

PART 6 - DEBT MANAGEMENT

LIST OF CHAPTERS

(Issued: 9/94; Trans. No. 94-38)

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6-0100 OVERPAYMENT OVERVIEW

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6-0100-1 Purpose and Scope

1. Purpose and Scope. This chapter of Part 6 describes overpayment processing and debt management in general terms. More specific information and procedures are provided in chapters 6-0200 and 6-0300. Information regarding the fiscal handling of overpayments and debt can be found in Part 5 - Benefit Payments, Chapter 5-505.

6-0100-2 Chronological Summary of Overpayment/Debt Actions

2. Chronological Summary of Overpayment/Debt Actions. The following is a typical sequence of events when an overpayment occurs:

- a. Overpayment is identified: if the overpayment is less than \$600, it may be administratively written-off as described in PM 6-200.3. Otherwise, the overpayment is calculated, verified, and a preliminary determination is made immediately, regarding whether the claimant was with fault or without fault. A memo justifying the finding on the issue of fault must be placed in the case record.

- b. The Preliminary finding on Form CA-2201 or Form CA-2202 is released within 30 days of the date the overpayment was first identified.
- c. If a hearing is requested, the case is referred to the Branch of Hearings and Review.
- d. If no hearing is requested, a Senior or GS-12 Claims Examiner considers any information submitted since the release of Form CA-2201 or Form CA-2202, makes a final finding on the fault and waiver issues, and formulates a collection strategy, in a memorandum to the case record. Immediately thereafter, a formal decision letter is issued. If the formal decision holds that a collectible overpayment (debt) exists, the decision should include notice to the debtor that referral to the Treasury Department may occur. The decision should include the due process requirements as outlined by the Treasury Department.
- e. Where the decision is made to collect the overpayment, the final decision is the first demand for payment. In these cases, a second demand letter must be issued by the 30th day following the formal decision letter, unless the debt has been resolved or is being collected under an established repayment schedule. If no resolution of the debt is achieved, a third demand letter should be issued by the 30th day following the second demand letter. Any of these demand letters can be issued before the 30th day, but should not be delayed past the 30th day. All the demand letters should include the appropriate due process language required by the Treasury Department, to avoid delays in the referral of the debt to the Treasury Department and to facilitate collection of the debt.
- Forms CA-9001 and CA-9002 are appropriate for this purpose and contain language required by the Debt Collection Improvement Act of 1996.
- f. By the 30th day following the third demand letter, if the debt has not been resolved, the debt should immediately be evaluated for the possibility of implementing salary offset, compromise, or referral to the Treasury Department, through National office.

6-0100-3 Legislative Authority and Directives

3. Legislative Authority and Directives. The instructions in this chapter and the other chapters of Part 6, are derived from the following regulations and directives:
- a. The Federal Employees' Compensation Act (FECA), at 5 USC 8129, authorizes the Secretary of Labor to recover overpayments because of an error of fact or law, except when an incorrect payment has been made to an individual who is without fault and the

adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience. With respect to recovery, the FECA authorizes OWCP (as designee of the Secretary of Labor) to collect overpayments from accrued compensation and continuing benefit payments.

b. Public Law 89-508, Federal Claims Collection Act of 1966 (80 Stat. 308), amended by Public Law 101-552 (1990), assigns the Secretary responsibility for the collection of debts arising from the activities of the Department. It also provides the authority to compromise, terminate, or suspend collection action on debts not in excess of \$100,000. In such cases, there must be no indication of fraud, and it must appear that no person liable for the claim has the present or prospective financial ability to pay any significant amount of the debt, or that the cost of collection is likely to exceed the amount of recovery. The Departmental Manual at 924(d) provides that debt collection and settlement functions are delegated to agencies with accounting and settlement procedures that are consistent with the standards outlined in Chapter 5-900, the Department's Manual of Administration, and procedures that are approved by the Assistant Secretary for Administration and Management.

c. Public Law 97-365, Debt Collection Act of 1982, amended several statutes, including the Federal Claims Collection Act of 1966. The Debt Collection Act authorizes Federal agencies to collect certain charges on outstanding debts, to use salary offset or administrative offset to collect claims and to use the services of private collection agencies. (Note: The Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 has been codified as 31 USC 3711-3720.)

d. Public Law 104-134, Debt Collection Improvement Act of 1996 also amended several statutes, including the Debt Collection Act of 1982. The Debt Collection Improvement Act provides that any non-tax debt or claim owed to the United States that has been delinquent for a period of 180 days shall be turned-over to the Secretary of the Treasury, who will determine whether to collect or terminate collection actions on the debt or claim.

e. 31 CFR Part 900-904 (Federal Claims Collection Standards) describes standards for the collection and compromise of debts, termination of agency collection, and referral of civil claims to the Department of Justice. In particular, 31 CFR 904-03.1(b) provides that the authority to suspend or terminate uncollectible claims in excess of \$100,000, exclusive of interest, penalties and administrative costs "rests solely with the Department of Justice." Consequently, even if OWCP believes that suspension or termination of recovery of such a debt is appropriate, the matter must be referred to the Department of Justice for determination.

f. In 29 CFR 20, Subparts A through D include the regulations governing credit

reporting, administrative offset against funds owed to a debtor by the United States (other than salary), FECA assessment and collection of charges, and salary offset when the debtor is a current employee of the United States. Although the Department of Labor's salary offset regulations may be applied to debts resulting from FECA overpayments, it is preferable to refer such debts to the Treasury Department through the National Office for resolution.

g. 20 CFR 10.430-441 includes the regulations applicable to overpayments of compensation.

h. 31 CFR Part 285 includes the provisions for transferring delinquent debt to the Department of Treasury for cross servicing.

i. In a case involving criminal fraud on the part of the debtor or any other party having an interest in the claim, where the initial debt is over \$600, exclusive of interest, penalties and administrative costs, instructions regarding compromise or termination do not apply. As provided by 31 CFR 900.3(a), only the Department of Justice has authority to compromise or terminate collection action on such claims.

j. In cases referred to the OIG or the U.S. Attorney for reasons other than collection of the debt, the OIG should be advised before collection action is initiated in order to evaluate whether collection action would jeopardize an ongoing investigation or a legal action in progress.

k. The Supreme Court ruling in the case of Califano v. Yamasaki, 442 U.S. 682 (1979) required that the Social Security Administration defer any measures to recover an overpaid benefit until the claimant had been notified of the overpayment, told of the right to seek reconsideration, and was given an opportunity for an oral hearing on the issues of fault and waiver. Because the wording of the Social Security Administration waiver provision is similar to that in the Federal Employees' Compensation Act, OWCP also provides the right to a pre-recoupment hearing to compensation claimants under FECA.

4. Other Debts in the FECA Programs. Debts may also be created when an entity or an individual, such as a medical provider, receives a duplicate payment, in excess of the amount authorized under the fee schedule or payment that the Secretary determines is not appropriate under FECA. Such debts are also subject to collection by OWCP.

6-0200 INITIAL OVERPAYMENT ACTIONS

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6-0200-1 Purpose and Scope

1. Purpose and Scope. This chapter describes specific procedures for identifying overpayments of compensation, properly notifying beneficiaries, making accurate and rationalized findings as to individual fault and entitlement to waiver, and issuing final decisions which include the initial collection strategy and the collection amount. The chapter is organized chronologically and interspersed with examples and definitions.

This chapter and all overpayment procedures in Part 6, reflect the policy of the Office of Workers' Compensation Programs (OWCP). FECA is social legislation intended to benefit entitled employees. Every effort should be made to accommodate the claimant's best interests and to ensure that all due process actions are completed in a timely and fair manner when specific collection actions must be enforced.

6-0200-2 Identification of Overpayments and Debts

2. Identification of Overpayments and Debts. Overpayments of compensation occur under

various circumstances, such as:

- a. A claimant returns to work and continues to receive compensation.
- b. A widow or widower under age 55 remarries without advising OWCP and compensation continues.
- c. A schedule award expires, but compensation continues to be paid.
- d. A claimant is determined to be not entitled to compensation already paid.
- e. Adjustments are made to rate of pay; cost-of-living increases are applied in error;
- f. Compensation is forfeited for failing to report earnings as required; etc.

When an overpayment is discovered, the Claims Examiner (CE) will document the correct period of entitlement and the actual period paid and arrange for certification of the calculation. The calculation of the overpayment must be in writing in the case record. In performing the calculations, the CE should use the worksheet calculation capabilities of the Automated Compensation Payment System (ACPS), for compensation paid since 1981; and/or of the ACPS WEC (Form CA-816) calculation capability for compensation for any prior period of time.

6-0200-3 Admin Termination of Debt Collection (Overpayments Less than \$200)

3. Administrative Termination of Debt Collection (Overpayments Less than \$200)

a. Debt collection actions on overpayments of less than \$200 may be administratively terminated at any time after the overpayment has been identified, with no requirement to complete any of the "due process" actions described elsewhere in this chapter or the other chapters of Part 6, if the cost of further collection action would exceed the recovery expected. This action may be applied to any type of debt except those not covered by 5 U.S.C. 8129, which include:

- (1) Refunds due OWCP under 5 U.S.C. 8132 as a result of a third party settlement.
- (2) Money owed OWCP as a result of a beneficiary's election of OPM retirement benefits in lieu of previously paid compensation, where the debt can be recovered from the retroactive portion of the annuity held by OPM.

(For amounts between \$700 and \$1,499, paragraph 8 below describes options which may expedite processing of debt collection.)

b. For each administrative termination of debt collection action, the CE must prepare a brief memorandum to the District Director, for review by the Overpayment Examiner (OE), describing the reasons for recommending termination of collection actions. See paragraph 8a of this chapter for consideration of appropriate factors. When termination is approved by the OE (acting as the delegated authority for the District Director), an accounts receivable record of the overpayment will be created in the automated Debt Management System (DMS). The receivable will then be written-off and terminated, without giving any notice of the overpayment to the overpaid party.

6-0200-4 Preliminary and Final Decisions

4. Preliminary and Final Decisions. For any overpayment not administratively terminated under the provisions of paragraph 3 above, the CE should document the calculation of the overpayment in the case record and forward the case to the OE for certification.

Once an overpayment is identified and calculated, the OE is responsible for determining whether the claimant was with fault or without fault, issuing a preliminary finding, and unless a hearing is requested, the OE is responsible for issuing a final decision. It is important that the OE carefully consider all the variables in making a fault determination.

It is also critical that all overpayments be handled separately, especially in relation to the fault finding. While on occasion there may be more than one overpayment identified on a claim and it may seem less cumbersome to combine the two overpayments in order to quote one debt figure, this should not be done. Rather, the OE should consider the overpayments separately, because each overpayment situation must be considered on its own merit, in terms of fault finding.

a. When a preliminary finding on the question of fault is made, the OE will prepare a memorandum for the file stating the finding and the rationale (see Exhibits 1-4 for sample memoranda). The OE will then immediately release the preliminary finding (Form CA-2201 or Form CA-2202), which informs the claimant of the fact and amount of the overpayment, and of the preliminary finding on the question of fault.

Regardless of whether the claimant is "with fault" or "without fault", a new determination on entitlement which results in an overpayment (e.g., an amended schedule award, the correction of an incorrect pay rate, the forfeiture of compensation) entitles the claimant to request reconsideration and a hearing and/or review by the Employees' Compensation Appeals Board (ECAB) on the entitlement issue. Therefore, a separate formal decision on the claimant's entitlement to benefits, with full appeal rights, should be issued along with the preliminary overpayment finding. Form CA-2201 and Form CA-2202 are preliminary finding notices, and are not proper for use in place of the entitlement decision on the issue that resulted in the overpayment.

(1) If the claimant is determined to be with fault, Form CA-2201 must be released (along with an OWCP-20) within 30 days of the date the overpayment is identified. Both the reason that the overpayment occurred and the reason for the finding of fault must be clearly stated. Form CA-2201 informs the claimant of the right to submit evidence and the right to a pre- recoupment hearing on the issues of a) fact and amount of the overpayment; b) fault; and c) waiver. Along with Form CA-2201, the OE should provide a clearly written statement explaining how the overpayment was calculated.

(2) If the claimant is determined to be without fault, Form CA-2202 must be released (along with an OWCP-20) within 30 days of the date the overpayment is identified. This letter advises the claimant of the fact and amount of the overpayment, and of the preliminary finding that the claimant is without fault in the creation of the overpayment. The reason that the overpayment occurred must be clearly stated in the preliminary decision and the OE should provide a clearly written explanation indicating how the overpayment was calculated.

Form CA-2202 also informs the claimant of the right to submit additional evidence and argument, if the claimant disagrees with the fact or amount of the overpayment and if the claimant feels the overpayment should be waived. Additional evidence and arguments must be submitted by the claimant within 30 days of the date of the letter.

Form CA-2202 also informs the claimant of the right to request a hearing with a representative of the Branch of Hearings and Review. If the claimant requests a hearing, the case should be transferred promptly to the Branch of Hearings and Review.

After issuance of the appropriate preliminary decision letter the OE will establish an accounts receivable record in DMS with a "PF" (preliminary finding) status.

If the claimant submits payment after receiving the preliminary decision, a brief acknowledgment letter should be issued. If full payment is made, the letter should state that the matter is closed. Where less than full payment is made, further action should be pursued, including possible administrative termination of collection under the appropriate provisions of paragraph 3 above. If the debt is administratively terminated, a letter should be issued to advise the debtor. The DMS account must be moved to "FD" (final decision) status in order to credit any payment.

b. Action Following a Preliminary Finding of "With Fault."

1. No Request for a Hearing. Following the release of Form CA-2201 and receipt of additional evidence from the claimant within 30 days (but no request for a hearing), the OE will determine whether the evidence is sufficient to make a final decision on the question of fault. If not, the OE should consider the associated costs for processing overpayments (see Exhibit 5), and whether or not to conference the case. The OE should also consider the provisions for the administrative termination of collection action for overpayments less than \$700 (see paragraph 8a of this chapter). If the case is conferenced, the OE should issue a Memorandum of Conference. If additional evidence is received, the OE must review the documentation and prepare a memorandum to the case record providing the rationale for the final determination on the issue of fault.

Cases should be conferenced where there is no response from the claimant following issuance of the preliminary decision. However, if a claimant is being paid compensation on the periodic roll or an annuity from OPM, or is due accrued benefits from either OWCP or OPM, and does not respond to the preliminary overpayment finding, a final decision should be issued without conducting a conference and the debt should be recovered from such benefits as quickly as possible. Importantly, the notice requirements must be provided before commencing the offset of ongoing benefits (see Chapter 6-300.8c and 6-300.9b). In cases where an OPM annuity is being paid, Form CA-9003 may be issued at the same time as the overpayment final decision.

(a) If the preliminary finding of "with fault" is sustained, the OE will issue a formal decision using Form CA-2223. (See paragraph 4d below for guidelines on final decisions.) After release of Form CA 2223 the DMS account will be changed to "FD" (final decision) status and collection action will begin (see Chapter 6-300 also).

(b) If the preliminary finding of "with fault" is overturned, the OE must decide if there is sufficient information on file to grant a waiver of the overpayment. Where the claimant has not submitted any financial information, and the case has not been conferenced, the OE should conference the case on the waiver issue. Thereafter, the OE will prepare a memorandum to the file, indicating the rationale and the final determinations on the issues of fault and waiver.

