



Department of Defense INSTRUCTION

NUMBER 1340.23
February 14, 2006

GC, DoD

SUBJECT: Waiver Procedures for Debts Resulting from Erroneous Pay and Allowances

- References:
- (a) DoD Directive 1340.22, "Waiver of Debts Resulting from Erroneous Payments of Pay and Allowances," January 8, 2005
 - (b) Section 2774 of title 10, United States Code
 - (c) Section 716 of title 32, United States Code
 - (d) Section 5584 of title 5, United States Code
 - (e) through (h), see Enclosure 1

1. PURPOSE

This Instruction implements policy under Reference (a) and prescribes procedures for considering waiver applications under References (b) through (d).

2. APPLICABILITY AND SCOPE

2.1. This Instruction applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense, the Defense Agencies, the Department of Defense Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

2.2. This Instruction applies to the Coast Guard, when it is not operating as a Service in the Navy under agreement with the Department of Homeland Security, the Commissioned Corps of the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA) under agreements with the Departments of Health and Human Services and Commerce, respectively (hereafter referred to collectively as the "non-DoD Components").

2.3. This Instruction applies to certain functions for considering waiver applications that, by statute or delegation, are vested in the Department of Defense or the Secretary of Defense.

3. DEFINITIONS

Terms used in this Instruction are defined at Enclosure 2.

4. POLICY

It is DoD policy under Reference (a) that waiver applications for debts resulting from erroneous payments of pay and allowances (hereafter referred to as “waiver applications”) be processed according to all pertinent statutes, regulations, and other relevant authorities.

5. RESPONSIBILITIES

5.1. The General Counsel of the Department of Defense (GC, DoD) or designee shall consult on, or render opinions concerning, questions of law or equity that arise in the course of the performance of the Director, Defense Office of Hearings and Appeals’ (DOHA) responsibilities under paragraph 5.2. when requested by the Director.

5.2 The Director, Defense Office of Hearings and Appeals or designee, under the GC, DoD (as the Director, Defense Legal Services Agency), shall:

5.2.1. Deny or grant all or part of a waiver application, if the aggregate amount of the debt is more than \$1,500.

5.2.2. Consider an appeal of an initial determination and affirm, modify, reverse, or remand the initial determination, according to this Instruction and relevant GC, DoD opinions.

5.2.3. Process waiver applications and appeals according to this Instruction.

5.3. The Heads of the DoD Components or designee shall process waiver applications according to this Instruction.

5.4. The Heads of the Non-DoD Components or designee concerning debts of Uniformed Services personnel resulting from the Component’s activity; the Director, Department of Defense Education Activity (DoDEA) or designee, concerning debts of civilian employees resulting from that Component’s activity; the Director, National Security Agency (NSA) or designee, concerning debts resulting from that Component’s activity; and the Director, Defense Finance and Accounting Service (DFAS) or designee, under the Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)/CFO), concerning debts resulting from all other DoD Components' activities shall:

5.4.1. Deny or grant all or part of a waiver application, if the aggregate amount of the debt is \$1,500 or less.

5.4.2. If the aggregate amount of the debt is more than \$1,500:

5.4.2.1. Deny a waiver application in its entirety, or

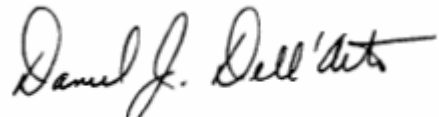
5.4.2.2. Refer a waiver application for consideration with a recommendation that part or all of the application be granted, according to this Instruction.

5.4.3. Process waiver applications, when the aggregate amount of the debt is more than \$1,500, and appeals according to this Instruction.

5.4.4. Resolve a debt according to the final action that results from the waiver application process provided for in this Instruction.

6. EFFECTIVE DATE

This Instruction is effective immediately.



