



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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March 17, 1980

The Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
House of Representatives HSE 02500

Dear Mr. Chairman:

By letter of December 18, 1979, you requested our views on H. R. 224, 96th Congress, 1st Session, a bill "[t]o provide for equitable waiver in the compromise and collection of Federal claims."

Comments

The purpose of the Waiver Acts--5 U.S.C. § 5584, 10 U.S.C. § 2774 and 32 U.S.C. § 716--is to allow the waiver, either in whole or in part, of a claim of the United States against an employee or former employee of a Federal agency or a member or former member of the military service or National Guard arising out of an erroneous payment of pay or allowances, the collection of which would be against equity and good conscience and not in the best interests of the United States.

The present bill is the successor to a bill, H. R. 13393, originally introduced in the 94th Congress, 2d Session, at the request of the General Accounting Office. We continue to believe that the bill should be passed to improve the waiver process. In addition, we now recommend in section II of this report that the bill be expanded to allow waiver of overpayments of travel and transportation expenses and allowances and relocation expenses. And, should the Congress adopt our recommendation to include travel, transportation, and relocation claims under the purview of the waiver statutes, we are offering an alternative proposal in section III that would allow agencies to consider all waiver claims without regard to any monetary limitation. These objectives are discussed below.

I. MONETARY LIMITATION ON AGENCY WAIVER AUTHORITY

Under the present laws and regulations authorizing waiver of erroneous payments of pay and allowances, cases which have been considered and recommended for waiver by an agency pursuant to standards prescribed by the Comptroller General must

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B-197290

nevertheless be forwarded to the Comptroller General for adjudication where the amount of the claim exceeds \$500. The proposed amendment would permit the Comptroller General to prescribe and modify the monetary limitation on waiver cases which may be adjudicated at the agency level. This action on the part of the Comptroller General would be predicated on the periodic evaluation of the functional effectiveness of the waiver statutes. More specifically, the agencies' ability to perform the statutorily prescribed waiver function within the applicable monetary limitation would be measured against economic factors such as increased costs, rising salaries and the possible effects of inflation. As a result, the volume of waiver requests which would be finally adjudicated at the agency level could be more consistently maintained, and the Comptroller General would not be required to return to the Congress every few years to offset the imbalance in operational waiver authority brought about by variable economic factors. We further believe that the proposed amendment would increase the incidence and effectiveness of the agency's role in the adjudication of waiver requests, thereby generating a savings through more timely and less costly processing of waiver requests.

The volume of waiver requests referred to the Claims Division, GAO has increased heavily during the period of more than 10 years since the \$500 criteria was first established. Certainly the growing number and increasing complexity of compensation laws, regulations and decisions represent several reasons for the increase in waiver requests. Another factor contributing heavily to the increased volume of requests for waiver has been the extension of waiver authority to military personnel (Public Law 92-453, October 2, 1972). However, we believe that the largest increase in the volume of referrals to the Claims Division, GAO, has resulted primarily from economic factors. For example, since 1968 average Federal salaries have more than doubled and the rate of inflation has also increased significantly. Costs associated with certain allowance entitlements have also increased resulting in a general increase in large allowance payments which are likewise covered by the waiver statutes. Thus, the average amount of overpayments subject to consideration under the existing waiver statutes has increased commensurate with these economic factors, causing a greater proportion of the waiver requests to exceed the \$500 settlement authority of the agencies. This

B-197290

impact is illustrated by the fact that in fiscal year 1972 only about 14 percent of all waiver requests involved amounts greater than \$500, whereas in fiscal year 1979 about 28 percent were greater than \$500. We estimate that to be comparable, the limitation of \$500, first established in 1968, now would need to be over \$1,000.

Claims Division, GAO, has streamlined waiver processing as much as possible by regulatory changes allowing agencies to deny waiver without regard to the \$500 limitation, by developing standardized formats for issuing settlements, and by creating a special team of adjudicators to expedite waiver processing. Despite the favorable impact of these efforts, it is currently taking the Claims Division an average of 6 months to complete the processing of waiver cases due to the heavy volume. This is a long period of uncertainty for the requestor and a situation that often leads to congressional inquiries on behalf of constituents. At the same time our review of our production in this area indicates that forty-three percent of the cases settled by the Claims Division, GAO, during fiscal year 1979 could have been settled at the agency level if the limitation had been \$1,000.

