



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
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JAGINST 5890.1B
Code 15
29 Mar 2021

JAG INSTRUCTION 5890.1B

From: Judge Advocate General

Subj: ADMINISTRATIVE PROCESSING AND CONSIDERATION OF CLAIMS ON
BEHALF OF AND AGAINST THE UNITED STATES

Ref: (a) JAGINST 5800.7F, Manual of the Judge Advocate General (JAGMAN)
(b) SECNAVINST 5430.27E, Responsibility of the Judge Advocate General of the Navy
and the Staff Judge Advocate to the Commandant of the Marine Corps for
Supervision and Provision of Certain Legal Services
(c) DoDI 5515.08, Assignment of Claims Responsibility
(d) DoD General Counsel Decision Memorandum of 21 Apr 17, Assignment of
Single Service Claims Adjudication Authority
(e) DoDD 5515.3, Settlement of Claims Under Sections 2733, 2734, 2734a, and 2734b of
Title 10, United States Code

Encl: (1) Procedures for Processing Federal Tort Claims Act Claims
(2) Procedures for Processing Military Claims Act Claims
(3) Procedures for Processing Foreign Claims Act Claims
(4) Procedures for Processing Claims Involving Nonappropriated-Fund Instrumentalities
and Their Employees
(5) Procedures for Processing Nonscope Claims
(6) Procedures for Processing Personnel Claims
(7) Procedures for Processing Affirmative Claims for Damage to Government Property
(8) Procedures for Processing Medical Care Recovery Act and Third Party Payers Act
Claims

1. Purpose

a. To provide general information about the Department of the Navy's (DON) claims program and the processing of claims under various Federal claims statutes. For admiralty claims, see Chapter XI of reference (a).

b. To supplement the provisions of reference (a) concerning the investigation of incidents giving rise to claims for or against the United States. For information and guidance in conducting an investigation of an incident or event likely to result in claims or civil litigation against or for the DON or the United States, see Chapter II of reference (a).

c. To provide, in the enclosures, detailed explanations of the procedures for adjudicating claims filed under the various claims statutes.

d. The guidance contained herein may be supplemented as necessary to give full force and effect to this instruction.

2. Cancellation. JAGINST 5890.1A

3. Scope. This instruction applies to claims filed under the following acts:

a. Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346b, 2671-2672;

b. Military Claims Act (MCA), 10 U.S.C. § 2733;

c. Foreign Claims Act (FCA), 10 U.S.C. § 2734;

d. International Agreements Claims Act (IACA), 10 U.S.C. §§ 2734a and b;

e. Military Personnel and Civilian Employees' Claims Act (PCA), 31 U.S.C. §§ 3701, 3721;

f. Medical Care Recovery Act (MCRA), 42 U.S.C. §§ 2651-2653;

g. Nonscope Claims Act (NCA), 10 U.S.C. § 2737, claims not cognizable under any other provision of law;

h. Federal Claims Collection Act of 1966 (FCCA), 31 U.S.C. §§ 3701, 3711; the Act of June 1921, 31 U.S.C. § 3702.

4. Responsibilities

a. The Judge Advocate General (JAG), pursuant to reference (b), is responsible for the administration and supervision of the resolution of claims involving the DON or where the Navy has single-service responsibility.

b. The Director, Claims and Tort Litigation Division of the Office of the Judge Advocate General (OJAG Code 15) is the functional manager of the Navy claims system established to evaluate, adjudicate, and provide litigation support for claims arising under the acts listed above and is responsible to the JAG for the management of that system.

c. The Tort Claims Unit (TCU), Norfolk, Virginia, is responsible for processing claims under the FTCA, MCA, FCA, IACA, NCA and FCCA.

d. The Personnel Claims Unit (PCU), Norfolk, Virginia is responsible for processing PCA claims and asserting affirmative claims against household goods carriers.

e. The Medical Care Recovery Units (MCRUs) in Norfolk, Virginia; Pensacola, Florida; and San Diego, California are responsible for processing affirmative claims under the MCRA.

5. General Provisions

a. Claims Against the United States. Claims against the United States shall receive prompt and professional disposition. Every effort will be made to ensure an investigation is thoroughly and accurately completed, the claimant's allegations evaluated promptly, and where liability is established, payment issued as quickly as possible to prevent further harm to a meritorious claimant. Similarly, claims not payable will be processed promptly and the claimant advised of the reasons for the denial. Forms and instructions for filing claims are located on the JAG webpage at: http://www.jag.navy.mil/organization/code_15.htm.

b. Claims on Behalf of the United States. Potential claims on behalf of the United States will be critically evaluated and, where appropriate, promptly asserted and aggressively pursued. OJAG Code 15 has the sole authority to assert affirmative claims for damage to DON property except for those involving admiralty incidents.

c. Assistance to Claimants. OJAG Code 15 personnel may not represent or assist any claimant or potential claimant in filing a claim against the United States. Personnel may provide general advice on the claims process but shall not provide advice or opinions about the merits or the wisdom of filing a particular claim. Specifically, the following actions are authorized: (1) providing proper claims forms; (2) advising where claims forms should be submitted; (3) advising what substantive evidence is required to be filed with the claims forms; and (4) providing general information concerning the filing of claims.

d. Proper Claimants

(1) A claim for damage to, or destruction or loss of, property shall be presented by the owner of the property or a duly authorized agent or legal representative. "Owner" includes a bailee, lessee, or mortgagor, but does not include a mortgagee, conditional vendor, or other person having title for security purposes only.

(2) A claim for personal injury shall be presented by the person injured or a duly authorized agent or legal representative, or, in the case of death, by the properly appointed legal representative of the deceased's estate or survivor where authorized by state law. Claims presented by an authorized representative should be accompanied by evidence of the representative's authority to present a claim on behalf of the claimant.

(3) A subrogor and a subrogee may file claims jointly or separately.

(4) All transfers and assignments made of any claim upon the United States, and all powers of attorney, orders, or other authorities for receiving payment of any such claim are null and void unless they are made after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. See 31 U.S.C. § 3727. This statutory provision does not apply to the assignment of a claim by operation of law, as in the case

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of a receiver or trustee in bankruptcy appointed for an individual, firm, or corporation, or the case of an administrator or executor of the estate of a person deceased, or an insurer subrogated to the rights of the insured.

6. Single-Service Claims Responsibility

a. General. References (c), (d), and (e) assign single-service claims responsibility for claims arising in foreign countries under the IACA, FCA, MCA, MCRA, NCA and FCCA. Claims are settled in accordance with the regulations of the armed service, which has single-service claims responsibility.

b. DON Assigned Countries. The DON has been assigned single-service claims responsibility for: Bahrain, Djibouti, Greece, Iceland, Israel, Italy, Portugal, Spain, United Arab Emirates, Benin, Cape Verde, Cote D'Ivoire, Guinea, Guinea-Bissau, Kenya, Liberia, Mali, Mauritania, Mozambique, Niger, Nigeria, São Tomé and Príncipe, Senegal, Sierra Leone, The Gambia, Togo, Cambodia, Laos, Thailand, and Vietnam.

c. Unassigned Countries. Countries not assigned to a service will be the responsibility of the service whose members' actions resulted in the claim. The Department of Defense (DoD) General Counsel is authorized to assign previously unassigned countries.

d. Port Visit Exception. Notwithstanding the single-service assignments above, the Navy may settle claims under \$2,500.00 caused by personnel not acting within the scope of employment and arising in foreign ports visited by U.S. forces afloat and may, subject to the concurrence of the authorities of the receiving state concerned, process such claims.

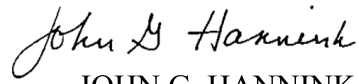
7. Specific Claims Processing Procedures. The enclosures establish detailed procedures for processing claims filed under the various Federal claims statutes.

8. Records Management. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned per the records disposition schedules located on the Department of the Navy Directorate for Administration, Logistics, and Operations, Directives and Records Management Division portal page at <https://portal.secnave.navy.mil/orgs/DUSNM/DONAA/DRM/Records-and-Information-Management/Approved%20Record%20Schedules/Forms/AllItems.aspx>.

9. Review and Effective Date. Per OPNAVINST 5215.17A, OJAG Code 15 will review this instruction annually around the anniversary of its effective date to ensure applicability, currency, and consistency with Federal, Department of Defense, Secretary of the Navy, and Navy policy and statutory authority using OPNAV 5215/40 Review of Instruction. This instruction will automatically expire 5 years after effective date unless reissued or canceled prior to 5-year anniversary date, or an extension has been granted.

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10. Forms. See enclosure (1), Appendix 1-a (SF 95).


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Releasability and distribution:

This instruction is cleared for public release and is available electronically only via Office of the Judge Advocate General Issuances website, <https://www.jag.navy.mil/library/instructions.htm>

PROCEDURES FOR PROCESSING
FEDERAL TORT CLAIMS ACT CLAIMS

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1. Scope. This enclosure provides information regarding the administrative processing of claims against the United States under the Federal Tort Claims Act (FTCA). The FTCA is a limited waiver of sovereign immunity under which a claimant may seek money damages for personal injury, death, or property damage caused by the negligent or wrongful act or omission of an employee of the Federal Government acting within the scope of employment. The FTCA also provides for compensation for injuries caused by certain intentional or wrongful conduct of investigative or law enforcement officers. For claims under the FTCA, the liability of the United States is determined in accordance with the law of the place where the alleged act(s) or omission(s) occurred.

2. Statutory/Regulatory Authority. The statutory provisions of the FTCA are at 28 U.S.C. §§ 1346(b), 2671-2680. Regulations issued by the Attorney General of the United States governing the processing of claims filed under the FTCA are at 28 C.F.R. Part 14. If any provisions of this enclosure conflict with the Attorney General's regulations, the Attorney General's regulations prevail.

3. Exclusiveness of Remedy

a. General. The Federal Employees Liability Reform and Tort Compensation Act of 1988, P.L. 100-694 (amending 28 U.S.C. §§ 2679(b)-2679(d)), commonly known as the Westfall Act, provides that the exclusive remedy for damage or loss of property, or personal injury or death arising from the negligent or wrongful acts or omissions of all Federal employees acting within the scope of their employment will be against the United States. This immunity from personal liability of the employee does not extend to allegations of constitutional torts or to allegations of violations of statutes specifically authorizing suits against individuals.

b. Other (Specific Categories). Other statutory provisions create immunity from personal liability for specific categories of Federal employees whose conduct, within the scope of their employment, gives rise to claims against the Government. For example, DoD health care providers and DoD attorneys are specifically protected from personal liability by 10 U.S.C. § 1089 and 10 U.S.C. § 1054, respectively.

4. Definitions

a. Negligent Conduct. Generally, negligence is the failure to exercise that degree of care, skill, or diligence a reasonable person would exercise under similar circumstances. Negligent conduct can result from either an act or a failure to act. Whether certain conduct was negligent and, therefore, whether the Government is liable will be determined by the tort law of the place where the conduct occurred. See 28 U.S.C. §§ 1346(b) and 2674.

b. Intentional Torts

(1) A claimant may not recover for certain intentional torts under the FTCA, including assault, battery, false imprisonment, false arrest, abuse of process, malicious prosecution, libel, slander, misrepresentation, deceit, or interference with contract rights. However, assault, battery, false imprisonment, false arrest, abuse of process and malicious prosecution may be payable

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under the FTCA if such acts or omissions are committed by Federal investigative or law enforcement officers and arise within the scope of their employment. An “investigative or law enforcement officer” is any officer of the United States empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law. See 28 U.S.C. § 2680(h).

(2) Other intentional torts, not specifically excepted by the FTCA, including but not limited to infringement of intellectual property rights, intentional infliction of emotional distress, invasion of privacy, and common law torts against property such as conversion, taking, and trespass to chattels, may be actionable under the FTCA depending on whether they are recognized as giving rise to a cause of action under the law of the state where the act or omission occurred.

c. Government Employees

(1) “Employee of the Government,” defined by 28 U.S.C. § 2671, includes officers or employees of any Federal agency, members of the United States military, and persons acting on behalf of a Federal agency in an official capacity.

(2) Government contractors (also referred to as independent contractors) are those individuals or businesses who enter into contracts with the United States to provide goods or services. The term “Federal agency” defined by 28 U.S.C. § 2671 specifically excludes “any contractor with the United States.” Therefore, the United States is generally not liable for the negligence of Government contractors. However, there are three limited exceptions to this general rule where a cause of action against the United States has been found to exist in some jurisdictions. They are: (1) where the thing or service contracted for is deemed to be an “inherently dangerous activity”; (2) where a non-delegable duty in the employer has been created by law; or (3) where the employer retains control over certain aspects of the contract and fails to discharge that control in a reasonable manner. Additionally, in cases involving the provision of medical services, the contractor may be deemed to be a “personal services provider” as defined by 10 U.S.C. § 1091, and the United States may be liable for the contractor’s negligence. In these limited circumstances, a contractor may be considered a Government employee under the FTCA.

(3) Non-Appropriated Fund (NAF) Instrumentalities, also referred to as NAF activities, are entities established and operated for the benefit of military members and their dependents and have been judicially determined to be instrumentalities of the Federal Government. NAF activities generate their own operational funds rather than receive funds appropriated to them by Congress. Examples of NAF activities include Navy and Marine Corps Exchanges, officer or enlisted clubs, recreational services and activities, and child development and welfare programs. Claims arising out of the acts or omissions of NAF employees acting within the scope of employment of NAF activities not located in foreign countries are cognizable under the FTCA. See enclosure (4) for a more thorough discussion of claims involving NAF employees.

d. Scope of Employment. Whether or not a Government employee acted within the scope of employment is defined by the law of the place where the act or omission occurred under the legal principle of respondent superior (i.e., master and servant). Although 28 U.S.C. § 2671 states that

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acting within the scope of employment means acting in the line of duty, the converse is not always true. A Government employee may be found to be “in the line of duty” yet not meet the legal criteria to be acting “within the scope of employment” under the law of the place where the act or omission occurred.

5. Scope of Liability

a. Territorial Limitations. The FTCA applies only to claims arising in the United States and its territories. The United States currently administers the following territories as insular areas: American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. The FTCA does not apply to any claim arising in a foreign country (which includes Cuba). See 28 U.S.C. § 2680(k).

b. Exclusions from Liability

(1) Statutory exclusions (28 U.S.C. § 2680).

(a) Claims based on the exercise or performance of, or the failure to exercise or perform a discretionary Government function;

(b) Admiralty claims under 46 U.S.C. §§ 30901 – 30918. These claims will be referred to the Office of the Judge Advocate General, Admiralty Division (OJAG Code 11) for adjudication under Chapter XI of reference (a);

(c) Most claims arising from intentional torts (see paragraph 4b above); and

(d) Claims arising from the combat activities of the military or the Coast Guard during time of war.

(2) Although not expressly statutorily excepted, the following types of claims are not payable under the FTCA:

(a) Claims for personal injury or death of a member of the armed forces of the United States incurred incident to military service or duty;

(b) Claims by military personnel or civilian employees of the Government who are paid from appropriated funds for personal property damage occurring incident to service or Government employment that are cognizable under the PCA (see enclosure (6) of this instruction);

(c) Claims by employees of NAF activities for personal property damage occurring incident to their employment (see enclosure (4) of this instruction);

(d) Claims for personal injury or death that are covered by the Federal Employees' Compensation Act (5 U.S.C. § 8101 - 8152);

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(e) Claims for personal injury or death that are covered by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. § 905 - 950 and 5 U.S.C. § 8171);

(f) That portion of any claim for personal injury or property damage caused by the negligent act or omission of a Government contractor;

(g) Claims against the Department of the Navy (DON) by another Federal agency (Government property is not owned by any one Government agency or department, and the Government does not reimburse itself for the loss of its own property except where specifically provided for by law);

(h) Claims for damage to vehicles rented pursuant to travel orders. See U.S. Government Car Rental Agreement (published by the Defense Travel Management Office) and the Joint Travel Regulations; and

(i) Claims where there is no recognized cause of action under the law of the place where the act or omission occurred. The U.S. Supreme Court has interpreted the "law of the place where the act or omission occurred" to mean state law, not Federal law. Therefore, unless the alleged acts also give rise to a state law cause of action, claims alleging violations of Federal law are not payable.

