

CHAPTER 25

★QUESTIONABLE, FRAUDULENT, AND DOUBTFUL CLAIMS2501 ADVANCE DECISIONS FROM THE COMPTROLLER GENERAL

★250101. General Rule for Nonpayment of Claims. Any claim presented for payment which the DO believes to be illegal or improper should not be paid. This section provides the DO with authority to refuse to make such payments and the procedures to follow when refusal to make payment occurs. Refusal to make payment is an undesirable procedure when it is based solely upon lack of knowledge or the unwillingness to ascertain the proper course of action from the proper authority.

250102. Application for Decision

★ A. Authority. Under Title 31, United States Code, section 3529 (reference (o)), a DO may request an advance decision from the Comptroller General of the United States on the propriety of any prospective payment. The Comptroller General is required to render a decision on questions presented under this statute. Also, such a decision is to govern the Comptroller General in the settlement of the account containing the disbursement. This statute does not provide for the rendering of decisions to the DO on questions of law pertaining to payments which have already been made or upon hypothetical cases.

★ B. Content. The statute requiring the Comptroller General to render an advance decision contemplates a presentation to the Comptroller General, when the question is one of law, of all the material facts necessary for its determination. When the question is one of fact, it contemplates a presentation of all the material evidence obtainable by the officer making the request. The specific point upon which the decision is desired and the reason for requesting the decision shall be stated. The document in question, appropriately certified, shall be made an enclosure to the request. As a general rule, the Comptroller General renders decisions only when the request is accompanied by a specific claim or voucher (legible copies are now acceptable). When a provision of the United States

Code is mentioned in the request, the number of the section shall be given. For example, section 3527, Title 31 United States Code should be shown as "3527, 31 U.S.C." When a provision of the Statutes at Large is mentioned, the date of the act and the number of the volume and page shall be given. For example, the act of March 26, 1934 should be shown as "act of March 26, 1934 (48 Stat. 466, 467)." When an Executive Order is mentioned, the number and date of the order shall be given. For example, Executive Order 9210 should be as "Exec. Order 9210, Aug. 1, 1942."

★ C. Forwarding of Requests. DOs shall submit requests for advance decisions to the Office of the General Counsel, U.S. General Accounting Office, 441 G Street, NW, Washington, DC 20548 through their chain of command and the servicing DFAS Center. DOs under the cognizance of the DFAS Columbus Center shall submit their requests through their chain of command and the Columbus Center, regardless of the applicable DSSN assigned. Prior to forwarding a request to DFAS Headquarters, Center Directors shall ensure the case file includes the legal review mandated by DFAS Regulation 005 (reference (ax)).

250103. DFAS Actions. Cases involving entitlement questions that clearly appear to have been authoritatively decided may be returned to requestors by the DFAS Centers or by DFAS Headquarters with advice that an advance decision is not necessary. An entitlement interpretation from anyone other than the Comptroller General, however, does not remove a DO's liability for illegal, incorrect, or improper payments, except for claims of \$100 or less. Therefore, DFAS Center and DFAS Headquarters responses shall indicate the advisory nature of their responses and shall advise requestors that resubmission may be made through the servicing DFAS Center. In lieu of requesting a decision from the Comptroller General for claims of \$100 or less, DOs may rely upon written decisions from the DFAS Centers authorized by reference (ax) to settle such cases. The GAO will consider decisions rendered under this procedure to be

conclusive in the settlement of accounts. A copy of the memorandum containing such a decision shall be attached to the voucher.

250104. Decisions of the Comptroller General

A. Payment in Question. An advance decision is conclusive only as to the particular payment involved in the question presented. A statement made by the Comptroller General in an advance decision upon a statement of facts submitted by a DO, which is broader than the stated facts rendered necessary, is not binding in the settlement of the accounts of a DO.

★ B. Affecting Other Payments. An advance decision of the Comptroller General in a particular case takes effect from its date, but the principles enunciated in decisions of the Comptroller General are applicable to all cases arising under the statutes, whether occurring before or after the date of the decision. A new construction of the law, contrary to former rulings, applies to disbursements and computations made subsequent to the date of such decision or to the date a DO receives notice of such decision, provided reasonable diligence was exercised to obtain notice.

