

**SUMMARY OF MAJOR CHANGES TO
DoD 7000.14.R, VOLUME 8, CHAPTER 6
“MISCELLANEOUS ACTIONS (SPECIAL ACTIONS)”**

All changes are denoted by blue font

Substantive revisions are denoted by a ★ preceding the section,
paragraph, table, or figure that includes the revision

Hyperlinks are denoted by *underlined, bold, italic, blue font*

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
General	This chapter is being updated to comply with current formatting guidance and to add hyperlinks.	Update
0602	Changed name for the Canadian Employment Insurance Program and the Canada Revenue Agency	Update
060303.C	Added guidance pertaining to the retirement accounts for mass transfers.	Addition
060401	Changed address for Debt and Claims Management Office to Indianapolis.	Update
060501-060509	Moved from Chapter 3 to Chapter 6.	Update
060503	Added section on statute of limitations and corrects paragraph numbering.	Addition
060504.C	Updated section on computation of adjusted gross back pay.	Update
060504.D	Updated section on computation of interest.	Update
060504.F.2	Added section on Old Age Survivor Disability Insurance and Medicare taxes.	Addition
060504.F.3 060504.F.4	Updated section on income tax withholdings and applicable deductions for health benefits premiums, life insurance premiums and Thrift Savings Plan contributions.	Update
060504.G	Updated examples of Back Pay Computations.	Update
060507	Added section on Thrift Savings Plan.	Addition

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CHAPTER 6

MISCELLANEOUS ACTIONS (SPECIAL ACTIONS)0601 UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES

060101. General. The Secretary of Labor administers the Unemployment Compensation for Federal Employees (UCFE) program under [Title 5, United States Code \(U.S.C.\), chapter 85](#), and prescribes regulations necessary to carry out its provisions. See [Title 20, Code of Federal Regulations \(C.F.R.\), part 609](#) for additional information. Each Department of Defense (DoD) Component has responsibility for managing their respective UCFE program. The appropriate human resources organization (HRO) for all Department of Defense (DoD) employing activities has primary responsibility for UCFE management. The civilian payroll office has the responsibility to assist HRO by providing wage data needed to complete the Department of Labor form ES-931 ([Request for Wage and Separation Information – UCFE](#)) and any other information within its control requested by a state, the Department of Labor, other Federal agencies, or other [Defense Finance and Accounting Service \(DFAS\)](#) offices. State employment security agencies determine entitlement to compensation and the amount of benefits payable to unemployed Federal civilian employees under the applicable state unemployment insurance law. See [20 C.F.R. 609.9](#).

060102. Civilian Payroll Office Responsibilities

A. The civilian payroll office shall report accurate wages to the HRO to support an accurate state determination. Monetary information that can affect the claim, such as lump-sum annual leave payments and severance pay, also must be accurately reported.

B. The state agency prepares an ES–931 from information gathered during the claimant’s interview and the employee’s copy of the [Standard Form \(SF\) 8](#) (Notice to Federal Employee About Unemployment Insurance). Three copies of the ES–931 are mailed to the appropriate HRO, and a response must be returned within 4 workdays after receipt.

1. The Defense Civilian Pay System (DCPS) provides a biweekly interface extract to support the Injury Compensation-Unemployment Compensation (IC-UC) application developed by the DoD Civilian Personnel Management Service. The HRO staff uses this data in completing the ES–931. When requested, the civilian payroll office will provide additional information to HROs for employees recently transferred to DCPS. If pay information cannot be provided within the time limits, [then](#) the civilian payroll office must notify HRO immediately, and the procedures in [20 C.F.R. 609.21\(b\)](#) must be followed.

2. The central point of contact for all UCFE matters is the HRO. The civilian payroll office shall refer all state queries, telephone calls, and UCFE documentation to the HRO. For example, if a state wants clarification of wage data, [then](#) the query must go to the HRO for control purposes. HRO shall contact the civilian payroll office for any additional information.

060103. Base-Period Wages and Annual Leave Information

A. Base-Period Wages. State agencies determine the amount and duration of unemployment compensation entitlement from the amount of Federal employment performed and gross Federal wages paid (or earned) in a 52-week base-period (1-year period specified by state law) which precedes the date of claim. States require 6 or 8 quarters of information to be reported.

1. Federal wages are defined as allowances and pay in any medium (5 U.S.C. 8501). This includes all payments for leave. Do not report lump-sum payments for annual leave and severance payments as base-period wages. These items are reported separately.

2. The amounts to be reported as base-period wages are gross wages before deductions for Social Security/Medicare, Civil Service Retirement System or Federal Employees Retirement System, Thrift Savings Plan (TSP), and Federal, state, and local taxes. Gross wages include allowances and pay in any medium. Do not include expenses for official business, such as taxi fares, other cost, per diem, or mileage. Also, do not include payments for uniform allowances. The following shall be included in gross wages:

a. Foreign and Non-Foreign Differentials and Allowances. Exemption from Federal income tax does not exclude any such item from gross wages for the purposes of unemployment compensation.

b. Back Pay. This includes wages paid during the base period, even though earned prior to that period.

c. Salaries Paid by the Department to Reemployed Annuitants. This is the amount equal to the difference between the salary of the position and the annuity received. The annuity paid by the Office of Personnel Management (OPM) is not “Federal wages” for UCFE purposes.

d. Increases in Rates of Compensation Authorized by Acts of the Congress. Such increases shall be reported as wages for the pay period in which paid. This is required even if the first payment covers a retroactive period. If the base period begins or ends during the pay period in which this payment was made, **then** the entire payment should be allocated to the second week of the pay period.

3. Report wages the same way the records are kept. Do not attempt to add or subtract wages earned by the employee for any days before the beginning of the quarter or the remaining days between the last payroll cutoff date and the end of the quarter. For example, if the pay period ends March 28, do not add March 29 through 31 to the wages reported for the January 1 to March 31 quarter. Do not report wages for periods other than, or in addition to, those periods requested. If the claimant had no base-period wages, then so indicate.