(i) If it is determined that waiver of recovery should be granted in full, the OE will issue a formal decision on Form CA-2226. When an overpayment is waived and the decision letter

has been issued, the accounts receivable is to be closed as "waived."

(ii) If waiver is not granted, or only partial waiver is granted, the OE will issue a formal decision on Form CA-2224. The OE should modify Form CA-2224, in cases of partial waiver. (See paragraph 4d below for additional guidelines on final decisions.) After release of Form CA-2224 the DMS account will be changed to "FD" status and collection action will begin (see Chapter 6-300).

(2) Hearing is Requested. If following the release of Form CA-2201, the claimant requests a hearing, the case will be transferred to the Branch of Hearings and Review for scheduling of the hearing. The Hearing Representative will hold the hearing, accept any evidence, and hear any testimony the claimant chooses to present on the issues of fault and waiver.

After carefully considering all the evidence of record, including the testimony at the hearing, the Hearing Representative will prepare a written decision, either affirming or modifying the preliminary finding of fault. If the claimant is found to be without fault, the Hearing Representative will also address the question of waiver in the decision. (See paragraph 4d below for additional guidelines on final decisions.) Upon careful consideration of the facts, if the Hearing Representative finds the amount of the debt is significantly larger than that outlined in the preliminary decision, the case should be returned to the district office for a new preliminary decision, which will then give the claimant full rights concerning the increased debt amount.

Otherwise, the hearing decision will represent the final decision on the overpayment, and the case will be returned to the district office for appropriate action, including updating of the DMS record. The district office need not issue one of the final decision form letters (Forms CA-2223 through CA-2225) in these cases.

c. Action Following a Preliminary Finding of "Without Fault" (Final Decision).

(1) Hearing is Requested. Following the release of Form CA-2202, if the claimant requests a hearing, the case will be transferred to the Branch of Hearings and Review for scheduling of the hearing. The Hearing Representative will hold the hearing, and allow the claimant to testify and submit additional evidence on the issues of overpayment and waiver.

After carefully considering all the evidence of record, including the testimony at the hearing, the Hearing Representative will prepare a written decision either

denying or granting waiver of the overpayment. (See paragraph 4d below for additional guidelines on final decisions). If the Hearing Representative finds the amount of the debt to be significantly larger than the amount indicated in the preliminary decision, the case should be returned to the district office for a new preliminary decision, which will then give the claimant full appeal rights concerning the increased debt amount.

Otherwise, the hearing decision will represent the final decision on the overpayment, and the case will be returned to the district office for appropriate action, including updating of the DMS record. The district office need not issue one of the final decision form letters (Forms CA-2223 through CA-2225) in these cases.

(2) No Response From Claimant. If after 30 days following the release of Form CA-2202 there has been no response from the claimant (no evidence is received to support a request for waiver and no request for a hearing is submitted), the OE should consider the associated costs and whether to conference the case. Further, the OE should consider the provisions for the administrative termination of collection action for overpayments less than \$700 (see paragraph 8a of this chapter). If the case is conferenced (see Chapter 2-500.7), the OE shall issue a Memorandum of Conference, stating whether overpayment should be waived.

In cases where the claimant is being paid compensation on the periodic roll or an annuity from OPM or is due accrued benefits from either OWCP or OPM and the claimant does not respond to the preliminary overpayment decision, a final decision should be issued without conducting a conference and the debt should be recovered from such benefits as quickly as possible. Importantly, the notice requirements must be given before commencing the offset of ongoing benefits (see Chapter 6-300.8c and 6-300.9b). In cases where an OPM annuity is being paid, Form CA-9003 may be issued at the same time as the overpayment final decision.

(a) If it is determined that waiver of recovery should be granted in full, the OE will issue a formal decision on Form CA-2227. When an overpayment is waived and the decision letter has been issued, the accounts receivable is to be closed as "waived."

(b) If waiver is not granted, or only partial waiver is granted, the OE will issue a formal decision on Form CA-2225. Appropriate modification to Form CA-2225 should be made in cases of partial waiver. (See paragraph 4d below for additional guidelines on final decisions.) After

release of Form CA-2225, the DMS account status will be changed to "FD" and collection action will begin (also see Chapter 6-300).

3. Waiver Requested Without a Hearing. Following the release of Form CA-2202, if the claimant submits new evidence or arguments for waiver of the overpayment (but no request for a hearing), the OE shall fully consider the evidence of record. The OE shall review the case file, including any new evidence, and consider the associated costs (see Exhibit 5) and whether to conference the case. The OE must also consider whether the evidence warrants waiver of the overpayment, as well as the provisions for the administrative termination of collection action for overpayments less than \$700 (see paragraph 8a of this chapter). The OE should then prepare a brief memorandum to the file to include the rationale for his or her finding as to the question of waiver of the overpayment.

(a) If it is determined that waiver of recovery should be granted in full, the OE will issue a formal decision on Form CA-2227. When an overpayment is waived and the decision letter has been issued, the accounts receivable is to be closed as "waived."

(b) If waiver is not granted, or only partial waiver is granted, the OE will issue a formal decision on Form CA-2225. The OE should modify Form CA-2225 in cases of partial waiver. (See paragraph 4d below for additional guidelines on final decisions.) After release of Form CA-2225, the DMS account will be changed to "FD" status and collection action will begin.(see Chapter 6-300).

d. Final Decisions.

(1) When issuing a final overpayment decision where waiver is not granted (i.e., Forms CA-2223 through CA-2225 or a hearing decision, as appropriate) on or after June 1, 1987, the only appeal right is review by the Employees' Compensation Appeals Board.

(a) The decision will address the appropriate collection strategy(ies) to be implemented in accordance with those described in Chapter 6-300. In establishing the initial collection strategy, OWCP must weigh the claimant's income, assets, and ordinary and necessary living expenses, in a manner similar to the waiver considerations described at Chapter 6-200.6a (regarding the "defeat the purpose of FECA" clause).

(b) Minimum Collection Guidelines. The Federal Claims Collection Standards published jointly by the Department of the Treasury and the

Department of Justice (31 CFR Parts 900 through 904) state that government claims should be collected in full. If an installment plan is accepted, the installments should be large enough to collect the debt promptly.

In cases where there is no entitlement to waiver and the claimant's assets are insufficient to repay the overpayment in full, the OE or Hearing Representative should evaluate the claimant's financial information to establish the highest reasonable rate of repayment which will collect the debt promptly and at the same time minimize any hardship on the claimant.

Where the claimant's ordinary and necessary living expenses approximately equal his or her income, a repayment schedule must still be established. In such cases, the rate of repayment should be set so that any hardship is minimized. The appropriate recovery rate must be established based on the circumstances of each case, taking into account the requirement to minimize (not necessarily eliminate) hardship on the claimant.

(c) Due process notice. The Debt Collection Improvement Act of 1996 created a new Federal Debt Collection system for delinquent debts. Delinquent debts are now cross-serviced by the Department of the Treasury and are required to be referred to them for collection action, when they are more than 180 days delinquent.

As part of this requirement, debtors must be given due process notice that the debt may be referred to the Department of the Treasury, that administrative costs may be assessed if this referral occurs, and that the debt is reportable to credit bureaus. Any debtor must also be advised of his or her right to inspect and request copies of debt records, to enter into a mutually agreeable repayment plan, and to request a review of the debt determination. This notification must be given at least 60 days prior to referral for cross servicing. All final decision letters that require repayment of a debt (Forms CA-2223 through CA-2225) contain the necessary due process language.

(2) It must be remembered that a decision on the claimant's entitlement to compensation benefits carries with it greater appeal rights than those afforded by a final overpayment decision. This difference may be especially important in the context of pre-recoupment review or hearing where the claimant contests the fact of the overpayment and the OE or the Hearing Representative must determine

whether the claimant's objections actually involve the issue of entitlement. If so, the OE or Hearing Representative should issue a decision on the question of entitlement. The decision must be accompanied by the appropriate appeal rights for the claimant. The OE or the Hearing Representative should then take appropriate action with regard to the overpayment issues of fault, waiver and/or recovery, and provide the proper appeal rights with the final overpayment decision.

For example, an overpayment is created as a result of OWCP's decision that compensation had been paid at an incorrect pay rate. If the claimant presents evidence in support of the argument that the original pay rate used by OWCP was correct and that the decision changing the pay rate was improper, the issue of entitlement should be addressed, and a formal decision with appropriate appeal rights should be issued. On the other hand, if the claimant questions the amount of overpayment based solely on the correctness of OWCP's mathematical computations, no issue of entitlement is raised in connection with the overpayment.

(3) When any final overpayment decision is issued, a copy is to be sent to the employing agency.

e. Special Cases.

(1) Payments to Representative Payees. Compensation payments are often sent to a representative payee, such as a party other than the individual on whose behalf the benefits are payable. The representative is legally obligated to use the funds for the advantage of the beneficiary. This commonly occurs in death cases, where a surviving spouse or legally appointed guardian receives payments on behalf of the decedent's surviving children. It is less common in disability cases, occurring chiefly where claimants are unable to handle their financial affairs for various reasons, such as being declared legally incapable of handling financial matters and grave illness. The representative payee may be a legally appointed guardian or a trustee or other fiduciary.

A representative payee may be held responsible for repaying an overpayment. A finding will be made regarding the representative's fault in creation of the overpayment. If the representative is without fault, waiver of the overpayment will be considered using established standards. The issues of fault and waiver are determined individually for the claimant-beneficiary and for the representative payee. Therefore, either the representative payee or the claimant/beneficiary would be liable for an overpayment, or both could share the liability if neither met the standards for waiver. The regulatory authority for representative payees

appears at 20 CFR 10.424.

A representative payee has a fiduciary responsibility. Consequently, the fact that an overpayment for a claimant/beneficiary must be repaid from the representative's funds is insufficient to justify waiver. If a representative payee is without fault, the waiver issue will be determined as it would be for a without fault claimant, who received an overpayment on his or her own behalf, by applying the tests including equity and good conscience.

Representative payees must be notified of the circumstances which may result in prohibited receipt of benefits. Claims Examiners must notify representative payees to return checks received after an event that affects entitlement. The Claims Examiner should issue Form CA-180 or Form CA-1617, which provides adequate notification of the reporting requirements of representative payees.

Since a determination of fault depends heavily on whether the payee was informed of the reporting responsibility, both the representative payee and the beneficiary should be informed of this responsibility and asked to furnish information. Providing a beneficiary with copies of letters addressed to a representative payee is generally not sufficient to hold the beneficiary responsible for submitting information. A separate letter must be sent to each.

Minors and those found legally incompetent to handle their own affairs however, should not be asked to submit information. Requests for information and final decisions should be sent only to the representative payees.

While a representative payee may do nothing more than endorse compensation checks to the beneficiary, this does not excuse the representative from liability or in any way diminish responsibility in the creation of an overpayment. An overpayment to a representative payee is handled according to the overpayment procedures and criteria discussed above in this chapter.

(2) Claims Against an Estate. Upon learning that a claimant with an outstanding overpayment has died, prompt action must be taken by OWCP to ascertain pertinent information about the claimant's estate. Generally once the estate is closed, creditors who have failed to assert a claim properly are precluded from any recovery. Therefore, quick action by OWCP in determining the nature of the estate is essential.

Upon learning of the death of a claimant with an outstanding overpayment, the district office should immediately send a letter by certified mail to the estate of the claimant, in care of the individual most likely to be named administrator or executor of the estate. The letter should explain that the claimant had an outstanding overpayment and ask whether the claimant had a will, the name of the executor or executrix, and the name of the court where the will would be filed for probate. If there is no will, the letter should ask for the name of the person who intends to be the administrator or administratrix of the estate. The letter should state that OWCP is making a claim against the estate for the amount of the overpayment. Upon receipt of the above information, the matter should be referred to the Regional Solicitor for the filing of a "Proof of Claim." This action should be taken even if the overpayment is in a preliminary status at the time of death.

If the information requested is not furnished or it is inadequate, a follow-up letter should be sent, again by certified mail, warning the estate that unless the information requested is provided promptly, the matter will be referred to the Regional Solicitor, who will request the appropriate probate court to appoint an

administrator of the estate. If the response continues to be inadequate, the district office should determine, as best as it can, whether an estate exists and the location of the probate court. If no response is received within six months from the date of the request and it appears that an estate may exist against which OWCP's claim may be filed, the case should be forwarded to the Office of the Solicitor so that appropriate timely action may be taken.

When attempting to collect from the claimant's estate, OWCP must consider waiver of the debt. The executor/executrix of the estate will generally be found to be without fault in the creation of the overpayment and is entitled to waiver consideration, including a pre-recoupment hearing if requested. The criteria for whether recovery would defeat the purpose of FECA, or be against equity and good conscience, will be the test applied to the heirs of the estate.

(3) Bankruptcy. A claimant's obligation to repay an overpayment is forgiven if the bankruptcy court has discharged the debt in a bankruptcy proceeding, unless the debt is found to be non-dischargeable. 11 U.S.C. 521(1) requires a debtor to file a list of all assets and liabilities, listing all creditors and amounts due when seeking bankruptcy protection. The court may send a "Proof of Claim" to each creditor, which must be completed **immediately** and returned in accordance with the instructions received (whether or not "due process" under FECA with respect to the overpayment has been completed). The district office should consult with the Solicitor's Office of Federal Employees' and Energy Workers' Compensation Division or the Regional Solicitor for assistance in filing the Proof of Claim and transmitting it to the U.S. Attorney, if appropriate.

As a proof of claim must be properly filed within the time allotted, all requests to the Solicitor's Office should be sent by facsimile transmission and marked **"URGENT AND TIME SENSITIVE."**

A debt is not discharged if the claimant knowingly failed to list it in petitioning the court, if the overpayment was not discovered until after discharge, or if the claimant committed fraud initially to obtain the payment. Debts resulting from fraud should be referred to the Regional Solicitor for guidance, with the request that the Solicitor file a timely objection to the discharge. The Solicitor's advice should be requested on any other case which may represent an exception.

(4) Automatic Stay of Collection when Bankruptcy is Filed. Under the Bankruptcy Code, once the FECA claimant files a petition for bankruptcy relief, the recovery of an overpayment against the claimant for an overpayment that arose prior to the filing in bankruptcy is automatically stayed. See 11 U.S.C. 362. The stay applies regardless of whether the overpayment will or will not be

discharged. Therefore, any deductions being made from the claimant's compensation benefits for the recovery of an overpayment **must stop immediately upon receipt of the notice in bankruptcy**. (In addition, any deductions made after the petition in bankruptcy was filed must be expeditiously refunded to the claimant-in a Chapter 13 case or to the trustee in a Chapter 7 case.) **Failure to stop deductions can subject OWCP to damages under the Bankruptcy Code**. The date that the petition in bankruptcy is filed will appear on the notice and is the date that should be used to determine whether any refund must be made.

6-0200-5 Fault Determinations

5. Fault Determinations. Fault applies only to the individual who has received a payment in his or her name or on behalf of a beneficiary. Although OWCP may have been with fault in making the overpayment, this does not relieve the payee of making a refund if the payee is also with fault. In situations where an equally valid argument can be made both for "without fault" and "with fault," the benefit of the doubt should go to the claimant, and a finding of without fault should be made consistent with the nature of FECA as social legislation designed to benefit entitled employees.