2502 FALSE, FICTITIOUS, OR FRAUDULENT CLAIMS

250201. Determination of Fraud. It is difficult to prescribe exact rules for determining the existence of fraud or misrepresentation, since the question of whether fraud exists depends on the facts in each case. Although it is the claimant's responsibility to accurately complete a claim to ensure proper payment, it may not be automatically assumed that the claim is fraudulent simply because it is not prepared according to the requirements of publications such as the Joint Federal Travel Regulations or the Joint Travel Regulations. Many innocent mistakes are made in the completion of claims, and not every inaccuracy on a claim form should be equated with an intent to defraud the Government. Where discrepancies are minor, small in total dollar amounts, or where they are infrequently made, a finding of fraud would not normally be warranted, lacking the most convincing evidence to the contrary. However, such errors should be discussed with the claimant and corrected. Where discrepancies are glaring, involve great

sums of money, or are frequently made, a finding of fraud could be more readily made, lacking a satisfactory explanation from the claimant. The DO, in ensuring the propriety of all payments made, is primarily responsible for determining the existence of fraud. For example, in 57 Comp. Gen. 664 (reference (ay)), the Comptroller General ruled that in connection with a claim for travel expenses containing items based on fraud, only those items free of fraud may be paid. Examples of individual items claimed on a single travel claim include transportation for each leg of travel performed at the traveler's expense, lodging expenses, and each miscellaneous expense incurred. Per diem allowance is divided into three separately distinct categories (lodging, meals, and incidental expenses). For any day on which a claimant submits a fraudulent lodging receipt, the claimant forfeits the lodgings portion of the per diem allowance for the day or days that the lodging receipt represents. If a meal or an item of incidental expense for a particular day is fraudulently claimed, the meal or incidental allowance portion of per diem for that day shall be denied. Payment of per diem allowances for other days which are not supported by a fraudulent lodging receipt, or for other expenses not tainted by fraud, may be made. This rule applies whether per diem is computed on an actual expense basis or under the lodging plus a fixed fee basis. The average cost of lodging, when applicable, shall be computed by assigning a value of zero to those days for which a fraudulent lodging receipt is submitted. The pro rata share of per diem for the day of return from travel shall be computed on the same basis. When making final settlement on a travel claim for which partial payments have been made on the basis of fraud, the amount of earned entitlements for the entire period of travel shall be computed by disallowing any items based on fraud. If the total entitlements thus computed are less than the amounts previously paid, the difference shall be recouped from the claimant. Similar procedures shall be followed upon final settlement of travel claims on which advances have been paid. If, after disallowing all fraudulent items, the remaining entitlement is less than the amount of the advance, the excess advance shall be recouped.

★250202. Required Action When a Suspected Fraudulent Claim is Presented for Payment. When there is reason to suspect that a claim

presented for payment contains fraudulent information, the DO shall request his or her commander to initiate an investigation into the suspected fraud. The requirement to request the commander to initiate an investigation applies regardless of the dollar value of the suspected fraud. Arrangements shall be made to provide the DO with a copy of the completed investigation. Unless otherwise directed by the investigating office, the DO shall retain the claim and all supporting documentation for possible use in any disciplinary action taken by the claimant's commander. An ultimate finding of fraud is not dependent upon legal or disciplinary action. Primary responsibility for that determination rests with the DO. If, in the opinion of the DO, the investigating office's report does not support a finding of fraud, payment shall be made for all amounts to which the claimant is entitled. No further action need be taken, but the DO should document the reasons for the determination. The DO may be called upon from time to time to furnish this documentation in order to provide an indication of whether the guidelines are being uniformly applied throughout the DoD. If, in the opinion of the DO, the investigating office's report confirms that some items of the claim are fraudulent, payment of those items free of fraud may be made. Once payment has been made for that portion of the claim free of fraud, if the claimant then protests the determination of fraud and insists on payment of the entire claim, the claimant may submit a new claim for the items denied because of fraud. The DO shall process the reclaim for the items denied as prescribed in paragraph 250205 below.

★250203. Required Action When It Is Discovered That a Fraudulent Claim Has Been Paid. If after payment of a claim the DO discovers or is provided information suggesting that a claim was paid based on fraudulent information or documents, the DO shall review the retained copy of the claim to determine whether or not the claim was tainted with fraud. If the claim is still suspected of being tainted, the DO shall immediately initiate action against the claimant to recover the illegal, incorrect, or improper payment as prescribed in Part II of this Volume and request his or her commander to initiate an investigation. The requirement to request the commander to initiate an investigation applies regardless of the dollar value of the suspected fraud and includes illegal, incorrect, or improper