Daniel J. Dell'Orto
Principal Deputy General Counsel

Enclosures - 8

- E1. References, continued
- E2. Definitions
- E3. Overview of Waiver Application Process
- E4. Standards for Waiver Determinations
- E5. Submitting a Waiver Application
- E6. Processing a Waiver Application When the Debt is \$1,500 or Less
- E7. Processing a Waiver Application When the Debt is More than \$1,500
- E8. Appeals

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Section 2104 of title 5, United States Code
- (f) Section 2105 of title 5, United States Code
- (g) Sections 552 and 552a of title 5, United States Code
- (h) DoD Directive 1340.20, "Settling Personnel and General Claims and Processing Advance Decision Requests," July 14, 2003

E2. ENCLOSURE 2

DEFINITIONS

E2.1. DEFINED TERMS

E2.1.1. Committee. The person or persons invested, by order of a proper court, with the guardianship of a minor or incompetent person and/or the estate of a minor or incompetent person.

E2.1.2. Component Concerned. The agency/activity (as well as the official designated by the Head of the agency/activity) required to perform the function or take the action indicated or that notifies the individual of the debt that is the subject of a waiver application.

E2.1.3. Debt. An amount an individual owes the Government as the result of erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services or civilian DoD employees.

E2.1.4. Employee. A person who is or was an officer or employee as defined in Sections 2104 and 2105 of title 5, United States Code (U.S.C.) (References (e) and (f)).

E2.1.5. Erroneous Payment. A payment that is not in compliance with applicable laws or regulations.

E2.1.6. Final Action. A finding by the appropriate official under this Instruction concerning a waiver application from which there is no right to appeal or request reconsideration, or for which the time limit prescribed in this Instruction for submitting an appeal or request for reconsideration has expired without such a submission.

E2.1.7. Member. A member or former member of the Uniformed Services.

E2.1.8. Waiver Application. A request that the United States relinquish its claim against an individual for a debt resulting from erroneous payments of pay or allowances (including travel and transportation allowances) under References (b) through (d).

E3. ENCLOSURE 3

OVERVIEW OF WAIVER APPLICATION PROCESS

E3.1. STANDARDS FOR WAIVER DETERMINATIONS

The standards that must be applied in determining whether all or part of a waiver application should be granted or denied are at Enclosure 4.

E3.2. SUBMITTING A WAIVER APPLICATION

The DoD Components shall ensure, if applicable, the submission and filing of waiver applications/appeals satisfy the requirements of 5 U.S.C. 552a (Reference (g)). The procedures an applicant must follow to submit a waiver application are at Enclosure 5.

E3.3. PROCESSING A WAIVER APPLICATION WHEN THE DEBT IS \$1,500 OR LESS

The procedures a DoD Component must follow in processing a waiver application when the debt is \$1,500 or less are at Enclosure 6.¹

E3.4. PROCESSING A WAIVER APPLICATION WHEN THE DEBT IS MORE THAN \$1,500

The procedures a DoD Component must follow in processing a waiver application when the debt is more than \$1,500 are at Enclosure 7.

E3.5. APPEALS

The DoD Components shall ensure, if applicable, the submission and filing of waiver applications/appeals satisfy the requirements of Reference (g). The procedures for appealing initial determinations are at Enclosure 8.

E3.6. REFUND OF REPAID DEBTS THAT ARE SUBSEQUENTLY WAIVED

When a final action waives all or part of a debt that has been repaid, the waiver application shall be interpreted as an application for a refund and the Component concerned shall, to the extent of the waiver, refund the amount repaid.

¹ Contact the appropriate non-DoD Component for the procedures it follows in processing a waiver application.

E3.7. PUBLICATION

The Director, DOHA or designee shall make redacted copies of responses to requests for reconsideration available for public inspection and copying at the DOHA's public reading room and on the worldwide web according to Reference (g).

E4. ENCLOSURE 4

STANDARDS FOR WAIVER DETERMINATIONS

E4.1. STANDARDS

E4.1.1. Generally, persons who receive a payment erroneously from the Government acquire no right to the money. They are bound in equity and good conscience to make restitution. If a benefit is bestowed by mistake, no matter how careless the act of the Government may have been, the recipient must make restitution. In theory, restitution results in no loss to the recipient because the recipient received something for nothing. However, References (b) through (d) provide authority to waive, under certain conditions debts individuals owe the Government that are the result of erroneous payments of pay and allowances (including travel and transportation allowances). A waiver is not a matter of right. It is available to provide relief as a matter of equity, if the circumstances warrant.

