

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Delegation of Authority No. 400.2

**DELEGATION OF AUTHORITY TO
FEDERAL SECURITY DIRECTORS**

1. PURPOSE: This delegation establishes the authority of a Federal Security Director (FSD) to implement transportation security. This authority includes, but is not limited to, planning, exercising, screening, regulatory compliance, security and law enforcement activities related to transportation security.

2. SCOPE: This delegation applies to all employees holding the position of FSD. This delegation is limited to the FSD's assigned area(s) of responsibility. This delegation clarifies existing FSD authority, but it does not expand upon it. Other guidance provides more specificity on the processes, roles, and responsibilities of FSDs.

3. AUTHORITIES: This delegation is consistent with the authorities found in the following:

- a. Titles 6 and 49, United States Code
- b. Department of Homeland Security Appropriations Acts
- c. Department of Homeland Security Delegation Number 7060.2

4. COORDINATION AND CONSULTATION:

- a. The FSD has complete authority to receive sensitive law enforcement and intelligence information in the furtherance of transportation security, consistent with the FSD's security clearance.
- b. In appropriate circumstances, or as required by management directives or other policies, the FSD must consult with all appropriate TSA components to ensure that actions are consistent with laws, regulations, policies, and procedures. In particular, the FSDs are responsible for coordinating closely with the Office of Law/Enforcement/Federal Air Marshal Service (OLE/FAMS) and FAMS Special Agents in Charge (SAC) who are in a separate chain of authority, and have the responsibility for establishing law enforcement policy, managing criminal investigations that implicate national security, and ensuring the collection of data on all criminal matters.
- c. Whenever the exercise of any of these responsibilities requires the assistance of other federal agencies, state agencies, or local governments, the FSD must act in a cooperative and collaborative manner with those parties.

- d. The FSD must exercise authorities in compliance with the TSA incident management process.
- e. The FSD must coordinate with the Privacy Officer and Office of Chief Counsel before collecting personal information about individuals in a new or not previously authorized manner.

5. DELEGATED AUTHORITY: By virtue of the authority vested in me by law, I hereby delegate the following authorities to the FSDs to be exercised in accordance with TSA regulations, policies, and procedures within the FSD's assigned area(s) of responsibility:

- a. Clearing, closing, or securing airports and related facilities.
- b. Canceling, delaying, or returning flights.
- c. Managing TSA's security resources placed under the FSD's direct line of authority, including but not limited to TSA personnel and equipment.
- d. Assessing threats to transportation, developing strategies and plans for dealing with threats, and making other plans related to security, including coordinating countermeasures.
- e. Serving as the senior TSA manager and the primary point of coordination for transportation security in all modes (except maritime transportation). This authority includes but is not limited to crossing through perimeters or barricades established by law enforcement to respond to the scene(s) of transportation security incidents, making inquiries and investigating such incidents, directing and coordinating various law enforcement and other entities as appropriate when in the interest of transportation security, ordering the deployment of personnel necessary to counter the risk of criminal violence or national security concerns, and interacting with federal, state and local authorities, private entities, and governmental communities, as needed.
- f. Developing and coordinating security operations for all transportation modes, including coordination with the United States Coast Guard (USCG) in order to assist the USCG in its mission to protect America's maritime borders and coordination with FAMS SAC.
- g. Providing for the screening of all passengers and property, including United States mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard an aircraft operated by an air carrier, air cargo carrier or foreign air carrier in air transportation or intrastate air transportation.
- h. Approving and amending Airport Security Programs (ASP) and ensuring that the ASP complies with applicable guidance and national policy regarding the FSD's role and authorities for day-to-day airport security incidents, coordination of air piracy security responses, law enforcement responses to security incidents in coordination with FAMS SAC, and transportation security planning.