B. Lump-Sum Annual Leave and Severance Pay. Report these items separately from gross wages (base-period wages).

1. If the employee received a lump-sum payment for annual leave after the beginning date of the base period, **then** furnish the following:

- a. Amount of payment.
- b. Date(s) of payment.
- c. Amount of annual leave (days and hours).
- d. Period of annual leave (for example, from 0700, July 8, 1999, to 1400, July 23, 1999).

2. If the employee receives or is entitled to receive severance pay, **then** report the information to the HRO via the interface supporting IC-UC. States whose laws require an offset of severance pay against unemployment benefits must be advised whether the former employee is receiving or will receive severance pay. The state agency obtains severance pay details from the employee's copy of the SF 50 (Notification of Personnel Action) and/or the ES-931, if appropriate.

3. If annual leave is payable but has not been paid, **then** report "annual leave payment due but not paid," and provide details (period covered, amount of payment, when it will be paid) if known.

060104. Employees on Leave Without Pay (LWOP). Upon HRO's receipt of an ES-931 Form 931, the nonpay status of an employee must be reported to the state agency. The HRO shall report the employee on LWOP from the starting date, through the ending date, and any other pertinent data. If the employee is in a nonpay status for more than 30 days, **then** the SF 50 provides the LWOP information. For LWOP of 30 days or less, the biweekly interface extract provides this information to the HRO.

A. HRO shall indicate whether employees on LWOP are awaiting an on-the-job injury or disability retirement from the Office of Workers' Compensation Programs (OWCP).

B. If an employee is awaiting an OWCP determination, **then** the state agency is responsible for contacting the OWCP for any necessary data it needs.

060105. Back Pay Notification

A. If an employee is entitled to back pay, **then** HRO shall determine if the employee applied for UCFE within the last 52 weeks. If the employee applied for or received UCFE, **then** the HRO shall promptly notify the state agency of the date of back pay payment, amount, and period covered. The state agency may be required to redetermine benefits. HRO shall suspend its notification for state reply. If a reply is not received in 60 days, **then** the HRO shall

send a follow-up. If no answer to the follow-up is received from the state in 30 days, then request assistance for resolution.

B. DoD will not deduct from the back pay the amount of UCFE paid during the period covered by the back pay. UCFE must be deducted from back pay awards however, when state law requires the employer, rather than the employee, to reimburse the state for overpayments and, when appropriate, the state agency has determined that an overpayment has occurred and has notified the employing agency.

060106. Obtaining Data From the National Personnel Records Center (NPRC)

A. How Obtained. If records necessary to furnish wage data to HRO have been sent to the NPRC, then they should be obtained via written authorization. Since this information is subject to the Privacy Act of 1974, it must be handled in accordance with the provisions of that Act. The NPRC gives priority to such requests. The request must:

1. Be addressed to the NPRC, Civilian Personnel Records, 111 Winnebago Street, St. Louis, Missouri 63118-4126.

2. Clearly identify the office sending the request.

3. Read “Unemployment insurance request for wages for 4 calendar quarters, enter period as shown on the ES-931, and statement of reasons for separation for (last name, first name, and middle initial), (name under which employed, if different), (date of birth), and Social Security number (SSN).”

B. Prohibited Actions. HRO or the civilian payroll office shall not send the ES-931 to the NPRC for completion. The state agency should not be asked to obtain data from the NPRC. State agencies shall be advised when the information is being requested.

C. Record Center Reply. A written reply will be received from the NPRC. The NPRC will mail a photocopy of the individual pay record to the civilian payroll office. The civilian payroll office shall furnish wage data to HRO on the basis of data furnished in the NPRC reply. Upon receipt of the pay record, wage data furnished to HRO shall be compared with the pay record. If an error is discovered, then HRO shall be notified, and it shall in turn notify the state agency.

★0602 EMPLOYMENT INSURANCE FOR CANADIAN EMPLOYEES

060201. The Canadian Employment Insurance Program

A. The U.S. government takes part in the Canadian Employment Insurance Program for Canadians employed in Canada by DoD.

B. U.S. participation in this program began at the start of the first pay period after June 30, 1956.

C. The civilian payroll office shall follow the procedures in this section for [employment](#) insurance withholdings and contributions for covered employees.

D. Installations that employ or might employ personnel in Canada [should follow guidance as issued by the Canada Revenue Agency](#).

060202. Policies Governing DoD Participation

A. Modifications. The following requirements do not apply to DoD:

1. Standing deposit of 1 month's combined contribution.
2. Application to operate on a calendar year basis. DoD installations will operate on the basis of a payroll year which, for this purpose, will be a calendar year.
3. Remittance of contributions and withholding by certified check.

B. Coverage

1. The civilian payroll office shall use [Canada Revenue Agency T4001 Employer's Guide - Payroll Deductions and Remittances](#) to determine insurable employment and earnings for withholding. Exceptions are in subparagraph 060202.B.2.

2. Contributions shall not be withheld for Canadian employees who are spouses of U.S. citizens employed by DoD Components and for U.S. civilians paid from appropriated and nonappropriated funds.

a. The Canadian employee must notify the civilian payroll office, through the HRO, of any change in marital status that affects insurability.

b. Deductions for Canadian [Employment](#) Insurance will stop at the end of the pay period in which notice of marriage is received.

c. Deductions shall start at the beginning of the next pay period after notice of divorce is received.

C. Refund of Deductions. If refund of deductions is required, [then](#) DoD installations will refund only amounts totaling \$1 or more.

D. Retroactive Payments. DoD shall not make retroactive payments of deductions to the [Canada Revenue Agency](#) if the employee concerned has not given true information to the employing installation. This includes cases that have been adjudicated.

E. Audit by the [Canada Revenue Agency](#). DoD records of deductions, contributions, and remittances are subject to audit. The audit requirements can be met by sending

copies of records of covered personnel and insurance remittance documents to the proper [Canada Revenue Agency](#) district office. The civilian payroll office shall send copies of records required by Canadian authorities on request.