6. Time Limitations

a. Administrative Claims. All claims filed against the United States under the FTCA must be presented in writing within two years after the claim accrues. See 28 U.S.C. § 2401(b). Federal law determines the date of accrual. A claim accrues when the claimant discovers or reasonably should have discovered both the existence of his injury and its cause. In computing the two-year statutory time period, the day of the incident is excluded and the day the claim was presented is included.

b. Amendments. Upon timely filing of an amendment to a pending claim (see paragraph 7d), the DON shall have six months to make a final disposition of the claim as amended, and the claimant's option to file suit under 28 U.S.C. § 2675(a) shall not accrue until six months after the presentment of an amendment. See 28 C.F.R. § 14.2(c).

c. Suits. A civil action is barred unless suit is filed against the United States not later than six months after the date the notice of the final denial of the claim is mailed. See 28 U.S.C. § 2401(b). The failure of the DON to make final disposition of a claim within six months after it is presented shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim. See 28 U.S.C. § 2675(a).

7. The Administrative Claim. A proper claimant must present a proper claim to the appropriate administrative agency for adjudication.

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a. Proper Claimant

(1) A claim for property damage or loss must be presented by the owner of the property or a duly authorized agent or legal representative. "Owner" includes a bailee, lessee, or mortgagor, but does not include a mortgagee, conditional vendor, or other person having title for security purposes only.

(2) A claim for personal injury must be presented by the injured person or a duly authorized agent or legal representative. Claims for wrongful death must be presented by the properly appointed legal representative of the deceased's estate or survivor where authorized by state law. Claims presented by an authorized representative must include evidence of the representative's authority to present a claim on behalf of the claimant.

(3) A claim filed by an agent or legal representative must be filed in the name of the claimant, signed by the agent or legal representative with the representative's title or legal capacity and accompanied by evidence of their authority to file a claim on behalf of the claimant. Claims that do not meet these basic requirements should be returned immediately for correction with notification of the deficiency.

(4) A subrogor and a subrogee may file claims jointly or separately.

b. Proper Claim. A proper claim must be in writing, filed on a Standard Form 95 (see Appendix 1-a) or other written notification of the incident, and signed by a proper claimant. If a letter or other written notification is used, it must set forth the same basic information required by Standard Form 95. The claim must describe the incident in sufficient detail to give reasonable notice of the time, place, circumstances, and resulting harm so as to allow the DON to investigate. A proper claim must include a demand for a specific and definite sum of money damages for property damage, personal injury, or death alleged to have occurred as a result of the incident. Failure to meet the aforementioned requirements may result in a determination that the administrative claim is incomplete. Subsequent lawsuit under the FTCA may be dismissed for lack of subject matter jurisdiction based on a claimant's failure to present a proper claim as required by 28 U.S.C. § 2675(a).

c. Presentment

(1) A claim shall be submitted by the claimant to the Office of the Judge Advocate General, Tort Claims Unit (TCU) Norfolk, 9620 Maryland Ave, Suite 205, Norfolk, VA 23511-2949. A claim may also be submitted to the commanding officer of the naval activity involved, or to the commanding officer of any naval activity, but preferably the one nearest to where the incident occurred. A claim is deemed presented, and the statute of limitations is tolled, when received by the DON in proper form and not when it is mailed by the claimant. Any DON command or office that receives any writing that purports to be a claim should immediately forward it to the TCU, along with the envelope in which it was mailed, noting the date it was first received.

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(2) A claim against another agency that is mistakenly addressed to or filed with the DON shall be transferred to the appropriate agency, if ascertainable, or returned to the claimant.

(3) A claimant presenting a claim for damages that arose out of the same incident to more than one agency should identify every agency to which the claim is submitted on each claim form presented. All agencies receiving such claims shall coordinate to designate a lead agency to investigate and adjudicate the claim. See 28 C.F.R. § 14.2(b).

d. Amendment of the Claim. A claimant may amend a proper claim at any time prior to settlement, denial, or the filing of a suit. An amendment must be submitted in writing and must be signed by the claimant or a duly authorized agent or legal representative.

e. Investigation of the Claim. Where a previously unanticipated claim is filed against the Government and no investigation has been initiated, the appropriate convening authority shall immediately convene an investigation. Chapters II and VIII of reference (a) provide detailed guidance on conducting investigations for incidents that may result in claims against or in favor of the United States.

f. Counterclaims, Cross-Claims, and Third-Party Claims. The requirement to file an administrative claim before filing suit does not apply to “claims as may be asserted under the Federal Rules of Civil Procedure by third-party complaint, cross-claim or counterclaim.” 28 U.S.C. §2675(a). For counterclaims, this provision applies only to compulsory counterclaims that arise out of the same transaction or occurrence as the opposing party’s claim. The requirement to file an administrative claim before filing suit is mandatory for parties wishing to file permissive counterclaims.

g. Incidents Involving Multiple Claimants. An administrative claim with a sum certain for damages must be presented for each claimant regardless of the size of the class of individuals filing claims arising out of the same incident.

8. Information Required to Substantiate Claims

a. Substantiation. Depending on the type of claim presented, claimants may be required to submit information and documents to substantiate the claim as follows:

(1) Death

(a) Documentation of claimant’s qualification as Personal Representative of decedent’s estate;

(b) An authenticated death certificate or other competent evidence showing the cause of death, the date of death, and the age of the decedent;

(c) Decedent’s employment or occupation at the time of death including monthly or yearly earnings and the duration of last employment;

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(d) Full names, addresses, birth dates, relationship, and marital status of the decedent's survivors including identification of survivors who were dependent upon the decedent for support at the time of death;

(e) The degree of support provided by the decedent to each survivor at the time of death;

(f) The decedent's general physical and mental condition before death;

(g) Itemized bills for medical and burial expenses;

(h) If damages for pain and suffering are claimed, a physician's detailed statement specifying the injuries suffered, the duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition during the interval between the injury and death; and

(i) Any other evidence or information that may affect the liability of the United States.

(2) Personal injury.

(a) A written report by the attending physician or dentist on the nature and extent of the injury, the nature and extent of treatment, any degree of temporary or permanent disability, future prognosis, period(s) of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by any Federal agency. Upon written request, a copy of the report of the examining physician shall be provided to the claimant, provided the claimant agrees to make or have made available any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of the claim;

(b) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payments of such expenses;

(c) A statement of expected expenses for future treatment;

(d) If a claim is made for lost wages, a written statement from the employer itemizing the actual time and wages lost;

(e) If a claim is made for lost self-employed income, documentary evidence showing the amount of earnings actually lost, including past Federal income tax forms for the previous five years. Estimates of future losses must be discounted to present value at a discount rate of one to three percent after deducting for income taxes. When a medical trust providing for all future care is established, personal consumption may be deducted from future losses; and

(f) Any other evidence or information that may affect the liability of the United States for the personal injury or the damages claimed.

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(3) Property damage

- (a) Proof of ownership, or an insurable interest by a subrogee;
- (b) A detailed statement of the amount claimed for each item of property;
- (c) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of repairs;
- (d) A statement listing the date of purchase, the purchase price, and the salvage value where repair is not economical; and
- (e) Any other evidence or information that may affect the liability of the United States for the property damage claimed.

b. Failure to Submit Substantiation. If a claimant fails to provide sufficient supporting documentation with the claim, the claimant should be notified of the deficiency with reference to 28 C.F.R. § 14.4. Failure to provide the supporting documentation will result in the denial of the claim as unsubstantiated.

9. Damages

a. Generally. The measure of damages is determined by the law of the place where the act or omission occurred. When there is a conflict between state law and applicable Federal law, the latter controls. See 28 U.S.C. § 1346(b). For a discussion of damages generally available in the majority of states, see paragraph 8 of enclosure (2).

b. Limitations on Damages. The United States is not liable for interest prior to judgment or for punitive damages. In a death case, if the place where the act or omission occurred provides for only punitive damages, the United States will be liable in lieu thereof for actual or compensatory damages. See 28 U.S.C. § 2674.

c. Setoff. The United States is not obligated to pay twice for the same injury. If a claimant has received Government benefits or services as the result of the alleged tort, the cost of these services or benefits shall be considered in arriving at any award of damages. For example, the cost of medical or hospital services furnished at Government expense, including Defense Health Agency (DHA - formerly TRICARE) payments, shall be considered. Additionally, benefits or services received under the Veterans Act (38 U.S.C. § 101, et seq.) must be considered.

10. Adjudication and Settlement Authority

a. Settlement Authority. Pursuant to 28 U.S.C. § 2672 and in accordance with 28 C.F.R. Part 14, the Secretary of the Navy or designee, acting on behalf of the United States, may compromise or settle any FTCA claim filed against the United States provided any award, compromise, or settlement by the Navy in excess of \$500,000.00 may be effected only with the prior written approval of the Attorney General or designee. OJAG Code 15 has authority to

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settle FTCA claims for an amount up to \$500,000.00, subject to the limitations provided in paragraph 11b.

b. Requests for Settlement Approval for an Amount Over \$500,000.00. If the amount of the prospective settlement of any single FTCA claim or the aggregate amount of the prospective settlements of all FTCA claims arising from a single occurrence exceeds OJAG Code 15's \$500,000.00 adjudication authority, United States Department of Justice (DOJ) approval must be obtained prior to the settlement of any of the claims.

11. Administrative Settlement and Payment

a. Settlement of An Administrative Claim

(1) A settlement agreement is required in all cases settled in excess of \$2,500.00 or where the full amount claimed for damages on the claim form is not paid. The settlement agreement will contain language indicating that payment is in full and is the final settlement of the claim, that acceptance of the settlement amount by the claimant or an agent or legal representative is final and conclusive on the claimant or the agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and that the agreement constitutes a complete release of any claim against the United States and against any Government employee whose conduct gave rise to the claim by reason of the same subject matter. See 28 C.F.R. § 14.10(b). All settlement agreements shall also contain a recitation of the applicable statutory limitation of attorney fees. See 28 U.S.C. § 2678.

(2) For claims involving minors and incompetents, generally, only the legal representative, court-appointed representative, or a person performing a similar function under court supervision may execute a binding settlement agreement. The DOJ requires the minor's/incompetent's representative to obtain state court approval of the negotiated agreement before it is executed. The law of the state where the minor/incompetent resides or is domiciled will determine the nature and type of court approval that is needed. Waiver of the requirement for state court approval of a minor settlement may only be granted by DOJ's Torts Branch, Federal Tort Claims Act Litigation Section and is limited to those cases where the applicable state law either specifically exempts a settlement under a certain dollar value from the necessity of state court approval or provides no available mechanism for obtaining such approval.

b. Payment of an Administrative Claim

(1) Claims approved for \$2,500.00 or less are paid from DON appropriations. Claims approved in excess of \$2,500.00 are paid from the judgment fund and must be forwarded electronically to the Judgment Fund Internet Claims System (JFICS) for payment under 31 U.S.C. § 1304.

(2) Only authorized JFICS users can monitor status once a claim has been electronically entered and certified for payment in JFICS.

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(3) Claims arising out of the operation of NAF activities and approved for payment shall be forwarded to the appropriate NAF activity for payment (see enclosure (4) of this instruction).

12. Denial of Claims. The final denial of an administrative claim must be in writing, signed by an OJAG Code 15 claims attorney, and sent by certified mail with return receipt requested to the claimant or a duly authorized agent or legal representative. The denial letter may include the reasons for denial and shall contain a statement informing the claimant of the right to file suit in the appropriate Federal district court not later than six months after the date the notification was mailed. See 28 C.F.R. § 14.9(a). The denial letter shall also inform the claimant of his right to request reconsideration of the denial within that same timeframe.

13. Reconsideration

a. Request. Prior to the commencement of suit and prior to the expiration of the six-month period for filing suit, a claimant or a duly authorized agent or legal representative may present a written request for reconsideration of the denial to the attorney who denied the claim. The request shall state the specific reasons the claimant feels the denial was in error. A request for reconsideration is considered presented on the date it is received by the DON. See 28 C.F.R. § 14.9(b).

b. Proper Basis. A claimant may include any supplemental supporting evidence or information along with the written request for reconsideration that sets forth the specific reasons he feels the denial of the claim was in error. Any writing that communicates a desire for reconsideration that reasonably appears to have been presented solely for the purpose of extending the statutory period for filing suit shall not be considered a proper request for reconsideration and the claimant or a duly authorized agent or legal representative shall be promptly notified of such.

c. Effect of Presentment of Request. If a proper request for reconsideration is timely filed, the DON has six months from the date of the receipt of the request to make a final disposition of the claim. The claimant may not file suit until the expiration of this new six-month period or until after the date the final denial of the request for reconsideration was mailed.

14. Suits Arising out of the Conduct of Federal Employees Acting in the Scope of Their Employment.

a. Suits under the FTCA

(1) A civil action is barred unless suit is filed against the United States not later than six months after the date the notice of the final denial of the claim is mailed. The failure of the DON to make final disposition of a claim within six months after it is presented shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim.

(2) The United States, not the individual Federal employee, is the proper defendant in an FTCA action. Pursuant to the Westfall Act, in cases where the plaintiff directly names as defendant a government employee acting within his official capacity, the Attorney General will

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act to substitute the United States for the individual employee as a defendant upon certification that the Federal employee was acting within the scope of his employment at the time of the incident. See 28 U.S.C § 2679(d).

(3) Federal district courts maintain exclusive jurisdiction for FTCA suits. Venue is proper only in the judicial district where the plaintiff resides or where the act or omission complained of occurred. See 28 U.S.C. § 1402. When the plaintiff files suit in a state court against the United States, a Federal entity (e.g., DON, Naval Regional Medical Center San Diego), or a Federal employee acting within his official capacity in scope, the U.S. Attorney will substitute the United States for the named defendant(s) and remove the entire matter to Federal district court.

(4) There is no right to trial by jury in suits brought under the FTCA. See 28 U.S.C. § 2402.

(5) The Attorney General of the United States, or his designee, may arbitrate, compromise, or settle any action filed under the FTCA. See 28 U.S.C. § 2677. The DOJ (normally an Assistant United States Attorney) generally seeks agency concurrence prior to settlement of lawsuits involving the DON. DOJ requests for concurrence in lawsuit settlement proposals shall be referred to the TCU Claims Attorney assigned to the case.

(6) Any damage award in litigation under the FTCA is limited to the sum certain presented on the administrative claim unless it is based on newly discovered evidence. See 28 U.S.C. § 2675(b). The plaintiff must prove that any increased demand is based on facts that were not reasonably discoverable at the time the claim was presented or that the increased demand is based on intervening facts relating to the claim amount.

(7) Litigation support is provided by the TCU who may call upon the command where the allegations arose for assistance.

(8) Immediately upon receiving notice that suit has been filed or in those instances when litigation is “reasonably anticipated” (e.g., in death or serious bodily injury claims or significant property damage claims), the assigned TCU Claims Attorney will issue a “Notice of Litigation Hold” to all records custodians and agency employees who may have relevant information. This “Hold” will direct the immediate preservation of all information and records related to a case, including electronically stored information and all official information in the possession or control of individual employees who may be witnesses in the case. This “Hold” includes all electronically stored information stored in any digital medium, including the agency’s computer network, free-standing PCs and desktop computers, and all back-up media, and includes without limitation, emails, calendars, word processing documents, scanned documents, spreadsheets, photos, and drafts.

b. Suits against Federal Employees in their Individual Capacity.

(1) Under 28 C.F.R. § 50.15, the Attorney General or a designee has the discretion to provide representation for a Government employee in civil or criminal proceedings in which he

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is sued, subpoenaed, or charged in his individual capacity (rather than in his official capacity) when the actions for which representation is requested reasonably appear to have been performed within the scope of his employment and it is deemed to be to the benefit of the Government to assume representation. Such action (known as a *Bivens*-type action) usually involves allegations of violation of the plaintiff's constitutional rights, usually by law enforcement officers.

(2) An employee requesting representation must submit a written request, together with all process and pleadings served on him, through his immediate supervisor for command endorsement, then on to the TCU for action. The assigned TCU attorney will prepare a statement (with recommendation) and forward all materials to DOJ Civil Division, Torts Branch, Constitutional and Specialized Torts Section. DOJ will make the final determination as to whether the employee's actions reasonably appear to have been performed within the scope of his employment and whether providing representation will be in the interest of the United States.