payments made as a result of issuing recertified payments where the payee negotiated both the original and the recertified check. Arrangements shall be made to provide the DO with a copy of the investigative report. In accordance with the requirements of the GAO, a report by the DO shall be made to the servicing DFAS Center upon initial disclosure that an illegal, incorrect, or improper payment has been made on the basis of fraud. The report shall contain a basic statement of the irregularity, date, amount, and identification of the individual(s) involved. Upon completion of final action (recoupment, investigation, etc.), a second report shall be forwarded. An ultimate finding of fraud is primarily the responsibility of the DO, who shall utilize the criteria in paragraph 250201 above in making a decision. If, in the opinion of the DO, the report of investigation does not support a finding of fraud, repayment shall be made for all amounts recouped from the claimant, if otherwise entitled, and this information shall be included in the second report. If, in the opinion of the DO, the report of investigation confirms that some or all items of the claim are fraudulent, no repayment of those items recouped may be made and the second report shall contain a citation of the applicable contract number (or travel order number, etc.), voucher number, date of payment, appropriation charged, and a description of the supporting documentation; a description of how the fraud was committed; a description of procedural deficiencies in the disbursing office, if any, and the action taken to correct the deficiencies; and, information as to recoupment effected or contemplated from the recipient of the payment. Except under unusual circumstances, reports shall not be classified or made in message form. No report is required if the fraud is detected prior to any payment being made. Should a claim in the form of a reclaim be received for any part or all of the amount recouped because of an illegal, incorrect, or improper payment of any voucher item obtained by fraud or misrepresentation, such reclaim shall not be settled by the DO, but shall be processed as prescribed in paragraph 250205 below. In no case shall submission of the reclaim or recoupment of amounts paid be deferred pending final determination on the claim.

★250204. Corrected Claims. When it is established, or it reasonably appears, that a claimant has submitted a fraudulent claim, and upon

discovery of the fraud, the claimant submits a corrected claim for those items previously suspected of being fraudulent, such claim shall not be paid by the DO. However, if the claimant persists in having the claim processed, the claim shall be processed as prescribed in paragraph 250205 below.

★250205. Reclaims of Items Disallowed or Recouped Due to Fraud. The DO shall forward reclaims of items disallowed or recouped due to fraud to the GAO (Claims Division) through the DO's chain of command and the servicing DFAS Center. If the entire claim was denied, the original claim shall be submitted. The completed claim shall be accompanied by a covering letter or memorandum from the DO stating specific information as to why the claim is considered fraudulent, and the statement: "I have not made payment and will not make payment in the future unless authorized by competent authority"; the original and 2 copies of all supporting documents and the orders with all endorsements if travel is involved; a copy of the payment voucher on which payment was made for the items free of fraud, if applicable; a copy of the report of investigation; and, a statement by the claimant supporting the claimant's belief that the claim is not fraudulent. A statement by the claimant's commander may be submitted at the option of the claimant. By endorsement to the DO's letter or memorandum, the DO's commander shall state an opinion on the case either in support of the DO or of the claimant.

250206. Accountability for Amounts Paid Due to Fraud. Most instances of fraud occur when a military member or civilian employee, whose identity is clearly established, submits a claim containing information known to be false. On some occasions, payments are made to individuals whose true identity cannot be determined. In some cases, a fictitious name is used by the individual committing the fraud. In other cases, the name of an actual military member or civilian employee may be used. In any of the above situations, an occurrence of this nature shall be reported and investigated as prescribed in chapter 06 of this Volume as an irregularity in the DO's account. The DO shall account for an irregularity caused by fraud as appropriate for the situations described in the following subparagraphs.

A. When the fraud is discovered prior to the submission of the monthly financial reports for the period during which the payment was made, the applicable voucher shall be reversed and withheld from the reports, and a loss of funds recorded in the DO's accountability (the DO still has the original payment document).

B. When the fraud is discovered after submission of the monthly financial reports which included the payment, the DO shall not adjust the accountability unless specifically directed to do so by the servicing DFAS Center.

250207. Relief of Liability. Requests for relief of liability for illegal, incorrect, or improper payments caused by fraudulent claims shall be submitted as prescribed in chapter 06 of this Volume. Generally, the Secretary of Defense has authority to grant relief when illegal, improper, or incorrect payments were caused by the fraudulent acts of disbursing personnel (DO, DDO, agents, cashiers, collection or paying agents, etc.) and the fraudulent payment is treated as a physical loss of funds. Only the Comptroller General may grant relief of liability if the illegal, improper, or incorrect payments were not the result of fraudulent acts by disbursing office personnel.