060203. Amount of Contributions

A. Employee's Share. Funds shall be withheld from the pay of all insurable employees at rates set in the [Canada Revenue Agency T4001 Employer's Guide - Payroll Deductions and Remittances](#).

B. Employer's Share. The employer's share shall equal 1.4 times the amount withheld from the employee's pay on each payroll voucher. The contribution shall be charged to the fund from which the employees' salaries are paid.

060204. Disposition of Contributions

A. Payroll Collection. The employee and employer contributions shall be made as a voucher deduction on the payroll voucher. For example, the accounting classification for the DoD civilian payroll offices will be deposit fund account 97X6875, "Suspense, Department of Defense."

B. Remittance to Canada Revenue Agency. The civilian payroll office shall request a bulk payment permit and information on deviation from remittance procedures from the Chief Coverage Officer, [Employment Insurance Commission](#), Ottawa 1, Ontario, Canada. An SF 1049 (Public Voucher for Refunds) shall be used to make the biweekly remittance to the Commission from the deposit fund account __X6875.

0603 MASS TRANSFER OF PAY ACCOUNTS

060301. A mass transfer is the movement of a number of employee accounts from one civilian payroll office to another, and the losing civilian payroll office remains operational. Refer to section [0105](#) for procedures concerning DoD civilian payroll operations that are being disestablished in accordance with consolidation initiatives.

★ 060302. Requests for mass transfer or transfer of payroll function must be sent, with justification, to the [DFAS Director of Civilian Pay](#), via the major command or claimant [Financial Manager \(FM\) representative](#). The [DFAS Director of Civilian Pay](#), or designated official, must approve all such requests in writing. These actions may also be initiated by the Director to improve efficiency and economy of the payroll operation.

060303. Losing Civilian Payroll Office Responsibilities

A. The losing civilian payroll office affected by the mass transfer must notify all the affected parties receiving support (refer to the following list). It is recommended that these parties be notified at least 90 days in advance of the proposed transfer but not less than 30 days prior to the date of the actual transfer. [The following](#) is a list of affected parties:

1. HROs are responsible for notifying labor organizations and professional associations.
2. Each Internal Revenue Service (IRS) District to which payments for tax levies are remitted for employees affected by a mass transfer.
3. DFAS-Cleveland Garnishment Operations Directorate will notify each court to which alimony, child support, and bankruptcy payments are remitted for employees affected by the mass transfer.
4. Other Federal agencies (e.g., Department of Veterans Affairs or Department of Education) and DoD functional areas (e.g., travel or hospitals) for whom debts are being collected.
5. The Defense Manpower Data Center.
6. State and local taxing authorities, if the transfer closes out the account.
7. The TSP Record Keeping Service Provider by the TSP-19 (Transfer of Thrift Savings Plan Information Between Agencies).
8. Federal Employee Health Benefits insurance carriers.
9. Customer Service Representatives.
10. DFAS-Cleveland Disbursing Operations.
11. The Department of Labor for ongoing OWCP cases.
12. The employing activity that is responsible for notifying the employees, source data automation systems, and accounting activities of the transfer.
13. Employees with debts being collected and employees with outstanding debt collection letters. Employees will be notified that debts are being transferred to new civilian payroll offices and will be provided with a point of contact at the gaining civilian payroll office.

B. The losing civilian payroll office shall prepare employee substantiating document files as stated in subparagraphs [010504.B.1 through 4](#). Every effort shall be made to transfer data electronically through automated processes. Hardcopy documents, original or copy as appropriate, shall be forwarded to the gaining civilian payroll office for the following, even if the data has been transferred electronically:

1. Indebtedness to the U.S. Government. Copies of all documentation to support current collections, including all on going DoD and non-DoD debts with the unpaid balance of the debt on the transfer date and the remittance address.

2. Form 668-W (Notice of Levy on Wages, Salary, and Other Income). Forward the original IRS tax levy showing the unpaid balance on the transfer date.

3. Court-Ordered Bankruptcy. Forward the original court order and addendum with balance due on the current order on the transfer date. Also, furnish a copy to DFAS-Cleveland Garnishment Operations Directorate if there is a pending commercial garnishment.

4. SF 1190 (Foreign Allowances Application, Grant and Report). Advances of pay received by DoD civilian employees proceeding to or arriving at a post of assignment in a foreign area are authorized an advance of up to 3 months of gross pay. Provide a copy of the [SF 1190](#) and the unpaid balance and biweekly deduction.

5. Nonappropriated Fund (NAF) 401k Authorizations. Forward a copy of the authorization that supports employee contributions to an NAF 401k plan allowable by the Portability of Benefits for NAF Employees Act of 1990 ([Public Law 101-508](#)).

6. Form TSP-1-NAF (TSP Election Form for Retroactive Contributions - NAF Employees). Forward a copy of the TSP-1-NAF for any employee who is currently making retroactive TSP contributions allowable by the Portability of Benefits for NAF Employees Act.

7. [SF 2806 \(Individual Retirement Record\)](#). Forward all hardcopy retirement records on file.

8. Report TSP 19401 (Thrift Savings Plan Loan Status Report). Forward a copy of all Reports TSP 19401 that support TSP loan information.

9. [SF 1150 \(Record of Leave Data\)](#) and SF 1150A (Transfer of Leave Records for the Leave Recipient Under the Voluntary Leave Transfer Program). Prepare an [SF 1150](#) in accordance with "[The Guide to Processing Personnel Actions](#)," subchapter 21, to reflect all leave balances as of the end of the last pay period paid by the losing civilian payroll office. Prepare an SF 1150A for the transfer of donated leave. Forward the original of the [SF 1150](#)/SF 1150A to the losing HRO to be included in the official personnel folder and forwarded to the gaining HRO. After receipt in the gaining HRO, the [SF 1150](#)/SF 1150A will be forwarded to the gaining civilian payroll office. File a copy in the employee's substantiating document file.