E4.1.2. Debts may be waived only when collection would be against equity and good conscience and would not be in the best interests of the United States. There must be no indication the erroneous payment was solely or partially the result of the fraud, misrepresentation, fault, or lack of good faith of the applicant.

E4.1.3. The fact that an erroneous payment is solely the result of administrative error or mistake on the part of the Government is not sufficient basis in and of itself for granting a waiver.

E4.1.4. A waiver usually is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. The recipient has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the Government, even if the Government fails to act after such notification.

E4.1.5. A waiver generally is not appropriate when a recipient of a significant unexplained increase in pay or allowances, or of any other unexplained payment of pay or allowances, does not attempt to obtain a reasonable explanation from an appropriate official. The recipient has a duty to ascertain the reason for the payment and to set aside the funds in the event that repayment should be necessary.

E4.1.6. A waiver may be inappropriate in cases where a recipient questions a payment (which ultimately is determined to be erroneous) and is mistakenly advised by an appropriate official that the payment is proper, if under the circumstances the recipient knew or reasonably should have known that the advice was erroneous.

E4.1.7. Financial hardship is not a factor for consideration in determining whether a waiver is appropriate.

E4.1.8. Waiver determinations under these standards depend on the facts in each case.

E5. ENCLOSURE 5

SUBMITTING A WAIVER APPLICATION

E5.1. WHO MAY APPLY FOR WAIVER

Any person (“applicant”) from whom collection is sought for a debt resulting from erroneous payments of pay or allowances (including travel and transportation allowances) may submit a waiver application under References (b) through (d). Additionally, an authorized official of the Component concerned, or the Director, DOHA or designee may initiate a waiver application during the processing of a claim under DoD Directive 1340.20 (Reference (h)).

E5.2. WHERE TO SUBMIT A WAIVER APPLICATION

An applicant must submit a waiver application to the Component concerned according to the guidance provided by that Component. A waiver application submitted somewhere other than to the Component concerned does not stop the calculation of the time limit as discussed in section E5.6. It is the applicant’s responsibility to submit the waiver application properly.

E5.3. FORMAT OF A WAIVER APPLICATION

An applicant must submit a waiver application in the format prescribed by the Component concerned. It must be written and signed by the applicant (in the case of an application on behalf of a minor or incompetent person, there are additional requirements explained at section E5.5.) or by the applicant's authorized agent or attorney (there are additional requirements explained at section E5.4.). In addition, the waiver application should include:

E5.3.1. The applicant's mailing address.

E5.3.2. The applicant's telephone number.

E5.3.3. The applicant's social security number when required by the Component concerned.

E5.3.4. The amount for which waiver is requested.

E5.3.5. An explanation why a waiver should be granted under the standards explained at Enclosure 4.

E5.3.6. Copies of documents referred to in the application.

E5.3.7. Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the applicant or other persons in support of the application.

E5.4. WAIVER APPLICATION SUBMITTED BY AGENT OR ATTORNEY

In addition to the requirements in section E5.3., a waiver application submitted by the applicant's agent or attorney must include or have attached a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the applicant.

E5.5. WAIVER APPLICATION SUBMITTED ON BEHALF OF A MINOR OR INCOMPETENT PERSON

In addition to the requirements in section E5.3.:

E5.5.1. If a guardian or committee has not been appointed, a waiver application submitted on behalf of a minor or incompetent person must:

E5.5.1.1. State the applicant's relationship to the minor or incompetent person.

E5.5.1.2. Provide the name and address of the person having care and custody of the minor or incompetent person.

E5.5.1.3. Include an affirmation that any moneys received shall be applied to the use and benefit of the minor or incompetent person, and that the appointment of a guardian or committee is not contemplated.

E5.5.2. If a guardian or committee has been appointed, a waiver application on behalf of a minor or incompetent person must include or have attached a certificate of the court showing the appointment and qualification of the guardian or committee.