In general, if the evidence shows either a lack of good faith or failure to exercise a reasonable degree of care in reporting changes in circumstances that may affect entitlement or the amount of benefits, an individual will be found with fault. However, when evaluating the degree of care expected of an individual, OWCP should consider both the complexity of the circumstances surrounding the overpayment and the capacity of a particular individual to realize that he or she is being overpaid. See 20 CFR 10.433.

In determining whether the claimant is with fault or without fault for receiving an overpayment, OWCP should apply the "reasonable person test." Factors may include age, intelligence/comprehension, education, demonstrated degree of familiarity with the compensation system, consistency of actions, physical and mental condition, the clarity of correspondence and/or telephone advice from OWCP or the employing agency, and/or other factors which can reasonably influence whether a claimant can be considered to have been aware that an error in payment occurred.

Also, in determining whether an individual is with or without fault for receiving an overpayment, OWCP should consider all circumstances surrounding the overpayment such as the individual's understanding of any reporting requirements, the agreement to report events affecting payments, knowledge of events that should have been reported, efforts to comply with the reporting requirements, opportunities to comply with the reporting requirements, understanding of the obligation to return payments which were not due, and the ability to comply with any reporting requirements. Ability to comply includes consideration of the individual's age, education,

comprehension, memory, and physical and mental condition.

- a. At Fault. A recipient is with fault if the incorrect payment resulted from:
 - (1) An incorrect statement as to a material fact made by the payee, that the payee knew or should have known to be incorrect, or
 - (2) Failure of the recipient to furnish information that he or she should have known to be material, or
 - (3) Acceptance of a payment that the overpaid individual either knew or should have known was incorrect. See 20 CFR 10.433.

- b. Without Fault. In addition to many circumstances where an individual may be found without fault, the following situations should always result in a finding of without fault:
 1. Where the overpayment resulted from OWCP error in:
 - (a) the calculation of cost-of-living increases;
 - (b) the calculation of the length and/or percentages of a schedule award of compensation;
 - (c) the under-deduction of health benefits or life insurance premiums; or
 - (d) the calculation of individual's loss of wage-earning capacity.

The only exception would occur when it is shown that the individual had actual knowledge of the calculation error.

- (2) Where the overpayment resulted from an individual's action or inaction, based on misinformation supplied by OWCP or the employing agency. In such cases, there must be documentation to show that misinformation was communicated. Further, there cannot be any evidence that the individual knew or should have known the proper course of action to be followed.

- c. The following are examples involving several common with-fault and without-fault overpayment situations:

Example 1: A claimant received a schedule award for a specific period of time and, upon expiration of the award, OWCP failed to terminate benefits. If OWCP had forwarded Form CA-1051 to the claimant shortly before the expiration of the schedule award, there would be no question that the claimant should have been aware of the date the award would expire and that any payment received subsequent to that expiration date was incorrect (and the claimant would not be without fault.) However, if Form CA-1051 was not sent, the OE must take into consideration the length of the schedule and how long ago the claimant was advised, on letter Form CA-181, of the period of compensation.

For instance, if the claimant was informed on Form CA-181 a number of years ago that compensation would be paid for a specific period, the fact that the claimant accepted additional compensation that he or she was not entitled to, would not necessarily mean that the claimant was with fault in the matter. Similarly, if the award was for a relatively short period of time, the claimant should have known the amount of compensation and the period of time he or she was entitled, and that any additional payments were in error. In other words, the simple fact that the claimant was informed in the past on Form CA-181 of the period of the schedule award, does not by itself, mean that the claimant was with fault by accepting compensation erroneously paid after the award had expired.

Example 2: A claimant received additional compensation to which he or she was not entitled because compensation was computed on an incorrect pay rate, or because cost-of-living increases were incorrectly applied. If an incorrect pay rate is involved, the OE must carefully evaluate the evidence to determine whether the claimant should have been aware that the compensation being paid was incorrect. If so, the claimant would likely be found to be with fault.

If an overpayment occurred due to incorrectly applied cost-of-living adjustments, the claimant would likely be found without fault. It is possible that the evidence may show that the claimant should have been aware that the adjustment(s) was/were incorrect.

However, it would normally be unrealistic to expect a claimant to know the effective date of a cost-of-living increase, whether this increase should be applied, or even the amount of such an increase.

Example 3: The original acceptance of a claim is rescinded and all compensation paid is declared an overpayment. In those situations, unless it could be proved that the claimant was aware that the acceptance of the claim was erroneous, the claimant would be found to be without fault in the creation of the overpayment.

Example 4: In the case of Marcia L. Wright, 37 ECAB 435 (Mar. 28, 1986), a married claimant received compensation on the periodic roll at the augmented rate. For several years she reported her spouse as a dependent on Form CA-1032. In July 1985, she returned a Form CA-1032 and reported that she had no dependent. When asked for additional information by OWCP, the claimant replied that she had been recently divorced. The claimant was overpaid from the date of her divorce until the date that OWCP adjusted her compensation.

The claimant stated that Form CA-1032 correctly indicated that she no longer had dependents and that it had been sent within 15 days that her divorce became final. She said that she would have sent the notification sooner, but she was hospitalized for surgery two days after the divorce. OWCP found that she was with fault because she knew or reasonably should have known that she was to report immediately any change in her dependency status.

The Board found that given the circumstances, the claimant's actions in reporting her change in status were both timely and reasonable. OWCP was incorrect in stating that the claimant failed to furnish information which she knew was material to her claim for compensation. The Board found the claimant to be without fault.

Example 5: In the case of Wanda G. Berdyck, Docket No. 89-391 (Mar. 31, 1989), an overpayment occurred when the claimant returned to duty on April 27, 1987, but was paid compensation for total disability until July 4, 1987. OWCP noted that the claimant had received Form CA-1049 advising her to "Return to us any compensation check received after you return to work." Also, OWCP noted that the compensation checks issued to the claimant showed on the face of the checks, the dates being paid. Accordingly, the claimant was found to be with fault in creating the overpayment. In upholding the decision of OWCP, the Board concluded that under this circumstance the claimant knew or should have known that she was not entitled to the checks she received after returning to work.

OWCP's regulations at 20 CFR 10.430 describe what information is provided on periodic checks and on EFT (electronic funds transfer). In determining whether or not a claimant is at fault in a case such as this, the claims examiner should be aware that all disability compensation checks issued through ACPS have the compensation period printed on the face of the checks. This fact alone may not be sufficient to find the claimant at fault, but it should be considered with all of the other factors in making the determination.

Example 6: The claimant received checks which indicated an unexplained increase of \$300 for a period of 28 days, and promptly called OWCP to question the additional amount. While the claimant should know that an increase of that size without explanation is incorrect, the claimant is without fault from the moment that he or she notified OWCP. (However, it generally will not be against equity and good conscience to collect such an overpayment, since the claimant should either return the checks promptly or hold the overpayment in an account until instructed by OWCP.)

6-0200-6 Waiver of Recovery

6. Waiver of Recovery. 5 U.S.C. 8129(b) states "Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience." This means that if the claimant is without fault in the creation of the overpayment, and adjustment or recovery would defeat the purpose of FECA, or would be against equity and good conscience, collection of the overpayment will be waived in whole or in part, depending on the circumstances of the case. However, a fault finding must be made in every overpayment case before waiver may be considered. If the claimant is with fault in the creation of the overpayment, adjustment or recovery may not be waived.

Note: A partial waiver may be granted to a "without fault" claimant if total recovery would impose a financial hardship, but partial recovery would not impose hardship.

a. The clause "defeat the purpose of this subchapter" means defeat the purpose of benefits under FECA. The purpose of FECA is to provide at least a subsistence income for beneficiaries. See 20 CFR 10.436. The test is whether the individual has income or financial resources sufficient for more than ordinary needs or is largely or solely dependent upon current benefit payments for the necessities of life. This clause applies only to beneficiaries, people who are, or were, entitled to benefits. If an individual was never entitled to benefits (e.g. after accepting a claim and awarding compensation it was later determined that the claimant was not a civil employee), the claimant's financial condition will be considered under the "against equity and good conscience" clause.

(1) Financial Hardship. Recovery of an overpayment will "defeat the purpose

of FECA" if recovery would cause hardship by depriving a presently or formerly entitled beneficiary of income and resources needed for ordinary and necessary living expenses under the criteria set out in this section. Recovery will defeat the purpose of FECA if both:

(a) The individual from whom recovery is sought needs substantially all of his or her current income (including FECA periodic benefits) to meet current ordinary and necessary living expenses; and

(b) The individual's assets do not exceed the resource base of \$4800 for an individual or \$8000 for an individual with a spouse or one dependent, plus \$960 for each additional dependent. This base includes all of the claimant's assets not exempted from recoupment in (4) below. The first \$4800 or more, depending on the number of claimant's dependents, is also exempted from recoupment as a necessary emergency resource.

An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50. In other words, the amount of monthly funds available for debt repayment is the difference between current income and adjusted living expenses (i.e. ordinary and necessary living expenses plus \$50).

Both conditions in (a) and (b) above must be met to defeat the purpose of FECA. If an individual has disposable current income or assets in excess of the allowable amount, a reasonable repayment schedule can be established over a reasonable, specified period of time. It is the individual's burden to submit evidence to show that recovery of the overpayment would cause the degree of financial hardship sufficient to justify waiver.

(2) Income. An individual's total income includes any funds which may reasonably be considered available for his or her use, regardless of the source. A spouse's income will not be considered available to the individual, unless the spouse was living in the household both at the time the overpayment was incurred, and at the time waiver is considered. Income to be considered includes, but is not limited to:

- (a) Government benefits such as Black Lung, Social Security, Railroad Workers' Compensation, and Unemployment Compensation.
- (b) Wages and self-employment income.
- (c) Regular payments such as rent or pension.
- (d) Investment income.
- (e) Alimony or child support payments.

(3) Ordinary and Necessary Living Expenses. An individual's ordinary and necessary living expenses include:(a) Fixed living expenses, such as food and clothing, furniture, household and personal hygiene supplies, rent, mortgage payments, utilities, maintenance, burial plot or prepaid burial contract, insurance (e.g. vehicle--one or two allowable, life, accident and health insurance), taxes, expenses for one or two vehicles (loan payments with the date each will be paid off; gas and oil; maintenance), and commuting expenses not included under vehicle expenses.

- (b) Medical, hospitalization and other similar expenses not reimbursed by insurance or other sources.
- (c) Expenses for the support of others for whom the individual is responsible, such as dependent child day care, child support, or alimony.
- (d) Church and charitable contributions made on a regular basis. This does not include large one-time gifts made after receipt of the preliminary notice of the overpayment.
- (e) Miscellaneous expenses (e.g. newspapers, haircuts) not to exceed \$50.00 per month.

A finding that a type of expense is ordinary and necessary does not mean that the amount is ordinary and necessary. The burden is on the claimant to show that the expenses are reasonable and needed for a legitimate purpose. If the OE or the Hearing Representative determines that the amount of certain expenses are not ordinary and necessary, particularly regarding the significant expenses of food, clothing, and vehicles, the OE or Hearing Representative must state in writing the reasons for the finding. The finding must be supported by rationale, which may include reference to recognized research data (such as current statistics from the Bureau of Labor Statistics) that would show that the claimant's expenses exceed the average or range of expenses for the general population relevant to the claimant's circumstances.

The OE or the Hearing Representative must be careful to avoid counting an expense twice when totaling the claimant's ordinary and necessary living expenses. For example, if the claimant's consumer debt (e.g., bank credit cards, department store charge cards, etc.) are already calculated in his or her documentation of fixed and miscellaneous living expenses (items A and E above), the credit card expenses should not be added again as consumer debt expenses. If the amount is added again, would result in an excessive total for the claimant's ordinary and necessary living expenses, and would incorrectly make the claimant appear less able to repay his or her overpayment than would actually be the case.

Furthermore, the OE or the Hearing Representative should ensure that the monthly expense used for each consumer debt billing reflects only the minimum payment required by the creditor, not a larger amount to pay-off the debt, in excess of the minimum required. The minimum amount should be verified, if necessary, by requiring the claimant to submit copies of his or her monthly billing(s) for consumer debt.

(4) Assets. An individual's assets include:

(a) Liquid Assets may include but are not limited to cash, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposit.

(b) Non-Liquid Assets may include but are not limited to the fair market value of an owner's equity in property such as a camper, boat, second home and furnishings/supplies, vehicle(s) (i.e., any vehicles above the two allowed per immediate family), jewelry, and artwork.

Assets do not include the value of household furnishings (primary residence), wearing apparel, one or two vehicles, family burial plot or prepaid burial contract, a home which the person maintains as the principal family domicile, or income-producing property, if the income from such property has been included in comparing income and expenses.

Form OWCP-20 is designed to obtain this information and should be enclosed with Form CA-2201 or Form CA-2202. Extensive documentation of assets and expenses in support of the statements made on the OWCP-20 is requested by both Forms CA-2201 and CA-2202. If adequate documentation is not supplied, the OE should conference the case and request that additional documentation be submitted (or the Hearing Representative should request additional documentation at the hearing).

b. "Against Equity and Good Conscience." If the claimant is not entitled to waiver under the "defeat the purpose of this subchapter" clause the "against equity and good conscience" clause must be considered.

Even if the claimant does not raise "equity and good conscience" reasons in the claim for waiver, the OE or the Hearing Representative must address the issue in the waiver memorandum or hearing decision, stating whether or not this clause is relevant to the particular case, and providing a detailed rationale if relevance is shown.

This clause is divided into three parts: financial hardship, lack of knowledge of the overpayment, and detrimental reliance.

(1) Financial Hardship. Recovery will be found to be "against equity and good conscience" when an individual who was not entitled to benefits would experience severe financial hardship in attempting to repay the debt. The factors to consider in making a financial hardship determination are the same as those indicated above in paragraph 6a.

(2) Lack of Knowledge. Recovery will also be found to be "against equity and good conscience" when the individual against whom the overpayment is charged derived no personal gain from the incorrect payments and had no knowledge of the compensation benefits that were paid.

The Eighth Circuit Court of Appeals ruled in Groseclose v. Bowen, 809 F.2d 502 (8th Cir. 1987), that the Secretary of Health and Human Services had applied an "unreasonably narrow" definition of the "against equity and good conscience" test, because the Secretary failed to interpret this phrase in a manner reflecting its commonly-understood meaning. The appellant Groseclose had been charged with a Social Security overpayment, and waiver was denied by the Social Security Administration (SSA), when benefits were incorrectly paid directly to one of his minor children who was living in another state. The appellant was not even aware that his child was receiving benefits.

The Court of Appeals reversed SSA and found that recoupment of the overpayment from appellant "would be against equity and good conscience as that phrase is commonly understood." The Court stated, "We find it difficult to imagine a more unfair or unjust situation than requiring a person who is without fault to repay overpaid benefits when that person had no knowledge of the overpayments."

A case where an individual is not aware of an overpayment is rare, and in such cases, the individual's present ability to repay the overpayment is not considered.

(3) Detrimental Reliance. Recovery is considered to be inequitable and against good conscience when a person, in reliance on such payments or on notice that such payments would be made, relinquished a valuable right or changed his or her position for the worse. In making such a decision, the individual's present ability to repay the overpayment is not considered.

When the claimant states he or she has relinquished a valuable right, it must be shown that the right was, in fact, valuable, that the claimant is unable to get it back, and that his or her action was based chiefly or solely on reliance on payments or notice of payment. When a claimant has changed his or her position for the worse, it must be shown that he or she made a decision that would not otherwise have been made, but for the receipt of benefits, and that this decision resulted in a loss.