10. Buyback of Leave. Forward copies of documentation to support the buyback of leave.

11. OPM Form 1514 (Military Deposit Worksheet). Forward all OPM Form 1514 information, including unpaid balance and biweekly deduction, to reestablish any unpaid balance on the day prior to transfer.

C. Complete Final Pay Period Processing. The losing civilian payroll office must complete processing for the last pay period for which it has responsibility for the employees affected by the mass transfer. Completion of these actions will allow the employee's records to contain the most current information.

1. Compute and process final salary and other payments. Prior to processing the final pay period, ensure that all time and attendance reports and all documentation from HROs have been processed.

2. Reconcile and clear/remit any deposit fund accounts for the employees affected by the mass transfer.

★ 3. Produce unique Intra-Agency Retirement Register.

a. Retirement balances for employees covered under the Civil Service Retirement System (CSRS) shall be transferred to the gaining payroll office on retirement register-type Intra-Agency CSRS Mass transfer. The CSRS retirement cards will not be printed for these register types.

b. Retirement balances for employees covered under the Federal Employees Retirement System (FERS) shall be transferred to the gaining payroll office on retirement register-type Intraagency FERS Mass transfer. The FERS retirement cards will not be printed for these register types.

c. Post a statement to the service history on the retirement record to reflect the mass transfer separation effective date and the gaining payroll office identification number. Post a statement to the fiscal history on the retirement card to reflect the automated intraagency transfer that reflects both the losing and gaining payroll office identification numbers.

4. Bond balances shall be transferred and not refunded to the employees upon a transfer from one DoD civilian payroll office to another. Bond balances shall be refunded and not transferred when the transfer is outside DoD.

★ 5. Compensatory hours and religious compensatory hours shall be paid for all transfers from one DoD Component to another. Credit hour balances shall also be paid for all employees who transfer to another agency (as defined in 5 U.S.C. 6121(I)). Additionally, as provided under 5 U.S.C. 6126(b), credit hours shall be paid when an employee is otherwise no longer subject to a flexible work schedule program.

6. The losing civilian payroll office shall make any retroactive adjustments necessary for an employee previously paid by their office and send to the gaining civilian payroll office for payment/collection.

060304. Gaining Civilian Payroll Office Responsibilities. The gaining civilian payroll office shall establish employee-substantiating document files with the employee's SSN and name.

0604 DOUBTFUL OR QUESTIONABLE CLAIMS

★ 060401. General. The General Accounting Office Act of 1996, Public Law No. 104-316, transferred the claims settlement functions previously performed by the Government Accountability Office (GAO) to certain executive branch agencies. As specified in Volume 5 of this Regulation, claims are received on a continuing basis from present or former civilian employees for additional compensation for various reasons. All such claims must receive individual processing to determine administratively whether or not the employee is entitled to the amount claimed. If the claim relates to the determination of an entitlement or similar matter, which is the responsibility of HRO, then it should be negotiated and documented through the employing activity's personnel channels. If the matter remains unsettled and the employee wishes an OPM review, then the civilian payroll office shall fully document the case, including the review processes, and forward the file to the DFAS-IN, Directorate of Debt and Claims Management Office, Indianapolis, IN.

060402. Procedures

A. Filing a Claim. Claims should be filed with the activity at which the individual was/is employed during the period for which additional compensation is claimed. The claim shall be fully documented and sent to the address identified in paragraph 060401 of this chapter for all claims related to civilian pay matters which cannot be resolved at the base or major command/claimant level.

B. Processing Claims

1. Approved Claims. Claims received by the civilian payroll office from the claimant may be approved and paid when there is no question of law or fact. Claims for pay under Title 5, U.S.C. must be filed within 6 years of the date the right to payment accrued. Claims for overtime pay under the Fair Labor Standards Act filed on or before June 30, 1994 are also subject to the 6-year statute of limitations; those filed after that date are subject to a 2-year statute. Any claim received from the OPM, including those originally received by the offices identified in paragraph 060401 but forwarded to the OPM for approval, shall be acted upon in accordance with instructions in the letter transmitting the claim to the civilian payroll office. These claims shall be paid only at the direction of the OPM or the appropriate office identified in paragraph 060401. When payment is to be made by the civilian payroll office, the claim shall be paid as part of the regular payroll.

2. Disapproved Claims. Claims not received through the OPM that are disapproved administratively by the civilian payroll office shall be returned to the claimant with a letter containing the basis for the disapproval. If the disapproval is appealed by the employee, then the civilian payroll office shall forward the claim with a letter of transmittal (prepared by the civilian payroll office) to OPM via the appropriate office identified in paragraph 060401.

C. Documentation for Claims

1. Content for Claims. A claim shall be submitted by the claimant in writing and must be signed by the claimant or by the claimant's representative. While no specific form is required, the request should describe the basis for the claim and state the amount sought. The claim should also include:

a. The name, address, telephone number, and facsimile telephone number, if available, of the claimant.

b. The name, address, telephone number, and facsimile telephone number, if available, of the agency employee who denied the claim.

c. A copy of the denial of the claim issued by the employing agency.

d. Any other information which the claimant believes OPM should consider.

2. Administrative Report. If requested by OPM, the civilian payroll office will submit an administrative report, which will include:

a. Factual findings.

b. Conclusions of law with relevant citations.

c. Recommendation for disposition of the claim.

d. A complete copy of any applicable regulation or policy memorandum.

e. A statement that the claimant is or is not a member of a collective bargaining unit and, if so, a statement that the claim is or is not covered by a negotiated grievance procedure that specifically excludes the claim from coverage.

f. Any other information that OPM should consider.

060403. Payment. Claims that have been administratively determined correct by OPM are settled and paid by the civilian payroll office.

060404. Claims Required to be Submitted to OPM. The following classes of claims may not be paid or administratively denied, but must be forwarded to the Program Manager, Room 7671, Office of Merit Systems Oversight and Effectiveness, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. These claims are forwarded to OPM via the offices identified in paragraph 060401 for adjudication unless otherwise specifically provided by law.