Primarily due to considerations of timely processing and inflation, officials from a number of the administrative agencies have told us that they agree that the existing \$500 limitation should be increased. In a letter dated June 12, 1974, to the Heads of Executive Agencies and Military Departments, we requested that agencies and departments, as a part of their required annual report to GAO on waivers, submit suggestions for amending the waiver authority. Of the 17 agencies and departments which made suggestions, 11--including the Army, Air Force, and Marine Corps--recommended that the present limitation be increased to at least \$1,000. Recently, we informally queried agencies which refer the majority of waiver cases to GAO and found that they still favor an increase in the limitation.

The principal thrust of this aspect of the amendment is to ensure the agencies' continued adjudicatory participation at the level prescribed by the Congress in 1968. It will also insure that the agencies' role does not degenerate to a mere reporting function through operation of the restrictive monetary limitation. This purpose is consistent with the original intent of the

B-197290

waiver statutes and with the expertise developed by the agencies over the past ten years.

The agencies' expertise in handling waiver requests has grown over the years through the guidance contained in hundreds of GAO decisions dealing with the various questions raised in such cases. Analysis of recent cases referred to GAO shows that in most cases we agree with the disposition recommended by the agencies. Satisfactory agency performance is also evidenced by the fact that appeals of agency actions are infrequent, and that, when appeals are received by GAO, the agency actions are usually sustained based on well documented and definitively prepared administrative records. Here again, we believe such demonstrated administrative capability should not be reduced by the operation of economic factors noted in this report.

The proposed amendment would improve the overall economy and efficiency of waiver processing. It would result in no additional administrative workload for the agencies because they now must make similar reviews, regardless of whether the cases are forwarded to GAO or settled at the administrative level. The overall procedures for handling waivers will not be changed because waiver cases will continue to be handled in accordance with standards prescribed by the Comptroller General. Agency performance will continue to be evaluated by GAO during on-site reviews of agency operations, and doubtful cases and appeals will continue to be submitted to the Comptroller General for review.

The proposed amendment, if enacted, would permit a significant reduction in the number of waiver requests presently referred to GAO. This would be consistent with the changing role of the Claims Division, GAO, directing greater emphasis on oversight functions and less emphasis on the direct settlement of claims coincident with the merger of the Claims Division with the Financial and General Management Studies Division, GAO.

II. WAIVER AUTHORITY FOR OVERPAYMENTS OF TRAVEL AND TRANSPORTATION EXPENSES AND ALLOWANCES AND RELOCATION EXPENSES.

The existing waiver statutes permit a Federal employee's liability for overpayments of pay and allowances to be waived where collection would be against equity and good conscience and not in the best interests of the United States, and where the employee seeking a waiver has acted in good faith. This general waiver authority, however, does not apply to overpayments of travel and transportation allowances and expenses and relocation expenses.

When the general waiver authority statutes were passed, covering both civilian employees and military personnel, this Office took the position that, being essentially one-time payments, employees receiving these expenses would not be placed in financially difficult positions by being required to repay travel expenses which had been overpaid. We have seen many cases since that time which demonstrate that that is not always the case. While it is true for short, uncomplicated trips with transportation expenses covered by a Government Travel Request and all per diem at one rate, or in uncomplicated relocation cases where expense entitlements are adequately and correctly presented for the employee, our experience demonstrates that hardship has been caused in many travel cases and that employees have been required to make substantial refunds to the Government as a result of circumstances which were not their fault.

More particularly, our experience shows that many of these claims arise from erroneous agency authorizations which an employee relies on in good faith to his detriment. Indeed, we have decided a number of individual claims where the increasing complexity of the laws relating to travel and transportation entitlements has outdistanced the agencies' ability to regulate these entitlements by promulgating guidance and instructions to authorizing officials.

The examples presented in Appendix II are indicative of the broad range of travel and transportation expenses and relocation expenses claims for which waiver consideration is precluded by the applicable statutes. No other administrative relief was

B-197290

possible in any of these cases, but in all of them, if waiver had been available it would have been considered and probably granted. At the present time, however, the only viable form of remedial relief in such cases is the "uncertain path of private relief bills" which may or may not begin with the referral of an individual case by this Office to Congress as a meritorious claim.