15. Attorney Fees. Attorney fees under the FTCA are limited to either 20 percent of the settlement amount of an administrative claim or 25 percent of any settlement after suit is filed or judgment rendered in favor of a plaintiff. See 28 U.S.C. § 2678. Attorney fees are paid out of the amount awarded and are not in addition to the award. Questions involving attorney fees occasionally arise in connection with a structured settlement utilizing an annuity. Attorney fees are calculated on the basis of the final, total cost to the Government at the time of settlement. Fee calculations are not based on either the investment value equivalent or the total annuity payout. With respect to an annuity, the actual cost, by definition, represents the present value of the flow of periodic or other scheduled payments.

APPENDIX 1-a (SF 95)

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Office of the Judge Advocate General Tort Claims Unit Norfolk 9620 Maryland Avenue, Suite 205 Norfolk, VA 23511-2949			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code.		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input type="checkbox"/> CIVILIAN	4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT	7. TIME (A.M. OR P.M.)	
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). Please include your e-mail address in this section. TCU's email address: TortClaimsUnit@navy.mil					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights).		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side).		13b. PHONE NUMBER OF PERSON SIGNING FORM		14. DATE OF SIGNATURE	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).		CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)			

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STANDARD FORM 95 (REV. 2/2007)
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28 CFR 14.2

INSURANCE COVERAGE	
In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.	
15. Do you carry accident Insurance? <input type="checkbox"/> Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. <input type="checkbox"/> No	
16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? <input type="checkbox"/> Yes <input type="checkbox"/> No	17. If deductible, state amount.
18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).	
19. Do you carry public liability and property damage insurance? <input type="checkbox"/> Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). <input type="checkbox"/> No	
INSTRUCTIONS	
<p>Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.</p> <p style="text-align: center;">Complete all items - Insert the word NONE where applicable.</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p>A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY</p> <p>Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.</p> <p>If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.</p> <p>The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.</p> <p>If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.</p> </div> <div style="width: 48%;"> <p>DAMAGES IN A <u>SUM CERTAIN</u> FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN <u>TWO YEARS</u> AFTER THE CLAIM ACCRUES.</p> <p>The amount claimed should be substantiated by competent evidence as follows:</p> <p>(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.</p> <p>(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.</p> <p>(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.</p> <p>(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.</p> </div> </div>	
PRIVACY ACT NOTICE	
<p>This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.</p> <p>A. <i>Authority:</i> The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.</p> <p>B. <i>Principal Purpose:</i> The information requested is to be used in evaluating claims.</p> <p>C. <i>Routine Use:</i> See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.</p> <p>D. <i>Effect of Failure to Respond:</i> Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."</p>	
PAPERWORK REDUCTION ACT NOTICE	
<p>This notice is <u>solely</u> for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.</p>	

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PROCEDURES FOR PROCESSING
MILITARY CLAIMS ACT CLAIMS

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1. Scope. This enclosure provides information regarding the administrative processing of claims against the United States for death, personal injury, or property damage caused by military personnel or civilian employees of the Department of the Navy (DON) (hereinafter DON personnel) under the Military Claims Act (MCA). For the purposes of this enclosure, DON personnel include all military personnel of the Navy and Marine Corps, some volunteer workers, other persons serving as employees of the DON with or without compensation, and members of the National Oceanic and Atmospheric Administration and of the Public Health Service when serving with the DON. DON personnel do not include DON contractors or their employees.

2. Statutory/Regulatory Authority. The statutory provisions of the MCA are located in 10 U.S.C. § 2733, as amended. These statutory provisions also apply to MCA claims arising in foreign countries for which the Navy has been assigned single service claims responsibility. See references (c), (d), and (e).

3. Scope of Liability

a. Territorial Limitation. Unlike the FTCA (which applies only to claims arising in the United States and its territories), there is no geographical limitation on the application of the MCA – it applies worldwide. However, if a claim arising in a foreign country is cognizable under the Foreign Claims Act or International Agreement Claims Act, the claim shall be processed under those statutes and *not* under the MCA. See Chapter VIII, Part B, of reference (a); enclosure (3) of this instruction; and 10 U.S.C. § 2733(b)(2).

b. FTCA Precedence. If a claim arising in the United States or its territories is cognizable under the FTCA, the claim must be processed under the FTCA rather than the MCA. Active-duty military members, however, who are barred from availing themselves of the remedies afforded under the FTCA for damages arising incident to their service (see *Feres v. USA*, 340 U.S. 135 (1950)) may recover for damage to their real or personal property under the MCA.

c. Claims Payable

(1) General. The MCA authorizes the administrative settlement and payment of certain claims, but does not permit suits against the United States. Unless otherwise prescribed, a claim for personal injury, death, or damage to or loss of real or personal property is payable under the MCA when:

(a) Caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of an employee of the Government acting within the scope of their employment (see enclosure (1) paragraph 4c); or

(b) Incident to noncombat activities of the DON, whether or not such injuries or damages arose out of negligent or wrongful acts or omissions. A claim may be settled under this provision if it arises from authorized activities essentially military in nature, having little parallel in civilian pursuits, and in which the United States has historically assumed a broad liability even if not shown to have been caused by any particular act or omission by DON personnel while acting within the scope of their employment. Examples include practice firing of missiles and

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weapons, sonic booms, training and field exercises, and maneuvers that include operation of aircraft and vehicles, use and occupancy of real estate, and movement of combat or other vehicles designed especially for military use. Activities incident to combat, whether or not occurring in time of war, and activities or operations involving DON personnel during civil disturbances are excluded.

(2) Specific Claims Payable. Claims payable by the DON under the MCA shall include, but are not limited to:

(a) Claims for damage to, loss, or destruction (even if by criminal acts) of registered or insured mail while in the possession of DON authorities are payable under the MCA. This provision is an exception to the general requirement that compensable damage, loss, or destruction of personal property be caused by DON personnel while acting within the scope of their employment or otherwise incident to noncombat activities of the DON. The maximum award to a claimant under this section is limited to that amount to which the claimant would be entitled from the Postal Service under the registry or insurance fee paid. The award shall not exceed the cost of the item to the claimant regardless of the fees paid. Claimant may be reimbursed for the postage and registry or insurance fees.

(b) Claims for damage to or loss of personal property bailed to the DON under an express or implied agreement are payable under the MCA, even though legally enforceable against the United States Government as contract claims, unless by express agreement the bailor has assumed the risk of damage, loss, or destruction. Claims filed under this paragraph may, if in the best interest of the United States Government, be processed by the DON Office of the General Counsel as contract claims.

(c) Claims for damage to real property incident to the use and occupancy by the DON, whether under an express or implied lease or otherwise, are payable under the MCA even though legally enforceable against the DON as contract claims. Claims filed under this paragraph may, if in the best interest of the United States Government, be referred to and processed by the DON Office of the General Counsel as contract claims.

(d) Claims of United States military personnel and civilian employees for property lost, damaged or destroyed incident to service under conditions in paragraphs 3c(2)(a) and (b), and not payable under the PCA, are payable under the MCA.

(e) Claims arising from the personal liability of DON health care providers and legal assistance personnel for costs, settlements or judgments for negligent acts or omissions while acting within the scope of assigned duties or employment are payable under the MCA. See paragraph 13 of this enclosure.

(f) Claims arising from injuries to military members arising out of medical malpractice by DoD health care providers at major military clinics, hospitals, and ambulatory care centers, but not DoD health care providers in combat, on ships, or at battalion aid stations.

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d. Claims Not Payable. The following are not payable under the MCA:

(1) Any claim for damage, loss, destruction, injury, or death which was proximately caused, in whole or in part, by any negligence or wrongful act on the part of the claimant, or claimant's agent or employee, unless the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstance, and then only to the extent permitted by that law;

(2) Any claim resulting from action by the enemy or resulting directly or indirectly from any act by armed forces personnel engaged in combat;

(3) Any claim for reimbursement of medical, hospital or burial expenses furnished at the expense of the United States, either directly or through contractual payments;

(4) Any claim cognizable under:

(a) The Military Personnel and Civilian Employees' Claims Act (PCA), 31 U.S.C. § 3721.

(b) The Foreign Claims Act (FCA), 10 U.S.C. § 2734.

(c) 10 U.S.C. § 8822, relating to admiralty claims. See Chapter XI of reference (a).

(d) The Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-2680.

(e) The International Agreements Claims Act (IACA), 10 U.S.C. §§ 2734a-2734b.

(f) The Federal Employees' Compensation Act (FECA), 5 U.S.C. §§ 8101-8152.

(g) The Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950.

(5) Any claim for damage to or for the loss or destruction of real or personal property founded in written contract, except as provided in paragraph 3c(2)(c) above;

(6) Any claim for rent of real or personal property, except as provided in subparagraph 3c above;

(7) Any claim involving infringement of patents;

(8) Any claim for damage, loss, or destruction of mail prior to delivery by the Postal Service to authorized DON personnel or occurring due to the fault of, or while in the hands of, bonded personnel;

(9) Any claim by a foreign national, or a corporation controlled by a foreign national, of a country in armed conflict with the United States or of an ally of such country, unless the claimant is determined to be friendly to the United States;

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(10) Any claim for the personal injury or death of a member of the armed forces or a civilian employee that is incident to service with the exception of claims for personal injury or wrongful death of a service member resulting from medical malpractice by certain DoD health care providers. See paragraph 3c(2)(f) above;

(11) Any claim for damage to or for the loss of bailed property when the bailor specifically assumes such risk;

(12) Any claim for taking private real property by a continuing trespass, or by technical trespass such as overflights of aircraft;

(13) Any claim based solely on compassionate grounds; or

(14) Any claim to which the exceptions to the FTCA in 28 U.S.C. § 2680 apply.

4. Statute Of Limitations. A claim against the DON under the MCA must be presented (as required by subparagraph 5e below) in writing within two years after it accrues. In computing the two-year period, exclude the day the claim accrues and include the day the claim is presented. If the incident occurs in time of war or armed conflict, or if war or armed conflict intervenes within two years after the incident occurs, an MCA claim, on good cause shown, may be presented within two years after the war or armed conflict is terminated. For MCA purposes, the date of the termination of the war or armed conflict is the date established by concurrent resolution of Congress or by the President.

5. The Administrative Claim

a. Proper Claimants under the MCA

(1) United States citizens and inhabitants;

(2) United States military personnel and civilian employees, except for claims alleging personal injury or death of a military member incident to service, unless such injury or death is the result of medical malpractice by certain DoD health care providers. See paragraph 3c(2)(f) above;

(3) States, state agencies, counties, municipalities and their political subdivisions;

(4) Prisoners of war for personal property (but not for personal injury); and

(5) Subrogees of proper claimants.

b. Not Proper Claimants under the MCA

(1) Inhabitants of foreign nations for loss or injury that occurs in the country they inhabit;

(2) United States Government agencies and departments; and

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(3) Governments of foreign nations, their agencies and political subdivisions.

c. Presentment of Claim. A claim shall be submitted by the claimant or his authorized representative (refer to paragraph 7a of enclosure (1) for a discussion of the requirements for presentation of a tort claim by a legal representative). The claim should be presented to the Office of the Judge Advocate General, Tort Claims Unit (TCU) Norfolk, 9620 Maryland Ave, Suite 205, Norfolk, VA 23511-2949. In the alternative, a claim may also be submitted to the commanding officer of the naval activity involved, or to the commanding officer of any naval activity, but preferably the one nearest to where the incident occurred. Any command that receives a claim directly should note the date of receipt on the document and immediately forward the claim and the envelope in which it was mailed to the TCU at the above address before taking appropriate investigatory action in accordance with Chapter II of reference (a).

d. Single-Service Claims Processing. Upon receipt of an MCA claim arising out of DON activities in a foreign country for which another military service has been assigned single-service claims responsibility, the DON will forward the claim to the designated service for adjudication under that service's regulations. The DON command most directly involved in the claim, usually the command where the incident allegedly occurred or whose personnel caused the loss, will assist in the investigation and adjudication of such claims if requested. See paragraph 6 of the basic instruction for information about single-service claims responsibility under references (c), (d) and (e).

e. Proper Claim. A proper claim must be in writing and filed on a Standard Form 95 (see Appendix 1-a) or other written notification of the incident. If a letter or other written notification is used, it must set forth the same basic information required by Standard Form 95. The claim may be signed by either the injured party or an authorized agent. A claim signed by an agent or legal representative will be filed in the name of the claimant, show the title or legal capacity of the person signing, and be accompanied by evidence of their authority to sign the claim on behalf of the claimant. The claim must describe the incident in sufficient detail to give reasonable notice of the time, place, circumstances, and resulting harm so as to allow the DON to investigate. A proper claim must include a demand for a specific and definite sum of money damages for property damage, personal injury, or death alleged to have occurred as a result of the incident.

f. Amendment of Claim. Claimants may amend their claim at any time prior to the final denial or payment of the claim if it is in writing and signed by the claimant or by a duly authorized agent or legal representative.

6. Applicable Law Under The Military Claims Act

a. Claims Arising within the United States, Territories, Commonwealths, and Possessions

(1) Generally, the law of the place where the act or omission occurred determines liability and the effect of contributory or comparative negligence on a claimant's right of recovery under the MCA.

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(2) For those claims alleging injuries to military members (including wrongful death) arising out of medical malpractice by DoD health care providers at major military clinics, hospitals and ambulatory care centers, liability is assessed under general principles of tort law common to the majority of states in adjudicating claims under the FTCA without regard to the state in which the malpractice occurred.

b. Claims Arising within Foreign Countries

(1) Liability is assessed under general principles of tort law common to the majority of American jurisdictions.

(2) Legal effect of contributory negligence.

(a) Generally, the law of the foreign country governing the legal effect of contributory or comparative negligence by the claimant determines the relative merits of the claim. If there is no foreign law on contributory or comparative negligence, traditional rules of contributory negligence apply. Foreign rules and regulations on operation of motor vehicles (rules of the road) apply to the extent those rules are not specifically superseded or preempted by United States Armed Forces traffic regulations.

(b) For those claims alleging injuries to military members (including wrongful death) arising out of medical malpractice by DoD health care providers at major military clinics, hospitals and ambulatory care centers, liability is assessed under general principles of tort law common to the majority of states in adjudicating claims under the FTCA without regard to the foreign country in which the malpractice occurred.

c. Principles Applicable to All MCA Claims

(1) “Scope of employment” is determined in accordance with Federal law. Accordingly, for MCA claims arising in the United States and its territories, reported FTCA cases (applying the law of the place where the act or omission occurred) provide guidance on scope of employment. For MCA claims arising in foreign countries, scope of employment will be assessed by reference to general principles of tort law common to the majority of United States jurisdictions.

(2) Claims for emotional distress will be considered for payment only from the injured person or members of the injured person’s immediate family. Claims from the injured person’s immediate family will be considered for payment only if such claimants were in the “zone of danger” (i.e., immediate vicinity of the incident) and the claimant substantiates the claim with proof of the physical manifestation(s) of the emotional distress.

(3) The principles of absolute/strict liability and punitive damages do not apply to claims under the MCA.

d. Clarification of Terms. Federal law determines the meaning and construction of the MCA.

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7. Information Required To Substantiate A Claim. See paragraph 8 of enclosure (1) for a detailed discussion of the supporting documentation required to substantiate a tort claim presented against the United States under any of the claims statutes. Supporting documentation requirements will vary according to the type of claim presented (i.e., property damage, personal injury, or wrongful death).

8. Damages

a. Claims for Damage to Property

(1) If the property has been or can be economically repaired, the measure of damages is the actual or estimated net cost of the repairs necessary to restore the property to the condition that substantially existed immediately prior to the incident. Damages shall not exceed the value of the property immediately prior to the incident less its value immediately after the incident. To determine the actual or estimated net cost of repairs, the value of any salvaged parts or materials and the amount of any net appreciation in value effected through the repair shall be deducted from the actual or estimated gross cost of repairs. The amount of any net depreciation in the value of the property shall be added to such gross cost of repair if such adjustments are sufficiently substantial in amount to warrant consideration. Estimates of the cost of repairs shall be based upon the lowest of two or more competitive bids, or upon statements or estimates by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(2) If the property cannot be economically repaired, the measure of damages shall be the value of the property immediately prior to the incident less its value immediately after the incident. Estimates of value shall be made, if possible, by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(3) The loss of the use of damaged property which is economically repairable may, if claimed, be included as an additional element of damage. Compensation for such loss is limited to the reasonable expense actually incurred for appropriate substitute property for such period reasonably necessary for repairs, as long as idle property of the claimant was not employed as a substitute. When substitute property is not obtainable, other competent evidence such as rental value, if not speculative or remote, may be considered. When substitute property is reasonably available but not obtained and used by the claimant, loss of use is normally not payable.

b. Claims for Personal Injury and Wrongful Death, except for those claims for personal injury or wrongful death of a military member resulting from medical malpractice by certain DoD health care providers. When an injury or death arises within the United States or its territories, commonwealths, or possessions, the measure of damages is determined under the law of the place where the injury arises. When an injury or death arises in a foreign country and is otherwise cognizable and meritorious under the MCA, general principles of American tort law determine damages. The following guidance applies:

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(1) For claims of personal injury, compensation allowed includes reasonable medical and hospital expenses necessarily incurred, lost earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering.