A. Claims that involve doubtful questions of law or fact, except those under \$25, and claims that have been the subject of an advance decision by applicable authority, in which case, a reference to the decision must appear on the voucher supporting the payment. When a claim contains items that involve doubt, and items, which DFAS Sites can settle administratively, only the doubtful portions over \$25 should be referred to OPM through DFAS-HQ for settlement.

B. Claims, regardless of doubt, which are required by statute, or by decision of applicable authority, to be settled by OPM before payment is made or denied.

C. Reclaims of items previously denied in an administrative review by DFAS Sites, unless it is determined administratively that the action taken was clearly in error and properly can be corrected by the DFAS Sites.

D. Claims that appear to be barred by the applicable statute of limitation at the time of receipt for administrative review by DFAS Sites. If the statutory period of limitations will soon expire, then claimants shall submit their claims directly to the Claims Division of OPM. In order to protect the interests of claimants, claims received as to which the right of payment accrued 4 years or more before the date of receipt and which cannot promptly be approved and paid in the full amount claimed shall immediately be referred to the Claims Division of the OPM. These claims shall be recorded in OPM, after which they shall be returned for payment, denial, or referral back to OPM for adjudication.

060405. Advance Decisions. Requests for an advance decision from the Defense Office of Hearings and Appeals (DOHA) shall be processed as prescribed in Volume 5 of this Regulation. In addition to normal submission channels prescribed in Volume 5 of this Regulation, requests to DOHA involving the determination of an entitlement or similar matter which is the responsibility of the HRO shall be negotiated and documented through the appropriate human resources channel.

0605 BACK PAY

060501. General. Title 5, U.S.C., section 5596 and implementing regulations in 5 C.F.R. 550, subpart H authorize the payment of back pay, interest, and reasonable attorney fees for the purpose of making an employee financially whole (to the extent possible). Payment of back pay can be made when, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance), an appropriate authority finds that the employee was affected by an unjustified or unwarranted personnel action. Such action must have resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials, otherwise due the employee under an applicable law, rule, regulation, or provision of a collective bargaining agreement. The HROs will

determine entitlement to payment of back pay that will be indicated in the remarks section of the SF 50.

060502. Correcting Unjustified or Unwarranted Personnel Action

★ A. When an appropriate authority corrects or directs the correction of an unjustified or unwarranted personnel action, the employee shall be deemed to have performed service in DoD during the period covered by the corrective action and the civilian payroll office shall compute, for the period covered by the corrective action, the pay, allowances, and differentials of the employee as if the improper personnel action had not occurred. In no case, however, will the employee be granted more pay, allowances, and differentials, [to include leave benefits](#) under the back pay law, than he or she would have been entitled to if the improper personnel action had not occurred.

B. When an employee's total interim earnings (including those from other Federal employment) exceed the total amount of back pay, the excess amount may be retained by the employee.

C. When an employee has been separated, corrective action is completed on the date DoD has reasonably set, with written notice to the employee, for return to duty. Until that date, the erroneous action is in effect. Failure by the employee to report for duty on the date set by DoD may result in the employee being charged annual leave, leave without pay, or absence without leave for the period from the date set for return of the employee to work until the date the employee actually returns to work. An employee who resigns instead of returning to duty, however, is still entitled to back pay since there is no requirement that the employee must return to duty. In this case, the employee will receive back pay up to the date that he or she legitimately is separated, which may not be the date that he or she is requested to report for duty.

★ 060503 Statute of Limitations

A. Under [5 C.F.R. 550.804](#), an agency may not authorize pay, allowances, and differentials for a period beginning more than 6 years before the date of the filing of a timely written claim or, or absent such filing, the date of the administrative determination that the employee is entitled to back pay.

B. If a back pay claim involves an entitlement under the Fair Labor Standards Act (FLSA) ([29 U.S.C. 207](#)), an agency must apply the 2-year statute of limitations (3 years for willful violations). This applies to all FLSA claims filed on or after June 30, 1994. ([5 C.F.R. 551, Subpart G](#)).

060504. Back Pay Computations

A. General. In computing the amount of gross back pay due an employee, the civilian payroll office must include premium pay and any changes that would affect the amount of pay, allowances, and differentials which the employee would have earned if the unjustified or unwarranted personnel action had not occurred. The computation of net back pay to which an employee is entitled is a three-step process: 1) **gross outside earnings received by an employee for employment** to replace the government employment must be deducted from the gross back pay due the employee; 2) erroneous payments received from the government as a result of an unjustified or unwarranted personnel action must be deducted from the back pay due the employee; and 3) other authorized deductions, as described at paragraph 060504.F, must be made from the remaining back pay due the employee.

B. Computation of Gross Back Pay

1. Under [5 C.F.R. 550.805\(c\)](#), an agency may not pay back pay for any period during which the employee was not ready, willing, and able to perform his or her duties because of an incapacitating illness. The employing agency, however, must grant, upon request of the employee, any sick or annual leave to his or her credit to cover the period of incapacity by reason of illness or injury. In addition, an agency may not pay back pay for any period during which the employee was unavailable for performance of their duties for reasons not related to, or caused by, the unjustified or unwarranted personnel action.

2. In computing an employee's pay, it is necessary to include any within-grade increases (WGI) to which he or she became entitled during the period covered by the corrected personnel action. When the grant or denial of a WGI requires an acceptable level of competence determination, under [5 C.F.R., part 531, subpart D](#), the requirements for such a determination, including the right of reconsideration and appeal, must be followed (even though the determination is made retroactively) before the WGI may be included in the computation of the amount of back pay due the employee. It should be noted that the regulations governing WGIs waive the requirement of an acceptable level of competence determination when the employee had less than 60 days of service during the final 52 calendar weeks of the waiting period because of the unjustified and unwarranted personnel action ([5 C.F.R. 531.409\(d\)](#)).

3. In computing the back pay of an employee who is restored to the rolls after an improper personnel action, any overtime the employee would have earned during the period of the erroneous separation is to be included in the back pay even though the overtime was not actually scheduled. The method of computing overtime incident to a back pay award due an employee may be based on the average number of overtime hours worked by fellow employees occupying similar positions during the same period.