E5.6. WHEN TO SUBMIT A WAIVER APPLICATION

An applicant must submit a waiver application so that it is received by the Component concerned within three years after the erroneous payment is discovered. The date of discovery is the date it is definitely determined by an appropriate official that an erroneous payment has been made. The time limit is set by References (b) through (d), whichever applies. It may not be extended or waived. Although the issue of timeliness is usually raised on initial submission (as explained in section E6.2.), the issue may be raised at any point during the waiver application consideration process.

E6. ENCLOSURE 6

PROCESSING A WAIVER APPLICATION WHEN THE DEBT IS \$1,500 OR LESS

E6.1. INITIAL COMPONENT PROCESSING

Upon receipt of a waiver application, the Component concerned must:

E6.1.1. Date stamp the application on the date received.

E6.1.2. Determine whether the application was received within three years after the discovery of the erroneous payment. If the application was not timely, follow the procedures in section E6.2.

E6.1.3. Investigate the circumstances relating to the erroneous payment.

E6.1.4. Refer the application to the appropriate determining official (see section E6.3.) for consideration and an initial determination.

E6.2. UNTIMELY WAIVER APPLICATIONS

When the Component concerned determines that a waiver application was not received within three years after the erroneous payment was discovered, the Component must send the applicant a notice of untimely receipt.

E6.2.1. The notice must:

E6.2.1.1. Cite the applicable statute and explain the reasons for the finding of untimely receipt.

E6.2.1.2. State that the application was not received within the statutory time limit and may not be considered unless that finding is reversed on appeal.

E6.2.1.3. Explain that the applicant may submit a rebuttal to the finding of untimely receipt (as explained in paragraph E6.2.2.).

E6.2.1.4. State that the statutory time limit may not be extended or waived.

E6.2.2. An applicant may submit a written rebuttal, signed by the applicant or the applicant's agent or attorney, to a notice of untimely receipt. The Component concerned must receive the rebuttal within 30 days of the date of the notice and may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should:

E6.2.2.1. Explain the points of, and reasons for, disagreement with the notice.

E6.2.2.2. Have any documents referred to in the rebuttal attached.

E6.2.2.3. Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the rebuttal.

E6.2.3. If the applicant does not submit a rebuttal within the time permitted, the notice of untimely receipt is a final action and the Component must return the application to the applicant with a notice that the finding is final and the application may not be considered.

E6.2.4. If the applicant submits a timely rebuttal, the Component must consider the rebuttal.

E6.2.4.1. If the Component finds that the application was received within the required time limit, the Component must reverse its finding of untimely receipt, notify the applicant in writing, and process the application on its merits.

E6.2.4.2. If the Component does not reverse the finding of untimely receipt, the Component must forward the record, including the application, notice of untimely receipt, and rebuttal, to the appropriate determining official (see paragraph E6.3.1.) for an initial determination on the issue of untimely receipt. The Component does not need to investigate the merits of the application before forwarding the record.

E6.2.5. After making an initial determination on the issue of untimely receipt, the determining official must follow the procedures in section E6.4. In addition, if the determining official finds that the application was timely, the official may:

E6.2.5.1. Return the application to the Component concerned for processing on its merits according to this Instruction, or

E6.2.5.2. Consider the application and make an initial determination on its merits according to paragraph E6.3.2.

E6.3. INITIAL DETERMINATIONS

The standards in Enclosure 4 must be applied when considering the merits of a waiver application. After making an initial determination, the determining official must follow the procedures at section E6.4.

E6.3.1. The officials listed and referred to in this Instruction as determining officials shall consider waiver applications and take the appropriate action described in paragraph E6.3.2. These officials are identified as follows:

E6.3.1.1. The Head of a non-DoD Component or designee for debts of Uniformed Services personnel resulting from that Component's activity.

E6.3.1.2. The Director, DoDEA or designee for debts of civilian employees resulting from that Component's activity.

E6.3.1.3. The Director, NSA or designee for debts resulting from that Component's activity.

E6.3.1.4. The Director, DFAS or designee for debts resulting from the DoD Component activity not included in subparagraphs E6.3.1.2. and E6.3.1.3.

E6.3.2. The officials listed in paragraph E6.3.1. may make an initial determination for the following:

E6.3.2.1. Whether or not a waiver application was received within three years after the discovery of the erroneous payment.