(2) For claims of wrongful death, compensation allowed includes that listed in subparagraph 8b(1) above, plus burial expenses, loss of support and services, loss of companionship, comfort, society, protection, consortium, and loss of training, guidance, and education, as applicable.

(3) Claims for wrongful death may be presented by or on behalf of the decedent's spouse, parent, child, or dependent relative by the properly appointed legal representative of the deceased's estate or survivor. Claims presented by an authorized representative must include evidence of the representative's authority to present a claim on behalf of the claimant. Claims may be consolidated for joint presentation by a representative of some or all of the beneficiaries or may be filed by a proper beneficiary individually. See paragraph 7 of enclosure (1) for a more detailed discussion on the requirements for claims filed by an agent or representative on behalf of a claimant.

c. Claims for Personal Injury or Wrongful Death of a Military Member Resulting from Medical Malpractice by Certain DoD Health Care Providers. Uniform standards consistent with generally accepted standards used in a majority of states in adjudicating claims under the FTCA are to be applied in the calculation of damages in these cases without regard to the state or foreign country in which the injury or death occurred.

9. Adjudicating Authority

a. Settlement/Denial Authority

(1) The Secretary of the Navy may settle or deny claims in any amount. On settlement of a claim, the Secretary may pay the first \$100,000.00 out of DON funds and report the excess to the Comptroller General of the Judgment Fund for payment under 31 U.S.C. § 1304. See 10 U.S.C. § 2733(d).

(2) The Judge Advocate General has been delegated authority to settle claims for \$100,000.00 or less, and has denial authority in any amount.

(3) The Deputy Judge Advocate General, the Assistant Judge Advocate General (Civil Law), and the Director, Claims and Tort Litigation Division (OJAG Code 15) have been delegated authority to settle claims for \$25,000.00 or less, and have denial authority in any amount.

b. Appellate Authority. Adjudicating authorities have the same authority listed in paragraph 9a to act upon appeals. No appellate authority below the Secretary of the Navy may deny an appeal of a claim that it initially denied.

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10. Advance Payments

a. Statutory Authority. Title 10 U.S.C. § 2736 authorizes the Secretary of the Navy or his designee to pay an amount in advance of the submission of a claim or in advance of the final settlement of the claim, to or for any person, or the legal representative of any person, who was injured or killed or whose property was damaged or lost under circumstances for which allowance of a claim is authorized by law. The amount of such a payment may not exceed \$100,000.00, and is not an admission by the United States of liability for the accident concerned. Any amount advanced shall be deducted from any final payment for injury, death, damage, or loss.

b. Officials Authorized to Make Advance Payments

(1) The Secretary of the Navy, up to \$100,000.00.

(2) The Judge Advocate General has been delegated authority to advance up to \$100,000.00.

(3) The Director, Claims and Tort Litigation Division (OJAG Code 15), has been delegated authority to advance up to \$25,000.00.

c. Conditions for Advance Payments. Prior to making an advance payment under 10 U.S.C. § 2736, the adjudicating authority shall ascertain that:

(1) The injury, death, damage, or loss would be payable under the MCA (10 U.S.C. § 2733);

(2) The payee, insofar as can be determined, would be a proper claimant, or is the spouse or next of kin of a proper claimant who is incapacitated;

(3) The provable damages are estimated to exceed the amount to be paid;

(4) The person who suffered the injury, damage or loss, or the family of a person who was killed, has an immediate need for food, clothing, shelter, medical expenses, burial expenses, or other necessities, and other resources for such expenses are not reasonably available;

(5) The prospective payee has signed a statement that it is understood that payment is not an admission of liability by the Navy or the United States and that the amount paid is not a gratuity but is an advance and shall be deducted from any amount that may be paid to the person or legal representative for injury, death, damage, or loss attributable to the accident concerned; and

(6) No payment under 10 U.S.C. § 2736 may be made if the accident occurred in a foreign country in which the NATO Status of Forces Agreement (4 UST § 1792, TIAS 2846) or other similar agreement is in effect and the injury, death, damage, or loss was caused by a member or employee of the DON acting within the scope of employment or occurred "incident to noncombat activities of the DON" as defined above.

11. Final Disposition

a. Claimant Notified. The adjudicating authority shall notify the claimant, in writing, of the action taken on the claim.

b. Settlement Agreements. A settlement agreement is required in all cases in claims in excess of \$2,500.00 or where the full amount claimed for damages on the claim form is not paid. See paragraph 11 of enclosure (1) for a discussion of the required elements of a settlement agreement.

c. Payment. Claims approved for payment shall be paid from appropriations designated for that purpose. For payment of claims in excess of \$100,000, DON claims monies are used to pay the first \$100,000 and the remainder is paid from the Judgment Fund.

d. Final Denial. A final denial, in whole or in part, of any MCA claim shall be in writing and sent via certified or registered mail, return receipt requested, if available, to the claimant or the claimant's attorney or legal representative. If certified or registered mail is not available (e.g., claimant is overseas), the denial should be sent to the nearest JAG office for delivery to the claimant. The notification shall contain the reason for the denial and shall inform the claimant of the right to appeal that action. The notification shall also inform the claimant:

- (1) The title of the appellate authority who will act on the appeal;
- (2) That the appeal should be addressed to the adjudicating authority who last acted on the claim;
- (3) That the grounds for appeal should be set forth fully; and
- (4) That the appeal must be submitted within 30 days of receipt of the notice of denial.

12. Appeal

a. General. A claimant may appeal a decision to deny the claim in whole or in part any time within 30 days after receiving notification of the disapproval. The appeal must be in writing and must state the grounds for the appeal. An appeal is not an adversarial proceeding and a hearing on the appeal is not authorized. A claimant may, however, obtain and submit additional evidence or a written statement for consideration by the appellate authority.

b. Review. Upon receipt of an appeal, the adjudicating authority will review the evidence in the file, including any evidence the claimant submitted with the appeal. If that review indicates that the claim should be approved on appeal, the adjudicating authority will attempt to settle the claim. If a settlement cannot be made or if the adjudicating authority remains of the opinion that the claim has no merit, the adjudicating authority will forward the appeal, together with the underlying claim, the complete investigative claim file and a memorandum of law, to the designated appellate authority for de novo review.

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c. Notification. The appellate authority shall notify the claimant in writing of the determination on the appeal, that such determination constitutes the final administrative action on the claim, and that the claimant has no right under the MCA to sue the United States.

13. Payment Of Costs, Settlements, And Judgments Related To Certain Medical Or Legal Malpractice Claims

a. General. Requests by Federal employees for reimbursement/indemnification of costs, settlements, and judgments against them cognizable under 10 U.S.C. § 1089(f) (for personal injury or death caused by any physician, dentist, nurse, pharmacist, paramedic, or other supporting personnel including medical and dental technicians, nurse assistants, and therapists) or 10 U.S.C. § 1054(f) (for damages for injury or loss of property caused by any attorney, paralegal, or other member of a legal staff) while acting as DON personnel may be paid if:

(1) The alleged negligent or wrongful actions or omissions arose in connection with either providing health care functions or legal services and occurred within the scope of employment; and

(2) Such personnel furnish prompt notification and delivery of all process served or received, and other documents, information, and assistance as requested; and cooperate in defending the action on the merits.

b. Requests for Indemnification. All requests for indemnification for personal liability of DON personnel for acts or omissions arising out of assigned duties shall be forwarded to the Director, Claims and Tort Litigation Division (OJAG Code 15) for action.

14. Attorneys' Fees. Attorneys' fees not to exceed 20 percent of any settlement amount may be payable under the MCA. Such fees are paid out of the amount awarded and not in addition to the award. These fee limitations must be incorporated into any settlement agreement negotiated with a claimant.

PROCEDURES FOR PROCESSING
FOREIGN CLAIMS ACT CLAIMS

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1. Scope. This enclosure provides information regarding the administrative processing of claims against the United States under the Foreign Claims Act (FCA). Foreign claims are demands for payment against the United States presented by inhabitants of foreign countries for property damage, personal injury, or death occurring outside the United States caused either by the negligent or wrongful act or omission of military members or civilian employees of the U.S. Armed Forces or by the noncombat activities of these forces in foreign countries. The statutory purpose of the FCA is to “promote and maintain friendly relations through the prompt settlement of meritorious claims” in foreign countries.

2. Statutory/Regulatory Authority

a. The statutory provisions of the FCA are at 10 U.S.C. § 2734. The FCA authorizes filing, investigating, processing, and settling foreign claims under such regulations as the service Secretary shall prescribe.

b. The regulations implementing the FCA are separate and distinct from the procedures governing implementation of the International Agreement Claims Act (IACA) 10 U.S.C. §§ 2734a and 2734b, as described in Chapter VIII of reference (a).

3. Scope of Liability

a. General. The FCA and its implementing regulations should be broadly construed to carry out the statutory purpose. The United States generally accepts responsibility for damage, injury, or death to local inhabitants caused by either the negligent or wrongful act or omission of military members or civilian employees of the U.S. Armed Forces or by the noncombat activities of our armed forces in foreign countries. Meritorious claims should be settled fairly and promptly, without regard to whether the acts giving rise to them are mistaken, negligent, intentional, or even criminal.

b. Claims Payable. For a claim to be payable under the FCA, both the claimant and the incident giving rise to the claim must be covered by the statute (10 U.S.C. § 2734).

(1) The FCA applies only to inhabitants of foreign countries who are defined as persons, corporations, or other Government or business entities, whose usual place of abode or activity is in a foreign country. The claimant need not be an inhabitant of the particular country in which the claim arose. Examples of covered claimants are:

(a) Foreign nationals residing in a foreign country;

(b) Foreign nationals visiting or traveling in a foreign country where they do not reside;

(c) U.S. citizens residing in a foreign country, if they are inhabitants of a foreign country and are not there as U.S. Service members or civilian employees (or their sponsored dependents), or as U.S. civilian contractors performing work pursuant to an agreement with the U.S. Government;

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(d) A corporation or other organization doing business in a foreign country on a permanent basis, even if organized under U.S. law, provided that the corporation or organization is not providing work pursuant to a contract with the U.S. Government; and

(e) Foreign governments and their political subdivisions, including the equivalents of State, county, and city governments, unless excluded by waiver provisions of an international agreement.

(2) Unless otherwise prescribed, a claim for personal injury, death, or damage to or loss of real or personal property may be paid under these regulations if the incident occurred outside the U.S. and was caused by either the negligent or wrongful act or omission of military members or civilian employees of the U.S. Armed Forces or caused by the non-combat activities of these forces.

(3) As a general rule, scope of employment of the service member or civilian employee that allegedly caused the loss is immaterial. If, however, a claim arises from the act of a U.S. employee who is an indigenous person (local hire), prisoner of war, or interned enemy alien, scope of employment is a prerequisite to United States responsibility. Claims arising from the operation of a U.S. Armed Forces vehicle by a U.S. employee who is an indigenous person (local hire), prisoner of war, or interned enemy alien are cognizable and may be paid if local law imposes liability on the owner of the vehicle under the circumstances.

c. Claims Not Payable

(1) Claims of insurers and other subrogees.

(2) Claims of sponsored dependents accompanying members and civilian employees of the U.S. Armed Forces, or U.S. national civilians employed by either the U.S. Government or a civilian contractor performing under an agreement or contract with the U.S. Government.

(3) Claims of foreign military personnel suffering injury or death incident to a joint military mission or exercise with U.S. Armed Forces, or as a result of the actions of a member or civilian employee of the U.S. Armed Forces, acting within the scope of employment, unless a treaty specifically provides for recovery.

(4) Claims of civilian employees of the U.S., including local inhabitants, injured incident to their employment. Compensation for such injuries is separately provided in Federal statutes and agreements with foreign governments.

(5) Claims of national governments or their political subdivisions engaging in combat with the United States or its allies.

(6) Claims of a national or a corporation controlled by a national of a country engaging in combat with the United States or its allies, unless it is determined that the claimant is friendly.

(7) Claims resulting from combat activities, except that claims arising from an accident or

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malfunction incident to aircraft operations, including airborne ordnance, occurring while preparing for, going to, or returning from a combat mission may be paid.

(8) Claims previously paid or denied.

(9) Claims purely contractual in nature.

(10) Claims involving private contractual and domestic obligations of individuals.

(11) Claims based solely on compassionate grounds.

(12) Claims for paternity or illegitimacy.

(13) Claims payable under other Federal statutes.

(14) Claims for damage caused by naval vessels, unless payment is specifically authorized by Chapter XI of reference (a).

4. Statute of Limitations. An FCA claim must be presented in writing to the appropriate U.S. military authorities within two years of the date it accrues. A claim accrues when the claimant discovers or reasonably should have discovered the personal injury or property damage giving rise to the claim. To compute the statutory time period, exclude the day the claim accrued and include the day the claim was filed.

5. Filing a Claim

a. Presentation of the Claim. An FCA claim may be presented to the Office of the Judge Advocate General, Tort Claims Unit (TCU) Norfolk, 9620 Maryland Ave, Suite 205, Norfolk, VA 23511-2949. In the alternative, the claim may be presented to any U.S. authority or to foreign government authorities if authorized under a Status of Forces Agreement (SOFA) or other applicable treaty or agreement. Claims shall be promptly transferred to the appropriate authorities for processing.

b. Appropriate Authorities

(1) General. The commanding officer of the organization or individual(s) whose activities gave rise to the claim has authority to process claims under these regulations, subject to the restrictions of any SOFA provisions or references (c), (d), and (e) which assign single-service claims responsibility. A commander who receives a claim that is not under his cognizance shall forward the claim promptly to the appropriate authority and shall provide assistance necessary to investigate and adjudicate the claim.

(2) The Commanding Officer, Region Legal Service Office Europe, Africa, Central (RLSO EURAFCENT), has authority to process all claims under the FCA arising in Bahrain, Djibouti, Greece, Iceland, Israel, Italy, Portugal, Spain, the United Arab Emirates, Benin, Cape Verde, Cote D'Ivoire, Guinea, Guinea-Bissau, Kenya, Liberia, Mali, Mauritania, Mozambique, Niger, Nigeria,

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São Tomé and Príncipe, Senegal, Sierra Leone, The Gambia, and Togo. See paragraph 5b(4) below. The Commanding Officer, RLSO EURAFCENT is authorized to pay any claim when payment does not exceed \$50,000.00 and has unlimited denial authority.

(3) Article VIII of the NATO SOFA and similar provisions of SOFAs with individual foreign countries may restrict the use of the FCA by authorizing foreign government officials to process claims that would otherwise be cognizable under the FCA. Therefore, consult the pertinent directives of the area commander to ensure proper processing.

(4) Single-service claims responsibility.

(a) Reference (c), as amended by reference (d), assigns single-service claims responsibility to individual military departments for processing claims in specified foreign countries. See paragraph 6b of the basic instruction.

(b) Reference (c) also authorizes the Navy to settle claims for less than \$2,500 arising in foreign ports visited by U.S. forces afloat, including those arising in countries assigned to the Departments of the Army and the Air Force.

(c) If a claim arises in a country not specifically assigned by either of these references, the military service component of the employee who caused the damage/injury is responsible for adjudication.

(d) Claims arising out of DON activities in countries assigned to the Army and the Air Force must be forwarded promptly to the appropriate military department and may not be processed by DON entities.

(5) Admiralty claims arising in foreign countries may be adjudicated under the FCA provided that the claim is not otherwise cognizable under applicable admiralty statutes and regulations. In particular, the reciprocity provisions of the Public Vessels Act (46 U.S.C. §§ 781 and 785) must be met. Prior authorization by the Office of the Judge Advocate General (OJAG Code 11) is required. See Chapter XI of reference (a).