The claimant must show that if required to repay the overpayment he or she would be in a worse position after repayment than would have been the case if the benefits had never been received in the first place. Conversion of the overpayment into a different form, such as food, consumer goods, real estate, etc., from which the claimant derived some benefit, is not to be considered a loss. Converting the overpayment into a different form for the benefit of another person, such as a child or relative, may be considered as a loss if the claimant retains no ownership interest in the proceeds and has no ability to reclaim the proceeds.

The following are examples of application of the detrimental reliance principle:

Example 1: After being advised of entitlement to temporary total disability benefits and being placed on the periodic roll, the claimant resigned his job and withdrew his contributions from the Civil Service Retirement fund, under the assumption that he would receive regular monthly benefits. Three years later it was discovered that his award was erroneous. The claimant had lost his retention rights, was unable to get his old job back, and could not secure other employment.

Recovery of any of the overpayment would be "against equity and good conscience" in this situation because the individual gave up a valuable right. Recall that in the situation where the claimant gives up a valuable right, his or her present ability to repay is not taken into consideration, as the forfeiture of the right is in itself the grounds for waiver.

Example 2: A widow and a son were receiving death benefits. After the son dropped off the rolls in 1996 at age 18, the widow's benefits were recomputed. An error was made in the re-computation of cost of living adjustments. When the error was detected in 1998, the widow applied for waiver of the overpayment, stating that she quit her job in 1996 based on the expectation of continuing compensation and was unable to regain her job. During most of 1996 she was receiving \$1016 each month when her correct entitlement would have been \$910. During 1997 she was receiving \$1095 each month with a correct entitlement of \$1036. The difference between her actual and correct 1998 benefits was even smaller. In this situation the likelihood is that waiver would not be granted on grounds of detrimental reliance. The widow must show here that she relied on the difference between actual and entitled benefits when deciding to retire and that if she had been receiving her correct benefits she would not have retired. Proving this will be very difficult in this case

due to the small difference between actual and correct benefits. Also, the widow must show that she cannot go back to work.

This outcome does not conflict with OWCP's responsibility to carefully investigate, evaluate, and make a determination on all of the claimant's contentions concerning waiver. Since the claimant is in possession of the facts, she is in the best position to show that her assertions have merit, and the burden of setting forth the argument is generally on the party with the best access to the facts. OWCP must provide the claimant with the opportunity to present additional arguments and prove her assertions. Further, OWCP must clearly explain to the claimant the basis for waiver and how she would qualify for waiver, but the claimant must produce the facts.

If the benefit which is now declared an overpayment is a large one, OWCP will compare the amount the claimant was receiving against the amount she would have received without the overpaid benefit to determine whether there may have been detrimental reliance. For example, if the widow's entire benefit was paid in error, the district office would have to consider whether she might have given up her job if she were getting no benefit from FEC at all. Even in this case she might have been entitled to an OPM annuity or other pension, sufficient to prompt her to resign.

Therefore, consideration must also include the financial hardship in the case. If detrimental reliance is not demonstrated, waiver might still be granted on financial hardship alone.

Example 3: A widow was awarded death benefits on behalf of herself and her daughter. The widow entered her daughter in college because the difference in monthly benefits between her entitlement to a Civil Service death annuity and her entitlement to a FECA death annuity made this possible. Subsequently it was discovered that all FECA benefits were paid in error. (She remained entitled to OPM benefits.) The widow had no other funds from which to pay her daughter's tuition. Because she entered her daughter in college and incurred a financial obligation in spending the benefits, she was in a worse position financially than if she and her daughter had never been entitled to FECA benefits.

In this situation recovery of the overpayment would be inequitable. Even if the widow is now well-off financially, it is still inequitable to collect the overpayment, as a finding of "detrimental reliance" is independent of the financial circumstances which exist at the time of recoupment. The

question of detrimental reliance focuses on the widow's financial position at the time of the payment of FECA benefits or at the time she incurred the financial obligation. At that time she did not have the money to send her daughter to school, but for the benefit differential that she received.

Example 4: A claimant received a large schedule award for her hearing loss. Later it was discovered that the claimant's hearing loss was not noise-induced and the entire award was declared to be an overpayment. The claimant contended that she had changed her position for the worse, as she used the entire award to make a down payment on a larger home. The claimant has not met her burden in showing that she changed her position for the worse, since she has not shown that she suffered any loss. She simply converted the money into a different form and did not lose it. Conversion of a liquid asset into real or personal property does not constitute a loss.

While the claimant may have made the expenditure in reliance on the award, she must also establish a financial loss before it will be inequitable to recoup the overpayment. Of course the examiner must still compare the claimant's income and expenses under the second part of the "against equity and good conscience" test, i.e., financial hardship.

This example is contrasted with example 3 where the widow relied on the benefits to pay her daughter's college tuition. In that example, the widow did not convert the money into anything for her own use. Therefore she would be worse-off if recoupment is made than if she never received the benefits. In example 4 the claimant converted the money into tangible property, which she can use. Therefore, she was not worse-off if recoupment is made than if she never received the benefits, as she had use of the property before recoupment began.

Example 5: A claimant was notified that he was entitled to a \$20,000 schedule award for his hearing loss. Upon receipt of the money, the claimant bought a farm with a \$2500 down payment and took a ten-year mortgage from the owner. The first payment was not due until six months after the down payment. Before the first payment was due the claimant was notified that the entire award was an overpayment. As a result the claimant put all the remaining money into the bank, failed to make the first payment, and forfeited the down payment. Since the claimant would not have entered into the contract to purchase the farm but for his receipt of benefits, it would be inequitable to recoup the entire \$20,000 overpayment, as the claimant clearly suffered a loss in the amount of \$2500.

This example clearly indicates that partial waiver is a legitimate action. The claimant did not suffer a \$20,000 loss, but merely a \$2500 loss. The claimant did not have the money to buy a farm and had no intention of doing so until he received his award. Thus the claimant detrimentally relied on OWCP's action and it would be inequitable to recover the overpayment, to the extent of his reliance. It would not be inequitable to recoup that part of the overpayment that the claimant deposited in the bank. If the claimant was faced with additional expenditures arising out of the forfeiture, those expenses should also be deducted from the overpayment.

Example 6: Suppose that the same claimant lent a relative \$10,000 to buy a house, before he received notice that there was an overpayment. In

determining the claimant's ability to repay the loan, the interest he received on the loan as well as any sum he may have received on the principal, should be taken into account. It would be inequitable to tell the claimant to recall the loan at once (further, the terms may not allow such action) and it would be inequitable to count the \$10,000 as presently available assets. Equity and good conscience do not require waiving recovery of this \$10,000 from the overpayment, rather, any amount paid back by the relative is considered as income.

Example 7: Upon receiving notification that she was eligible for compensation for loss of wage earning capacity, the claimant signed a lease on an apartment renting for \$15 a month more than the room she had occupied. It was subsequently discovered that the claimant was not entitled to the award. Since the claimant would not have signed the lease if she had not believed that she was entitled to the award, recovery of the additional rent for the term of the lease would be against equity and good conscience. Consequently, waiver of that amount would be warranted.

The above example involves a situation where both grounds for waiver may be present. If the claimant is an entitled beneficiary, her financial circumstances should be considered to see if recovery would "defeat the purpose of the Act." If the claimant is no longer a beneficiary, then financial ability to repay must be examined before considering the more complex issue of whether the beneficiary changed position for the worse or relinquished a valuable right.

This is not to say that it is less valid to grant waiver where recovery “would defeat the purpose of the Act,” but only that the question of ability to repay the debt is often more easily developed and decided. In the above example, the claimant's current expenses may be equal to her income. Even if the claimant moves back to the cheaper apartment, it would be inequitable to recoup that part of the overpayment amounting to the moving costs, plus \$15 times the number of months in the lease at the more expensive location, as the claimant moved in reliance on her award from OWCP.

Whether a person changed his or her position for the worse has an alternate side. Often the overpayment will result in an improvement in the claimant's financial position, for example, if the sum was invested profitably. The use of the detrimental reliance argument applies only in cases where the claimant has suffered a loss. As the court stated in Day v. Secretary of Health and Human Services, 519 F.Supp. 872 (Dist. S.C. 1981), the overpayment is in effect a source of relatively costless capital. When its investment is productive and profitable, it is not "against equity and good conscience" to require repayment.

c. Authority to Waive.

(1) If a question arises for which the district office has no guidance or precedent, and a hearing has not been requested or held, a recommendation to waive must be submitted by memorandum to the Director of FEC, for a decision. The District Director should review all overpayment cases that are referred to the National Office, to ensure that district office actions are complete, adequate and correct.

(2) Except for overpayments exempted by 5 U.S.C. 8129 (see Chapter 6-200.3a[1-2]), waiver may be made through the release of Form CA-2226 or Form CA-2227, or by an OE or higher authority, or by a final decision of a Hearing Representative.

6-0200-7 Waiver of Interest Only

7. Waiver of Interest Only. The Debt Collection Act of 1982 and the Federal Claims Collection Standards (31 CFR Part 900-904, provide that interest shall be assessed on all debts due the United States Government unless specifically exempted or waived under established regulations. When recovery of an overpayment is waived in full under paragraph 6 of this chapter, the overpayment never becomes a "debt" and, therefore, interest is not involved. However, whether or not waiver of recovery is requested, an overpaid individual may request

that interest be waived.

In the case of Marie D. Sinnett, 40 ECAB 1009 (1989), the claimant agreed to repay an overpayment through deductions of \$100 from her continuing compensation checks. While she did not request waiver, she did request that the assessment of interest be waived. OWCP refused to waive the interest amount and the claimant appealed. The Board ruled that the case was not in the posture for decision on the issue of OWCP's refusal to waive the imposition of interest on the overpayment debt because "...the Office hearing representative failed to specify the circumstances of appellant's case which deny the Office authority to waive interest and he failed to explain why the agreed repayment schedule precludes waiver of interest under the applicable regulations."

In any overpayment case where the claimant specifically requests that interest be waived and waiver of recovery of the overpayment is not granted in full, the final decision of the OE or Hearing Representative must address the request for waiver of interest. (Chapter 6-300.4 describes circumstances where interest may be waived.) If waiver of interest is denied, the decision must include a discussion of the rationale for waiving interest and why the circumstances in the case do not meet the criteria for waiving interest. In cases where the claimant is without fault, the decision should reference the Waiver of Charges Worksheet (Form CA-601) and note that on that basis alone, the repayment schedule established does not allow for the waiver of charges under the provisions of Chapter 6-300.4(c).

6-0200-8 Administrative Termination of Debt Collection (Overpayments Less than \$700)

8. Administrative Termination of Debt Collection (Overpayments less than \$700). The Federal Claims Collection Standards (FCCS), 31 CFR 902.2(a)(3), state that a claim may be compromised if the "cost of collecting the debt does not justify the enforced collection of the full amount." 31 CFR 903.3(a)(3) states that agencies may terminate collection activity when the "costs of collection are anticipated to exceed the amounts recoverable."

In a decision issued on September 29, 1986, the Comptroller General concluded that these standards extend to the collection of debts from Federal employees, and that agencies may establish "minimum debt amounts" and realistic "points of diminishing returns" in their debt collection activities. The term "minimum debt amounts" refers to the designation of categorical thresholds beneath which collection action need not be initiated, because the amount of the debts in that class are so small in relation to the costs of attempting collection efforts.

"Diminishing returns" refers to an agency's designation of debt collection efforts the agency initiated, but will discontinue, when it appears that the costs of additional collection actions would exceed the amounts likely to be recovered. Further, the Comptroller General instructed that agencies may, on a case-by-case basis, take the anticipated costs of required administrative hearings into consideration when determining whether to compromise or terminate collection action.

Although the General Accounting Office's role in collecting debts owed the United States has been redefined, current Department of the Treasury guidelines continue to follow the September 29, 1986 opinion of the Comptroller General.

- a. When an overpayment to a beneficiary is between \$201 and \$699, OWCP may, on a case-by-case basis, elect to accept or propose a compromise offer, or terminate collection action, if the costs of collection of the full overpayment are likely to exceed the amount recoverable.

(If the overpayment is less than \$700, refer to paragraph 3 of this chapter.) However, such action will not be taken prior to the issuance of a preliminary finding and release of Form CA-2201 or Form CA-2202 in accordance with the procedures described in paragraph 4 of this chapter. The factors to be considered in this regard include:

- (1) What are the potential costs to pursue this particular case, and are those costs likely to exceed the amount owed? See exhibit 5 for a schedule of processing costs).
- (2) Can the individual be located?
- (3) From what might be known of the beneficiary (financial status, ability to pay, etc.), what is the likelihood of collection?
- (4) If there has been a previous overpayment, what was the outcome? Amounts still owed from previous overpayments should be factored into the decision. However, separate overpayment occurrences involving the same beneficiary, if due to differing circumstances and potentially requiring expenditure of differing costs to pursue, may be considered separately.

(5) Do the circumstances resulting in creation of this overpayment, or the overpaid individual's actions, demand that recovery be pursued? Considerations may include whether the individual made willful attempts to mislead or engaged in obvious shirking of the reporting responsibilities.

The status of an overpaid individual on Federal compensation or retirement rolls, or in current employment with the Federal government, shall not preclude OWCP from giving these considerations. However, if a claimant is being paid compensation on the periodic roll or an annuity from OPM, or is due accrued benefits from either OWCP or OPM, and does not respond to the preliminary overpayment decision, a final decision should be issued and the debt should be recovered from such benefits as quickly as possible. Proper regard to the notice requirements must be given before actually commencing the offset of ongoing benefits (see Chapter 6-300.8c and 6-300.10b).

b. If an election is made to compromise or to terminate recovery action on a debt between \$201 and \$700, the OE will prepare a memorandum to the case record indicating the reasons for the decision and then advise the claimant (and the employing agency if appropriate) of such decision. The accounts receivable record will be moved from PF to FD status. The debt will then be written-off and terminated. It must be noted that for overpayments of this size, if the beneficiary requests waiver, a decision on waiver must be made and the beneficiary notified of the decision. If the case does merit a waiver, DMS must be updated with the waiver transaction before the account is terminated.

c. A request for a hearing on an overpayment less than \$700 must be referred by the district office to the Branch of Hearings and Review, following usual procedures. The Hearing Representative will apply the factors detailed in the preceding paragraphs 8a and 8b, as well as conduct a routine analysis of overpaid cases, and consider whether to compromise or terminate recovery. If the Hearing Representative elects to compromise or terminate the overpayment, the parties will be so advised and the case will be returned to the district office with a detailed discussion of the basis for compromise or termination of the debt. The district office will then update DMS in accordance with the Hearing Representative's decision.

6-0200 Exhibit 1: Sample Memorandum to File Finding of Fault

MEMORANDUM TO THE FILE

The issue to be determined is whether the claimant is without fault for an overpayment.

The claimant, a 27 year old plumber with the Defense Department, sustained a back injury on August 10, 1996. After receiving 45 days Continuation of Pay, he received compensation at the temporary total rate from September 25, 1996 through January 19, 2000. He returned to duty on January 20, 2000.