In recommending the present legislative initiative, we recall that one of the express purposes of the comprehensive waiver statutes was to relieve the Congress of the burden of considering numerous private relief bills introduced on behalf of overpaid employees and members. The following excerpt from House Report (Judiciary Committee) No. 92-195, May 11, 1971 [to accompany H.R. 7614], as set out in S. Rep. No. 1165, 92d Cong., 2d Sess. (1972) accompanying Pub. L. No. 92-453, October 2, 1972, 86 Stat. 760, reflects the congressional intent to provide for remedial relief in certain erroneous payment cases which would otherwise require the Congress to prepare and consider private legislation:

"In discussing the provisions of the present bill, repeated references have been made to Public Law 90-616, and to section 5584 which was added to title 5 by that law. The considerations which prompted the enactment of that law are also clearly relevant to the amendments provided for in the present bill. The legislative history of Public Law 90-616 reflects an awareness that the laws governing the compensation system of Federal employees were extremely complex. Administrative errors in interpreting and applying these laws resulted in erroneous payments which employees received in good faith, unaware they were erroneous. This point was emphasized in the course of the consideration of the bill S. 4120 of the 90th Congress which was enacted as Public Law 90-616. The Senate report accompanying that bill (S. Rept. No. 1607, 90th Cong., second sess.) noted that the complexity of the laws is further increased when the pay laws are changed in a manner which have retroactive increases. In recommending authority of the sort now embodied in the law that committee in its report stated:

"The committee believes that a general policy should be established to waive such claims when the employee is without fault and when his only avenue of relief from such claims is the uncertain path of private relief bills introduced in Congress. Although waiving such claims will cost the Government some money, the time and energy saved on the part of those whose duty it is to ascertain and collect overpayments will be able to be devoted to other administrative duties."

We now believe, as our experience indicates, that this rationale applies with equal forcefulness and logical consistency to claims involving erroneous overpayments of travel and transportation expenses and relocation expenses. The measure of present congressional deliberation directed toward requests for private relief in cases of erroneous overpayments of travel and relocation claims cannot be completely quantified. However, we consider the following excerpts from a letter to our General Counsel from the Assistant Director for Legislative Reference, Office of Management and Budget, dated March 30, 1978, as adequately portraying the growing dimension of this issue:

"Each year, the Office of Management and Budget reviews private relief bills that would waive the liability of certain Federal employees to repay the Government amounts erroneously paid them for travel and transportation expenses and allowances or for relocation expenses. Generally, the overpayments result from administrative error and are received by the employees in good faith.

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"Our review of the private relief cases referred to above has raised a question in our minds as to whether distinguishing between overpayments of travel and transportation allowances, on the one hand, and overpayments of pay and other allowances, on the other, is a desirable policy. We recognize that travel and transportation allowances are paid incident to a given trip or change of station so that, unlike overpayments of pay, an error should be more

B-197290

readily apparent to an employee and most likely will not result in the accumulation of a large overpayment over a number of years. Nevertheless, holding an employee to a standard of constructive knowledge of complex travel and relocation regulations may be unreasonable, particularly when even those charged with administering the regulations frequently make mistakes in determining an employee's entitlement. While this in itself does not make the Federal Government liable, an employee acting in good faith who receives travel or transportation allowances, or incurs actual travel expenses in the expectation of being reimbursed, faces a potentially burdensome economic liability if he or she is required to repay the amount of an erroneous overpayment. * * *

We fully agree with that statement by the Office of Management and Budget. We have reached the same conclusion based on our own experience in settling claims and responding to agency requests for decisions. Our concern is also founded in our exercise of the statutory authority vested in the Comptroller General to recommend meritorious claims to the Congress pursuant to 31 U.S.C. § 236. Our policy in regard to the referral and recommendation of meritorious claims serves to preclude consideration of recurring issues - such as most overpayments of travel and relocation expenses - in favor of claims which are extraordinary in nature and do not present a recurring problem. This policy of restrained and careful pre-qualification of claims is predicated on our consistent interpretation that the procedure provided by the Meritorious Claims Act is an extraordinary one and its use is limited to extraordinary cases. Thus, at present, erroneous overpayments of travel and relocation expenses are at once ill-suited for the consistent application of our meritorious claims jurisdiction and, at the same time, beyond the scope of our authority to effect an administrative solution.