- i. Inspecting, maintaining, and testing security facilities, equipment, and systems.
- j. Inspecting, reviewing, and retaining copies of records of any TSA regulated entity or person that are relevant to transportation security.
- k. Enforcing TSA's transportation security-related regulations, orders, and requirements.
- l. Issuing administrative subpoenas.
- m. Assessing and inspecting any entity or person covered under statutes or regulations enforced by TSA to ensure compliance with any regulation, order, security program, security directive, or emergency amendment.
- n. Issuing warning notices and letters of correction and notices of violations.
- o. Deploying appropriate personnel, consistent with the FSDs' responsibilities as expressed in planning documents and the ASP, to any area of the airport as necessary to counter the risk of criminal violence, the risk of aircraft piracy at the airport, the risk to air carrier operations at the airport, or to meet national security concerns.
- p. Identifying threats to critical transportation systems.
- q. In coordination with FAMS SAC, ensuring that appropriate interagency agreements, security planning, security exercises, and security training are in place to implement an effective security and law enforcement response to a security incident in any transportation mode, including air piracy.
- r. For matters within their immediate, daily purview, such as passenger and baggage screening or cargo inspections, initiating and overseeing investigations of violations of transportation security statutes and regulations or other applicable laws, while ensuring close and appropriate coordination with TSA HQ, and other federal, state and local investigative or prosecutorial agencies as warranted.
- s. For matters within their purview, administering oaths in the course of investigations and inquiries.
- t. Hiring, training, managing, supervising, disciplining, rewarding, and testing assigned and detailed personnel.
- u. Administering oaths of office to new employees.
- v. Entering into locally implemented Memoranda of Understanding (MOU) and Memoranda of Agreement (MOA) with local federal offices, state agencies, local governments, and other public and private entities. However, the following MOUs and MOAs require appropriate prior approval by HQ: (1) an MOU or MOA that raises

significant policy issues, (2) an MOU or MOA that entails the sharing of terrorism information, homeland security information, or law enforcement information related to terrorism or homeland security, or (3) an MOU or MOA that commits resources.

- w. Developing and managing, in consultation and coordination with appropriate TSA offices, Visible Intermodal Prevention and Response (VIPR) team activities, security operations, and exercises in any transportation mode pursuant to 6 U.S.C. § 1112.
- x. Exercising limited law enforcement authority for the purpose of gaining prompt access to the scene(s) of transportation security incidents or responding to matters implicating transportation security, and ordering the deployment of personnel necessary to counter the risk of criminal violence or national security concerns.

6. REDELEGATION: All delegations may be re-delegated to appropriate and qualified staff members in accordance with applicable TSA policies and procedures.

7. CANCELLATION: This delegation supersedes Delegation Order 400.1, dated February 24, 2006. This delegation does not supersede other specific delegations to the Federal Security Directors.

8. EFFECTIVE DATE: This delegation is effective immediately.



Kip Hawley
Assistant Secretary

Dated: 1/16/09

Filing Instructions: File 400.1

Effective Date: Date of Signature

Review Date: Annually from Effective Date

TSA Associate Administrators, Assistant Administrators and equivalents, Area Directors and FSDs Point-of-Contact: David Bassett, Operational Plans and Programs, Security Operations



To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Innovation and Team Spirit.

NOTE: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114 (n)), this directive and all related Handbooks, Attachments, and Appendices, establish Transportation Security Administration (TSA) policy and must be applied accordingly.

REVISION: This revised directive cancels and supersedes TSA MD 1100.55.10, *Back Pay*, dated March 30, 2009.

SUMMARY OF CHANGES: Section 4, Definitions, moved to the Handbook to TSA MD 1100.55-10, *Back Pay*, Section 5, Responsibilities, updated, Section 6, Policy, revised, Section 8, Approval and Effective Date, updated; and various clarifying administrative changes throughout the directive.

1. **PURPOSE:** This directive provides TSA policy and procedures for authorizing the payment of back pay and reasonable attorney fees based on the specific provisions described in this policy.
2. **SCOPE:** This directive applies to current and former TSA employees and applicants for TSA employment who were determined by an appropriate authority to have been subjected to an unjustified or unwarranted personnel action resulting in withdrawal or reduction of all or part of the pay and incentives to which the employee was otherwise due. This directive may also apply to settlement agreements (please see [TSA MD 1100.55-9, *Settlement Agreements*](#), for additional information) between TSA and a current or former employee or applicant for TSA employment. Similarly, this directive may apply to the pay implications of corrections to mistakes or errors, or changes in policy.
3. **AUTHORITY:** The Aviation and Transportation Security Act, Pub. L. 107-71 (ATSA)
4. **DEFINITIONS:** See the Handbook to [TSA MD 1100.55-10, *Back Pay*](#).
5. **RESPONSIBILITIES:**
 - A. The Assistant Administrator for Human Capital (AA/OHC) is responsible for:
 - (1) Ensuring that provisions of settlement agreements and/or decisions rendered by an appropriate authority, which correct or direct the correction of unjustified or unwarranted personnel actions, are implemented in a timely manner in accordance with this directive;
 - (2) Ensuring that advice and guidance is provided to employees concerning back pay and reinstatement of benefits;
 - (3) Ensuring that [TSA Form 1155-1, *Employee Back Pay Notification and Benefits Option Checklist*](#) is distributed to employees subject to restoration of pay and benefits; and
 - (4) Administering this directive and ensuring that it supports the mission of the agency.

B. The Office of Chief Counsel is responsible for:

- (1) Providing advice and guidance to affected TSA managers and OHC concerning:
 - (a) Implementing the terms of settlement agreements, and
 - (b) Implementing decisions rendered by an appropriate authority, which correct or direct the correction of unjustified or unwarranted personnel actions.
- (2) Negotiating and drafting settlement agreements, when appropriate.

C. An affected employee/applicant is responsible for:

- (1) Providing information to TSA, such as wages earned during the period the employee/applicant was separated or unable to work due to unjustified or unwarranted personnel actions, to help TSA make appropriate back pay calculations; and
- (2) Completing and submitting [TSA Form 1155-1](#), and other applicable Federal forms, within time limits specified by the determination awarding back pay, or by the agency. Failure to provide information requested will delay payment of any back pay due the employee. An employee's failure to provide information needed to properly compute back pay may result in a claim of enforcement being denied by the appropriate authority.

6. POLICY:

- A. TSA shall provide appropriate back pay based on a determination made by an appropriate authority that an employee was affected by an unjustified or unwarranted personnel action which resulted in a loss of all or part of the pay or incentives to which the employee was entitled.
- B. TSA shall compute, for the period covered by the determination (back pay period), the pay and incentives the employee would have received if the subject personnel action had not occurred. For purposes of computing back pay, the employee should be treated as if they worked their regular tour of duty for the agency during the back pay period.
- C. TSA funds may be used to provide back pay to a TSA employee or former employee when an appropriate authority issues a decision as described in Sections 6A and 6B. The employee's program office will identify the funding source for payments.
- D. An applicant for TSA employment may be eligible to receive back pay in accordance with an Equal Employment Opportunity Commission (EEOC) determination or a decision by the Secretary, Department of Homeland Security (DHS) or designee. TSA funds may be used to pay an applicant for employment as provided by an EEOC or DHS Secretary determination.
- E. The provisions of this directive and the accompanying Handbook may apply in matters for which TSA enters into a settlement agreement with a current or former employee or an applicant for employment with TSA. TSA funds may be used to provide back pay granted under the terms of a settlement agreement. Back pay will be calculated in accordance with the

provisions of this directive unless the settlement agreement contains specific provisions dealing with such calculations.

- F. Attorney fees will be paid only if a determination to do so was made in writing by an appropriate authority or specifically called for by the terms of the settlement agreement. The employee's program office will identify the funding source for payment of attorney fees and costs.
- G. No employee will be entitled to receive greater pay or incentives than he or she would have been entitled to receive if the unjustified or unwarranted personnel action had not occurred.
- H. Determining Entitlement to Back Pay:
 - (1) Back pay shall be paid when an appropriate authority determines, based on provisions of applicable law, rule, regulation, or TSA policy, that an employee experienced withdrawal, reduction, or denial of pay or incentives because of an unjustified or unwarranted personnel action;
 - (2) Requirement for a Timely Appeal: The employee or the employee's representative must initiate a claim, as noted below, in a timely manner:
 - (a) An appeal or grievance in accordance with TSA policies,
 - (b) A claim against the United States Government, or
 - (c) A discrimination complaint.
 - (3) Requirement for a Determination by an Appropriate Authority: The appropriate authority's determination must be in writing and must conclude that the employee's pay or incentives were withdrawn, reduced, or denied due to an unjustified or unwarranted personnel action; and
 - (4) Requirement for Correction of the Personnel Action: The written determination by the appropriate authority must correct or direct the agency to correct the personnel action which caused the loss of the employee's pay or incentives.

I. Time Limitations Affecting Back Pay:

- (1) TSA will not authorize back pay for a period beginning more than six (6) years from the date of the filing of a timely appeal, or, absent such filing, the date of the administrative determination that the employee is entitled to back pay, consistent with this directive;
- (2) When a determination that the employee is entitled to back pay is based on a complaint filed by way of the EEO process, the time limitation for the back pay is two (2) years prior to the date the complaint was originally filed; and
- (3) Where a claim for back pay is based on an employee's exempt or nonexempt status with regard to premium pay, TSA will apply a two (2)-year time limitation on claims.

A three (3)-year time limitation will apply for willful violations of TSA premium pay provisions. See [TSA MD 1100.55-8, Premium Pay](#).

J. Calculating a Back Pay Award:

- (1) Where the requirements for entitlement to back pay are met, the amount of back pay will be calculated consistent with the provisions of this directive and the [TSA Handbook to MD 1100.55-10, Back Pay](#); and
- (2) For decisions involving a removal or any suspension action, the time period covered by the back pay award ends on the date OHC processes the personnel action cancelling the removal action, restoring the employee to TSA's rolls. Alternatively, if the employee fails to follow instructions regarding the timely return of documents necessary to process the back pay award, the back pay award time period will end.
 - (a) When the employee is returned to TSA's rolls, he or she will be placed on excused absence (administrative leave), pending completion of any required background investigations and/or training needed to return the employee fully to duty;
 - (b) The employee's earnings while on administrative leave will be based on a straight 40-hour work week for a full time employee (i.e. Monday – Friday, 8:00 a.m. – 4:30 p.m.);
 - (c) A part-time employee will receive earnings based on the number of hours in the official tour of duty, as documented on the SF50 Personnel Action that is in effect prior to the personnel action that is being corrected; and
 - (d) While on administrative leave, the employee will receive no premium pay or differential pay.

K. Payment of Reasonable Attorney Fees and Costs:

- (1) Attorney fees and costs shall only be allowed for the services of an active member in good standing of the Bar of a state, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States, and for services of law clerks, paralegals, or law students who are assisting members of a Bar. No payment may be made for the services of any TSA employee, other Federal Government employee, or non-attorney union representatives;
- (2) If an employee satisfies the requirements for back pay entitlement, reasonable attorney fees and costs may be paid when the appropriate authority determines in writing that their payment is justified and in the interest of justice; and
- (3) In accordance with section 706(k) of the Civil Rights Act of 1964, as amended, attorney fees and costs are payable as prescribed when an EEOC finding of prohibited discrimination is the basis for correcting an unjustified or unwarranted personnel action.

7. **PROCEDURES:** Refer to the [Handbook to TSA MD 1100.55-10, Back Pay](#).

8. **APPROVAL AND EFFECTIVE DATE:** This policy is approved and effective the date of signature unless otherwise specified.

APPROVAL

Signed

October 29, 2014

Karen Shelton Waters
Assistant Administrator for Human Capital

Date

EFFECTIVE

Date:

Distribution: Administrator, Deputy Administrator, Assistant Administrators, Regional Directors, Federal Security Directors, Supervisory Air Marshals in Charge, Business Management Division Directors, Administrative Officers, and Human Resources Specialists

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Transportation Security Administration

Office of Human Capital

TSA MD 1100.55-10, Handbook

Back Pay

Policy Effective: March 30, 2009
Handbook Published: March 30, 2009
Handbook Revised: October 29, 2014

APPROVAL

Signed

Karen Shelton Waters
Assistant Administrator for Human Capital



Transportation
Security
Administration

This Handbook and all related Appendices and/or Attachments contain stipulations to implement the provisions of TSA MD 1100.55-10, Back Pay. Until such time as TSA MD 1100.55-10 is rescinded, the Management Directive, Handbook, Appendices, and any Attachments are considered TSA policy, and must be applied accordingly.

Summary of Changes:

- Section A, Definitions were added, updated Definition 2.
- Section G, updated language under G.2.

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A. Definitions:

- (1) Applicant: An individual who submitted a resume or other similar documentation of work experience and education in anticipation of consideration for selection or placement in a vacant TSA position.
- (2) Appropriate Authority: A person or an entity having authority in the case at issue to correct or direct the correction of an unjustified or unwarranted personnel action, or to enter into a settlement agreement on behalf of the agency, including a court, the Merit Systems Protection Board (MSPB), the Equal Employment Opportunity Commission (EEOC), the Secretary of the Department of Homeland Security (DHS) or his designee, the Office of Professional Responsibility Appellate Board (OAB), the Administrator of the TSA, or other TSA component or official to whom such authority is delegated.
- (3) Back pay: Payment awarded by an appropriate authority for pay and incentives lost by an employee due to an unwarranted or unjustified personnel action, or to resolve a matter in a settlement agreement.
- (4) Employee: An individual who is or has been employed by TSA to perform specific duties and responsibilities assigned to a position.
- (5) Pay or incentives: The pay, leave, and other monetary employment benefits an employee is entitled to by statute, regulation, or TSA policy and which are payable by the TSA during periods of TSA employment.
- (6) Unjustified or unwarranted personnel action: An act of commission or omission (i.e., failure to take an action or confer a benefit) that an appropriate authority subsequently determines was unjustified or unwarranted under applicable law, rule, regulations or TSA policy. Such actions include personnel actions and pay actions (alone or in combination). No unjustified or unwarranted personnel action is deemed to have occurred where a back pay term is provided in a settlement agreement.

B. General Requirements: When an appropriate authority issues a decision which corrects or orders the correction of an unjustified or unwarranted personnel action, and which finds that the unjustified or unwarranted personnel action resulted in the withdrawal, reduction, or denial of all or part of the pay or incentives due an employee, entitlement to back pay must be determined and calculated.

- (1) The employee shall be deemed to have performed services for TSA for which compensation is due during the period covered by the corrective action.
- (2) TSA shall compute for the period covered by the corrective action the pay and incentives the employee would have received if the unjustified or unwarranted personnel action had not occurred. To provide information needed by TSA to determine

entitlement to back pay and benefits, an employee must complete and submit [TSA Form 1155-1, *Back Pay Notification and Benefits Option Checklist*](#).

- (3) Depending on the situation, an employee may also be required to submit some or all of the following documentation, as applicable:
 - (a) [TSP-1, *Thrift Savings Plan Election Form*](#);
 - (b) [SF-2809, *Employee Health Benefits Election Form*](#);
 - (c) [SF-2817, *Life Insurance Election Form*](#); or
 - (d) [SF-1199A, *Direct Deposit Sign-Up Form*](#), including a copy of a voided check.

C. Requirement for an Administrative Determination: The requirement for an administrative determination is met when an appropriate authority issues a written determination that an employee has been affected by an unjustified or unwarranted personnel action which resulted in the withdrawal, reduction, or denial of all or part of the pay and incentives otherwise due to the employee.

D. Requirement for Correction of Personnel Action: The requirement for correction of a personnel action is met when an appropriate authority, upon review and consistent with law, Executive Order, rule, regulation, or TSA policy, corrects or directs the correction of an unjustified or unwarranted personnel action which resulted in the withdrawal, reduction, or denial of all or part of the pay and incentives otherwise due to the employee.

E. Time Limitations Affecting Back Payments:

- (1) TSA will not authorize pay and incentives in any case for a period beginning more than six years before the date of the filing of a timely appeal, or, absent such filing, the date of the administrative determination that the employee is entitled to back pay.
- (2) TSA will apply a two-year limitation for back pay claims dealing with an employee's exempt or non-exempt status (three-year limitation for willful violations). See [TSA MD 1100.55-8, *Premium Pay*](#).

F. Back Pay Limitations:

- (1) No employee shall be granted more pay and incentives than he or she would have been entitled to receive if the unjustified or unwarranted personnel action had not occurred.
- (2) No back pay shall be awarded for:
 - (a) Any period during which the employee was not ready, willing, and able to perform his or her duties because of an incapacitating illness or injury. However,

upon written request, an employee may be granted any sick or annual leave available to him or her for a period of incapacitation if the employee can establish that the period of incapacitation was the result of illness or injury.

- (b) Any period during which the employee was unavailable to perform his or her duties for reasons other than those related to the unjustified or unwarranted personnel action.
- (c) Any time period after failure to submit required checklists and forms.

G. Computing Back Pay Awards: The following amounts shall be included when computing a back pay award:

- (1) Any gross pay (i.e., before any deductions) to which the employee would have been entitled including any non-competitive promotion(s) that may have been received by employees occupying similar positions during the period of back pay, such as promotions granted to employees assigned as Transportation Security Officer (TSO) positions from the D band to the E band.
- (2) Any Comparability Equivalent Increase, Transportation Success Increase, Transportation Officer Performance System Increase (based on the rating the employee would have received, if supportable; otherwise, based on a presumed rating of Achieved Expectations), and locality-based increase paid to employees occupying similar positions.
- (3) Any incentive, such as a retention incentive approved for payment to employees occupying TSO positions at certain airports, as long as the official duty station for the employee was the airport for which the incentive was approved.
- (4) The following amounts shall be deducted from any amount of back pay award:
 - (a) Any amounts earned by an employee from other employment (including self-employment) undertaken during the time the employee was separated or unable to perform duties because of the unjustified or unwarranted personnel action (calculate gross earnings less any associated business losses and ordinary and necessary business expenses);
 - (b) Any amounts earned by an employee from expansion of a “moonlighting” position the employee held while employed by TSA prior to the unjustified or unwarranted personnel action (only earnings received for expanded hours worked in the “moonlighting” employment which would have exceeded the hours worked prior to the separation);
 - (c) Any payments received from the Government as a result of the unjustified or unwarranted personnel action which, in the case of payments received from a Federal employee retirement system, shall be returned to the appropriate system.

The following payments shall be recovered from the back pay award prior to payment:

- (i) Retirement annuity payments (except health benefits and life insurance premiums);
- (ii) Refunds of retirement contributions;
- (iii) Severance pay;
- (iv) Lump sum payments for unused annual leave;
- (v) Mandatory employee retirement contributions to Federal Employees Retirement System (FERS) or Civil Service Retirement System, as appropriate;
- (vi) Social Security taxes and Medicare taxes;
- (vii) Health benefits and life insurance premiums, if coverage continued during the period of erroneous separation;
- (viii) Life insurance premiums if coverage continued during a period of erroneous retirement; coverage was stopped during an erroneous separation and the employee suffered death or accidental dismemberment during that period; or additional premiums are owed due to a retroactive pay increase;
- (ix) Federal income tax withholdings; and
- (x) Other authorized deductions.

NOTE: In general, there will be no deductions from back pay awards for unemployment benefits. States will generally seek reimbursement directly from the employee for unemployment compensation payments based on the cancellation of the separation action. However, if TSA is billed by the appropriate state for such funds, TSA will in turn bill the employee.

H. Correcting Leave Balances:

- (1) Annual Leave
 - (a) Annual leave restored to an employee in excess of the maximum leave accumulation authorized by law shall be credited to a separate leave account for use by the employee, and must be used in accordance with the following standards:

- (i) A full-time employee must schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress two years after the date on which the annual leave is credited to the separate account. TSA shall extend this period by one leave year for each additional 208 hours of excess annual leave or any portion thereof.
- (ii) A part-time employee must 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 period of 52 calendar weeks, by the end of the leave year in progress two years after the date on which the annual leave is credited to a separate account. TSA shall extend this period by one 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.

NOTE: The time to schedule and use excess annual leave will be determined based on the date an employee returns to his or her duty station.

(2) Sick Leave

- (a) Sick leave shall be restored to the balance held prior to the unjustified or unwarranted personnel action.
- (b) The restored sick leave balance shall be increased by the amount of sick leave which would have been earned during the period of separation from TSA.
- (c) Any sick leave which may have been used during the period of separation from TSA will be subtracted from the sick leave balance.

I. Correcting Thrift Savings Plan (TSP): Errors that affect an employee's TSP account must be corrected consistent with regulations prescribed by the Federal Retirement Thrift Investment Board.

- (1) Employees may choose to make retroactive TSP contributions covering the period of separation due to the unjustified or unwarranted personnel action. (NOTE: For employees covered under FERS, matching contributions will be made by the agency, as appropriate.)
 - (a) Employees will be given the option to have the contribution election they had on file at the time of the unjustified or unwarranted personnel action reinstated for purposes of retroactive TSP contributions, or to submit a new TSP-1, *Thrift Savings Plan Election Form*.
 - (b) Any employee retroactive TSP contributions will be deducted from the amount of the back pay award.

- (2) Employees may choose to make current TSP contributions by submitting a current TSP-1, *Thrift Savings Plan Election Form*.

J. Health and Life Insurance:

(1) Health Insurance

- (a) An employee may elect to have 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 unjustified or unwarranted personnel action had not taken place; or
- (b) An employee may elect to enroll in the same manner as a new employee, by submitting a new SF-2809, *Employee Health Benefits Election Form*.
- (c) An employee who converted to an individual health insurance contract during the period of an unjustified or unwarranted personnel action may receive a refund of the premiums paid for that coverage if proof of premiums can be provided to TSA.

NOTE: Item (b) does not apply when an employee was erroneously separated via a retirement personnel action under conditions which 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.

(2) Life Insurance

- (a) An employee who is retroactively restored to duty with pay will have life insurance coverage as though the erroneous action never occurred. However, retroactive salary deductions for life insurance shall not be withheld from any back pay awarded for the period of the unwarranted or unjustified personnel action.
- (b) If death or accidental dismemberment occurs during the period between the employee's removal and the finding that the personnel action was unjustified or unwarranted, insurance proceeds will be paid and premiums will be withheld from the back pay award for the period of the unjustified or unwarranted personnel action.
- (c) An employee who had no life insurance coverage prior to the unjustified or unwarranted personnel action is allowed to elect life insurance coverage, as permitted during an open season. Additional life insurance coverage may also be elected by the employee if he or she is restored to duty after the life insurance open season has closed. The effective date of the coverage is generally the first day in a pay and duty status on or after the date a SF-2817, *Life Insurance Election Form*, is received by TSA.

- (d) An employee who opted to participate in Temporary Continuation of Coverage may request a refund of premiums if appropriate payment statements for the period of the coverage are provided to TSA.

K. Interest Computations: (applies only if interest is awarded by an appropriate authority).

- (1) Interest begins to accrue on the date or dates (usually one or more pay dates) on which the employee would have received the pay and incentives if the unwarranted or unjustified personnel action had not occurred.
- (2) Interest accrual ends at a time selected by TSA that is no more than 30 days before the date of the back pay interest payment. No interest is payable if a complete back pay payment is made within 30 days after any erroneous withdrawal, reduction, or denial of a payment, and the interest accrual ending date is set to coincide with the interest accrual starting date.
- (3) When computing the amount of interest due, TSA will utilize an Office of Personnel Management (OPM) automated interest rate calculator or similar tool.
- (4) TSA shall compute interest on the amount of back pay calculated before making any deductions for erroneous payments.
- (5) Rate(s) of interest used to compute the interest payment shall be the annual percentage rate or rates established by the Secretary of the Treasury for the period or periods of time for which interest is payable (these rates are published at <http://www.OPM.gov>).
- (6) Interest shall be compounded daily.
- (7) TSA shall compute the amount of interest due, and shall issue the interest payment within 30 days of the date on which accrual of interest ends.
- (8) To the extent feasible, TSA shall issue payments of back pay and interest simultaneously. If all or part of the payment of back pay is issued on or before the date on which accrual of interest ends, and the interest payment is issued after the payment of back pay is issued, the amount of the back pay paid shall be subtracted from the accrued amount of back pay and interest, effective with the date the payment of back pay was issued. Interest shall continue to accrue on the remaining unpaid amount of back pay (if any) and interest until the date on which accrual of interest ends.

L. Payment of Reasonable Attorney Fees:

- (1) An employee or an employee's personal representative may submit a request for payment of reasonable attorney fees and costs to the appropriate authority who decided that an unjustified or unwarranted personnel action was taken which resulted in the withdrawal, reduction, or denial of all or part of the pay and incentives otherwise due the employee.
 - (a) Such a request may only be presented to the appropriate authority which corrected or directed the correction of the unjustified or unwarranted personnel action.
 - (b) The appropriate authority to which a request for payment of attorney fees and costs is made usually provides TSA the opportunity to respond to such a request.

NOTE: Attorney fees and costs will not be paid in connection with cases involving TSA's OAB.

- (2) When an appropriate authority corrects or directs the correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction or denial of all or part of the pay and incentives otherwise due an employee, the payment of reasonable attorney fees shall be deemed warranted only if:
 - (a) Such payment is in the interests of justice, as determined by the appropriate authority.
 - (b) There is a specific finding by the appropriate authority setting forth in writing the reasons such payment is in the interest of justice.
- (3) When an appropriate authority determines that such payment is warranted, it shall require payment of attorney fees and costs in an amount determined to be reasonable by the appropriate authority. When an appropriate authority determines that such payment is not warranted, no such payment shall be required.
- (4) When an appropriate authority determines that an employee has been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay and incentives otherwise due the employee based on a finding of discrimination prohibited under law, the payment of attorney fees and costs shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights act of 1964, as amended.
- (5) Payment of reasonable attorney fees and costs shall be allowed only for the services of an active member in good standing of the Bar of a state, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States, and for the services of law clerks, paralegals, or law students, when assisting members of a Bar. No fees may be paid for the services of any employee of TSA or the Federal government.

- (6) Payment of reasonable attorney fees and costs may be a negotiated term of a settlement agreement and processed accordingly.