4. An employee who should have been selected for overtime work because a regulation or collective bargaining agreement provided for assignment of overtime work in a prescribed manner is entitled to back pay for the overtime not worked if the regulation or nondiscretionary provision of the agreement is violated. The appropriate authority must find that the action taken was unjustified or unwarranted, and direct that corrective action be taken.

The overtime will be computed on the basis of the number of hours worked by the employee selected to perform the overtime work during the same period.

5. Any allowances or differentials that the employee would have received if the improper personnel action had not occurred are included in the amount due the employee. This is true even though the employee did not physically remain in the location giving rise to entitlement to the allowance or differential.

6. In determining the amount of irregular or intermittent pay for physical hardship or hazard duty to which a GS employee would have been entitled, the civilian payroll office may assist the HRO to determine the number of days per week the employee performed each type of irregular or intermittent hardship or hazard duty during the 52 weeks preceding the unjustified or unwarranted separation for which they would have been compensated. The civilian payroll office may use an average of the amounts to make the necessary computations as authorized by the HRO.

7. Payment of environmental differentials on an actual exposure basis, or on the basis of hours in a pay status, must be computed in accordance with the OPM regulations and instructions. DoD determines entitlement to such differentials on the basis of the 52 weeks preceding the unjustified or unwarranted separation for which the FWS employee would have been compensated.

8. When DoD is not able to determine with certainty the number of hours that the intermittent employee would have worked during the period covered by the corrected personnel action, the HRO may estimate the amount of back pay. This estimate is determined by taking an average of the number of hours worked by other DoD employees under the same type of appointment and performing the same kind of work to which the employee in question would have been assigned during this period. The HRO also may determine the average number of hours a week the employee actually worked for a representative period preceding the unjustified or unwarranted personnel action (such as 26 or 52 weeks, whichever would represent a fairer approximation of the employee's earnings if he or she had actually worked), and use these average weekly hours to make the necessary computations.

★ C. Computation of Adjusted Gross Back Pay

1. Adjusted gross back pay means gross back pay less the offset for outside earnings, but before adding interest.

2. Under 5 C.F.R. 550.805(e), the civilian payroll office must determine the adjusted gross back pay by offsetting (deducting) any outside or interim earnings that were earned by an employee from other employment during the period covered by the corrective action. The amount of back pay entitlement is the difference between the amount of compensation the employee would have earned in government service, and the amount actually earned in employment during the period covered by the corrected personnel action. The amount of compensation the employee would have earned if the unjustified or unwarranted personnel action had not occurred includes all pay (including premium pay), allowances, and differentials.

The [outside or interim earnings from other employment, or from a business enterprise undertaken](#) to take the place of Federal employment, means gross earnings less losses and less certain expenses incurred in connection with the interim employment or business. Deductions for losses sustained in a venture unrelated to that separation, however, are not allowable.

3. The only earnings from other employment that may not be deducted from back pay are earnings from outside employment the employee already had before the unjustified suspension or separation. For example, if an employee worked 20 hours on an outside part-time job prior to separation from government employment, and during the period of separation worked 40 hours, [then](#) the amount representing the 20 hours additional time worked would be offset against the back pay computation. To clearly establish whether the pay for outside employment increased substantially during the period of separation, DoD should obtain a statement or affidavits from the employee covering his or her outside earnings.

★ D. Computation of Interest on Back Pay Awards

1. Under [5 U.S.C. 5596](#), interest shall be paid on all back pay awards that became final on or after December 22, 1987. In most cases, the actual date of the award or decision is not the date the decision becomes final, i.e., no longer subject to reconsideration or higher-level review or appeal. Interest begins to accrue on the effective date [on which the employee would have received the pay, allowances, and differentials had the unjustified or unwarranted personnel action not occurred](#). As a result, most computations will involve a series of effective dates, one for each date (usually a pay date) on which the employee failed to receive an amount of pay, allowances, and differentials because of the unjustified or unwarranted personnel action.

2. For purposes of computing back pay interest, an outside earnings offset is applied as a constant percentage offset to each payment of back pay for each pay period during the period covered by the corrected action. This percentage offset is determined by dividing the employee's outside earnings by the total amount of back pay owed to the employee prior to any deductions. [Section 550.805 of 5 C.F.R.](#) sets out procedures for the computation of back pay, and [5 C.F.R. 550.806\(b\)](#) addresses the computation of the amount of interest due to the employee.

3. DoD must issue interest within 30 calendar days of the date on which accrual of interest ends. If issuance of the interest payment is delayed more than 30 calendar days after the date on which accrual of interest ends, [then](#) interest must be recomputed based on a new ending date meeting the 30-day requirement.

4. The applicable interest rate is the "overpayment rate" adjusted quarterly by the Secretary of the Treasury and published in an IRS bulletin issued before the beginning of each quarter.

5. Interest is computed in accordance with the formula or computer software provided to civilian payroll offices by OPM. Taxes will not be withheld from interest payments on back pay awards. The civilian payroll office will provide employees with a

Form 1099-INT ([Interest Income](#)) for all interest payments. OPM has requested a formal opinion from IRS regarding the tax status of interest on back pay.