E6.3.2.2. Deny a waiver application in its entirety.

E6.3.2.3. Grant all or part of a waiver application.

E6.4. PROCESSING AFTER AN INITIAL DETERMINATION

After making an initial determination, the determining official must:

E6.4.1. Notify the applicant. The notification must explain:

E6.4.1.1. The determination and the reasons for it.

E6.4.1.2. The appropriate Component action to resolve the debt as a consequence of the determination if it is or becomes a final action (the finality of an initial determination is explained at section E6.5.).

E6.4.1.3. The appeal process (as explained in Enclosure 8) if the determination does not grant the entire application or does not contain a finding of timely receipt.

E6.4.2. Notify the Component concerned if the determining official is not an official of the Component concerned when and if the determination is a final action. The notice must explain:

E6.4.2.1. The determination and its reasons.

E6.4.2.2. The appropriate Component action to resolve the debt as a consequence of the determination.

E6.5. WHEN AN INITIAL DETERMINATION IS FINAL

A final action is an initial determination that grants the entire waiver application or finds that the application was timely received. Also, an initial determination (including one of untimely receipt) is a final action if the determining official does not receive an appeal within 30 days of the date of the initial determination (plus any extension of up to 30 additional days granted by the determining official for good cause shown).

E7. ENCLOSURE 7

PROCESSING A WAIVER APPLICATION WHEN THE DEBT IS MORE THAN \$1,500

E7.1. INITIAL COMPONENT PROCESSING

Upon receipt of a waiver application, the Component concerned must:

E7.1.1. Date stamp the application on the date received.

E7.1.2. Determine whether the application was received within three years after the discovery of the erroneous payment. If the application was not timely, follow the procedures in section E7.2.

E7.1.3. Investigate the circumstances relating to the erroneous payment.

E7.1.4. Refer the waiver application to the appropriate determining official (see section E6.3.) who after applying the standards in Enclosure 4 may either:

E7.1.4.1. Deny the application in its entirety, if appropriate, and follow the procedures in section E6.4., or

E7.1.4.2. Refer the application with a recommendation that part or all of the application be granted to the DOHA for consideration and an initial determination under section E7.3. The determining official must send the entire record and prepare and submit a recommendation and administrative report (as explained in sections E7.4. and E7.5.) with the application.

E7.2. UNTIMELY WAIVER APPLICATIONS

When the Component concerned determines that a waiver application was not received within three years after the erroneous payment was discovered, the Component must send the applicant a notice of untimely receipt.

E7.2.1. The notice must:

E7.2.1.1. Cite the applicable statute and explain the reasons for the finding of untimely receipt.

E7.2.1.2. State that the application was not received within the statutory time limit and may not be considered unless that finding is reversed on appeal.

E7.2.1.3. Explain that the applicant may submit a rebuttal to the finding of untimely receipt (as explained in paragraph E7.2.2.).

E7.2.1.4. State that the statutory time limit may not be extended or waived.

E7.2.2. An applicant may submit a written rebuttal, signed by the applicant or the applicant's agent or attorney, to a notice of untimely receipt. The Component concerned must receive the rebuttal within 30 days of the date of the notice and may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should:

E7.2.2.1. Explain the points of, and reasons for, disagreement with the notice.

E7.2.2.2. Have any documents referred to in the rebuttal attached.

E7.2.2.3. Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the rebuttal.

E7.2.3. If the applicant does not submit a rebuttal within the time permitted, the notice of untimely receipt is a final action and the Component must return the application to the applicant with a notice that the finding is final and the application may not be considered.

E7.2.4. If the applicant submits a timely rebuttal, the Component must consider the rebuttal:

E7.2.4.1. If the Component finds that the application was received within the required time limit, the Component must reverse its finding of untimely receipt, notify the applicant in writing, and process the application on its merits.

E7.2.4.2. If the Component does not reverse the finding of untimely receipt, the Component must forward the record, including the application, notice of untimely receipt, and rebuttal, to the appropriate determining official (see paragraph E6.3.1.) for an initial determination on the issue of untimely receipt. The Component does not need to investigate the merits of the application before forwarding the record.