6. The Administrative Claim. A proper claim must be in writing and filed on a Standard Form 95 (see Appendix 1-a) or other written notification of the incident. If a letter or other written notification is used, it must set forth the same basic information required by Standard Form 95.

a. Proper signature. The claim may be signed by either the injured party or an authorized agent. A claim signed by an agent or legal representative will be filed in the name of the claimant, show the title or legal capacity of the person signing, and be accompanied by evidence of their authority to sign the claim on behalf of the claimant.

b. Sufficiently Detailed. The claim must describe the incident in sufficient detail to give reasonable notice of the time, place, circumstances, and resulting harm so as to allow the DON to investigate.

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c. Sum Certain. A proper claim must include a demand for a specific and definite sum of money damages for property damage, personal injury, or death alleged to have occurred as a result of the incident.

d. Substantiation. See paragraph 8 of enclosure (1) for a detailed discussion of the supporting documentation required to substantiate a tort claim presented against the United States under any of the claims statutes. Supporting documentation requirements will vary according to the type of claim presented (i.e., property damage, personal injury, or wrongful death).

e. Amending the Claim. A claim may be amended in writing at any time prior to final settlement or denial and must be signed by the claimant or an authorized agent.

7. Foreign Claims Commissions

a. Purpose. The purpose of a Foreign Claims Commission (FCC) is to settle meritorious claims fairly and promptly. An FCC shall deny or pay (in full or in part) all claims in accordance with its adjudicating authority or, when required under these regulations, forward adjudication recommendations to appropriate higher authorities. See Chapter VIII of reference (a).

b. Authority to Appoint

(1) All commanding officers of the Navy and Marine Corps have authority to appoint an FCC, unless restricted by a competent superior commander.

(2) For the purpose of the FCA and these regulations, the following officers are considered commanding officers: the Judge Advocate General of the Navy; the Staff Judge Advocate to the Commandant of the Marine Corps, Commanding Officer, RLSO EURAFSWA; Chiefs of Naval Missions (including Chiefs of the Naval Section of Military Missions); Chiefs of Military Assistance Advisory Groups (including chiefs of the naval section of such groups); and naval attachés.

c. Composition of the FCC. An FCC shall be composed of either one or three members. Alternate members may be appointed where circumstances require and may be substituted for the principal members for specific cases by order of the appointing authority. The appointing orders should clearly indicate which member is president of a three-member FCC. For detailed discussion of the composition of an FCC, the qualification of its members, and the various levels of adjudicating authority held by each type of Commission, consult Chapter VIII of reference (a).

8. Processing Claims

a. Action by the Staff Judge Advocate. The staff judge advocate for the cognizant commanding officer is responsible for providing advice, guidance, and review to the commanding officer, FCC, and claims investigating officer on the policies and procedures in these regulations. Commands without a staff judge advocate assigned should request assistance from the cognizant

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RLSO, the next superior command with a staff judge advocate, or the nearest command with a staff judge advocate or any judge advocate assigned.

b. Action by the Appointing Authority. The appropriate commanding officer (see paragraph 7b) is the appointing authority for the FCC that will adjudicate the claim. The appointing authority shall detail and appoint qualified members in writing, convene an appropriate investigation or obtain the report of investigation if one has already been conducted, refer the claim with the investigative report to the FCC for adjudication, and, if required under these regulations, review any recommendation from the FCC with appropriate legal advice, and take action or forward it as appropriate.

c. Action by the Claims Investigating Officer. There is no formal procedure for conducting an investigation of a foreign claim, but Chapter II of reference (a) may be used as guidance. A transcript of witness testimony is not required, a written summary of the substance of any statement is adequate. The formal rules of evidence do not apply, and any relevant evidence may be received to establish the essential facts of the incident. A written report of the investigation shall be submitted to the appointing authority as soon as practicable.

d. Action by the FCC

(1) Review the claim and the investigation and, if necessary, initiate or request further investigation.

(2) If appropriate, negotiate with the claimant for settlement of the claim within the limits of the FCC's adjudicating authority.

(3) Deny or pay the claim, in full or in part, within the limits of the FCC's denial or payment authority as set forth in paragraph 7f or make a recommendation to OJAG Code 15. When making a determination on the amount of any payment, the FCC will apply criteria found in Section 0814, Chapter VIII of reference (a). All decisions of the FCC shall be determined by a majority vote.

(4) Report the decision or recommendations along with supporting rationale to, or through, the appointing authority, as required under these regulations.

(5) Prepare the written notification to the claimant, explaining the decision to deny or pay the claim in full or in part, or advising that the claim has been referred to a higher authority.

(6) Prepare the settlement agreement and release using the form in Appendix 3-a of this enclosure. The settlement agreement and release should state the agreed settlement amount in U.S. dollars which will be converted into local currency at the currency exchange rate in effect at the time of payment. Ensure that the claimant signs the settlement agreement and release prior to payment of any claim and forward the settlement agreement through the appointing authority to the disbursing officer.

9. Report of The FCC

a. Contents of Report. The FCC shall make a written report of each claim that will include all materials relevant to the adjudication of the claim. For detailed discussion of the requirements of an FCC report, consult Chapter VIII of reference (a).

b. Forwarding Reports

(1) When an FCC pays or denies a claim, the original report and all related documents shall be forwarded to the appointing authority.

(2) When an FCC recommends payment or denial of a claim in excess of its denial or payment authority, the original report and all related documents shall be forwarded to the appointing authority for retention with a copy forwarded by the appointing authority to OJAG Code 15 for further action.

10. Action On Forwarded Claims. When the FCC recommends payment or denial of a claim in excess of the FCC's authority, the following officers may approve or disapprove the recommendation and pay the claim, in whole or in part, or return the claim with instructions to the appointing authority or the FCC:

a. Claims up to \$50,000.00. The Deputy Judge Advocate General, the Assistant Judge Advocate General (Civil Law), the Division Director (Claims and Tort Litigation) and for claims arising in his area of responsibility, the Commanding Officer, RLSO EURAFCENT. These officials have unlimited denial authority.

b. Claims from \$50,000.00 to \$100,000.00. The Judge Advocate General.

c. Claims in excess of \$100,000.00. The Secretary of the Navy. See 10 U.S.C. § 2734(d).

11. Notification To The Claimant. Claimants shall be promptly notified in writing by the FCC of approval or denial of claims within the authority of the FCC, or of any referral of claims to higher authority. The notification letter to the claimant detailing the final action on a claim taken by higher authority shall be forwarded through the appointing authority with a copy to the FCC. When resources permit, the notification letter should be translated into the claimant's language. Claimant shall not be informed of the substance of any recommendations to higher authority for payment or denial and shall not be shown the FCC's report.

12. Reconsideration, Appeal, and Suit

a. Reconsideration

(1) A claim may be reconsidered when it appears that the original action was incorrect in law or fact based on the evidence of record at the time of the action or based on evidence subsequently received. The request for reconsideration must be received by the FCC within 60 days of the date of the denial letter unless good cause is shown.

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(2) Claimant's request for reconsideration should indicate the legal or factual basis asserted as grounds for relief.

(3) The claim may be reconsidered by the original FCC, a successor FCC, or a newly appointed FCC upon written request from the claimant, upon the original FCC's initiative, or upon direction by a superior officer authorized to take action on the claim.

(4) If the FCC concludes that the original action was incorrect, it will modify the decision or forward a supplemental recommendation through the appointing authority for action. If the FCC concludes that the original action was correct, it will affirm the decision, and forward a memorandum for information through the appointing authority.

(5) When action on reconsideration has been completed and approved, the appointing authority shall notify the claimant that such action is final and conclusive by law. See 10 U.S.C. § 2735.

b. Appeal. There is no right of appeal under this statute.

c. Suit. The United States has not consented to be sued under this statute.

13. Payment

a. Release. A settlement agreement and release shall be obtained from the claimant when payment of an award is accepted. The settlement amount shall be set forth in U.S. dollars to be paid in local currency at the currency exchange rate in effect at the time of payment. If payment will be made by electronic wire transfer, the necessary banking and routing information should be included on the settlement agreement. See Appendix 3-a for the suggested template for the settlement agreement and release.

b. Documentation. When payment has been authorized, the appointing authority shall submit the original and one copy of the approved report of the FCC to the nearest Navy or Marine Corps disbursing officer for payment. If no Navy or Marine Corps disbursing officer is reasonably available, the nearest U.S. disbursing officer of any agency may be requested to pay the claim.

c. Voucher and Accounting Data. For details on the specific requirements of the voucher and the accounting data to be used in payment of FCA claims, consult Chapter VIII of reference (a). See section 0822.

d. Advance Payments. Advance payments may be paid under Chapter VIII of reference (a) section 0822.

e. Currency. Due to Federal currency restrictions, all payments under this chapter shall be made in the local currency of the country in which the claim arose or in the currency of the country where the claimant resides at the time of such payment.

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Appendix 3-a**SETTLEMENT AGREEMENT AND RELEASE**

File Reference: _____

I, _____ [claimant], hereby agree to accept the sum of _____ [amount] (\$ [or equivalent] _____) USD (to be paid in local currency at the exchange rate in effect on the date payment is issued) in full satisfaction and final settlement of any and all claims which I have individually, on behalf of the next of kin of _____ [injured party], and on behalf of the estate of _____ [injured party] or may have against the United States, its officers, agents and employees, for property damage, personal injury, wrongful death, [whichever applicable] and associated losses arising from _____ [brief details of incident], and for any and all damages, injuries and losses proximate and consequent thereto.

In consideration hereof, I hereby release and forever discharge the United States, its officers, agents and employees, from all liability, claims and demands of whatsoever nature arising from the said incident.

Payment of the settlement amount will be made by government wire transfer as per the following:

Name on the Account: _____
 Account Number: _____
 IBAN: _____
 Code BIC/Swift: _____
 Bank Name: _____
 Bank Branch _____
 Street Address of Bank: _____
 Bank Address: _____

It is understood that the amount tendered is accepted in full satisfaction and final settlement and that the award is made pursuant to the Foreign Claims Act, 10 U.S.C. § 2734, which provides for the administrative settlement of disputed claims against the United States arising from its activities, and is not to be construed as an admission of liability on the part of, but as a release of, the United States, its officers, agents and employees.

DATE_____
CLAIMANT'S NAME

WITNESSES TO CLAIMANT'S SIGNATURE:

NAME

ADDRESS

NAME

ADDRESS

PROCEDURES FOR PROCESSING CLAIMS INVOLVING
NON-APPROPRIATED FUND (NAF) ACTIVITIES AND THEIR EMPLOYEES

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1. Scope. This enclosure details the claims process for claims filed against and on behalf of the United States for property damage, personal injury, or death arising out of the operations of non-appropriated fund (NAF) instrumentalities, also referred to as NAF activities. NAF activities are Federal agencies within the meaning of the Federal Tort Claims Act (FTCA) (28 U.S.C. §§ 1346(b), 2671-2680 if they are charged with an essential function of the Department of the Navy (DON) and if the degree of control and supervision by the DON is more than casual or perfunctory. Consequently, to the extent sovereign immunity is waived by the FTCA, the United States remains ultimately liable for payment of NAF activity claims.

2. Authority. Policy governing the administrative processing of claims arising out of the operation of NAF activities is established by DoD Directive 5515.6.

3. Definitions

a. NAF Activities. An instrumentality of the Federal Government established to generate and administer non-appropriated funds for programs and services contributing to the mental and physical well-being of DoD personnel and their dependents. A NAF activity is not incorporated under the laws of any State and enjoys the privileges and immunities of the Federal Government. Navy and Marine Corps retail services (exchanges), MWR activities, food and hospitality services, and child welfare centers are examples of NAF activities.

b. Non-appropriated Funds. Funds generated through the use and patronage of NAF activities, and not including funds appropriated by Congress.

c. Employees of NAF Activities. Personnel employed by NAF activities whose salaries are paid from non-appropriated funds.

4. Notification

a. General. A few NAF activities, such as flying clubs, carry private commercial insurance to protect them from claims for property damage, death or personal injury attributable to their operations. The majority of NAF activities, however, are either totally or partially self-insured.

b. Timely Notice. When the operation of a NAF activity results in property damage, death or personal injury, any insurance carrier must be provided with immediate written notification of the incident by the NAF activity involved. Such notification should not be postponed until a claim is filed. When the NAF activity is self-insured, the self-insurance fund shall be notified of the potential liability by the activity.

5. Responsibility. All claims resulting from NAF activities should be submitted to the command having cognizance over the NAF activities involved or directly to the Tort Claims Unit (TCU). If the claim arises overseas, it will be forwarded to the single-service claims authority designated to process claims arising in that area of responsibility. The TCU has primary responsibility for the negotiation and settlement of DON NAF activity claims unless there is an agreement between the cognizant NAF activity and the TCU that specifies otherwise. All claims received by the

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command should be stamped with the date of receipt and, along with the envelope in which they arrived, immediately forwarded to the TCU.

6. Investigation. All claims arising out of the operation of NAF activities world-wide shall be investigated in accordance with the procedures for investigating similar claims against appropriated fund activities. Chapter II of reference (a) provides guidance for conducting an investigation of an incident or event likely to result in claims or civil litigation against or on behalf of the DON or the United States.

7. Negotiation

a. General. Claims against NAF activities will be processed using claims procedures, regulations and statutes applicable to claims against appropriated fund activities. The administrative requirements and time limitations for filing a claim as described in enclosure (1) apply to all NAF activity claims.

b. When the NAF Activity Is Insured. When a NAF activity is insured, the insurer or the contracted third-party claims administrator (TPA) will normally conduct negotiations with claimants. If requested by the insurer or TPA, the TCU may conduct settlement negotiations. If the TCU negotiates a final settlement, the request for payment will be forwarded to the insurer or TPA for payment. Concurrence by the insurer or TPA in the amount of the settlement is not required.

c. When the NAF Activity Is Not Insured. When there is no private commercial insurer and the NAF activity has made no independent arrangements for negotiations, the TCU or the appropriate single-service claims authority is solely responsible for conducting negotiations. When a settlement is negotiated by the DON, the final settlement award will be forwarded to the NAF activity for payment from non-appropriated funds.

8. Payment of Substantiated Claims. A tort claim must be paid with non-appropriated funds when a non-appropriated fund employee is responsible for the negligent act or omission giving rise to the liability. Liability arising from acts or omissions of appropriated fund employees or active-duty military members is payable with appropriated funds. When the negligent act or omission giving rise to liability was jointly committed by a non-appropriated fund employee and an appropriated fund employee, liability may be apportioned and the claim paid with appropriated and non-appropriated funds according to the percentage of negligence assigned to each tortfeasor.

9. Denial of Tort Claims. Tort claims resulting from the operation of a non-appropriated fund activity may only be denied by an OJAG Claims Attorney. Denial of a NAF activity tort claim shall be in writing and mailed by certified mail, return receipt requested, stating the reason for the denial and for claims denied under the FTCA (see enclosure (1) of this instruction) notifying claimant of the right to file suit. For NAF activity claims denied under the MCA (see enclosure (2) of this instruction), the denial letter shall inform claimant that there is no right to sue under the MCA but that the denial decision may be appealed in writing.

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10. Requests for Reconsideration

a. FTCA Claimants. Prior to the commencement of suit and prior to the expiration of the six-month period for filing suit, a claimant may present a written request for reconsideration of the denial to the attorney who denied the claim. See paragraph 14 in enclosure (1).

b. MCA Claimants. A claimant whose claim is denied under the MCA has 30 days from his receipt of the denial letter to file a written appeal. See paragraph 11 in enclosure (2).

11. Suits Arising out of the Conduct of NAF Activity Employees Acting Within the Scope of Their Employment

a. FTCA Claimants. A person dissatisfied with the denial of his NAF activity tort claim adjudicated under the FTCA may file suit in the appropriate Federal district court not later than 6 months after the mailing of the denial letter. See paragraph 15 in enclosure (1).

b. MCA Claimants. There is no right to sue under the MCA. The sole remedy for an MCA claimant who is dissatisfied with the denial of his MCA tort claim is to file an appeal with the original adjudicating authority within 30 days of receipt of the denial letter. See paragraph 12 of enclosure (2).

12. Claims by NAF Activity Employees for Damages Incurred Incident to Their Employment

a. Property. Claims by NAF activity employees for loss, damage, or destruction of their personal property incident to their employment shall be processed and adjudicated under the Personnel Claims Act (PCA) in accordance with enclosure (6) of this instruction. These claims will then be forwarded to the appropriate NAF activity for payment from non-appropriated funds.

b. Personal Injury or Death

(1) Compensation is provided by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) for employees of NAF activities who are citizens or permanent residents of the United States, or foreign nationals employed within the United States, and have suffered injury or death arising out of and in the course of their employment (5 U.S.C. § 8171). That Act is the exclusive basis for Government liability for such injuries or deaths that are covered (5 U.S.C. § 8173). A claim should first be made under that Act if there is a substantial possibility the injury or death is covered under the Act's provisions.