While receiving compensation, the claimant had been placed on the periodic roll effective October 17, 1996. While on the periodic roll he received consumer price increases (CPI's) effective March 1, 1997, (3.3 percent), March 1, 1998 (1.5 percent) and March 1, 1999 (1.6 percent). Of these CPI's the only two to which he was actually entitled were the 1.5 percent effective March 1, 1998 and the 1.6 percent effective March 1, 1999. The erroneous application of the 1997 CPI has resulted in an overpayment of compensation in the amount of \$1,106.49.

When the claimant received his increased periodic roll checks, there was no way he could have known that the increases were not, in fact, legitimate. Therefore, the claimant was without fault in the matter of the overpayment.

6-0200 Exhibit 2: Sample Memorandum to File Finding of Fault

MEMORANDUM TO THE FILE

The issue to be determined is whether the claimant is without fault for an overpayment.

The claimant, a 33 year old letter carrier, sustained a back injury on June 6, 1998, and was off work from that date until February 23, 1999. The case was accepted for acute lumbosacral strain. COP was paid from June 7, 1998 through July 21, 1998. The claimant began receiving compensation for temporary total disability as of July 22, 1998 and was placed on the periodic roll effective July 30, 1998.

Although the claimant returned to work on February 23, 1999, compensation for temporary total disability was erroneously paid through June 19, 1999. The claimant returned periodic roll checks dated May 22 and June 19, 1999 but not the checks dated February 27, March 27 or April 24, 1999, resulting in an overpayment of \$2527.59 for the period February 23 through April 24, 1999.

A review of the file reveals that letter Form CA-1049 was sent to the claimant when he was placed on the periodic roll, which was only six months prior to his return to work. Also, the claimant's periodic roll checks had the compensation payment period printed on the face of the check (as shown on the copies of the returned checks in the file).

Based on the above, and the fact that the claimant returned two checks, it is apparent that the claimant was aware that any compensation paid to him after he returned to duty was in error. The claimant is, therefore, not without fault in the matter of the overpayment.

6-0200 Exhibit 3: Sample Memorandum to File Finding of Fault

MEMORANDUM TO THE FILE

The issue to be determined is whether the claimant was with fault for an overpayment.

The claimant, a 45 year old secretary, sustained a knee injury on May 14, 1997, while employed by the Department of Defense at the Norfolk Naval Shipyard. The case was accepted for torn medial meniscus of the right knee, and the claimant received compensation for temporary total disability from May 16, 1997, through her return to duty on January 14, 1998. The claimant underwent corrective knee surgery on August 8, 1997.

On March 18, 2000, it was determined that a schedule award was payable for a 25 percent permanent impairment to the right lower extremity. The award was scheduled to run from December 1, 1998 (date of MMI) through April 17, 2000. Unfortunately, compensation continued to be paid past the expiration date of the award, through September 20, 2000, resulting in an overpayment in the amount of \$9,874.49.

A review of the file reveals that, while the Form CA-1051 was not issued prior to the expiration of the award, a Form CA-181 was sent on April 4, 2000, when payment of the schedule award began. Given that the award was only scheduled to run for slightly more than one week after the date the Form CA-181 was sent, the claimant should have been aware of when her award was scheduled to expire and, accordingly, should have been aware that the extra payments she received were in error. As such, the claimant is not without fault in the matter of the overpayment.

6-0200 Exhibit 4: Sample Memorandum to File Finding of Fault

MEMORANDUM TO THE FILE

The issue to be determined is whether the claimant is without fault for an overpayment.

The claimant, a 35 year old letter carrier, filed notice of injury and claim for benefits alleging she had sustained an injury to her back on October 2, 1997, while lifting a tray of mail. The case was accepted for a subluxation of L5 based upon the report and x-ray findings of Dr. Jones, a chiropractor. Continuation of pay was approved for 45 days and compensation was paid through November 30, 1997. The claimant returned to work on December 1, 1997.

Prior to returning to work the claimant underwent a fitness for duty evaluation by the USPS which resulted in a conflict of medical opinion over the question of whether or not the claimant had actually sustained a subluxation injury. The conflict was resolved through evaluation of the x-rays by a referee specialist who concluded that there was no evidence of a subluxation, using the definition listed in the Medicare Carriers Manual.

Based upon the weight of the medical evidence, the acceptance of the claim has been rescinded because Dr. Jones is not considered a physician as defined by the Federal Employees' Compensation Act and, therefore, no medical support for the claim exists.

With the rescinding of the acceptance of this case, all benefits paid (\$2,123.93) must be treated as an overpayment. However, the claim for benefits was made in good faith and the claimant is clearly without fault in the creation of the overpayment.

6-0200 Exhibit 5: Estimate of Costs of Processing Overpayments (FEC)

ESTIMATE OF COSTS OF PROCESSING OVERPAYMENTS (FEC)

{PRIVATE }
{PRIVATE }

The following are estimated costs of processing FEC overpayment cases as of February, 2004. These estimates will be updated periodically, but as a general rule, it may be assumed that the costs will increase between three and four percent per year because of inflation. Separate costs are shown for each processing step listed, and are not shown cumulatively. update

I. Pre-Waiver and Debt Determination Processing

Initial Processing	\$ 58
Calculate and verify.	
Create accounts receivable.	
Send initial notification and preliminary finding of fault.	

Administrative Review	164
of ability to pay, consideration of waiver, and issue Final Determination.	

Costs to refer to SOL.	11
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Referral to a Wage Hour or OFCCP Investigator	318
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Reconsideration	100
of new evidence or argument, document file.	

Conferencing	326
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Hearings and Review	
Review of Record decision.	239
Prepare for and conduct hearing	768

Salary Offset Hearing	40
Includes preparation and referral.	

Appeal before ECAB	20
Includes only referral expense.	

II. Delinquent Processing

Demand Letters	24
(manual processing - each)	

Referral to Treasury	232
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6-0300 DEBT LIQUIDATION

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6-0300-1 Purpose and Scope

1. Purpose and Scope. The preceding chapter (6-200) covered the identification and establishment of debts, to the point of finding a specific debt amount to be due and payable (i.e., collectible). The purpose of this chapter is to provide guidance on the management of debts by outlining procedures for collection, compromise and termination. Included are procedures for the assessment of charges, collection actions, salary offset, administrative offset, compromise, referral to the Department of the Treasury, and termination (write-off) of collection efforts.

6-0300-2 Responsibility for Collection & Settlement of Debts

2. Responsibility for the Collection and Settlement of Debts is delegated as follows:

a. The Director for Federal Employees' Compensation is authorized to compromise up to \$100,000 on claims and suspend or terminate collection action on claims not in excess of \$100,000, exclusive of interest, penalties, and administrative costs.

b. Overpayment Examiners (OEs), which are either Senior Claims Examiners or journey-level claims examiners, are authorized to compromise claims and to suspend or terminate collection action, subject to the approval of the District Director, on claims of \$1.00 to \$100,000, and to recommend referral of claims of more than \$100,000 to the Director for FEC for such action. However, if there is any indication of fraud on the part of the debtor or any other party having an interest in the claim, the authority of the OE is limited to claims of less than \$2500. Hearing Representatives have the same limitations with respect to compromising, suspending or terminating collection action on debt claims.

Note: A case involves fraud if an investigation is ongoing which is likely to lead to an indictment; if an indictment is pending; or if in connection with the debt claim there has been a conviction. Cases where the Department of Justice has declined to seek an indictment, where the criminal case has been dismissed or where an acquittal has occurred are not considered fraud cases.

c. The district office is responsible for initiating computation of overpayments, taking preliminary and final action with respect to waiver, establishing and maintaining accounts receivable records (see PM 5-505), pursuing collection of the debt, and

monitoring accounts receivable to determine if and when referral to the Department of the Treasury or termination of collection action may be appropriate.

d. An overpayment of compensation does not become a "debt" and is not subject to recoupment (except for overpayments not covered by 5 U.S.C. 8129 [see 6-200.3a(1-21)]) until established due process procedures have been provided and Form CA-2223 or Form CA-2224 or a final decision on waiver, has been issued. Until that time, OWCP may accept payment against the overpayment but may not assess any charges, take any action to collect from compensation owed, or issue requests for offset by OPM or other Federal agencies.

6-0300-3 Assessment of Charges

3. Assessment of Charges. The Debt Collection Act of 1982 authorizes the assessment of interest, administrative costs, and penalties on delinquent debts.

a. Charges are assessed on all debts where a final decision has been issued (except certain debts which are being repaid under a long-standing repayment agreement as noted below) beginning on the date the debtor was notified that charges may apply to the debt, or the date of the final decision, whichever is later.

Charges are not assessed on any debt being repaid under a repayment agreement in effect prior to October 25, 1982. The repayment agreement may have been oral or written. If OWCP notified the debtor and began collections prior to October 25, 1982 and voluntary payments or offset payments have continued more or less regularly since that time, it may be assumed that an agreement exists.

Charges are assessed on any debt being repaid under a repayment agreement which took effect between October 25, 1982 and March 26, 1986, unless the repayment agreement, as documented in the case file, stipulates that no charges will be assessed. If the repayment agreement took effect after March 26, 1986, charges apply regardless of what is indicated in the repayment agreement.

b. In cases of court-ordered restitution, the Court Order takes precedence over the Debt Collection Act. Unless stipulated in the Court Order, charges may not be assessed on the part of the debt corresponding to the restitution amount set by the court. (See paragraph 18 below.)

c. Interest is assessed at the rate in effect on the date of the final decision (unless the debtor has defaulted on a case the interest rate in effect on the date of the new agreement is used). Changes in the interest rate will be announced by ESA Notice and DFEC directive. (See Exhibit 1 for interest rates.)

d. Administrative costs are assessed when the debt is found to be delinquent. When a delinquent debt is referred to the Department of the Treasury for collection, a charge is added to the principal and interest as an administrative cost of collection.

e. Penalties. At present, penalties are not being assessed.

6-0300-4 Waiver of Interest and Other Charges

4. Waiver of Interest and Other Charges. There are only three circumstances where charges may be waived. Waiver is mandatory under subparagraphs a. and c. below; it is discretionary under subparagraph b.

a. If the principal is repaid in full within 30 days of notification that charges are applicable, then charges are waived. This may be extended for one additional 30-day period (for a total of 60 days) on a case-by-case basis for good cause shown. Acceptable reasons for the 30-day extension include but are not limited to, situations where the debtor needs the additional time to liquidate assets or arrange financing in order to pay the debt, or where the debtor does not receive the final decision in a timely manner (e.g., because of absence from home due to vacation).

b. If the full amount of the principal is paid after charges have accrued, and the additional cost of recovering the charges is greater than the amount of the accrued charges, then the OWCP may, at its discretion, waive the charges.

c. Where the debtor is without fault in the creation of the debt and a repayment agreement has been established, charges are waived if:

(1) the monthly payment is so small that it does not cover the interest, or

(2) there is so little left after interest that the debt will not be paid off within the lifetime of the debtor as determined by actuarial tables.

Waiver of charges under this provision is determined by using the automated "Waiver of Charges and Compromise of Principal Program" or by completing the Waiver of Charges Worksheet (Form CA-601; Exhibit 2). (If the debtor should later default on the repayment agreement, charges will again apply.)

When charges are waived under any of the three above criteria, the debtor should be informed by letter. If waived pursuant to item c, the letter should advise that charges will again be applied if the debtor defaults on the debt.

6-0300-5 Compromise to Limit the Repayment Period

5. Compromise to Limit the Repayment Period. Compromise should be distinguished from waiver of all or part of an overpayment under 5 U.S.C. 8129(b). Full or partial waiver is accomplished by formal decision of OWCP, which negates the overpayment, or the portion waived, before it becomes a debt. Compromise is an administrative means of disposing of debts by accepting a partial settlement. The debtor has no legal right to settlement or compromise. Also, the debtor need not be without fault for compromise to be considered.

Compromise of principal has always existed as a collection tool for existing overpayments. However, compromise under OWCP's policy for the application of additional charges is different from the concept of compromise of principal. Compromise is mandatory in circumstances where it is necessary to limit the repayment period. In such cases, a specific mathematical formula is used to determine the amount to be compromised.

Under this policy, compromise of additional charges is considered in all cases at the time the repayment agreement is established, unless charges are waived pursuant to paragraph 4(c) of this chapter. If charges are waived under that provision, then compromise will not be considered under this policy. (Note: When a debt arises because of a third party recovery, any compromise may not result in a principal balance which is less than the amount of the government's lien. See paragraph 17 of this chapter.)

a. If charges cannot be waived and a repayment schedule (either initial or re-negotiated) is being established, compromise must sometimes be considered. For example, if OWCP has determined, by review of detailed financial information that the maximum amount per installment the debtor can afford and the period required for repayment of the debt at this rate is extended by more than thirty-five per cent due to the application of the charges, then the amount of the principal must be compromised so that

the period required for repayment of the debt is not extended by more than thirty-five per cent. This rule applies in cases where the district office or the Branch of Hearings and Review has reviewed the debtor's financial situation and determined that a certain amount is the most the debtor can afford to repay.

The district office may have some cases in which a modest repayment amount was set years ago, without a thorough review of the debtor's resources. While the debtor is repaying, interest will extend the schedule by more than thirty-five per cent. In such cases, OWCP should not proceed to compromise based on the scheduled amount. The OE should contact the debtor to discuss the schedule, point-out that the application of interest will extend the schedule, and ask the debtor to consider an accelerated repayment schedule in order to resolve the debt earlier and reduce the total interest paid. (The possibility of compromise of a portion of the debt may be used as an incentive for earlier repayment.) If the debtor can provide financial information which supports an inability to pay more, OWCP may then apply the compromise rule above.

b. Three pieces of information are needed to determine whether compromise of accrued charges and/or principal is required: the amount of the principal, the amount of the monthly payment, and the interest rate.

c. Some cases may be eliminated as candidates for compromise by applying the following general calculation rule: divide the current principal balance (plus any accrued charges) by the monthly payment; and multiply the result by the annual interest rate. If the result is less than 5.5, no compromise is necessary. If the general calculation rule eliminates the case as a candidate for compromise, please indicate this in a memorandum to the file showing the figures used and the result.

If the result of the general rule is 5.5 or greater, the Compromise of Principal Worksheet (Form CA-602; Exhibit 3) must be completed in order to determine the amount, if any, to be compromised. (The automated "Waiver of Charges and Compromise of Principal Program" may be used instead of Form CA-602 to determine the compromise amount.)

d. If the principal must be compromised under this provision, and the principal amount (before compromise) is not more than \$100,000 where there is no indication of fraud (see the note at paragraph 2b above), or not more than \$2500 where there is such an indication, then the Compromise of Principal Worksheet should be certified by a second individual and a compromise order issued, which includes the information outlined below. If the repayment period is sufficiently reduced by compromising only accrued charges, the Compromise of Principal Worksheet should be certified by a second individual and a compromise order issued, regardless of the principal amount.

The compromise order should incorporate the following:

- (1) The amount of each component of the debt (with separate amounts specified for principal, accrued administrative costs, accrued penalty, and accrued interest, as applicable);
- (2) The rationale for the determination that the debt cannot be waived;
- (3) The rationale for any determination with respect to fraud (see the note at paragraph 2b above);
- (4) A brief explanation of the rationale for compromise (the Compromise of Principal Worksheet may be incorporated by reference);
- (5) The amount to be accepted in full settlement of each component of the debt (with separate amounts specified for principal, accrued administrative costs, accrued penalty, and accrued interest, as applicable);

- (6) The time and manner of payment; and
- (7) A statement that the debt is not compromised or settled until full payment of the specified amount has been made.