E7.2.5. After making an initial determination on the issue of untimely receipt, the determining official must follow the procedures in section E6.4. In addition, if the determining official finds that the application was timely, the official may:

E7.2.5.1. Return the application to the Component concerned for processing on the merits according to this Instruction, or

E7.2.5.2. Make a recommendation to the DOHA to grant all or part of the application as described in sections E7.4.

E7.3. INITIAL DETERMINATIONS

The standards in Enclosure 4 must be applied when considering the merits of a waiver application. After making an initial determination, the DOHA must follow the procedures at section E7.6. and may take the following actions regarding waiver applications referred under subparagraph E7.1.4.2. or E7.2.5.2.:

- E7.3.1. Make an initial determination denying a waiver application in its entirety; or
- E7.3.2. Make an initial determination granting all or part of a waiver application.

E7.4. RECOMMENDATION TO THE DOHA TO GRANT ALL OR PART OF AN APPLICATION

Referrals to the DOHA must include the entire record along with the recommendation and administrative report described in section E7.5. The record and the report must be sent to:

Defense Office of Hearings and Appeals
Claims Division
P.O. Box 3656
Arlington, VA 22203-1995

E7.5. RECOMMENDATION AND ADMINISTRATIVE REPORT

The recommendation and administrative report required by section E7.4. must describe the recommended action (and its reasons) and the following:

- E7.5.1. The names and mailing addresses of each employee, member, or other person from whom collection is sought, or a statement that the person cannot reasonably be located.
- E7.5.2. The aggregate amount of the debt, including an itemization showing the elements of the aggregate amount.
- E7.5.3. The date the erroneous payment was discovered.
- E7.5.4. The date the recipient was notified of the error and a statement of the erroneous amounts paid before and after receipt of such notice.
- E7.5.5. A summary of the facts and circumstances describing how the erroneous payment occurred; the recipient's knowledge of the erroneous nature of the payment; the steps taken by the recipient to bring the matter to the attention of the appropriate official; and the Component's response, if any.

E7.5.6. A finding of whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the applicant and the reasons for such a finding.

E7.5.7. Legible copies or the originals of supporting documents, such as leave and earnings statements, notifications of personnel actions, travel authorizations and vouchers, and military orders.

E7.5.8. Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the applicant or other persons in support of the application.

E7.6. PROCESSING AFTER AN INITIAL DETERMINATION

After making an initial determination, the DOHA must:

E7.6.1. Notify the applicant if all or part of the waiver application is denied. The notification must explain:

E7.6.1.1. The determination and the reasons for it.

E7.6.1.2. The appropriate Component action to resolve the debt as a consequence of the determination if it is or becomes a final action (the finality of an initial determination is explained at section E7.7.).

E7.6.1.3. The appeal process (as explained in Enclosure 8) if the determination does not grant the entire application or does not contain a finding of timely receipt.

E7.6.2. Notify the Component concerned when and if the determination is a final action. The notice must explain:

E7.6.2.1. The determination and its the reasons.

E7.6.2.2. The appropriate Component action to resolve the debt as a consequence of the determination.

E7.7. WHEN AN INITIAL DETERMINATION IS FINAL

A final action is an initial determination that grants the entire waiver application or finds that the application was timely received. Also, an initial determination (including one of untimely receipt) is a final action if the determining official does not receive an appeal within 30 days of the date of the initial determination (plus any extension of up to 30 additional days granted by the determining official for good cause shown)

E8. ENCLOSURE 8

APPEALS

E8.1. WHO MAY APPEAL

An applicant may appeal if an initial determination denies all or part of a waiver application or finds that the application was not received by the Component concerned within the time limit required by statute.

E8.2. WHEN AND WHERE TO SUBMIT AN APPEAL

E8.2.1. When the determining official is not in the DOHA, the determining official must receive an applicant's appeal within 30 days of the date of the initial determination. The determining official may extend this period for up to an additional 30 days for good cause shown. No appeal may be accepted after this time has expired. The appeal shall be processed under the procedures in sections E8.3. through E8.11.