E. [Erroneous Payment Deductions](#). The following deductions are mandatory and necessary to achieve the “make whole” purpose of the back pay statute:

1. [Retirement Annuity Payments](#). Any employee who, as a result of separation that is subsequently determined by an appropriate authority to have been erroneous, has been in receipt of retirement annuity payments (either special payments or regular annuity payments) is indebted to the government for the gross amount of retirement annuity payments authorized for the period covered by the corrective action. Because the gross amount of annuity payments had already been reduced by required health benefits and life insurance premiums, the civilian payroll office recovers an amount of annuity from the back pay award equal to the gross annuity less health benefits and life insurance premiums, and transfers that amount to the retirement system. The government then recovers the amounts paid from the CSRS or FERS gross annuity for health benefits and life insurance from the respective carriers for those programs, and the retired employee’s account is satisfied. The civilian payroll office then must collect from the back pay due the employee the required amount for health benefits coverage during the period following restoration, and transfer that amount, plus the agency’s share, to OPM on the SF 2812 ([Report of Withholdings and Contributions for Health Benefits, Life Insurance and Retirement](#)).

a. As an example of the instruction in [subparagraph 060504.E.1](#), consider that the retired employee was entitled to a gross annuity of \$500 per month, less \$50 per month for health benefits coverage and \$50 per month for unreduced basic life insurance coverage after age 65, and optional insurance. The net amount payable to the annuitant in this example was \$400 per month. If the period of erroneous annuity payment was for only 1 month, [then](#) the gross indebtedness was \$500; however, the net amount of indebtedness to be withheld from the back pay award is \$400 (the amount the annuitant actually received).

b. Erroneous separations resulting in indebtedness to the retirement fund may occur in a number of circumstances, including: an erroneous separation resulting from removal for misconduct or poor performance that subsequently is overturned on appeal; a reduction-in-force action that subsequently is overturned on appeal; separation for retirement that subsequently is determined to have been coerced; and erroneous separation for retirement because of incorrect counseling about eligibility for retirement. The civilian payroll office must deduct the amount of the net erroneous retirement payments from the back pay award. The civilian payroll office must remit the appropriate amount payable to the U.S. Office of Personnel Management and, if a check payment, mail that payment to the U.S. Office of Personnel Management, Funds Control Branch, Room 1312, 1900 E Street, NW., Washington, D.C. 20415.

2. [Refund of Retirement Contributions](#). [Title 5, U.S.C., section 8342\(a\)](#) authorizes refund of an employee’s retirement contributions only upon absolute separation from the service or transfer to a position not subject to the law. An employee must be

separated or transferred for at least 31 consecutive days to be eligible for this refund. Therefore, a refund of retirement contributions paid to an employee based on a separation which subsequently is found erroneous and canceled by restoring the employee to duty retroactively so that there was no break in service removes the legal basis for the refund. A refund that was paid in error represents a debt due the retirement fund that must be deducted from any back pay entitlement. If the restored employee is entitled to back pay, then the civilian payroll office should contact OPM to determine the amount of refund, if any, to be offset against the back pay entitlement. A payment for the appropriate amount should be remitted to OPM at the address shown in subparagraph 060504.E.1.b.

3. Severance Pay. The gross severance pay paid to an erroneously separated employee at the time of his or her removal must be deducted from the back pay award upon restoration to duty.

4. Lump-Sum Payment for Annual Leave. The lump-sum payment that an erroneously separated employee received upon his or her removal must be refunded by the employee upon cancellation of the separation action. This is because the lump-sum payment for annual leave is authorized under 5 U.S.C. 5551(a) only upon separation from the service. Therefore, when a separation is canceled and the employee is restored to duty as of the date of separation, the lump-sum payment is considered erroneous. Any lump-sum received by the employee must be offset against the employee's back pay award, and the leave must be recredited to the employee's leave account. There is no authority to permit an employee to elect to retain payment or receive credit for the leave. The procedures for collecting leave payments are in subparagraphs 031203.C and 031203.D.

5. Order of Precedence. The order of precedence for deducting erroneous payments from back pay awards when the net amount of back pay is insufficient to cover all the deductions is as follows: retirement annuity payments or refunds of retirement contributions; severance pay; and lump-sum payment for accrued annual leave.

a. Employees may request OPM to waive recovery of erroneous payments of any amount from the Civil Service Retirement and Disability Fund. Requests for waiver should be submitted to the U.S. Office of Personnel Management, Office of Retirement Programs, Reconsideration and Debt Collection Division, Room 3H30, 1900 E Street, NW., Washington, D.C. 20415. Employees also may submit requests to that address to repay debts owed to the Civil Service Retirement and Disability Fund by installment deductions from salary.

b. For severance pay and lump-sum annual leave payments, any net indebtedness remaining after liquidation of back pay is subject to waiver (by the GAO or DFAS, as applicable) under the authority of 5 U.S.C. 5584.

F. Other Authorized Deductions

1. The retirement contribution is computed on the employee's gross back pay subject to retirement, and deducted after subtracting the earnings from outside

employment. Even if no amount of back pay is due the employee, because of excessive outside earnings, the employee must remit the appropriate amount of retirement fund contributions to DoD in order to receive full retirement credit for the period of the unjustified or unwarranted separation ([5 U.S.C. 8334\(c\)](#)).

★ 2. Both Social Security taxes, also known as Old Age Survivor Disability Insurance, and Medicare taxes are computed on the adjusted gross back pay and deducted. This is the back pay amount less the offset for outside earnings.

★ 3. Income tax withholdings are computed on the adjusted gross back pay less any part of back pay not subject to income tax deductions. Therefore, if the back pay amount includes any amount not subject to income tax deductions, such as nonforeign area cost-of-living allowances and contributions to the TSP, then compute the taxes after reducing the adjusted gross back pay by these nontaxable amounts.

★ 4. If applicable, health benefits premiums, life insurance premiums and TSP contributions may be made from the remaining back pay due the employee. Health benefits premiums for an employee restored to duty following an erroneous separation for retirement must be deducted if coverage under the health benefits program continued without interruption during the erroneous retirement.

★ G. Examples of Back Pay Computations. The following examples are set forth as an aid to computing back pay (figures are not actual but illustrative only):

Example 1:

An employee's gross back pay computation (based on basic pay only) is \$10,000. During the period covered by the corrective action, the employee earned \$7,000 from outside employment (interim earnings).