The compromise order does not carry the right to a hearing or to review by the Employees' Compensation Appeals Board. Exhibit 4 is a sample compromise order.

e. If any amount of the principal must be compromised under this provision and the principal amount (before compromise) is more than \$100,000, or \$2500 where there is an indication of fraud (see the note at paragraph 2b above), then the Compromise of Principal Worksheet must be certified by a second individual and the case referred to the Director of Federal Employees' Compensation for further action in regard to the compromise.

f. If neither accrued charges nor principal are compromised under this provision, then the Compromise of Principal Worksheet must be filed in the case file.

6-0300-6 Compromise in Consideration of Partial Payment

6. Compromise in Consideration of Partial Payment. Regardless of whether compromise is required under the provisions of Paragraph 5 of this chapter, compromise may be further considered as a means of disposing of debts where collection would be extremely difficult or expensive. Again, the debtor has no legal right to settlement or compromise to dispose of an overpayment. Further, the debtor need not be without fault in order for compromise to be considered. (Note: When a debt arises because of a third party recovery, any compromise may not result in a principal balance which is less than the amount of the government's lien. (See paragraph 17 of this chapter.)

a. The debtor may propose that OWCP be satisfied with partial recovery on the debt, or OWCP may propose a compromise to the debtor. OWCP should inform the debtor that under certain circumstances the compromised portion of the debt will be reported to IRS as income. Compromise might occur if the debtor reported a liquid asset that exceeded the resource base, but was insufficient to cover the debt, and otherwise had only enough income to meet expenses. The compromise would provide for recovery of the amount available and forgiveness of the remainder. However, in judging whether repayment would cause hardship, OWCP should assess the debtor's income and assets according to the criteria provided in paragraph 6- 200.6a. The debtor should be required to submit a current financial report (OWCP-20), if one has not been provided within the previous six months.

b. Compromise should be considered if the Government cannot collect the full

amount because the debtor is unable to pay it within a reasonable time, or the debtor refuses to pay the claim in full and the Government is unable to enforce collection within a reasonable time by court action. In determining inability to pay, the OWCP may consider:

- (1) The age and health of the debtor;
- (2) Present and potential income;
- (3) Inheritance prospects;
- (4) The possibility that assets have been concealed or transferred by the debtor to avoid recoupment; and
- (5) The availability of assets or income for enforced collection.

If OWCP finds that compromise is warranted, the OE should prepare a memorandum to the file which describes the financial circumstances of the debtor, the proposed compromise, and the considerations which led to the compromise recommendation. Exhibit 5 is a sample compromise memorandum.

c. The compromise limitations as described in paragraph 5 of this chapter, also apply here. If compromise of the debt principal appears warranted but the original principal amount is more than \$100,000, or \$2500 where there is an indication of criminal fraud (see the note at paragraph 2b above), then the compromise memorandum and the case file should be referred to the Director of Federal Employees' Compensation for further action regarding compromise.

d. If compromise appears warranted and the limitations noted above do not apply, a compromise order should be issued by the OE which includes the items listed in paragraph 5(d) of this chapter. The compromise memorandum may be incorporated by reference to explain the basis for the compromise. The compromise order does not carry the right to a hearing or to review by the Employees' Compensation Appeals Board. Exhibit 4 is a sample compromise order.

e. Compromise is a contractual agreement on the part of the United States to be satisfied with partial repayment of the debt. Even if the debtor's circumstances change, such that the reasons for the compromise are no longer valid, OWCP has officially forgiven the remainder of the debt and may not press for additional repayment unless the debtor defaults on the repayment agreement. Therefore, only after the debtor's financial circumstances are known, should compromise be undertaken.

f. A claim may also be compromised if the Solicitor notifies the district office that

significant doubt exists as to whether the Government could establish its claim in court, and the debtor has offered partial repayment. This may occur because of a dispute about the law or facts of the individual case. However, the district office should not make a judgment about legal enforceability without the Solicitor's specific advice after review of the case. (The compromise limitations noted in item c. also apply here.)

g. Once a compromise letter is released and the agreed- upon portion of the debt has been refunded to OWCP, the debt is fully resolved. Accounts receivable records should be annotated to reflect resolution by compromise and the amount repaid, and a letter should be sent to the debtor confirming that the debt has been discharged. Unless the compromise was for reasons of economic hardship, the letter sent to the debtor should also advise that the amount compromised will be reported as income to the IRS and may be subject to taxation under IRS rules. Compromise to limit the repayment period under paragraph 5 of this chapter is considered to be due to hardship, as is compromise based on life expectancy. At the end of each year, the National Office files IRS Form 1099G in cases where the debt has been compromised for other than economic hardship reasons, and a copy of the form is forwarded to the debtor's case file.

6-0300-7 Collection Strategies

7. Collection Strategies. Strategies for collection of a debt should generally be pursued in the following order, as appropriate:

- a. Recovery of the entire debt from accrued compensation for which there is direct statutory authority under 5 U.S.C. 8129.
- b. Voluntary prompt repayment of the debt in a lump sum;
- c. Deduction of installment payments from periodic compensation;
- d. Voluntary deduction of installment payments from retirement benefits;
- e. Involuntary offset of retirement benefits or refund of retirement contributions;
- f. Voluntary installment payments made directly by the debtor;
- g. Referral to the Department of the Treasury (if the debt meets certain criteria);
- h. Agreement to compromise in consideration of partial payment;
- i. Referral to the Department of Justice (if the debt meets certain criteria);
- j. Termination or suspension of collection action (write-off).

6-0300-8 Recovery from Continuing Entitlement

8. Recovery from Continuing Entitlement.

a. If compensation is owed to the debtor, the debt should be recovered from compensation due. Collection action cannot begin until after a final overpayment decision has been issued. The payment of benefits due should not be delayed, since collection can be made from ongoing compensation.

b. If a sufficiently large lump sum payment of compensation is due the debtor for a single period of past entitlement or for a schedule award, the debt should be recovered in full by a single deduction from compensation owed. The OE should send the debtor a letter explaining the recovery method.

c. If the beneficiary is receiving periodic payments, an appropriate payment set-up document should be placed in the record to reflect the rate at which compensation may be offset to recover the overpayment.

An accounts receivable should be established in ACPS using code AR, and a narrative letter should be sent to notify the debtor of the rate of offset and the date on which the debt will be liquidated. Deductions toward the overpayment can be started with the next periodic roll payment following the release of the final overpayment decision, making sure that the overpayment decision is released at least two weeks before the issuance of the first reduced compensation check. If for any reason the decision letter is not released at least two weeks before the next compensation check, the deduction for the overpayment should not be started until the following check cycle, to provide the claimant the required two-week notice for reduction in net compensation.

6-0300-09 Retired Debtors & Debtors w/ Contributions Toward Retirement

9. Retired Debtors and Debtors With Contributions Toward Retirement (Administrative Offset).

a. OWCP and OPM have an agreement whereby offset may be made against amounts payable from the Civil Service Retirement and Disability Fund. The amount involved must be at least \$25.00. If there are accrued benefits which have not yet been paid to the debtor, because of a retroactive election of benefits under the Civil Service Retirement Act (CSRA) or the Federal Employees Retirement System (FERS), OPM will reimburse OWCP up to the amount of accrued benefits without certification of notice to satisfy due process. However, to collect a debt by offset from continuing OPM payments, OWCP must provide notice to satisfy due process, and must certify to OPM that the due process requirements were provided.

b. The Federal Claims Collection Standards provide that before applying to OPM for offset, the district office must notify the debtor of the intention to proceed with collection by offset, offer the opportunity to review and copy records pertaining to the debt, and offer the debtor the opportunity to enter into a voluntary written agreement. Such notice is provided by Form CA-9003, which should be released to the debtor at least 30 days prior to actually requesting offset from OPM. Requests to review and obtain copies of records should be handled in the usual manner. The debtor is entitled to the first copy of any case record material without charge, in accordance with the Privacy Act.

c. OPM's regulations governing administrative offset are at 5 CFR 550.1101-1110. If a person indebted to OWCP is receiving or is entitled to OPM benefits, and the requirements described above have been met, the fiscal personnel should promptly complete and forward Form SF-2805 and OPM Form 1552, certifying that appropriate due process notice was offered and offset was requested. Where collection will be in installments, the amount requested must be specified as either a percentage of net annuity or a specific dollar amount for each monthly installment. If possible, the installment amount should be large enough to liquidate the debt in not more than three years. Generally, the monthly installments should be at least ten per cent of the net benefit and should not be less than \$50, unless a smaller amount is justifiable on financial hardship grounds or some other reasonable cause. However, the monthly installments may not be more than fifty per cent of the net benefit, unless the debtor has consented in writing to collection of a larger amount. (Note: The amount withheld by OPM does not automatically increase following the annual cost-of-living adjustment or a change in insurance deductions. However, OPM will increase the offset at OWCP's request.)

d. If the claimant is receiving an annuity under CSRA or FERS, OPM will begin deductions and continue until the debt is paid. If interest accrues against the debt, the district office should notify OPM of the additional amount and of the additional period necessary to pay the interest well in advance of the last deduction that OPM would make if paying off only the amount of the debt at the time the offset was requested. OPM will not calculate the interest.

e. If the debtor is not receiving an annuity under the CSRA or FERS and has no accrued retirement contributions, OPM will inform the district office that no possibility for offset exists.

f. If the debtor is not receiving an annuity under CSRA or FERS but has accrued retirement contributions, OPM will notify the district office and retain the claim for future recovery. The district office should then pursue recovery through other means. If recovery is made through other means, the district office must notify OPM so that the claim against CSRA or FERS entitlement can be removed.

If OPM subsequently receives an application for an annuity or for refund of contributions within one year of the claim for offset, it will offset the amount stated in the claim (unless the claim specifies that interest is being charged, in which case it will first contact the district office to determine the current balance to be offset). If the application for an annuity or refund is received more than one year after the claim for offset, OPM will contact the district office to determine the current balance before collecting from the amount to be offset.

g. If the debtor advises OPM that due process procedures were not followed, OPM will notify the district office. The district office must send a letter signed by the District Director certifying that notice sufficient to satisfy due process was provided, and enclose copies of the preliminary decision and the final decision (either the hearing decision or the district office's final decision).

h. If OWCP has made an incomplete claim for offset, and OPM receives an application for refund of contributions to the retirement system, OPM will withhold the amount of the debt from the refund for 120 days, which upon request, may be extended an additional 60 days (for a total of 180 days). If OPM has not received certification of sufficient notice to satisfy due process by the end of the period, full refund will be made to the debtor.

i. A regulatory limitation of ten years exists for the initiation of any offset effort. Specifically, OWCP may not initiate administrative offset to collect a debt more than ten years after the right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by those charged with the responsibility to discover and collect such debts. In general, the date the "right to collect the debt first accrued" is the date the overpayment first occurred. However, the ten-year limitation would not begin to run until the fact of the overpayment was known or could reasonably have been known by the Office. Also, once OWCP completes the applicable procedures and makes the offset request to OPM, the requirement that offset be initiated within the 10 year limitation is satisfied. This is true whether or not the debtor has requested or is yet eligible for benefits under CSRA or FERS.

6-0300-10 Recovery in Cases With No Compensation, Salary Offset...

10. Recovery in Cases With No Compensation, Salary Offset or OPM Offset Available.

a. Debts should be collected in one lump sum whenever possible. If the debtor is unable to pay in this manner, however, payment may be accepted in regular installments. The size and frequency of installment payments should be determined by the size of the debt and the debtor's ability to repay.

b. The debtor's resources for repayment should be evaluated as soon as a final determination has been made (see Chapter 6-200.4). If detailed information on the debtor's financial status is not already in the case file, it should be obtained. This information may include: OWCP-20, Overpayment Recovery Questionnaire; the official transcript of any hearing; claim Form CA-7; Form CA-1032; information provided by the Social Security Administration in response to Form CA-1036; and information from iFECS concerning the debtor's financial status. This information may be used to negotiate an appropriate repayment plan with the debtor.

c. If the debtor refuses to submit detailed financial information, or has not yet had time to reply to a request for such information, the district office may accept voluntary installment payments in an amount determined by the debtor, until detailed financial information becomes available. However, the district office should not enter into a formal agreement with the debtor, and should not consider waiver of charges (see paragraph 4) or compromise of principal (see paragraphs 5 and 6), unless and until the debtor provides detailed financial information and agrees to installment payments in an amount which reasonably represents the maximum payment he or she is able to afford.

d. If the debtor offers to repay on a set schedule or requests a change in a schedule already established, the proposed repayment plan should be evaluated for reasonableness on the basis of the debtor's resources as documented in the case file. The GAO Manual recommends that debt repayment be scheduled to recover the entire amount (including any interest or penalties) in three years, but this may not be practical if the debtor does not have appreciable income.

(1) If the repayment plan is not reasonable, the debtor should be asked to visit the district office to discuss an accelerated plan with the OE and/or the District Director.

(2). If the repayment plan is reasonable, OWCP should obtain a signed statement from the debtor which specifies the terms of repayment, and the statement will constitute a legally enforceable agreement. OWCP should annotate the accounts receivable and diary the next payment.

e. If the debtor unilaterally makes installment payments in an amount so small that the debt will never be repaid or will be repaid in an unreasonably long period (termed a "perpetual debtor"), and refuses to increase the payments or submit detailed financial information justifying the size of the payment, the district office should consider involuntary offset, referral to the Department of the Treasury, or referral to the Justice Department.

f. If the debtor has not agreed to a repayment plan, the OE should conference the

case and thereafter send up to two demand letters for repayment at thirty-day intervals. The letters should advise the debtor of the amount of the money owed, the rate at which applicable interest and penalties will accrue, the possibility of salary or administrative offset, and the potential for referral to the Department of the Treasury or for litigation by the Department of Justice, if no good faith is demonstrated on the part of the debtor. (Forms CA-9001 and CA-9002 are progressively stronger demand letters and they should be used following the final decision, as they include the notice to satisfy due process, which is required prior to referral to the Department of the Treasury.)

g. If no response is received to the demand letters, OWCP must attempt to contact the debtor by telephone. The person who contacts the debtor should explain who is calling and refer to the decision that stated the amount and terms of collection of the overpayment. The debtor should be asked what arrangements he or she would like to make to effect repayment. If the debtor does not suggest a repayment plan, the caller should be prepared, based on review of the case file, to propose a weekly or monthly amount. When agreement is reached, a follow-up letter should be drafted referring to the telephone call and the terms discussed, and requesting the first installment payment.

h. If the telephone contact is unsuccessful, or if the debtor does not begin the agreed-upon payments, the debt should be evaluated for referral to the Department of the Treasury, for referral to the U.S. Department of Justice, or for termination of collection action.