E8.2.2. When the determining official is in the DOHA, the DOHA must receive an applicant's appeal within 30 days of the date of the initial determination. The DOHA may extend this period for up to an additional 30 days for good cause shown. No appeal may be accepted after this time has expired. The appeal shall be considered to be a request for reconsideration and shall be processed under the procedures in sections E8.12. through E8.17.

E8.3. CONTENT OF AN APPEAL

No specific format for an appeal is required however it must be written and signed by the applicant, the applicant's authorized agent, or the applicant's attorney. In addition, it should:

E8.3.1. Provide the applicant's mailing address.

E8.3.2. Provide the applicant's telephone number.

E8.3.3. Provide the applicant's social security number when required by the Component concerned.

E8.3.4. Identify specific:

E8.3.4.1. Errors or omissions of material and relevant facts.

E8.3.4.2. Legal or equitable (under the standards in Enclosure 4) considerations that were overlooked or misapplied.

E8.3.4.3. Conclusions that were arbitrary, capricious, or an abuse of discretion.

E8.3.5. Present evidence of the correct or additional facts alleged.

E8.3.6. Explain the reasons why the findings or conclusions should be reversed or modified.

E8.3.7. Have attached copies of documents referred to in the appeal.

E8.3.8. Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the appeal.

E8.4. DETERMINING OFFICIAL'S REVIEW

The determining official must review an applicant's appeal, and affirm, modify, or reverse the initial determination.

E8.4.1. When the determining official grants the entire waiver appeal or grants the application to the extent requested in the appeal after review of an appeal in a case involving a debt in the aggregate amount of \$1,500 or less, the determining official must notify the applicant in writing and the Component concerned if the determining official is not an official of the Component concerned. The notice must explain the appropriate action to resolve the debt. This is a final action.

E8.4.2. When the determining official finds that the application was received within the time limit required by statute after review of an appeal concerning the untimely receipt of the waiver application, the determining official must notify the applicant in writing and take the appropriate action under paragraph E6.2.5. or paragraph E7.2.5., as appropriate.

E8.4.3. In all other cases, the determining official must forward the appeal to the DOHA according to section E8.5. The determining official must prepare a recommendation and administrative report (as explained in section E8.6.) and send a copy of the administrative report to the applicant with a notice that the applicant may submit a rebuttal to the determining official (as explained in section E8.7.).

E8.4.4. The determining official must date stamp the applicant's rebuttal on the date it is received.

E8.5. SUBMISSION OF APPEAL TO THE DOHA

The determining official must send the entire record along with the recommendation and administrative report required by section E8.6. no earlier than 31 days after the date of the administrative report or the day after the applicant's rebuttal period, as extended, expires, to the following address:

Defense Office of Hearings and Appeals
Claims Division
P.O. Box 3656
Arlington, Virginia 22203-1995

E8.6. RECOMMENDATION AND ADMINISTRATIVE REPORT

The recommendation and administrative report required by paragraph E8.4.3. must describe the recommended action (and its reasons) and include:

E8.6.1. The names and mailing addresses of each employee, member, or other person from whom collection is sought, or a statement that the person cannot reasonably be located.

E8.6.2. The aggregate amount of the debt, including an itemization showing the elements of the aggregate amount.

E8.6.3. The date the erroneous payment was discovered.

E8.6.4. The date the recipient was notified of the error and a statement of the erroneous amounts paid before and after receipt of such notice.

E8.6.5. A summary of the facts and circumstances describing how the erroneous payment occurred; the recipient's knowledge of the erroneous nature of the payment; the steps taken by the recipient to bring the matter to the attention of the appropriate official; and the Component's response;

E8.6.6. A finding of whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the applicant and the reasons for such a finding.

E8.6.7. Legible copies or the originals of supporting documents, such as leave and earnings statements, notifications of personnel actions, travel authorizations and vouchers, and military orders.

E8.6.8. Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the applicant or other persons in support of the application.

E8.7. APPLICANT'S REBUTTAL

An applicant may submit a written rebuttal, signed by the applicant or the applicant's agent or attorney, in response to the recommendation and administrative report. The rebuttal must be received by the determining official within 30 days of the date of the recommendation and administrative report. The determining official may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should include:

E8.7.1. An explanation of the points and reasons for disagreeing with the report.