250208. Fraud Alert Reporting System

A. General. The Fraud Alert Reporting System is used only when an attempt to commit fraud has occurred or when a high vulnerability to fraud exists. Many of the incidents described in this paragraph are perpetrated by individuals who represent themselves as transient employees.

B. Action by DO. When it is determined that an employee is suspected of obtaining a fraudulent payment (pay, travel, or any other miscellaneous payment) by use of bogus documents and/or identification, DOs shall immediately notify the servicing DFAS Center by priority message. An information copy shall be forwarded to all the other DFAS Centers. A fraud alert report is also appropriate when a DO foresees a strong possibility of fraud being attempted by an unauthorized absentee who is knowledgeable in disbursing or pay and personnel matters. A fraud alert report shall provide a

description of the individual(s) involved in the fraud and details relating to the commission of the fraud with the expectation that this information will forewarn disbursing personnel and enable them to recognize fraudulent acts and thereby avoid losses. Reports of missing luggage, burglarized automobiles, and unauthorized absence of personnel in the lower pay grades usually have no value in preventing fraud. The guidance in the following subparagraphs is provided for DOs when submitting a fraud alert report.

1. Address the fraud alert report message only to the servicing DFAS Center with the other DFAS Centers as information addressees.

2. Report fraudulent payments that have been made to anyone, especially transients, giving a description of the perpetrator, describing the type of documents used to establish fraudulent entitlement, explaining how the fraud was committed, and expressing an opinion on the likelihood of the perpetrator attempting future fraud. The description should include: name (plus known aliases); rank or rate; SSN; race; age; height; weight; color of eyes/hair; and, distinguishing characteristics and/or body marks.

3. Under no circumstances shall DOs address a fraud alert report to any activity other than the servicing DFAS Center.

4. Submit a fraud alert report for unauthorized absence of personnel only when the following three criteria are met.

a. The employee has possession of documents such as pay records, orders, vouchers, blank checks, etc., which could be used to obtain fraudulent payments.

b. The employee has knowledge of pay and personnel procedures necessary to commit a fraudulent act.

c. The employee has a motive to commit fraud such as facing disciplinary action, past history of substance abuse, presently encountering personal or financial problems, or past/suspected involvement in fraud or embezzlement.

C. Action by DFAS Center. Upon receipt and evaluation of the fraud alert report, the servicing DFAS Center shall issue a Fraud Alert Warning to all DOs. Fraud Alert Warnings should be held for 1 year unless they are canceled by the issuing DFAS Center.

★2503 CLAIMS AGAINST THE GOVERNMENT

The Act of October 9, 1940 (54 Stat. 1061; 31 U.S.C. 3702) (reference (o)) provides that any claim against the United States shall be forever barred unless such claim, bearing the signature and address of the claimant or an authorized agent or attorney is received by the GAO within 6 full years after the date such claim first accrued. This act required such claims to be forwarded to GAO for recording purposes and that GAO return the claims to the submitting office for payment, denial, or referral back to the GAO for adjudication. Effective June 15, 1989, the Act was amended to provide that claims may be timely filed with the agency through which the claim arose, as well as with the GAO. Thus for claims that were not already barred as of June 15, 1989, filing of a claim with the appropriate agency within 6 years of the date the claim accrued will be effective to suspend the statute of limitations. Moreover, GAO has held that claims that were filed with the agency prior to June 15, 1989, and which were not barred as of that date, are considered to have been constructively filed with the agency as of June 15, 1989, so as to suspend the statute of limitations. Consequently, there is no longer a need to have claims recorded with GAO. Payment of claims to carriers for transportation services are further limited by 31 U.S.C. 3726 (reference (o)).

2504 CLAIMS FOR SETTLEMENT BY THE GENERAL ACCOUNTING OFFICE

★250401. General. Title 4, chapter 2, section 5 of the GAO Policy and Procedures Manual for Guidance of Federal Agencies (reference (x)) requires certain classes of claims against the United States to be adjudicated by the Claims Division of the General Accounting Office before payment is made or denied. The following classes of claims may not be paid or denied administratively, but must be forwarded to the Office of the General Counsel, U.S. General Accounting Office, Claims Division, 441 G Street

NW, Washington, DC 20548, for adjudication, unless otherwise specifically provided by law:

A. Claims which involve doubtful questions of law or fact except those under \$100, as provided below, and claims which have been the subject of an advance decision of the Comptroller General, in which case a reference to the decision must appear on the voucher supporting the payment. Note: When a claim contains items which involve doubt and items which the agency can settle administratively, only the doubtful portions over \$100 should be referred to GAO for settlement.