(2) Employees who are not citizens or permanent residents, and who are employed by a NAF activity outside the continental United States, may be protected by private insurance of the NAF activity or by other arrangements. When a NAF activity has elected not to obtain insurance coverage or to make other arrangements, compensation is separately provided by federal statute, military regulations, and agreements with foreign countries. See 5 U.S.C. § 8172; DoD 1401.1-M, Personnel Policy Manual for Non-appropriated Fund Instrumentalities; and BUPERSINST 5300.10A, NAF Personnel Manual.

PROCEDURES FOR PROCESSING
NONSCOPE CLAIMS

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1. Scope. This enclosure provides information on payment of claims against the United States for property damage, personal injury or death incident to the use of a government vehicle at any location, or incident to the use of any other government property on a government installation, when the claim is not payable under any other statute. Claims may be paid under this provision whether or not the military member, civilian employee or official is acting in the scope of their employment.

2. Statutory Authority. The authority to pay these claims is found at 10 U.S.C. § 2737, the Nonscope Claims Act (NCA), which provides authority for the administrative settlement of up to \$1,000.00 for claims caused by negligent, wrongful or otherwise involving fault acts or omissions of DON military personnel or civilian employees or officials. There is no right to sue. Settlement shall be final and conclusive pursuant to 10 U.S.C. § 2735. There are no territorial limitations and the Act has worldwide application.

3. Definitions

a. Civilian Official or Employee. Any civilian employee of the DON paid from appropriated funds at the time of the incident.

b. Vehicle. Includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land (see 1 U.S.C. § 4). Government vehicles, for purposes of this instruction, do not include rental cars.

c. Government Installation. Government installation is a facility having fixed boundaries and owned or controlled by the United States Government. It includes both military bases and nonmilitary installations.

d. Scope of Employment. Whether or not a Government employee acted within the scope of employment is defined by the law of the place where the act or omission occurred under the legal principle of respondeat superior (i.e., master and servant). If the employee is found to be within the scope of his employment, the claim must first be considered under the Federal Tort Claims Act (FTCA) and the Military Claims Act (MCA).

4. Statute of Limitations. A claim must be presented in writing within two years after it accrues. It accrues at the time the claimant knew or should have known of the injury or damage. In computing time to determine whether the period of limitation has expired, exclude the incident date and include the date the claim was presented.

5. Claims Procedures

a. General. The general provisions of paragraph 4 of the basic instruction and Chapter VIII of reference (a) shall apply in determining what is a proper claim, who is a proper claimant, and how a claim is to be investigated and processed under 10 U.S.C. § 2737 and this enclosure.

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b. Presentment. A claim is presented when received by the DON. It must be in writing and contain a description of the incident giving rise to the claim with a demand for money damages from a claimant or the claimant's duly authorized agent.

c. Amendments. Amendments will be submitted in writing at any time prior to final adjudication and signed by the claimant or the claimant's duly authorized agent.

d. Automatic Considerations. Claims submitted under the provisions of the FTCA or MCA shall be considered automatically for an award under the NCA when payment would otherwise be barred because the DON personnel were not acting in the scope of their employment at the time of the incident.

e. Overseas Applicability. Nonscope claims for damages caused by local national DON employees overseas are also payable under this enclosure if the injury was caused by the use of Government equipment.

f. Payment. Payment may not be made on a nonscope claim unless the claimant accepts the amount offered in full satisfaction of the claim and signs a settlement agreement. If the claimant refuses payment, then the claim will be denied pursuant to the rules applicable to the statute under which it was submitted.

g. Denial. If a claim submitted under the NCA is denied, the claimant shall be informed of the reasons in writing and advised of the right to appeal in writing provided the appeal is received within 30 days of the notice of denial. The provisions of paragraph 12 of enclosure (2) also apply to denials of nonscope claims.

h. Relationship to Article 139 Claims. Article 139, Uniform Code of Military Justice (10 U.S.C. § 939) is not preemptive. The prohibition in 10 U.S.C. § 2737 on paying claims "cognizable under any other provision of law" applies only to laws authorizing claims against the United States. Article 139 authorizes claims against service members. See Chapter IV of reference (a).

6. Claims Not Payable

a. Negligence on claimant. Claims for damages caused wholly or partly by negligent or wrongful acts of claimants or their agents or employees;

b. Negligence of Non-appropriated Fund (NAF) Activity Employees. Claims arising out of the negligent or wrongful acts NAF activity employees;

c. Indemnification. Claims, or any part thereof, that are legally recoverable by claimants under an indemnifying law or indemnity contracts; and

d. Subrogation claims. Subrogated claims and those covered by insurance, whether claimed on that insurance or not.

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7. Measure of Damages. Generally, the measure of damages provisions under the MCA are used to determine the extent of recovery for nonscope claims. Compensation is computed in accordance with paragraphs 7 and 8 of enclosure (2) of this instruction, except payment of damages for personal injury or death under this enclosure shall not be for more than the cost of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid for by the United States (in no event to exceed \$1,000.00).

PROCEDURES FOR PROCESSING PERSONNEL CLAIMS

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PROCEDURES FOR PROCESSING PERSONNEL CLAIMS

This enclosure is divided into two sections. Section A prescribes procedures and substantive bases for administrative settlement of Personnel Claims against the United States submitted by Department of the Navy (DON) personnel and civilian employees. Section B sets forth procedures for the administrative pursuit by DON of recovery from carriers, contractors, or insurers responsible for loss of such personal property.

SECTION A: CLAIMS AGAINST THE UNITED STATES

1. Claims Against the United States - Generally

a. Scope. This enclosure provides information regarding the administrative processing of claims submitted by DON military and civilian personnel under the Military Personnel and Civilian Employees' Claims Act (PCA), 31 U.S.C § 3721. Payment does not depend on Government tort liability and is based on the claimant's status at the time of the loss. The loss, damage, or destruction (hereinafter referred to as "loss") must be incident to the claimant's service in order to be cognizable. The statute provides that the administrative settlement of claims is final and conclusive; there is no judicial remedy.

b. Purpose. The PCA is a gratuitous payment statute that Congress intended to help lessen the hardships of military life by providing limited compensation for certain types of property losses. The PCA authorizes payment of claims for the fair market value (FMV) of personal property lost, damaged or destroyed incident to service. Personal property is defined as any type of tangible property that is not real property and includes, but is not limited to, household goods (HHG), unaccompanied baggage, pets, clothing and articles worn, privately owned vehicles (POVs), mobile homes and boats. This limited compensation is not a substitute for private insurance. Intangible property and consequential and incidental damages are not considered personal property and are not payable under the statute.

c. Preemption. The PCA and the provisions of this enclosure preempt payment under any other claims statute. Claims not cognizable under the PCA may, however, be cognizable under another claims statute.

2. Statutory Authority. The statutory provisions of the PCA are located in 31 U.S.C. § 3721, as amended. In addition, the adjudication of HHGs claims is supported by the following statutory provisions:

a. 10 U.S.C. § 2636a, The Full Replacement Value (FRV) Program, which mandates government contracts for transportation of Department of Defense (DoD) personnel's baggage and household effects include FRV protections for lost or destroyed items.

b. 10 U.S.C. § 2740, commonly referred to as "GAP Legislation," which authorizes payment of FRV on a HHG PCA claim in certain instances in which FRV reimbursement to the claimant for the loss or damage is not available directly from a transportation service provider (TSP).

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3. Maximum Amount Payable. The maximum amount payable to a claimant for loss arising from a single incident is \$40,000.00. However, where the loss to personal property arose from emergency evacuations or other extraordinary circumstances, the maximum amount payable to a claimant is \$100,000.00.

4. Statute of Limitations

a. General. A PCA claim must be filed with the Personnel Claims Unit (PCU), Norfolk, within two years from the date it accrues. A claim accrues on the day the claimant knows or should know of the loss. In the case of loss, that is normally the day of the incident; in case of HHG, it is the date of delivery. The requirement is statutory and may only be waived if a claim accrues during armed conflict, or armed conflict intervenes before the two-year period has run, and good cause is shown.

b. Special Rules for HHG shipped under Defense Personal Property Program (DP3). Although the two year statute of limitations applies for HHG claims, to be eligible for Full Replacement Value (FRV) protection, the claimant must first file a claim with the TSP within nine months after the date of delivery. See section 9 for a more detailed explanation.

5. Claimants

a. Proper Claimants. The definition of a proper claimant under the PCA is based on a claimant's status at the time the claim accrued, even if the member or employee has separated from Federal service at the time the claim is filed.

(1) The PCA covers all active-duty members and reservists on active duty or active duty for training at the time the claim accrued. Claims filed by Navy and Marine Corps active-duty members for loss of personal property incident to their employment will be processed and adjudicated by the PCU. A retired member is not a proper claimant unless the loss or damage occurred while the claimant was on active duty or in connection with his last movement of personal property incident to service.

(2) The PCA covers all Federal employees who are paid from appropriated funds. It does not cover Red Cross employees, United Services Organization (USO) personnel, or employees of Government contractors. Claims filed by Navy and Marine Corps Federal employees for loss of personal property incident to their employment will be processed and adjudicated by the PCU. The military services have agreed that a claim brought by a civilian employee transferring from one service to another is processed and paid by the service gaining the employee.

(3) Non-appropriated Fund (NAF) activity employees are employees whose salaries are paid from non-appropriated funds. Persons paid from appropriated funds but assigned to NAF are not NAF activity employees for PCA claims. These claims will be processed per paragraphs 5a(1) and 5a(2), above. Claims by Navy and Marine Corps NAF activity employees for loss of personal property incident to their employment will be processed and adjudicated by the PCU in accordance with this enclosure and forwarded to the local NAF activity that employs the claimant for payment from non-appropriated funds.

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(4) By agreement among the military services, claims from Department of Defense Education Activity (DoDEA) teachers are processed by the service operating the installation where the teacher is employed, even if they have left DoDEA employment.

(5) Agents or Legal Representatives

(a) The authorized agent or legal representative of a proper claimant may file on behalf of the claimant if the agent provides a Power of Attorney (POA) that complies with local law. A letter of authorization is insufficient. Payment is made in the claimant's name and sent to the address of record.

(b) Certain relatives of a deceased proper claimant may file on behalf of the deceased. However, neither the estate of a deceased proper claimant nor the executor or personal representative is considered a proper claimant. If multiple persons listed by the statute as equal in priority file separate claims, the first claim settled extinguishes the rights of the other claimants. The PCA ranks surviving relatives in the following order of priority:

- (1) Spouse;
- (2) Child or children;
- (3) Father, mother, or both; and
- (4) Brother, sister, or both.

(c) The legal guardian of a minor claimant or a claimant declared incompetent or incapacitated by a court may file a claim on the claimant's behalf. Payment is made in the name of the legal guardian or parent, for the benefit of the claimant.

b. Improper Claimants. Insurance companies, assignees, subrogees, vendors, lienholders, and other third parties; contractors, subcontractors and their employees; and foreign military personnel.

6. Claims Payable. Claims for loss of property are compensable if the loss was incident to service and possession of the property was reasonable and useful under the circumstances.

a. Assigned Quarters. Claims may be payable for loss of property at assigned quarters or other authorized places.

b. Transportation and Storage Losses. Claims may be payable for the loss of property incurred during transportation or storage under orders and at Government expense.

c. Examples. Annex A contains a list of examples of many common claims. While this list is not exhaustive, the concepts described on how to analyze, investigate, and adjudicate claims are applicable to all claims filed under the PCA.

7. Claims Not Payable

a. Covered by Insurance. Claims are not payable if any part of the loss is payable by any available insurance, except for the loss of HHG or POVs while shipped or stored at Government expense pursuant to the Full Replacement Value Act unless the TSP is excluded from liability under the Defense Personal Property Program Claims and Liability Business Rules (Business Rules) promulgated by U.S. Transportation Command (USTRANSCOM).

b. Potential Tort Claims. Claims that are not payable under the PCA but implicate potential negligence on behalf of Government personnel acting within the scope of their employment may be referred to the Tort Claims Unit for consideration under the Federal Tort Claims Act, Military Claims Act, or any other applicable claims statute.

c. Examples. Annex B is a list of examples of many common claims that are not payable. While this list is not exhaustive, the concepts described are applicable to all claims filed under the PCA.

8. Adjudicating Authorities

a. The Judge Advocate General, the Deputy Judge Advocate General, Assistant Judge Advocate General (Civil Law), Director, Claims and Tort Litigation (OJAG Code 15), and Head, Affirmative and Personnel Claims Branch (OJAG Code 15) have been delegated authority to adjudicate claims for \$100,000.00 or less and denial authority in any amount.

b. Any individual who is personally designated by the Director, Claims and Tort Litigation, may adjudicate claims up to \$40,000.00 and may deny claims in any amount.

9. Submitting a Claim

a. General. A claim for loss of personal property incident to their employment under the PCA must be in writing and signed by a proper claimant or by a person with appropriate POA from a proper claimant (see paragraph 5(a) above). Any writing will be accepted and considered as long as it substantially describes the facts necessary to support a claim cognizable under these regulations, is signed by a proper claimant, and contains an amount claimed. To constitute a filing under this regulation, the claim must be presented within two years from the date it accrues.

b. Non-HHG Claims. Non-HHG Claims include any type of tangible personal property that is not real property and incurs a loss incident to service. Non-HHG claims should be filed with the PCU on a DD Form 1842 (Claim for Loss of or Damage to Personal Property Incident to Service) accompanied by DD Form 1844 (Schedule of Property).

c. HHG Claims. HHG Claims include those claims stemming from a shipment of DoD personnel's baggage and household effects personal property arranged under orders and at Government expense. The DoD HHG move program requires the member to first file a claim with the TSP within nine months of delivery in order to retain FRV protection associated with

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the DoD moving contract. Thirty days after the claimant has submitted the claim to the TSP, the option becomes available for the claimant to transfer the claim to the PCU. A transferred HHG claim is processed in accordance with this instruction. Although compensation is more limited than that provided in the DoD FRV moving contract, once processed, the PCU will pursue recovery from the TSP under the terms of the FRV contract and any additional monies recovered will be forwarded to the member.

(1) Transferring a HHG claim to the PCU is accomplished by the claimant selecting the “transfer to MCO” option in the Defense Personal Property System (DPS). This option automatically becomes available thirty days following the submission of the claim or if the TSP has made a final offer or denied an item before the thirty days toll.

(2) To transfer a claim filed against the TSP outside DPS to the PCU, the claimant must notify the TSP in writing (by letter or email) detailing what items are being transferred to the PCU and provide a copy of that letter and the completed DD Form 1842 and 1844 (referenced in paragraph 9b above).

(3) For claims where the member does not want to file with the TSP first or, the nine-month timeframe has expired, the claimant can file directly with the PCU using the DD Form 1842 and 1844. If the member does file directly with the PCU prior to the expiration of the nine-month timeframe because the member does not want to file with the TSP, the member loses the FRV entitlements associated with the contract and the PCU cannot pursue for FRV under the terms of the contract.

10. Adjudication and Computation of Payment

a. General. When a claim has been transferred or received by the PCU, it will be evaluated independently based upon the information presented.

b. Substantiation. Claimants are expected to report losses promptly and are responsible for substantiating ownership or possession of the items claimed as lost or damaged; that the items were in fact lost or damaged; and the value of the loss or damage.

c. Credibility. The credibility of evidence presented will be evaluated in every claim. When there are indications of alleged damage that is exaggerated, the dollar values are excessive, or the damage is similar to damage noted in previous claims, claimants may be requested to provide additional evidence. If the evidence is not credible, an item or the entire claim may be denied. If fraud (an intentional attempt to deceive), is discovered, the entire claim will be denied. If fraud is discovered after payment has been made, the claimant will be requested to repay the Government for all payments made on the claim. If the claimant refuses, Defense Finance and Accounting Services (DFAS) may be requested to withhold the pay of the claimant and/or the case may be referred to the Naval Criminal Investigative Service (NCIS).

d. Computation of payment. OJAG Code 15 periodically publishes an Allowance List-Depreciation Guide that specifies average yearly and flat rates of depreciation and maximum payments applicable to certain categories of property. The Allowance List-Depreciation Guide

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is binding. The value of a loss is first determined in accordance with the below guidance and then adjusted to reflect payments, repairs or replacement by carrier insurance companies, or lost potential insurance or carrier recoveries.

