

Job Aid 2 - Relief from Liability

Certifying Officers are accountable for and required to reimburse personally the government the amount of any illegal or otherwise improper payment. This is called pecuniary liability. Pecuniary liability is imposed by law under 31 U.S.C. § 3528 and is automatic. Relief from liability is a subsequent process that Certifying Officers may petition for. The grounds upon which relief is granted are outlined in 31 U.S.C. § 3528.

31 U.S.C. § 3528 - Relief from Liability

Relief

The Comptroller General may relieve a certifying official from liability when the Comptroller General decides that—

- (A) the certification was based on official records and the official did not know, and by reasonable diligence and inquiry could not have discovered, the correct information; or
- (B)
 - (i) the obligation was incurred in good faith;
 - (ii) no law specifically prohibited the payment; and
 - (iii) the United States Government received value for payment.

What does 31 U.S.C. § 3528 mean to me?

Certifying Officers may be relieved from liability if:

- The certification was based on official records.
- Due diligence was exercised in the performance of duties.
- The Certifying Officer had no personal knowledge of any illegal, improper, or incorrect payments.
- The Certifying Officer could not have been expected to uncover any illegal, improper, or incorrect payments in the reasonable performance of his or her legal duties.

The Department of Justice's Office of Legal Counsel Opinion (OLC) on the Authority of the Comptroller General to Relieve Certifying Officers from Liability

Relief is no longer granted by the Comptroller General

31 U.S.C. §§ 3527 and 3528 authorize the Comptroller General to relieve (1) Accountable Officers for a loss or deficiency of public money and (2) Certifying Officers from liability for illegal or improper payments.

In 1991, the OLC decided that statutes §§ 3527 and 3528 violated the constitutional doctrine of separation of powers and concluded that the Comptroller General could not constitutionally relieve disbursing and certifying officials. Subsequently, Certifying Officers must follow their entity's procedures to petition for relief.

Advance decisions

The OLC concluded that seeking an advance decision from the Comptroller General would not insulate a Certifying Officer from liability for certifying an erroneous payment.

Instead, OLC stated that, if a Certifying Officer had obtained and followed an opinion from his or her general counsel or from the general counsel of the Justice Management Division, the Department of Justice would not bring suit to recover that payment.

Therefore, when questions of the legality of authorizing disbursement of payment arise, the Certifying Officer should seek advance decisions from their general counsel.

31 U.S.C. § 3526 Statute of Limitations

31 U.S.C. § 3526(c)(1) states that accounts of Accountable Officers must be settled within 3 years. If the fiscal irregularity occurred more than three years ago, it is possible that the statute of limitations may prevent the government from being able to collect from the Accountable Officer.

The statute does not establish a limitation on recoveries against the recipient of the improper payment and does not affect an entity's obligation to pursue collection action.

An entity may always decide not to grant relief to a Certifying Officer if the Certifying Officer's efforts to recover the improper payment has not been sufficient.