Our experience to date in considering requests for waiver indicates that consideration of waiver requests relating to erroneous overpayments of travel, transportation and relocation expenses and allowances could be incorporated into the existing system of administrative review and adjudication without the need for fundamental changes in the procedures

B-197290

now in force. Further, we anticipate that the establishment of standards for utilization at the individual agency level would not involve any great difficulty.

We therefore strongly recommend to Congress that the waiver statutes be amended to include consideration of claims resulting from erroneous overpayments of travel, transportation and relocation expenses and allowances.

III. AGENCY WAIVER AUTHORITY NOT SUBJECT TO MONETARY LIMITATION

Expanding the scope of the existing waiver statutes to cover erroneous overpayments of travel and transportation expenses and allowances and relocation expenses would necessarily generate a new class of claims that would increase the administrative workload of Claims Division, GAO, correspondingly. This result would be contrary to the achievement of a reduced workload in the area of direct settlement of claims by Claims Division, GAO, at the expense of greater emphasis on oversight functions the Claims Division will undertake in connection with its merger with the Financial and General Management Studies Division, GAO. However, in view of the following practical considerations alluded to earlier in our report, we believe that procedural implementation of the expanded waiver coverage will be facilitated if the agencies have complete authority over waiver determinations, regardless of the amounts involved.

In the first instance, giving agencies complete authority over waiver determinations would obviate the need for periodic review of the effectiveness of the ceiling on the aggregate amount of waiver claims in consideration of changing economic factors. The agency's role will remain primary in the adjudication of waiver requests, thereby generating a savings through more timely and less costly processing, while at the same time perpetuating the agency's expertise in considering individual classes of waiver requests. As noted earlier, agencies are presently authorized to deny waiver in any case without regard to a monetary limitation. In addition, the agencies are required to forward with those waiver requests exceeding the statutory limitation an administrative report of findings and recommendations which serves as the basis for adjudication by GAO. Thus,

B-197290

since the agency must now consider each waiver request and prepare a report of findings and recommendations, it would not materially alter the procedural intent of the waiver statutes to accord such agency findings and recommendations a greater degree of finality, especially where GAO will ultimately provide a source of final administrative appeal. Here again, we have found that appeals of agency waiver actions are infrequent, and, where appeals are received by GAO, the agency actions are usually sustained based on well documented and definitively prepared administrative records.

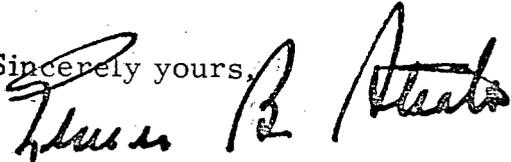
This approach would be consistent with the majority of waiver authorities existing throughout the Government. For example, the military services may remit debts for active duty members under 10 U.S.C. §§ 4837(d), 6161 and 9837(d); the Social Security Administration may waive overpayments of social security and supplemental security benefits under 42 U.S.C. §§ 404(b) and 1383(b); and the Veterans Administration may waive overpayments of any VA benefits under 38 U.S.C. § 3102. Most other Government assistance or benefit programs have a similar authority allowing for waiver of overpayments. These waiver authorities are administered solely by the agencies regardless of the amounts of the overpayments and usually invoke determinations of equity and good conscience similar to the equity and good conscience determinations made when considering waivers of erroneous payments of pay and allowances of employees and members.

Granting agencies complete waiver authority would also be consistent, as we have indicated, with the changing role of the Claims Division, GAO. Resources presently devoted to settlement of waiver cases would be available for oversight of agencies' waiver activities. In addition, the Comptroller General maintains substantial uniform control over agency waiver activities through the Standards for Waiver (presently contained at sections 91 through 94, title 4, Code of Federal Regulations) and through retention of the prerogative to settle doubtful cases and overturn agency determinations upon appeal.

B-197290

An amended bill which incorporates the new proposals contained in sections II and III of this report is enclosed as Appendix I.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Thomas B. Stearns". The signature is written in dark ink and is positioned to the right of the typed name.

Comptroller General
of the United States

Enclosures