B. Claims, regardless of doubt, which are required by statute, by GAO regulation, or by decision of the Comptroller General, to be settled in the General Accounting Office before payment is made or denied.

C. Reclaims of items previously denied by the administrative agency, unless it is determined administratively that the action taken was clearly in error and properly can be corrected by the agency. Reclaims include items for which payment is denied based on existing regulations as well as items which have been paid but subsequently determined as non payable based on existing regulations when the claimant wishes to obtain further review of the determination to deny the claim or the determination to recoup the payment as non payable. A reclaim also includes items denied or recouped as a result of fraud as described in section 2502 above. A claim must be filed with the GAO or the department or agency out of whose activities the claim arose within 6 years after the date it first accrued or be forever barred.

D. Claims which appear to be barred by an applicable statute of limitations at the time of receipt by an agency.

The GAO defines a claim as doubtful when in the exercise of reasonable prudence either a person having final responsibility for deciding appropriate administrative action or the person who, in accordance with applicable statutes, will be held accountable if the claim were paid and then found to be incorrect, illegal, or improper, is unable to decide with reasonable certainty the validity and correctness of the claim. Claims of \$100 or less, involving doubtful questions of law

or fact, may be settled by the agency in which the claim arose, relying upon written advice from an agency official designated by the head of each the agency to provide such advice. If paid, a copy of the document containing such advice should be attached to the voucher, and the propriety of any such payment will be considered conclusive on the General Accounting Office in its settlement of the accounts involved. The Director, DFAS and the Directors of the DFAS Centers or their designees are authorized to settle doubtful claims of \$100 or less.

★250402. Claim Submission Procedures

A. General. All claims shall be submitted on an individual voucher basis through the use of the appropriate voucher form. Each claim voucher shall identify the payee by name and either Social Security or Employer's Identification Number, as appropriate, and shall be supported by a claim over the signature and address of the claimant. When the entire amount due is recommended for setoff, the claim voucher may be submitted without a supporting claim. The claimant may state the claim directly on a dealer's bill or public voucher. Claim vouchers with supporting documents shall be submitted under a transmittal letter to the servicing DFAS Center. Vouchers covering claims chargeable to either lapsed or available appropriations shall be submitted in the original with sufficient copies for regular distribution, plus one extra copy for retention by the GAO (Claims Division). Claims for payments due deceased civilian employees shall be processed as prescribed in Volume 8 of this Regulation.

B. Voucher Preparation. The voucher shall contain: the name and current address of the claimant or assignee; the appropriation and other accounting data chargeable; a statement as to the purpose of the payment; a citation of the contract number, previous voucher payment(s), project order, and any other data required to process the voucher; an explanation of the difference when the recommended amount of payment is different from the amount claimed; and details regarding setoff as provided in subparagraph 250402.D above.

C. Letter of Transmittal. The letter of transmittal shall include: a statement of facts surrounding the claim; the reason for forwarding

the claim and an explanation of the doubtful aspects; a recommendation and the reason therefor or a statement that there is no specific recommendation and the reason no recommendation is made; and a statement that the DO has not paid and will not pay the claim until authorized to do so.

D. Setoff. In all cases involving setoff, 1 additional copy of the voucher shall be submitted. When it is recommended that an amount be allowed with a certain amount to be set off, the voucher shall show the amount recommended for setoff and the complete accounting data to be credited. A statement shall also be furnished showing the basis for the setoff in sufficient detail to permit adequate explanation to the claimant. If no recommendation can be made as to the amount to be set off, the amounts will be inserted on the voucher by the GAO.

250403. Review of Claims. The claims shall be reviewed by the servicing DFAS Center to determine that the claim is complete as prescribed in this section and that the claim is otherwise proper for submission to the GAO. If submission of all or a major part of the claim to the GAO is not required, the claim shall be returned to the submitting office with advice that all or a major portion of the claim be paid locally, a citation to the regulations that authorize or provide for such payment, and a statement, if applicable, that the doubtful portion of the claim should be resubmitted.

250404. Payment of Claims After Approval by the GAO. Approved civilian or military pay claims shall be forwarded by the servicing DFAS Center to the appropriate office for payment. All other approved claims shall be paid by the servicing DFAS Center. Copies of vouchers covering approved claims paid against available appropriations shall be distributed in the same manner as other comparable vouchers. One copy of vouchers covering approved claims paid against successor appropriations shall be forwarded to the payee, one copy shall be forwarded to the office which administers the successor appropriation involved, and one copy shall be forwarded to the accountable activity.

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