Gross back pay	\$10,000.00
Less interim earning	\$7,000.00
Subtotal (Adjusted Gross Back Pay)	\$3,000.00
Less authorized deductions	
Retirement deductions (CSRS) computed on gross back pay (\$10,000)	\$700.00
Federal tax computed on adjusted gross back pay (\$3,000)	\$750.00
State tax computed on the adjusted gross back pay (\$3,000)	\$120.00
Medicare computed on the adjusted gross back pay (\$3,000)	43.50
Total deductions	\$1,613.50
Net back pay	\$1,386.50

Example 2:

An employee's gross back pay computation is \$32,420, as follows:

Basic pay	\$31,000.00
Overtime pay	\$300.00
Holiday pay	\$120.00
On-call pay	\$1,000.00

The employee received lump-sum payments amounting to \$1,000, and net retirement payments (gross retirement less the amount withheld for health benefits and the amount withheld for post-retirement basic life insurance) amounting to \$10,000. During the period covered by the corrective action, the employee earned \$11,000 from outside employment (interim earnings).

Gross back pay	\$32,420.00
Less interim earning	\$11,000.00
Subtotal (Adjusted Gross Back Pay)	\$21,420.00

Less erroneous payments	
Erroneous retirement payments (not including FEHB and FEGLI premiums)	\$10,000.00
Erroneous lump-sum payments for annual leave	\$1,000.00
Total	\$11,000.00
Subtotal	\$10,420.00

Less other authorized deductions	
Retirement deductions (CSRS) computed on gross basic pay (\$31,000)	\$2,170.00
Federal tax computed on adjusted gross back pay (\$21,420)	\$5,355.00
State tax computed on adjusted gross back pay (\$21,420)	\$856.80
Medicare computed on adjusted gross back pay (\$21,420)	310.59
Health Benefits Premiums	\$1,116.00
Total	\$9,808.39

Net back pay	\$611.61
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060505. Restoration of Leave. Under 5 C.F.R. 550.805(g), annual leave that is restored to an employee as a result of the correction of an unjustified or unwarranted personnel action, and that is in excess of the maximum leave accumulation authorized by law, must be credited to a separate leave account for use by the employee. Annual leave in such a separate leave account must be scheduled and used as follows:

A. For a full-time employee, excess annual leave of 416 hours or less must be scheduled and used by the end of the leave year in progress 2 years after the date on which the annual leave is credited to the separate account. This period is extended by one leave year for each additional 208 hours of excess annual leave or any portion thereof. NOTE: For both part-time and full-time employees, the ending date of the time limit for use of excess annual leave is not necessarily exactly 2 years, or the additional years, as appropriate, from the restoration date. Rather, the time limit ends at the end of the appropriate leave year.

B. A part-time employee shall schedule and use excess annual leave in an amount equal to or less than 20 percent of the employee's scheduled tour of duty over a 52 calendar week period by the end of the leave year in progress 2 years after the date on which the annual leave is credited to the separate account. The agency shall extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the employee's scheduled tour of duty over a period of 52 calendar weeks.

C. To determine the time limitations for use of restored leave, see paragraph [050803](#).

060506. Health Benefits and Life Insurance

A. Health Insurance. [Title 5, U.S.C., section 8908](#) provides that if the enrollment of an employee who was removed or suspended without pay was terminated, and the employee is ordered restored to duty on the grounds that the removal or suspension was unjustified or unwarranted, he or she may elect to: (1) have the prior enrollment reinstated retroactive to the date it was terminated, with appropriate adjustments made in contributions and claims, to the same extent and effect as though the removal or suspension had not taken place; or (2) enroll the same as a new employee. NOTE: The statutory provisions of [5 U.S.C. 8908](#) do not apply when an employee was separated erroneously for retirement under conditions that entitle him or her to continued enrollment. In such cases, there is no need to restore health benefits coverage; it was transferred to the retirement system and automatically continued. Refer to the [Federal Employees Health Benefits Program Handbook](#) for additional information.

B. Life Insurance

1. If an employee is restored retroactively to duty with pay after an erroneous suspension or removal, **then** any insurance coverage the employee had before the improper action will continue as though the erroneous action never occurred. Retroactive salary deductions for life insurance, however, shall not be withheld from any back pay awarded for the period of separation or suspension. If death or accidental dismemberment occurs during the period between the employee's removal and the finding that the separation was erroneous, **then** insurance proceeds will be paid and premiums will be withheld from the back pay award for the period of separation or suspension. Refer to [5 U.S.C. 8706\(e\)](#) and [Federal Employees Group Life Insurance Handbook](#) for additional information.

2. An employee who had no insurance coverage prior to an erroneous suspension or removal, and who is restored to duty after the closing date of an open season for life insurance which occurred during the period between the employee's suspension or removal and restoration, is entitled upon restoration to elect life insurance coverage as permitted during the open season. Since coverage for basic life insurance is automatic, the effective date is the first day in a pay-and-duty status. For options A, B, and C, the effective date is the first day in a pay-and-duty status on or after the date the [SF 2817](#) (Life Insurance Election) is received by the employing office. An employee who had life insurance coverage prior to an erroneous suspension or removal, and who is restored to duty after the closing date of an open season for

life insurance which occurred during the period between the employee's suspension or removal and restoration, is entitled upon restoration to elect additional life insurance coverage as permitted during the open season. The effective date is the first day in a pay-and-duty status on or after the date the employing office receives the SF 2817.

★ 060507. Thrift Savings Plan. If an employee is awarded back pay, then the agency must correct errors that affect the employee's TSP account consistent with regulations prescribed by the Federal Retirement Thrift Investment Board. The payroll office should refer to 5 C.F.R. 1605 and Chapter 4, section 0417 of this volume for additional information.

060508. Payment of Reasonable Attorney Fees. Title 5, U.S.C., section 5596(b)(1)(A)(ii) provides for payment of reasonable attorney fees in accordance with the standards established under 5 U.S.C. 7701(g), under certain conditions. Under 5 C.F.R. 550.807, such payment is available in all back pay cases, without regard to the nature of the case or the appropriate authority in the case. HROs will determine entitlement to payment of attorney fees, and indicate the amount in the remarks on the SF 50.

060509. Reporting Back Pay to State Agencies. If an employee is awarded back pay, then see paragraph 060105 of this volume regarding notification of the state agency.