6-0300-11 Referring Debts to a Private Collection Agency

The Debt Collection Improvement Act of 1996 provides that any non-tax debt or claim owed to the United States that has been delinquent for a period of 180 days shall be turned-over to the Secretary of the Treasury for appropriate action to collect or terminate collection actions on the debt or claim. To further this goal, the Department of the Treasury has created the Debt Management Services (DMS) division of the Financial Management Services branch. DMS provides debt collection services ranging from the Treasury Offset Program (TOP) (which involves offset of payments from a variety of federal programs and includes offset of income tax refunds) to Cross-Servicing, wherein debts are sent out to private collection agencies for collection activities. The Department of the Treasury oversees all collection activity on all referred debts, and all debts more than 180 days delinquent are required to be referred for either TOP or Cross-Servicing or both. All debts related to overpayment of benefits under the FECA will be referred for both.

a. At least 60 days prior to referral to Department of the Treasury, a debtor must be given notice that the referral for collection action is a possibility. The notice must also include specific advice that the debtor can:

- (1) inspect and request copies of records about the debt;

- (2) enter into a mutually agreeable written repayment agreement; and
- (3) request review of the amount of the debt, its past-due status, and whether the debt is legally enforceable.

Form CA-9001 and Form CA-9002 collection letters include appropriate language to serve this purpose, so issuance of either or both at thirty-day intervals after finalization of the debt will provide adequate due process notice. The Department of the Treasury will not accept debts where such notice has not been given.

b. When a debt is between 90 and 180 days delinquent, and there is no progress in collection efforts through internal benefits, OPM, or voluntary repayment actions, the debt should be referred to the Department of the Treasury. The exceptions are that the Department of the Treasury will not take debts that are not final (i.e. debts that are on appeal), covered by bankruptcy, already in private collection or in litigation, or with the Justice Department. The referral is to be made on the form created by the Department of the Treasury for this purpose (Exhibit 7). All documents pertaining to the debt (calculation through the most recent demand letter) must be attached. The complete package should then be forwarded to the National Office to determine whether referral is appropriate.

c. Once the debt is received by the National Office, it will be reviewed to assure that all due process requirements have been met and that it is an appropriate debt for referral to the Department of the Treasury. If the debt is found to be appropriate, the district office will be advised to transfer the debt to District 90 in the Debt Management System (DMS). Transfers of accounts to District 90 in DMS should only be performed upon request from the National Office. From that point until the debt is returned to the district office, all questions about the debt should be directed to National Office. Any collections received in the district office while the account is under District 90 control should be reported to the appropriate National Office staff person.

d. The Department of the Treasury may return a debt for a number of reasons. The debt may have been paid in full, found to be uncollectable, covered by a bankruptcy filing, or compromise may have been reached. When the Department of the Treasury returns a debt, it will be returned to the custodial district office for further action as necessary.

6-0300-12 Referral to the Justice Department

When the district office has exhausted all means to collect a debt, referral to the Justice Department for litigation should be considered. However, before referral to the Justice Department, prior collection actions should have included referral to the Department of the Treasury.

Statutory time limitations exist for filing a civil action in the courts to enforce an administratively declared fine, penalty or forfeiture or to recoup overpayments. With respect to collection of debt, 28 U.S.C. 2462 provides that claims resulting from a forfeiture determination have a five-year limitation period to seek judicial enforcement of the forfeiture, starting from the date OWCP issues its final decision on the forfeiture issue.

With respect to filing suit to enforce collection of other debts, 28 U.S.C. 2415(a) provides that any such action shall be barred unless filed within six years after the right of action accrues or within one year after a final administrative decision has been rendered on the matter, whichever is later. The date the overpayment first occurred represents the date the "right of action accrues." However, 28 U.S.C. 2416(c) provides that as long as "facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act in the circumstances," the six-year period will be tolled.

The ECAB stated that OWCP was not barred by the six-year period of limitations set forth in 28 U.S.C. 2415 from recovering an overpayment of compensation made more than six years before the Office determined there was an overpayment. The Board found that section 2415(d) applies only when the government seeks to recover an erroneous payment in a civil action in a court of competent jurisdiction and it has no application to section 8129 of FECA. The Board found this interpretation consistent with language of section 2415(d), with the legislative history of the section, with the position of the Comptroller General, with subsection(I) of section 2145, and with court decisions on the application of section 2415. Earl C. Poppell, 39 ECAB 1455 (1988).

- a. If clear evidence exists for the potential recovery through litigation and the debt is greater than \$2500, the case should be referred to the National Office by signature of the District Director. Legal action will require evidence that the debtor has assets that may be attached or that family income is sufficient to repay.

Any case referred for legal action must contain the following information, if known:

- (1) Debtor's full name and current address, or a listing of prior known addresses and steps taken to locate debtor;
- (2) Debtor's date of birth and SSN;
- (3) Military serial or other identifying number;
- (4) Statement detailing circumstances of the debt and computations pertinent to amount of debt;
- (5) Action taken to collect or compromise the debt, specifying whether or not referral to a private collection agency was made;
- (6) Credit information, including a complete claims collection report;
- (7) Copies of correspondence with debtor;
- (8) Any documents which establish the Government's position on issues raised by the debtor;
- (9) Citations to applicable laws and regulations;
- (10) Action taken toward recoupment through salary offset or OPM offset;
- (11) Dates the debt first accrued and dates of partial payments, if any;
- (12) A description of the debtor's financial status.

The regulations specify that credit information must exist in one of the following forms: a commercial credit report; an agency investigative report showing assets, liabilities, income and expenses; or the debtor's own financial statement executed under penalty of perjury. The district office may enlist an agency investigator to obtain this information.

b. If the credit information shows that the debtor has assets which may be recovered, the Fiscal Officer or OE should prepare a memorandum recommending referral to the Director for Federal Employees' Compensation. On receiving such a recommendation, the District Director (or designee) should carefully review the file to verify that the finding of overpayment is supported, that due process rights were properly provided, and that the potential for enforced collection is documented in the file. The District Director (or designee) should consider the facts of the case including the pay rate used for compensation purposes and evidence regarding dependents. If the overpayment arose because the forfeiture provision in 5 U.S.C. 8106 was invoked, the reviewer should ensure that the only period at issue is the time period required by affidavit which was falsely provided and declared forfeit.

c. On receipt of a complete file, National Office staff will determine whether:

- (1) The overpayment decisions (fact and amount of overpayment, presence of fault, and entitlement to waiver) were correct;
- (2) Due process rights were provided;
- (3) All possible collection actions were taken by the district office;
- (4) All information is present or thorough efforts to obtain the information are documented.

Cases which do not meet the above criteria will be returned to the district office for further collection action or additional documentation, since the Department of Justice will not accept them. If the case is accepted for referral to the Department of Justice, the district office will be contacted by telephone to request the transfer of the account in DMS to District 90. Transfers of accounts to District 90 should only be performed upon request from the National Office.

d. A Claims Collection Litigation Report (CCLR) is required whenever a debt is referred to the Department of Justice. Preparation of the CCLR is the responsibility of the National Office, with assistance from the Office of the Solicitor (SOL).

e. An agency may cancel its accounts receivable record on a case referred for collection when notified by the Department of Justice that further action will not be taken. While the Department of Justice is considering a case, the National Office (DMS District 90) should carry the accounts receivable record as open and annotate it as referred to Justice. Any collections received in the district office while the account is under District 90 control should be reported to the appropriate National Office staff person.

f. Where OWCP is collecting a debt under a Department of Justice agreement, OWCP cannot charge interest or send billing notices.

6-0300-13 Debtors Who Cannot Be Located

13. Debtors Who Cannot Be Located. If no response is received to a second demand letter, and other options are not available, a third demand letter should be sent by certified mail to ensure that the address is correct. If letters are returned because of an insufficient address, the district office should seek the correct address by contacting the employing agency, former employer, dependents, or OPM; or by using the internet, telephone directories, city directories, Postmasters, motor vehicle records, credit agency skip reports, and credit bureaus. (Surrounding states should be considered as well.) The services of Wage-Hour investigators may be used if it is necessary to interview dependents or neighbors of the beneficiary.

Depending on the nature and amount of the debt, if all efforts to locate the debtor are unsuccessful, further collection action should be terminated as provided in paragraph 14 of this chapter, or the debt should be referred to the National Office for possible litigation as provided in paragraph 12 of this chapter.

6-0300-14 Termination of Collection Action

14. Termination of Collection Action (Write-off). If the debtor does not respond to requests for repayment, or if OWCP is not successful in its attempts to collect from the debtor (including Treasury referral), the effort should be terminated, suspended or referred to the National Office for litigation. Federal agencies are required to use all reasonable means to collect debts short of legal action, and cases will be returned by the National Office or by the Department of Justice if the file does not document persistent and substantial efforts toward recovery.

The Department of Justice also requires that the file include a credit information document completed not more than six months ago. If significant doubt exists about the financial hardship reported by a beneficiary, a Wage-Hour investigator may be asked to interview the beneficiary, verify unemployment, etc. The Department of Justice will also accept an OWCP-20 completed by the debtor under penalty of perjury.

a. The district office may terminate collection activity on debts which do not exceed \$100,000, exclusive of interest, and which do not involve fraud (see the note at paragraph 2b above). OWCP must consider whether:

- (1) Any substantial amount can be collected;
- (2) The debtor can be located;
- (3) Assets exist which can be liquidated;
- (4) The applicable statute of limitations has expired, so that litigation will be unsuccessful;
- (5) Cost of further collection action will exceed recovery;
- (6) The agency's claim has legal merit, or can be substantiated by the evidence.

b. District office management should periodically review the accounts receivable records to identify cases in which aggressive collection action has brought no result.

- (1) Each case should be examined to determine whether litigation would lead to collection of the debt. Circumstances where collection is not likely to be successful should be terminated. Those circumstances include: where it appears that the debtor has no assets or income which could be attached by a court; if the debtor's financial circumstances are such that hardship would result from recoupment; or if the Solicitor or the U.S. Attorney states that OWCP has a poor legal case against the debtor.

(2) Where aggressive collection action has brought no result, a memorandum should be prepared by the OE regarding termination of collection action on the debt. The memorandum should state the nature and amount of the debt, the efforts made to collect it, and the financial circumstances of the debtor, explaining why termination of collection action is warranted. If the debt exceeds \$100,000, or is between \$2500 and \$100,000 and there is an indication of fraud (see note at paragraph 2b above), the memorandum should be signed by the District Director and referred to the National Office with documentation of collection action and a recommendation.

Debts of \$2500 or less which cannot be collected by administrative means, including referral to the Department of the Treasury, must be written off, since the Department of Justice will not accept them.

c. Occasionally a debtor may ask that the debt be forgiven due to financial hardship. OWCP may suspend collection action because of financial hardship, but reserve the right to resume collection action in the event of future claims or a change in the debtor's circumstances. Exhibit 6 shows a sample letter advising a debtor of this action. If the debtor has failed to respond to requests or has refused to repay, OWCP should place a memorandum in the file without corresponding with the debtor. If the debtor's circumstances change, or OWCP receives different information at some later date, collection action may be resumed if no order compromising or forgiving the debt was issued.

d. When collection action is terminated, the accounts receivable record should be documented and closed. Termination of collection action, or the "write-off" of a bad debt is an administrative action which is different from waiver or compromise. Termination of collection action does not forgive the debt since OWCP may collect the debt at a later date. Generally, however, once a debt has been written off, collection action will never be resumed. At the end of each year the National Office files IRS Form 1099G for cases where the debt has been written off for other than economic hardship reasons, and a copy of the form is forwarded to the case file. Once Form 1099G has been filed, the accounts receivable record should be documented accordingly, and OWCP may not collect the debt at a later date.

6-0300-15 Recovery from a Deceased Debtor's Estate

16. Recovery from a Deceased Debtor's Estate. If the debtor dies before the debt is completely recovered, the district office must quickly ascertain pertinent information about the estate. Prompt action is essential because creditors who have not properly asserted a claim before the estate is closed are generally precluded from any recovery. Once the estate has been closed and the proceeds distributed, collection action must be terminated.

The necessary information to be requested and the action to be taken is described in paragraph 6-200.4e(2), is the same for an established debt as for a newly discovered debt. (Note: OWCP should also look to OPM for the possibility of an offset against any benefits payable at the time of death, e.g., a refund of the employee's retirement contributions payable to the estate.)

6-0300-16 Debts Resulting From Third Party Liability

16. Debts Resulting From Third Party Liability.

a. No action should be taken to create an Account Receivable on a third party debt except at the direction of the Solicitor's office. Pursuant to 20 CFR 10.715, interest may be assessed on third party debts.

b. There are two types of third party debts. The first type occurs when a completed Form CA-162 (Statement of Recovery) is submitted but no payment is made, or only a partial payment is made, and a balance remains due the government. The second type results when compensation is declared forfeit because the claimant refuses to cooperate with OWCP by failing to provide information about the third party settlement and/or by failing to repay any of the government's lien. (See PM 2-1100 for procedures to follow in the latter case.) Forms CA-9001, CA-9002 and CA-9003 are available in the Correspondence Library for optional use in attempting to collect a third party debt.

c. The principal amount in third party debts may not be waived or compromised. [The only exception to this rule occurs when a debt arises from forfeiture of compensation under 5 U.S.C. 8131 for refusal to cooperate with OWCP (the second debt described above), and OWCP has sufficient information to determine the amount of the government's lien.] In such a case, the debt may be compromised down to (but not below) the amount of the government's lien. OWCP may negotiate a compromise of accrued charges, and may accept installment payments, but must not issue any compromise order or other document which excuses any part of the lien.

OWCP may collect monies through collection efforts against attorneys who have not repaid the government's lien, through deductions from continuing compensation or through referral of the debt to the Department of the Treasury.

d. If all collection efforts fail, including litigation where appropriate, the debt may be written off. Write-off is allowable when compromise is not, because write-off is an administrative action which may be reversed if circumstances change. Compromise is a formal agreement, however, which is binding on the Office, provided that the debtor makes payments as promised. IRS Form 1099G should not be filed in situations involving write-off, since OWCP would then be prohibited from collecting the debt at a later date. Instead a memorandum should be placed in the case file. It should note the existence of the outstanding third party debt due the government. Most importantly, the memo should warn, in the event further benefits are claimed, that the accounts receivable record should be reopened and the debt satisfied before any additional payments are made.

6-0300-17 Credit Reporting

17. Credit Reporting. Under the Debt Collection Act of 1982, debtors whose accounts become delinquent are subject to reporting to private credit reporting bureaus. OWCP will report delinquent debtors to one or more credit bureaus based on information in the DMS. These bureaus maintain credit information on individuals and provide the information upon request to lenders. The possibility of credit reporting should be pointed-out to individuals who refuse to cooperate in the debt collection process.

If a debtor disputes the information in a credit bureau's file, the credit bureau will contact the district office to verify the information. The district office should immediately verify the information and respond to the credit bureau, as failure to respond within a given time limit (generally thirty days) will result in the credit bureau accepting the debtor's version of the facts. If the information held by the credit bureau was incorrect, the credit bureau should be notified, and the correct information should be input immediately into DMS, so that the mistake is not repeated in the next transmission to the credit bureau.

6-0300-18 Court Ordered Restitution in Fraud Cases

18. Court Ordered Restitution in Fraud Cases. When a debtor has been convicted in court of filing a false claim which resulted in an overpayment/debt due the government, the court often orders the defendant to make restitution to the United States as a condition of probation. The amount of restitution may or may not be the full amount of the debt owed to OWCP.

a. If the Court Order states that the restitution amount will be in full satisfaction of the debt owed the United States (a "Global Settlement"), the Court Order takes

precedence over the Office's administrative debt collection process. In such cases, if the restitution amount is less than the outstanding debt principal balance, the principal balance must be reduced to the restitution amount set by the court. Also, interest may not be applied to such debts unless stipulated in the Court Order. However, if the probation period ends and the debtor fails to make full restitution of the amount ordered by the court, OWCP may pursue collection of the full original debt amount.

b. If the Court Order does not represent a "Global Settlement," OWCP should continue to pursue collection of the full amount of the debt, taking credit for any restitution amounts received. Unless assessment of interest is stipulated in the Court Order, interest may not be applied to the restitution amount and any restitution payments received should be applied directly to the debt principal.

