

**DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY**

DEPARTMENTAL PERSONNEL MANUAL SYSTEM

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DPM LETTER: 550-4

SUBJECT: Payment of Interest on Back Pay Awards

DATE: SEP 29 1980

1. BACKGROUND

5 U.S.C. 5596 authorizes the payment of back pay for the purpose of making an employee financially whole when it is found that the employee was affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction or denial of all or part of the pay, allowances and differentials otherwise due to the employee. This provision was amended by Public Law 100-202 to provide interest on all back pay awards that became final on or after December 22, 1987.

The Office of Personnel Management (OPM) has issued regulations implementing these provisions. The development and coordination of these regulations focused attention on the variety of situations which now fall within the scope of the back pay law but have not generally been considered "back pay awards". OPM has clarified that many delayed or corrective personnel and payroll actions, previously considered simple retroactive processing actions, are technically back pay awards and subject to interest payments in the same manner as a formal back pay award ordered by a court, the Comptroller General or the Merit Systems Protection Board.

2. ACTIONS COVERED

Detailed guidance on the actions covered by the back pay law may be found in the Federal Personnel Manual Supplement 990-2, Book 550, Subchapter S-8, Back Pay.

In general, the term "unjustified or unwarranted personnel action" includes both personnel and pay actions, alone or in combination, as well as the omission or failure to take an action or confer a benefit after approval by the properly authorized official. If an error occurs before proper approval, an unjustified or unwarranted action has

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occurred only when the error (1) resulted in the failure to carry out a non-discretionary administrative regulation or policy or (2) deprived the employee of a right granted by law, Executive Order, rule, regulation, or mandatory administrative policy.

Some of the more common examples of unjustified or unwarranted personnel actions include:

- o Failure to process a within-grade increase or promotion due to an administrative or clerical error by either the personnel or payroll office, **after final approval by the properly authorized official**. If an error occurs prior to this final approval, e.g., the supervisor or personnel office misplaces documents or delays processing, this would not be considered an administrative error because the time frame is discretionary and the administrative intent to act **at a particular time** cannot be established.
- o Failure to process a promotion or quality step increase within the time frames **mandated** by a non-discretionary administrative policy or collective bargaining agreement.
- o Failure to pay an employee overtime due to an administrative oversight, after the supervisor has authorized payment by certifying the time card. It should be noted that failure to post or a delay in posting overtime on the time card is not considered an administrative error.

3. TIME FRAME FOR PAYMENT OF INTEREST

The OPM regulation provides that an agency may end the accrual of interest up to 30 days before the date payment of interest is issued, i.e., actual paycheck issued to employee. This provides a window of 30 days within which personnel and payroll actions may be delayed and/or corrected without payment of interest. However, interest is due whenever a back pay award is made to the employee on or after the 31st day from the date the payment was due to the employee.

4. DOT POLICY ON PAYMENT OF INTEREST ON BACK PAY AWARDS

Interest will be automatically paid on **all** back pay awards when the payment date is on or after the 31st day after the date the employee was due the payment.

As an exception to this policy, automatic interest shall be stopped when either the personnel or payroll office determines that the retroactive pay action does not constitute a back pay award, i.e., the action was not the result of an unjustified or unwarranted personnel action as defined in the Federal Personnel Manual. Procedures to stop the payment of interest are outlined in Section 5 of this Letter.

5. PROCEDURE FOR PERSONNEL OFFICE TO STOP INTEREST PAYMENT

To stop the automatic payment of interest for those cases where there is no entitlement, the personnel office must:

- a. notify the payroll office immediately by telephone; and
- b. follow-up with written confirmation to the payroll office by forwarding the "Notification to Stop Interest on Back Payment", Attachment 1. If available in the personnel office, a fax machine may be used for transmittal of this form.

6. IMPLEMENTATION

The Consolidated Uniform Payroll System (CUPS) has historical data available on retroactive pay adjustments from December 18, 1988 to the present. Prior to this time, however, historical data on retroactive pay adjustments is not available in CUPS. For this reason, the following two-part implementation procedures will be utilized:

- a. For the period from December 22, 1987 (the effective date of the legislation) to December 17, 1988, CUPS will not make any interest payments on a blanket or automatic basis. Rather, it will be the responsibility of both the personnel and payroll office to identify individual cases of back pay awards for this time period where interest should now be paid.
- b. Beginning on December 18, 1988, the policy of automatic interest payments unless otherwise stopped on an individual exception basis, which is outlined in sections 4 and 5 above, will take effect.

7. EFFECTIVE DATE OF PAYMENT OF INTEREST TO EMPLOYEES

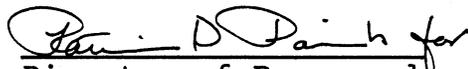
Due to programming requirements of CUPS, employees will not begin to receive interest payments on back pay awards until calendar year 1990. This delay will not change or affect the issuance of back pay awards as presently processed by CUPS. Additionally, this delay will not impact the implementation of the policy and procedures contained in this DPM Letter. Further information will be provided as soon as a specific date for the payment of interest is established by CUPS.

On an exception basis, operating personnel offices may request the payroll processing center to process interest payments on a manual basis for specific cases.

8. Timeliness of Processing of Personnel Actions

In light of the issues and new requirements discussed in this DPM Letter, the importance of timely processing of personnel actions must be given renewed emphasis. Operating administration personnel offices

should review their current processing procedures and ensure that appropriate measures are taken to process actions in a timely manner, thereby minimizing the payment of interest penalties.


Director of Personnel

Subject: ACTION: Notification to Stop Interest
on Back Pay Award

From: (Personnel Office)

To: (Servicing Payroll Processing Center)

Please do not process interest on back pay on the
following:

Name _____

SSN _____

Region _____

Cost Center _____

Effective Date of Action _____

Nature of Action _____

Reason _____

Name and Location of Employing Office _____

Approval

Title of Authorizing Official _____

Signature of Authorizing Official _____

Date _____