former subpar. (B) which read as follows: “the claim is not the subject of an exception made by the Comptroller General in the account of any accountable officer or official; and”.

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).*

Subsec. (b). Pub. L. 104–316, § 116(2), substituted “The Director of the Office of Management and Budget” for “Comptroller General” in introductory provisions.

1991—Subsec. (a)(2)(A). Pub. L. 102–190 substituted “\$1,500” for “\$500”.

1985—Pub. L. 99–224, § 3(a)(1), substituted “and travel” for “other than travel” in section catchline.

Subsec. (a). Pub. L. 99–224, § 3(a)(2), substituted “made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances” for “, other than travel and transportation allowances, made before or after October 2, 1972”.

Subsec. (b)(2). Pub. L. 99–224, § 3(a)(3), struck out “of pay or allowances, other than travel and transportation allowances,” before “was discovered”.

1980—Subsec. (a). Pub. L. 96–513 substituted “October 2, 1972” for “the effective date of this section”.

### **Effective Date of 2006 Amendment**

Amendment by Pub. L. 109–364 effective Mar. 1, 2007, see section 671(c) of Pub. L. 109–364, set out as a note under section 2774 of Title 10, Armed Forces.

### **Effective Date of 1996 Amendment**

Amendment by Pub. L. 104–316 effective 60 days after Oct. 19, 1996, see section 101(e) of Pub. L. 104–316, set out as a note under section 130c of Title 2, The Congress.

### **Effective Date of 1985 Amendment**

Amendment by Pub. L. 99–224 applicable to any claim arising out of an erroneous payment of travel and transportation allowances made on or after Dec. 28, 1985, see section 4 of Pub. L. 99–224, set out as a note under section 5584 of Title 5, Government Organization and Employees.

### **Effective Date of 1980 Amendment**

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of Title 10, Armed Forces.