(1) The measure of damages under the PCA is the fair market value of the loss. Except in unusual cases, a used item that has been lost or destroyed is worth less than a new item of the same type. The price of a new replacement item is depreciated to award the claimant the fair market value of the lost or destroyed item. Yearly depreciation is not taken during periods of storage and normally no depreciation is taken on repair costs or on replacement costs for items less than six month old, excluding the month of purchase and the month the claim accrued.

(a) Depreciation is not taken on replacement parts for damaged items unless they are parts separately purchased or normally replaced during the useful life of the item.

(b) When upholstered furniture is reupholstered because the damage is too severe to be repaired and a Loss of Value (LOV) payment is not appropriate, the cost of new fabric is depreciated at the rate reflected in the Allowance List-Depreciation Guide.

(c) Items such as tires, most clothing items, and most toys rapidly lose their value. For rapidly depreciating items, half of the normal yearly or flat rate depreciation on such items is applied when the item is between three and six months old at the time of the loss.

(d) Even though depreciation is not taken during periods of storage, depreciation is applied for storage periods for those items that have become obsolete and have lost value because of changes in style or technological innovations.

(2) For items that can be economically repaired, the cost of repair is the measure of the loss. The cost of repair may be the actual cost as demonstrated by a paid bill, or may be reasonable estimated costs as demonstrated by an estimate of repair prepared by a person in the business of repairing that type of property. Navy policy is that repair estimates are not required for repair costs that are less than \$100. This policy was adopted for administrative purposes only.

(3) Pre-existing damage (PED) is damage to an item that predates the incident giving rise to a claim. PED is most commonly identified by the use of symbols on HHG descriptive inventories. Whenever PED is listed on an inventory, examiners must determine whether the PED did in fact exist and if the cost of repairing the item includes repairing PED. The fact that a claimant signed the inventory that listed PED is conclusive evidence that PED did exist unless the member has taken written exceptions on the inventory to the TSP's description of PED. A deduction for PED is taken if the repair includes repairing PED unless repairs to the new damage cannot be made without repairing PED.

(4) A LOV payment rather than repair cost, is appropriate when an item incurs minor damage that is not economical to repair but the item remains useful for its intended purpose. A LOV payment is particularly appropriate when the item is not of great value and has preexisting

damage (PED). A LOV payment may also compensate claimants for cosmetic damage to items that were not purchased for purposes of display or decoration.

(5) A fair and reasonable (F&R) payment may be appropriately considered when the item is obsolete but has some value; the claimant cannot replace the item in the local area; the claimant cannot replace the item at any cost; repair costs or replacement costs are excessive for the item and LOV adjustment is not appropriate or when the claimant has substantiated a loss in some amount but has failed to substantiate a loss in the amount claimed.

e. Notice of Decision. Upon adjudication, the claimant will be notified in writing of the amount authorized and the reasoning behind the adjudicated amount, as well as the right to request reconsideration of the decision.

11. Emergency Partial Payments

a. General. If a claimant has suffered a significant, compensable loss of items that are needed for daily living, and can demonstrate a need for immediate funds to replace some of those items (e.g., food, clothes, baby items, etc.) the adjudicating authority may authorize a partial payment of an appropriate amount.

b. Effect of Partial Payment. Partial payments are to be subtracted from the adjudicated value of the claim before final payment is made, and all overpayments must be recouped.

12. Reconsideration

a. General. When a claim is denied in whole or in part, the claimant shall be given a written explanation of the initial adjudication and the right to submit a written request for reconsideration. A request for reconsideration must be submitted to the original adjudicating authority within six months from the date the claim was adjudicated.

b. Initial Adjudicating Authority. If a claimant requests reconsideration and the original adjudicating authority determines the original action was erroneous or incorrect, the original adjudicating authority will authorize any supplemental payment deemed warranted.

c. Higher Authority Review. If the original adjudicating authority does not determine all items requested to be reconsidered warrant full additional payment, the file will be forwarded to the next higher adjudicating authority. The decision by the next higher adjudicating authority is final.

SECTION B: CARRIER RECOVERY CLAIMS

1. Carrier Recovery Claims – Generally

a. Scope. This section applies only to HHG shipments and addresses the process of recovering funds from the carrier under the terms of the DoD contract for loss during the storage or transportation of household goods and other personal property (such as cars, truck, mobile homes, boats, etc.) for which military personnel and civilian employees were paid under the provisions of the PCA. For Navy and Marine Corps personnel, assertions and recovery are the responsibility of the PCU unless the shipment was arranged by the Department of State (DOS). In those moves, recovery is the responsibility of DOS.

b. Elements of Collection. A carrier recovery claim will be asserted against a TSP only if the following elements are met. There are three elements in the successful assertion and collection of a recovery claim:

(1) Establishing a transit loss occurred – that a TSP received the property and that the property was not delivered in the condition that the TSP received it;

(2) Determining who had responsibility for the goods at the time of the transit loss;

(3) Calculating the value of loss.

2. Statutory/Regulatory/Contractual Authority

a. The Federal Claims Collection Act, 31 U.S.C. §§ 3711-3720e, provides the authority for pursuing recovery action. This statute allows the PCU to assert claims on behalf of the United States and provides authority to waive or compromise, collect by administrative offset, and assess interest, penalty, and handling charges on delinquent claims.

b. 10 U.S.C. § 2636a, in addition to requiring the Government to contract for FRV protection with all TSPs no later than 1 March 2008, allows the Government to deduct the value of outstanding claims of a TSP based on FRV from the amount due to the TSP if the TSP fails to settle the outstanding claim.

c. The Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 14706, governs the liability of interstate transport of property by motor and rail carriers and freight forwarders.

d. The Defense Personal Property Program (DP3) Claims and Liability Business Rules (Business Rules), are detailed provisions agreed upon by the Government and TSPs and provides the process, timelines and liability associated with the DoD FRV program.

3. Limitations on Carrier Recovery Actions.

a. No Demand. No demand will be made where it conclusively appears that the loss or damage was caused solely by Government employees or where a demand would otherwise be clearly improper under the circumstances and Business Rules.

b. Claims less than \$25.00. Claims of \$25.00 or less will not be pursued as administrative costs outweigh recovery proceeds.

4. Liability And Types Of Shipments

a. General. The delivering TSP is liable to the claimant, to the claimant's agent, or to the military service that contracted for the shipment, for any loss that occurs to the claimant's personal property while it is in the custody of the TSP in accordance with the Business Rules.

b. Amount of Liability. Liability on all shipments will be determined in accordance with 49 U.S.C. § 14706 unless a specific provision of the "Government Bill of Lading" (GBL) establishes a different rule or procedure. However, if the claim is filed directly with the TSP more than nine months after delivery, then the TSP is liable for FMV (depreciated value), up to a maximum of \$1.25 times the net weight of the shipment in pounds.

c. Shipment Types. HHG are shipped through various contracts. The type of contract will determine the extent of liability on the part of the TSP.

5. Assertion of Claim Against a Carrier, Contractor, or Insurer. If payment is made by the Government to a claimant in a HHG claim, the claimant assigns to the Government all rights and interest the claimant may have against any contractor, carrier, or insurer or other party arising out of the incident on which the claim is based.

a. General. For DON shipments, the PCU will submit a written "demand" against a carrier, contractor or insurer to compensate for loss or damage incurred to personal property during shipment or storage.

b. Last Handler. The demand will be made against the last TSP known to have handled the goods, unless the TSP in possession of the goods when the loss occurred is known. The demand packet will include a completed DD Form 1843 identifying the responsible carrier, the shipment details, the amount claimed, the claimant's name, supporting documentation and a point of contact. The DD Form 1843 informs the TSP that they have 60 days to respond, and after 60 days the PCU will initiate offset action if no response is received.

6. Recoveries From TSP, Contractor, Or Insurer. If a claimant receives payment from the Government under this instruction and also receives compensation from a carrier, contractor, or insurer for the same item, the Government shall collect from the claimant the amount necessary to prevent the claimant from being compensated twice for the same loss. If the amount payable on a claim is less than the adjudicated value of the claim (due to the limits of a TSP's liability),

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the Government shall pay any amount in excess of what is owed by the carrier or other third parties to the claimant, up to the adjudicated value of the claim.

7. Exclusions of Liability. The TSP shall be liable for loss that occurs while being transported or held in non-temporary storage (NTS) except loss caused by or resulting from any act or omission of the claimant or the exclusions listed in the Business Rules.

8. Offsets

a. General. Administrative offset is the process by which the Government's demand is taken from money that is owed to the TSP for transportation services or from other payment due the TSP from the Government when the carrier has failed to respond to the PCU's demand. For DON HHG shipments, the PCU has been designated the offset authority for debts of TSPs contracted to move or store personal property under the provisions of a government contract.

b. Execution of Offsets. A carrier recovery claim may be offset if the claim has not been settled within 60 days from the date a demand was made, a response has not been received from the carrier or contractor, or when legitimate efforts to collect the fully justified demanded amount have reached a standstill and the carrier has no valid basis for denial.

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ANNEX A – COMMON CLAIMS PAYABLE

The following are examples of more common claims. Not all situations that may result in a claim are covered in this Annex, but the process described below on how to approach, investigate, and adjudicate claims are applicable to all claims filed.

1. Losses at Assigned Quarters or Other Authorized Places. Assigned quarters are Government-owned or leased housing assigned or otherwise provided-in-kind to the claimant.

a. Within the United States. Housing provided uniformed military personnel under the Military Housing Privatization Initiative (MHPI) within the United States is considered to be provided-in-kind by the United States Government but only if: (1) it is located within the perimeter of a military installation that is bounded by a fence, and (2) access is restricted by personnel access control measures (e.g., a guarded gate, CAC controlled access point, etc.). A loss by a member visiting another member's quarters is not cognizable under the PCA.

b. Outside the United States. All authorized off-base quarters are considered assigned quarters. An overseas civilian employee who is not a U.S. citizen, or a U.S. citizen who was hired as a civilian employee while residing abroad, is considered a local inhabitant and their residences are not considered assigned quarters. A loss from overseas quarters occupied by a service member's family is not compensable if the service member is permanently stationed elsewhere unless the service member is on unaccompanied orders or away on an operational deployment.

c. Temporary Additional Duty (TAD). Authorized temporary quarters anywhere, including hotels and motels are considered assigned quarters. Permissive TAD and leave are not at Government expense and, consequently, not considered assigned quarters.

d. Other Authorized Places. Other authorized places are defined as any other place on the installation where the claimant is authorized to store property of the type that was lost or damaged, or where the claimant was directed or required to store the property by competent authority.

2. Unusual Occurrence. The PCA covers loss that results from serious events and natural disasters not expected to take place in the normal course of events and hazards outside the routine risks of day-to-day living and working. Two different types of incidents may be considered unusual occurrences: those of an unusual nature and those of a common nature that occur to an unexpected degree of severity. Examples of unusual occurrence include structural defects in quarters, faulty plumbing maintenance, termite or rodent damage, unusually large size hail, and hazardous health conditions due to Government use of toxic chemicals.

a. Flood. Losses due to flooding in assigned quarters are compensable. In areas plagued by frequent flooding, the claimant is expected to store items off the floor. Few items are destroyed merely by becoming wet, and claimants have a duty to mitigate damage by drying out wet items promptly; deterioration caused by failure to do so is not compensable.

b. Lightning and Power Surges. Storms and power surges are not considered unusual occurrences, and damage caused by such incidents is normally not compensable. Claims that electrical or electronic devices were damaged by a power surge may be paid only when lightning actually strikes the claimant's residence or objects outside the residence, such as a transformer box, or when power company records or similar evidence shows that a particular residence or group of residences were subjected to a power surge of unusual intensity.

c. Power Outages. Claims that electrical or electronic devices were damaged by a power outage are not compensable. Claims for food spoilage caused by a power outage may be compensable if the outage was of unusual duration.

d. Termite and Other Insect or Rodent Infestation. In areas where these pests are common, such as tropical zones, infestation is not considered an unusual occurrence.

e. Ice and Snow. In regions subject to very cold weather, ice and snow sliding off a roof onto a vehicle or collapsing the roof of a utility shed are not considered unusual occurrences.

f. Hail. While a hailstorm is normally not considered an unusual occurrence, an exceptionally severe hailstorm based on a region's history may be considered unusual. A hailstorm with baseball-sized or larger hail is considered unusual for any area.

g. Wind. Wind is not considered an unusual occurrence unless the wind has risen to the degree that it is considered a tornado, hurricane, cyclone, etc. or it fits the definition of unusual occurrence.

h. Falling Trees and Branches. While falling branches are not unusual, it is unusual for a large, healthy tree or a significant portion of one to fall. In such cases, claims for damage may be compensable under the PCA.

i. Contamination. Contamination of personal property by toxic chemicals is considered an unusual occurrence. Toxic chemicals are those that are highly poisonous but do not include common chemicals such as paint, battery acid, ink, or oil.

3. Fire. Losses caused by fire are compensable unless it is determined that negligence of the claimant, or the claimant's family members or guests, caused the loss.

4. Theft. Theft incurred incident to service may be compensable, although failure to report the theft immediately or as soon as practicable, or fully cooperate in the investigation of the loss, may impede a claimant's ability to prove a loss occurred.

a. Reasonable measures to safeguard property. Losses due to theft may be paid only if the claimant took reasonable measures to safeguard the property and the theft occurred as a result of forced entry.

b. Extra measures for certain items. Claimants are expected to take extra measures to protect cash, valuable jewelry, and similar small, high value, easily pilferable items. Valuables should

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be stored in a locked container within a secured room, and the locked container should be large enough that it is not convenient for a thief to carry.

c. Money, jewelry and high value items and easily pilferable items in household goods shipments. Money should never be shipped with baggage or HHG. Small, easily pilferable items (e.g., jewelry) may be shipped, but claimants are expected to remain present at the residence while the TSP packs the items to ensure they are actually packaged correctly and properly documented on the descriptive inventory and the High Value/ High Risk Inventory as items tendered to the TSP that the inventory specifically and accurately reflects the tender of each of the items.

d. Theft in gyms. Theft of property from on-base gym lockers is considered a loss incident to service for service members even if it occurred after normal duty hours. Theft of property belonging to civilian employees would be considered incident to service only if the loss occurred during duty hours. Theft from gym lockers used by family members, however, is not compensable.

e. Theft from claimant's person. A theft from the person of a claimant is reimbursable if the theft occurred by use of force, violence or threat to do bodily harm, or by snatching or pick-pocketing, and at the time of the theft the claimant was either on a military installation, utilizing a recreation facility operated or sponsored by the DoD or any agency thereof, or acting in the performance of official duties. To be compensable, possession of the item must be reasonable in both quantity and quality and the claimant must report the loss as soon as practicable and cooperate in the investigation of the theft.

5. Vandalism. Vandalism is intentional damage. Damage caused by accidents, such as marks on a car caused by children playing nearby or rocks kicked by a mower, are not vandalism nor are they considered unusual occurrences. Some incidents of vandalism may have sufficient indicators of intent to be more readily compensable (e.g., an expletive scratched into the hood of the car or painted on a picnic table), but a claimant's discovery of scratches or damage may not alone be sufficient evidence of vandalism. Vandalism to vehicles, because of their mobility, requires a high degree of evidence that the vandalism occurred at assigned quarters or other authorized location.