E8.7.2. The file reference number.

E8.7.3. Any documents referred to in the rebuttal.

E8.7.4. Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the rebuttal.

E8.8. DOHA APPEAL DECISION

Except as provided in section E8.16., the DOHA must base its decision on the written record, including the recommendation and administrative report and any rebuttal by the applicant. The written decision must:

E8.8.1. Affirm, modify, reverse, or remand the initial determination and decide the application on its merits or return the application to the Component concerned for investigation and processing for an initial determination on the merits according to Enclosure 6.

E8.8.2. State the amount of the waiver application that is granted and the amount denied and/or that the application was or was not received within the statutory time limit, as appropriate.

E8.8.3. Explain the reasons for the decision.

E8.9. PROCESSING AFTER THE APPEAL DECISION

After issuing an appeal decision, the DOHA must:

E8.9.1. Send the applicant the decision and notify the applicant of:

E8.9.1.1. The appropriate Component action to resolve the debt as a consequence of the decision if it is or becomes a final action (as explained in section E8.10.).

E8.9.1.2. The procedures under this enclosure to request reconsideration (as explained in sections E8.11. through E8.13.), if the decision does not grant the waiver application to the extent requested, or does not contain a finding of timely receipt, when applicable.

E8.9.2. Notify the Component concerned of the decision and the appropriate Component action to resolve the debt as a consequence of the decision.

E8.10. FINALITY OF A DOHA APPEAL DECISION

An appeal decision that grants the waiver application to the extent requested on appeal, or that finds that the application was timely received, when applicable, is a final action when issued. An appeal decision is a final action if the DOHA does not receive a request for reconsideration within 30 days of the date of the appeal decision (plus any extension of up to 30 additional days granted by the DOHA for good cause shown). NOTE: In the case of a DOHA appeal decision issued before the effective date of this Instruction that denied all or part of the waiver application, a request for reconsideration by the GC, DoD may be submitted within 60 days of the effective date of this Instruction. The GC DoD shall consider such requests and affirm, modify, reverse, or remand the DOHA appeal decision. Requests for reconsideration by the GC, DoD received more than 60 days after the effective date of this Instruction shall not be accepted. Requests must be submitted to the address in section E8.5. The provisions of section E8.13. apply.

E8.11. WHO MAY REQUEST RECONSIDERATION

An applicant may request reconsideration of a DOHA appeal decision.

E8.12. WHEN AND WHERE TO SUBMIT A REQUEST FOR RECONSIDERATION

The DOHA must receive a request for reconsideration within 30 days of the date of the appeal decision.² The DOHA may extend this period for up to an additional 30 days for good cause shown. No request for reconsideration may be accepted after this time has expired. A request for reconsideration must be sent to the DOHA at the address in section E8.5.

E8.13. CONTENT OF A REQUEST FOR RECONSIDERATION

The requirements of section E8.3. for the content of an appeal apply to a request for reconsideration.

E8.14. DOHA'S REVIEW OF A REQUEST FOR RECONSIDERATION

No earlier than 31 days after the date of the appeal decision or the day after the last period for submitting a request, as extended, expires, the DOHA must:

E8.14.1. Consider a request for reconsideration.

E8.14.2. Affirm, modify, or reverse the appeal decision.

² Request for reconsideration by the GC, DoD must be received by the DOHA within 60 days of the effective date of this Instruction as explained in section E8.10. for appeal decisions issued before the effective date of this Instruction.

E8.14.3. Prepare a response that explains the reasons for the finding.

E8.14.4. Send the response to the applicant and the Component concerned and notify them of the appropriate action on the debt.

E8.15. FINALITY OF A DOHA RECONSIDERATION DECISION

The response is a final action. It is precedent in the consideration of all waiver applications covered by this Instruction unless otherwise stated in the document.

E8.16. CONSIDERATION OF APPEALS AND REQUESTS FOR RECONSIDERATION

When considering an appeal or request for reconsideration, the DOHA may:

E8.16.1. Take administrative notice of matters that are generally known or are capable of confirmation by resort to sources whose accuracy cannot reasonably be questioned.

E8.16.2. Remand a matter to the Component with instructions to provide additional information.