Note: In criminal cases, OWCP is sometimes asked to assist the Department of Justice in calculating the loss to the government in accordance with federal sentencing guidelines. This may involve calculating how benefits would have been paid if the claimant had advised OWCP of the overpayment. **Please refer all such requests to the National Office.**

6-0300-19 Compensation Paid After the Claimant's Death

19. Compensation Paid After the Claimant's Death. It is not unusual for one or more compensation checks to be issued after the death of the claimant. Sometimes these checks continue to be cashed by the claimant's surviving spouse or child. This is a criminal act and is not an overpayment subject to waiver under 5 U.S.C. 8129. No waiver or hearing rights are available in these cases and no overpayment should be declared. Likewise, no overpayment is declared when compensation continues to be paid by Electronic Funds Transfer (EFT) for direct deposit to the decedent's bank account.

Whenever the district office discovers that compensation has been paid after the death of the claimant, and the checks are not returned, the Fiscal Officer should immediately notify the Department of the Treasury of each erroneous payment on Standard Form 1184 (Unavailable Check Cancellation), indicating the claimant's name and date of death in the appropriate boxes on the form (see PM 5-502.11). The Department of the Treasury will recoup the money from the bank which cashed the check or received the EFT and restore the funds to the Office. Once the Department of the Treasury has been advised, the responsible OE should monitor the case for receipt of the payments.

The Department of the Treasury has a twelve-month time limit from the date of negotiation of a check or EFT to initiate action against a bank to recover the improper payment. Therefore, it is imperative that the district office act promptly upon learning that payments have continued beyond the date of the claimant's death. If for any reason the Department of the Treasury is unable to recoup the erroneous payments, OWCP has no redress and the OE should simply draft a memorandum to the case file concerning the matter.

6-0300 Exhibit 1: Table of Interest Charges

TABLE OF INTEREST CHARGES

<u>Effective Dates</u>	<u>Annual Rate</u>
Prior to 1/1/84	not applicable
1/1/84 - 12/31/85	9%
1/1/86 - 12/31/86	8%
1/1/87 - 12/31/87	7%
1/1/88 - 12/31/88	6%
1/1/89 - 12/31/89	7%
1/1/90 - 12/31/90	9%
1/1/91 - 12/31/91	8%
1/1/92 - 12/31/92	6%
1/1/93 - 12/31/93	4%
1/1/94 - 12/31/94	3%
1/1/95 - 12/31/95	5%
1/1/96 - 12/31/96	5%
1/1/97 - 12/31/97	5%
1/1/98 - 12/31/98	5%
1/1/99 - 12/31/99	5%
1/1/00 - 12/31/00	5%
1/1/01 - 12/31/01	6%
1/1/02 - 06/30/02	5%
7/1/02 - 12/31/02	3%
1/1/03 - 12/31/03	2%
1/1/04 - 12/31/04	1%

6-0300 Exhibit 2: Waiver of Charges Worksheet

Waiver of Charges Worksheet

Only enter figures into boxes that colored in gray

File Number:

1) Current Principal Balance (PV)	\$ <input style="width: 50px;" type="text"/>
2) Accrued charges	
a) accrued Administrative charges	\$ <input style="width: 50px;" type="text"/>
b) accrued penalty	\$ <input style="width: 50px;" type="text"/>
c) accrued interest	\$ <input style="width: 50px;" type="text"/>
Total (Item 2a + Item 2b + Item 2c)	\$ <input style="width: 50px;" type="text"/>
3) Interest rate (express as percent; i.e; 5%, not .05)	<input style="width: 50px;" type="text"/>
monthly rate (l) (annual rate/12)	_____ %
4) Monthly payment (PMT)	<input style="width: 50px;" type="text"/>
5) Monthly interest (Item 1 x Item3)	\$ <input style="width: 50px;" type="text"/>

If item 5 >= item 4, then charges are waived. Stop here.

IF item 5 < item 4, go on to item 6.

6) Period to repay full amount of debt (months)		
a) Period to repay accrued charges	_____	mos.
Item 2/Item 4 - (Item 1 x Item 3)		
b) Period to repay principal	_____	mos.
Total (Item 7a + Item 7b)	_____	mos.

7) Debtor's life expectancy (see page 2 of this exhibit; multiply that figure by 12 to convert years to months).

IF ITEM 7 IS LESS THAN ITEM 6, then all charges must be waived.

IF ITEM 7 IS GREATER THAN OR EQUAL TO ITEM 6, then charges cannot be waived.

Consider whether the accrued charges and/or principal must be compromised by completing the Compromise of Principal Worksheet.

Calculations performed by:			Date:
Certified by:			Date:

WAIVER OF CHARGES WORKSHEET (Continued)

Life Table 6.3, Expectation of Life at Single Years of Age, by Race and Sex, United States Found in "National Vital Statistics Reports - March 21, 2001," Volume 50, Number 6, pages 7-12 (Tables 1-3), published by the Department of Health and Human Services, Center for Disease Control and Prevention, National Center for Health Statistics, National Vital System,

Age	All races		
	Both sexes	Male	Female
30	48.2	45.7	50.5
31	47.3	44.8	49.6
32	46.3	43.9	48.6
33	45.4	42.9	47.6
34	44.4	42.0	46.7
35	43.5	41.1	45.7
36	42.6	40.2	44.8
37	41.6	39.2	43.8
38	40.7	38.3	42.9
39	39.8	37.4	41.9
40	38.8	36.5	41.0
41	37.9	35.6	40.0
42	37	34.7	39.1
43	36.1	33.8	38.2
44	35.2	32.9	37.2
45	34.3	32.0	36.3
46	33.4	31.1	35.4
47	32.5	30.3	34.4
48	31.6	29.4	33.5
49	30.7	28.5	32.6
50	29.8	27.7	31.7
51	28.1	26.8	30.8
52	28.1	26.0	29.9
53	27.2	25.2	29.0
54	26.4	24.4	28.2
55	25.5	23.5	27.3
56	24.7	22.7	26.4
57	23.9	21.9	25.6
58	23.1	21.2	24.7
59	22.3	20.4	23.9
60	21.5	19.6	23.1
61	20.7	19.9	22.3
62	20.0	18.9	21.5
63	19.2	18.2	20.7
64	18.5	17.5	19.9
65	17.7	16.1	19.1
67	16.3	15.4	17.6
68	15.6	14.7	16.9
69	15	13.5	16.1
70	14.3	12.8	15.4
71	13.7	12.3	14.7
72	13.0	11.7	14.1
73	12.4	11.1	13.4
74	11.8	10.6	12.7
75	11.2	10.0	12.1
76	10.7	9.5	11.5
77	10.1	9.0	10.8
78	9.6	8.5	10.2
79	9.0	8.0	9.7
80	8.5	7.5	9.1
81	8.0	7.1	8.6
82	7.5	6.7	8.0
83	7.1	6.3	7.5
84	6.7	5.9	7.1
85	6.3	5.5	6.6

6-0300 Exhibit 3: Compromise of Principal Worksheet (Not yet Available)

6-0300 Exhibit 4: Sample Compromise Order

COMPROMISE ORDER

1. An overpayment of compensation was found in the above referenced case in the amount of \$0000.00.

It has been determined that the claimant does not have the present or prospective ability to pay the full amount of the claim within a reasonable period of time. It has been further determined that there is no indication of fraud, the filing of a false claim, or misrepresentation on the part of the claimant or on the part of any other party having an interest in the claim.

(Adjust wording of paragraph 2 to fit circumstances.)

2. On (DATE) the claimant was advised by the office that he was found (with/without) fault in the matter of the overpayment and was notified of the grounds for consideration of waiver and of his rights in the matter. The claimant applied for waiver, and on (DATE) a final determination was made that claimant was with fault in the matter and was not entitled to consideration of waiver.

3. Based on the information outlined above, it is hereby determined that full settlement of the claim for recovery of the overpayment shall be accepted in the amount of \$0000.00, which does not exceed \$100,000 exclusive of interest and penalties, to be paid in the following manner and time:

4. The claim for overpayment shall not be considered settled until full payment of \$0000.00 has been made within the time and in the manner specified above. The failure to make such payment shall result in the reinstatement of the full amount of the overpayment, less any amounts paid prior to default.

Given by me this day of
Senior Claims Examiner

6-0300 Exhibit 5: Sample Compromise Memorandum

MEMORANDUM TO FILE:

The claimant in the attached case is indebted to OWCP in the amount of \$16,748.63. The indebtedness arose because the Office accepted a claim for cardiac condition which was later rescinded by compensation order in 2000. The claimant was fully advised of his rights in the matter of overpayment but did not request hearing or review by the ECAB. The decision regarding the overpayment was made final by letter decision on December 2, 2000.

The claimant has agreed that a certificate in the amount of \$10,805 be paid in partial settlement of the debt and he proposed that we accept this in full settlement. The claimant submitted financial reports showing that his income is derived solely from a pension under the Civil Service Retirement Act and Social Security benefits. Also, the claimant has submitted documentation of his expenses which, according to the calculations in the file, consume virtually all of his income. There is no indication of fraud in this case.

Since it appears extremely unlikely that the debt can be recouped in a reasonable period of time, either voluntarily or through legal proceedings, given the claimant's financial circumstances, I recommend that this proposal for settlement be accepted and that an order be issued compromising the remainder of the debt upon receipt of \$10,805.

6-0300 Exhibit 6: Letter Terminating Collection Action

Dear CLAIMANT NAME:

This is in further reference to your debt to the United States in the amount of \$0000.00, and your letter to us of DATE.

I have reviewed the issues raised in your letter, and the information concerning your financial situation which you have provided. I have determined that collection action on your debt will be terminated indefinitely and that no further action will be taken by this office, unless we are notified that your circumstances have changed.

I have taken this action because it has been found that your financial circumstances are such that recovery would cause hardship. In the event that we receive evidence of substantial income or assets which would support collection, we reserve the right to take further action to recover the money due.

Sincerely,

DISTRICT DIRECTOR

6-0300 Exhibit 7: Treasury Referral Document

Debt Information

	<i>FMS INPUT ONLY</i>
<i>DMSC Receipt Date</i>	
<i>DOJ Documents Present?</i>	

Agency	DOL/ESA/OWCP/DFEC
Agency Debt Number	

Debt Description:	Consumer	Commercial
Debt Security:	Secured	Unsecured
Debt Type:	Loan	Administrative

Administrative classification:

<input type="checkbox"/> Grant
<input checked="" type="checkbox"/> Overpayment
<input type="checkbox"/> Fine
<input type="checkbox"/> Penalty
<input type="checkbox"/> Fee
<input type="checkbox"/> Employee Advance
<input type="checkbox"/> Miscellaneous Debt

Program:	FEDERAL EMPLOYEES COMPENSATION ACT
Date of Delinquency	
Original Value of Debt	\$

Balance at time of referral to the DMSC

Type of Interest Rate: Financing Interest Additional Late Charge *(Circle One)*

Interest Rate	%
Principal	\$
Financing Interest	
Additional Interest (Late Charge)	\$
Administrative Cost	
Penalty	
Total	\$
Date of last interest calculation	

Has debt been referred to Private Collection Agency for 1 st referral?	Yes	No
Has debt been referred to Private Collection Agency for 2 nd referral?	Yes	No
Is debt in judgment?	Yes	No
Has debt been written off?	Yes	No

(If yes to any of the above, please complete Additional Debt Information form)

Individual Debtor

Debtor Information

(Please complete one form for each debtor on debt)

Agency Debt Number

TIN (SSN)
Last Name
First Name
Middle Initial

Generation: Jr. Sr. I II III IV V

Gender: Male Female Unknown

AKA/FKA/DBA

Address Line 1
Address Line 2
City
State
Zip Code
Phone

Please submit a separate Debtor Information Form for each additional responsible party

Debtor in Bankruptcy? Yes No (assumes no)

Date of Bankruptcy

Bankruptcy Title: 7 11 12 13 Unidentified

Primary Debtor? Yes No (assumes yes)
Any guarantors/co-signers etc. Yes No (assumes no)

Date of last contact with debtor

Additional Information

Treasury Referral Document

Debt Information

<i>FMS INPUT ONLY</i>	
<i>DMSC Receipt Date</i>	
<i>DOJ Documents Present?</i>	
Agency	DOL/ESA/OWCP/DFEC
Agency Debt Number	
Debt Description:	Consumer Commercial
Debt Security:	Secured Unsecured
Debt Type:	Loan Administrative
Administrative classification:	<input type="checkbox"/> Grant <input checked="" type="checkbox"/> Overpayment <input type="checkbox"/> Fine <input type="checkbox"/> Penalty <input type="checkbox"/> Fee <input type="checkbox"/> Employee Advance <input type="checkbox"/> Miscellaneous Debt
Program:	FEDERAL EMPLOYEES COMPENSATION ACT
Date of Delinquency	
Original Value of Debt	\$
<i>Balance at time of referral to the DMSC</i>	
Type of Interest Rate:	Financing Interest Additional Late Charge <i>(Circle One)</i>
Interest Rate	%
Principal	\$
Financing Interest	
Additional Interest (Late Charge)	\$
Administrative Cost	
Penalty	
Total	\$
Date of last interest calculation	
Has debt been referred to Private Collection Agency for 1 st referral?	Yes No
Has debt been referred to Private Collection Agency for 2 nd referral?	Yes No

Treasury Referral Document Individual Debtor

Additional Information

(one form for each debtor on debt)

Agency Debt Number	<input style="width: 100%;" type="text"/>				
Debtor Name	<input style="width: 100%;" type="text"/>				
TIN	<input style="width: 100%;" type="text"/>				
Date of most recent credit report	<input style="width: 100%;" type="text"/>				
Relationship to Primary Debtor: (circle one)	Self Owner	Spouse President	Sibling Vice-President	Parent Shareholder	Other: _____ Other: _____
Debtor's Association to Debt:	Individual Deceased	Signer Co-Signer	Joint Account Authorized User	Joint Contractual Liab On-Behalf-of	
% Debt Owning	<input style="width: 100%; text-align: center;" type="text" value="100%"/>				
Guarantor/Co-signer Name*	<input style="width: 100%;" type="text"/>				

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Please submit a separate Debtor Information Form for each guarantor

Employer	<input style="width: 100%;" type="text"/>						
City, State, Zip, Country	<input style="width: 100%;" type="text"/>						
Phone	<input style="width: 100%;" type="text"/>						
Job Title	<input style="width: 100%;" type="text"/>						
Salary:	\$	per:	Hour	Week	Month	Year	Other:
	Gross	Net	(Circle one)				

Federal Employee Status

Bank Name	<input style="width: 100%;" type="text"/>				
City, State, Zip, Country	<input style="width: 100%;" type="text"/>				
Phone	<input style="width: 100%;" type="text"/>				
Account #	<input style="width: 100%;" type="text"/>				
Account Type:	Checking	Savings	Other:		

Personal Property Information	<input style="width: 100%;" type="text"/>				
Real Property Information	<input style="width: 100%;" type="text"/>				
Last Payment Information	Date:				Amount: