

(iii) Whether he or she failed to disclose material facts in his or her possession.

(iv) Whether he or she could have determined that the payment was erroneous.

(c) *Equity and good conscience.* (1) “Equity and good conscience” as defined in equity and the commonly understood meaning thereof shall be attached to waiver determinations. In addition, the decision must be made whether the exercise of waiver of overpayment would be in opposition to the basic purpose of title VII of the Foreign Service Act (22 U.S.C. 1061, *et seq.*) and would injure the administration of such title.

(2) The following guides will also be applied, as appropriate:

(i) Waiver of overpayment may be granted when an individual by reason of receipt of the overpayment has: (a) Relinquished a valuable right; or (b) changed his or her position for the worse.

(ii) Waiver of overpayment may be granted when the individual has consistently acted in good faith regarding the overpayment.

(iii) Waiver of overpayment cannot be granted when the individual has been found to be at fault or if the overpayment has been obtained by fraud.

§ 17.6 Notice of decision and right of appeal.

If the annuitant, without good cause shown, fails or refuses to produce the requested additional information or authorization, the Department of State is entitled to make adverse inferences with respect to the matters sought to be amplified, clarified, or verified.

(a) The final administrative decision shall be reduced to writing and the Director shall send it expeditiously to the annuitant.

(b) If the decision is adverse to the annuitant, the notification of the decision shall include a written description of the annuitant’s rights of appeal to the Foreign Service Grievance Board, including time to file, where to file, and applicable procedure.

§ 17.7 Appeal.

The Foreign Service Grievance Board shall entertain any appeal under this

part in accordance with the regulations of the Board set forth in 22 CFR part 16. The Director of the Office of Finance, with such assistance as may be necessary, shall represent the Department in proceedings before the Board. The decision of the Board is final.

EFFECTIVE DATE NOTE: At 71 FR 16229, March 31, 2006, part 17 was revised, effective May 1, 2006. For the convenience of the user, the revised text is set forth as follows:

PART 17—OVERPAYMENTS FROM THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND UNDER THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM (FSRDS) AND THE FOREIGN SERVICE PENSION SYSTEM (FSPS)

Sec.

17.1 General.

17.2 Conditions for waiver of recovery of an overpayment.

17.3 Fault.

17.4 Equity and good conscience.

17.5 Financial hardship.

17.6 Ordinary and necessary living expenses.

17.7 Waiver precluded.

17.8 Burdens of proof.

17.9 Procedures.

AUTHORITY: 22 U.S.C. 4047(d); 22 U.S.C. 4071(b); 5 U.S.C. 8470(b); 5 CFR 845.301–07.

§ 17.1 General.

This part establishes procedures for notifying individuals of their rights if they have received an overpayment from the Foreign Service Retirement and Disability Fund under Chapter 8 of the Foreign Service Act of 1980, as amended, including their right to contest the determination that there has been an overpayment and the right to request a waiver of recovery of the overpayment. This part also provides the procedures for administrative determination of these rights and for appeals of negative determinations.

§ 17.2 Conditions for waiver of recovery of an overpayment.

(a) *Foreign Service Retirement and Disability System.* Recovery of an overpayment from the Foreign Service Retirement and Disability Fund under the Foreign Service Retirement and Disability System may be waived pursuant to section 4047(d), of title 22, United States Code when the individual is without fault and recovery would be against equity and good conscience or administratively infeasible.

(b) *Foreign Service Pension System.* Recovery of an overpayment from the Foreign Service Retirement and Disability Fund under the Foreign Service Pension System may be