6. Vehicle Losses

a. Vehicles. Vehicles include automobiles, motorcycles, all-terrain vehicles, mopeds, utility trailers, camping and boat trailers, boats, trucks, mounted camper bodies, motor homes, jet skis, bicycles, and aircraft. Mobile homes, house boats and other property used as dwellings are not considered vehicles.

b. Used in the Performance of Duty. Losses incurred while a vehicle is used in the performance of military duty are compensable if such use was authorized or directed for the convenience of the Government, the travel did not include commuting to or from the claimant's permanent place of duty or arise from mechanical or structural defects of the vehicle, and was not caused by the negligence of the claimant. As a general rule, travel is not considered to be for

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the convenience of the Government unless it was pursuant to written orders specifically authorizing such use. The maximum payments authorized by the Allowance List-Depreciation Guide still apply to loss to vehicles and their contents.

c. Shipped at Government Expense. Losses incurred while a vehicle is shipped at Government expense are compensable if the loss did not arise from a mechanical or structural defect of the vehicle. Damage that is caused during shipment at the claimant's expense or while the claimant or an agent of the claimant, is moving the vehicle to or from a port are not compensable.

d. Located at Quarters or Other Authorized Place of Lodging. A loss or damage incurred while a vehicle is located at claimant's assigned quarters or other authorized place of lodging, including garages, carports, driveways, assigned parking spaces, or located at an authorized place on a military installation other than at quarters is compensable if the loss or damage is caused by fire, flood, hurricane, theft, vandalism or other unusual occurrence. Damage to unregistered/improperly insured vehicles or abandoned vehicles are not considered incident to service.

e. Property Inside a Vehicle. Theft of property stored inside a vehicle is compensable only if it was reasonable for the claimant to have the property in the vehicle and neither the claimant nor the claimant's agents were negligent in failing to protect the property. Neither the passenger compartment nor the trunk of a vehicle is considered a proper place for the storage of property unconnected with the use of the vehicle. Except for maps, child car seats, a reasonable number of audiotapes or CDs and similar items kept in the passenger compartment for immediate use, claimants are expected to remove their property when exiting a vehicle. A claimant is also expected to bolt or permanently affix to the vehicle items that are not factory-installed, such as CD players, speakers, CB radios, GPS units and similar accessories. Such items are not secured merely by mounting them on a slide. An item may be considered permanently affixed if tools or a key are needed to detach the item.

f. Baseballs, Golf Balls, and Rocks Thrown by Lawn Mowers or Vehicles. Balls escaping from ball fields and golf courses, and rocks thrown up by lawn mowers, weed-eaters or vehicles are only compensable when the vehicle was being used under orders for the convenience of the Government, and the claim is otherwise meritorious. In all other cases, these are not considered unusual occurrences.

7. Paint Overspray and Airborne Emissions. Damage from paint overspray or airborne emissions from smokestack emission or fuel dumped/leaked from military aircraft is compensable if the sprayer/emitter is a DON employee and the claimant is a proper claimant, even if the overspray/emission occurred as a result of a maritime tort such as painting a ship or lighting off engines resulting in smokestack emissions. Where the sprayer/emitter is an independent contractor and the claimant is a proper claimant, the claimant must first file against the contractor.

8. Clothing and Articles Being Worn. Repairs/replacement of clothing and articles damaged while being worn on a military installation or in the performance of official duty may be paid

only if the loss is caused by fire, flood, hurricane, theft, or vandalism, or other unusual occurrences. Normal hazards of day-to-day living and working, such as paint, battery acid, ink and oil spilled on clothing, or tears, rips, or snags in clothing are not considered unusual occurrences.

9. Transportation and Storage Losses

a. Transportation or Storage at Government Expense. Losses to property incurred during transportation or storage under orders and at Government expense are compensable. Opportune lifts, when a member ships personal property using excess space on a vessel at no cost to the member or to the Government, are not transportation under orders and losses are not compensable.

b. Travel. Losses to personal property incurred during travel under orders, including temporary duty, are compensable regardless of the method of conveyance. As a general rule, travel is considered as being in the performance of duty if the Government will be reimbursing the claimant for the costs of travel.

c. Personally Procured Move (PPM). In general, loss to property during a PPM move is not compensable, unless the evidence shows that something outside the claimant's control caused the damage.

d. Transportation or Storage at Claimant's Expense. The Government will not compensate a claimant for loss or damage that occurs when property is shipped or stored at the claimant's expense, even if the Government reimburses the claimant for all or a portion of the shipping or storage fees.

10. Borrowed Property (Including Vehicles). Loss or damage to property that was borrowed for the claimant's use or for the use of the claimant's dependents and is otherwise payable under the PCA is compensable. If the claimant paid money for the use of the property, then the property is not considered to be borrowed.

11. Personal Property Held as Evidence or Confiscated Property. The loss of property belonging to a claimant who is a crime victim and which is lost, destroyed or damaged as a result of its use as evidence in a criminal proceeding may be compensable. A claim for the temporary loss of the use of property that is held as evidence for an extended period of time (in excess of two months) may be considered for payment if the temporary loss will work a grave hardship on the claimant. A claimant suspected of an offense may not be compensated for property seized as part of an investigation of that offense, regardless of whether the claimant is ever charged, tried, or convicted unless the claimant is tried and found not guilty of the offense for which the property was seized. Claims for property confiscated by a foreign Government, or claims for property surrendered or abandoned as a result of the application of a foreign law, are also not compensable under the PCA.

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12. Property Used for the Benefit of the Government. Compensation is authorized where property is damaged or lost while being used in the performance of Government business at the direction or request of superior authority or by reason of military necessity.

13. Money Deposited for Safekeeping, Transmittal, or Other Authorized Disposition. Compensation is authorized for the loss of personal funds delivered to and accepted by military and civilian personnel who are authorized by an appropriate official (e.g., a Commanding Officer) to receive the funds for safekeeping, deposit, transmittal, or other authorized disposition.

14. Fees

a. Payment to obtain certain documents. The fees for replacing birth certificates, marriage certificates, college diplomas, passports, or similar documents may be payable if the original or a certified copy of such documents is lost or destroyed incident to service. In general, compensation will only be allowed for replacing documents with a raised seal that are official in nature. No compensation will be allowed for documents that are representative of value, such as stock certificates, or for personal letters or records.

b. Estimate fees. A reasonable estimate fee is compensable if it will not be credited toward the cost of repair. An estimate fee is a fixed cost charged by a person in the business of repairing property to provide an estimate of the cost to repair property at the time the estimate is prepared. An estimate fee should not be confused with an appraisal fee, which is normally not compensable (see paragraph 12). An estimate fee to be credited toward the cost of repair is not compensable regardless of whether the claimant chooses to have the repair done.

15. Computers.

c. Internal damage. Internal operating problems may occur in computers or computerized devices following transportation or some other event. Without signs of exterior damage, claims for internal damage should not be paid unless the claimant provides sufficient evidence that establishes the reason the item is not working is due to a covered compensable event such as rough handling in transportation or a lightning strike at the claimant's quarters.

d. Documenting the Cause of Damage. Claimants must submit electronic repair forms that list the type and cause of damage unless the repair estimate specifically discusses those items. While cracked or physically damaged internal parts may be a result of rough handling in shipment, repairs for loose components or ceased functioning/burned out parts do not establish rough handling and will not be sufficient to pay the claim. The claimant also needs to provide a statement attesting to knowledge of the working condition of the item prior to shipment for the Government to be successful in any subsequent recovery action against the TSP.

e. Obsolescence. Computers and other electronic items rapidly become obsolete. Claimants are entitled only to the value of an item with specifications and capabilities similar to the computer being replaced.

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f. Software. Compensation for software is limited to loss of licensed software that has been purchased. Shareware or similar programs available on the internet for general public access and use, are not compensable absent a showing that the claimant purchased a program containing the shareware and that the claim is for the lost program. A license is not tangible personal property; a user does not lose the license even if the disc that contained the program is lost.

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ANNEX B - COMMON CLAIMS NOT PAYABLE

1. Losses in Unassigned Quarters in the United States. Claims for property damaged or lost at quarters occupied by the claimant within the United States that are not assigned or otherwise provided in kind by the Government. MHPI Public Private Venture (PPV) is not considered provided-in-kind unless: (1) the housing is located within the perimeter of a military installation enclosed by a fence, and (2) access to that installation is restricted by personnel access control measures (e.g., a guarded gate, CAC controlled access point, etc.).
2. Currency or Jewelry Shipped or Stored in Baggage or Household Goods. Small, valuable, highly pilferable items, such as expensive jewelry or coin collections, and items of great sentimental value such as photo albums, are compensable only if each item of expensive jewelry is listed and described on the high value inventory and listed as missing on the inventory at the time of delivery or upon the Notice of Loss at Delivery form the TSP provides the member at delivery to note loss or damage.
3. Enemy Property or War Trophies. This includes property that was originally enemy property or a war trophy that passed into the hands of a collector and was then purchased by a claimant.
4. Unserviceable or Worn-out Property. This property is not considered to have any fair market value.
5. Loss or Damage to Property to the Extent of any Available Insurance Coverage. When insured property is lost, damaged, or destroyed, the claimant must make a demand for payment against the insurance company under the terms of the insurance policy except for claims for loss or damage to HHG or POVs while shipped or stored at Government expense. In such cases, unless the TSP is excluded from liability, the claimant is not required to use his/her personal insurance. The claimant's demand on his/her insurance company should be made prior to payment of any claim filed with the Government unless the amount claimed is clearly less than the policy deductible. If a claimant chooses not to file with the insurance company, the amount of any payment will be reduced by the amount the claimant would have recovered from the insurance company.
6. Consequential Damages and Claims for Inconvenience or Loss of Use. Expenses arising from late delivery of personal property, including but not limited to expenses for food, lodging, furniture rental, loss of use, interest, carrying charges, attorney's fees, telephone calls, additional costs of transporting the claimant or family members, time spent in preparation of the claim, or the costs of insurance are not compensable.
7. Items of Speculative Value. Payment for loss or damages to manuscripts, unsold paintings, or similar creative or artistic works is limited to the cost of materials as the value of such items is speculative. Compensation for a utilitarian object made by the claimant, such as a quilt or bookcase, is limited to the value of an item of similar quality.
8. Business Property. Loss of items acquired for resale or use in a private business are not compensable as the possession of the property would not be considered incident to service. If

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property is acquired for both business and personal use, compensation will not be allowed if the business use is the primary purpose for which the item was designed or intended. However, if the loss or damage occurred during a Government contracted household goods move, and is fully substantiated, the Government will include the business property in its demand against the TSP. The amount recovered for the business property will be forwarded to the service member claimant.

9. Motor Vehicles

a. Collisions. Collisions are not normally payable under the PCA. This includes hit-and-run incidents and collisions involving animals or shopping carts. Claims for damages arising from collisions may be paid under the PCA only when the vehicle was being used under orders for the convenience of the Government. Collision damage is not payable unless it meets the criteria established in paragraph 6 of Annex A of this enclosure.

b. Potholes and Other Road Hazards. Damage to moving vehicles caused by defects or foreign objects in the road are not unusual occurrences.

c. Rental Vehicles. Damage to rental vehicles is never payable under the PCA.

10. Violation of Law or Directives. The loss or damage to property acquired, possessed, or transported unlawfully or in violation of competent regulations or directives is not payable.

11. Sales Tax and Drayage Charges. Sales tax and drayage charges (pick-up and delivery) associated with repair or replacement costs are not payable unless the claimant provides proof that the charges were incurred.

12. Appraisal Fees. An appraisal, as distinguished from an estimate of replacement or repair, is defined as a valuation of an item provided by a person who is not in the business of selling or repairing that type of property and is compensable only if the claims examiner deems an appraisal reasonably necessary and useful.

13. Quantities of Property Not Reasonable or Useful Under the Circumstances. The PCA authorizes payment for loss or damage to personal property only if possession of the property is reasonable and useful under the circumstances. All claims must be evaluated to make this determination of "reasonable and useful" by evaluating the totality of the circumstances surrounding the possession. Factors to be considered are the claimant's living conditions, family size, social obligations, any need for more than average quantities, and actual circumstances surrounding the acquisition and loss. For example, possession of large amounts of expensive personal property not related to your work in your work space, like golf clubs that you use occasionally on your way home from work, is generally not considered reasonable. However, if the claimant is a recruiter, and the recruiters are sponsoring a golf tournament for perspective recruits, it might be reasonable to have a set of golf clubs in the office at the time of the tournament.

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14. Intangible Property. The loss of intangible property (i.e., property that has no intrinsic marketable value such as bankbooks, checks, promissory notes, non-tangible stock certificates, bonds, baggage checks, insurance policies, money orders, traveler's checks, and licenses for software, etc.) is not compensable.

15. Property Owned by the United States, Except Where the Claimant is Pecuniarily Liable to an Agency of the Government. The loss must not have been caused by the claimant's negligence. Examples include, but are not limited to, bullet-proof vests signed for by law enforcement personnel and personally-issued breathing apparatuses.

16. Contractual Coverage. Losses or any portion thereof, that have been recovered or are recoverable pursuant to a contract are not compensable.

17. Real Property. The loss or damage to real property (i.e., land, crops, garden flowers, trees, and other things permanently joined to a house or land) is not compensable.

18. Negligence of the Claimant. A loss caused in whole or in part by the failure of the claimant, or the claimant's agent, to exercise the degree of care expected under the circumstances is not compensable.

19. Other Claims. Claims arising from the operation of a ship's store, laundry, dry cleaning facility, tailor shop, or cobbler shop should be processed in accordance with NAVSUP P487, Ship's Store Afloat, paragraph 8202.

PROCEDURES FOR PROCESSING AFFIRMATIVE
CLAIMS FOR DAMAGE TO GOVERNMENT PROPERTY

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1. Scope. This enclosure describes the process for asserting, administering and collecting claims for damage to or loss of Government property through negligent or wrongful acts.

2. Statutory/Regulatory Authority

a. General. With the exception of medical cost claims, affirmative claims for damage to or loss of property of the United States are processed in accordance with the Federal Claims Collection Act (FCCA) (31 U.S.C. §§ 3711-3720E, as amended by the Debt Collection Act of 1982, PL 97-365, 96 Stat. 1749 (25 October 1982), PL 101-552, 104 Stat. 2746 (15 November 1990) and the Debt Collection Improvement Act of 1996, PL 104-134, 110 Stat. 1321, 1358 (26 April 1996) and its implementing regulations at 31 C.F.R. Chapter IX.

b. The Federal Claims Collection Standards (Department of the Treasury - Department of Justice), 31 C.F.R. Chapter IX. These guidelines control the assertion and collection of affirmative claims. This instruction supplements the material contained in those regulations. If this instruction conflicts with materials and procedures published in those regulations, now or at a later date, those regulations control.

3. Statute of Limitations (SOL). Subject to specific provisions in other statutes, there is a general three-year SOL for these types of affirmative Government tort claims. See 28 U.S.C. § 2415(b).

4. Authority to Assert

a. General. Only the Judge Advocate General of the Navy and his designees are authorized to pursue, collect, compromise, or terminate affirmative claims for money damages in favor of the Department of the Navy (DON) unless the property is located in a country where another service has single-service claims responsibility in accordance with reference (c).

b. Restrictions. A command suffering property loss is not authorized to assert an affirmative claim or collect money damages for its damaged property.

5. Claims That May Be Collected

a. Claims Against Third Parties Responsible for Damage to Government Property or the Property of Non-appropriated Fund (NAF) Activities. An affirmative claim may be asserted for loss or damage to any government property, real or personal, caused by the negligent or wrongful acts or omissions of a third party. To be actionable, these acts or omissions must constitute a tort as determined by the law of the place where the act or omission occurred. Liability and damages are also determined in accordance with the law of the place in which the damage occurred, considering such factors as applicable traffic laws, elements of tort, and possible defenses. As a general rule, the DON does not seek payment from service members or Government employees for damages caused by their simple negligence while acting within the scope of their employment.

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b. Other Claims. Any other claim for money or property in favor of the United States cognizable under the FCCA that is not specifically listed.

c. Contract Claims. Claims arising out of contract are not asserted by the Office of the Judge Advocate General. Such claims must be referred to the cognizant Office of the General Counsel.

6. Assertion of Claims

a. General. The controlling procedures for administrative collection of claims are found in 31 C.F.R. § 901.

b. Procedure. Assertion of the claim is accomplished by mailing a “Notice of Claim” to the tortfeasor by certified mail, return receipt requested.

7. Settlement of Affirmative Claims

a. Full payment. When a responsible party or insurer tenders full payment or an agreed compromise settlement on a claim, the payment should be in the form of a check or money order made payable to “Treasurer of the United States”:

(1) For collections for damages to real property, the collection is credited to the account available for the repair or replacement of the real property at the time of recovery (see 10 U.S.C. § 2782) or;

(2) For damages to personal property, collections are returned to the General Treasury.

b. Installment payments. If the debtor is financially unable to pay the debt in one lump sum, an installment payment plan may be arranged and payments made consistent with the above guidelines. Monthly payments in an amount that bears a reasonable relation to the size of the debt and the debtor’s ability to pay will be specified in an installment agreement that will liquidate the Government’s claim in not more than three years. Installment payments of less than \$50 per month will be accepted only if justified on the grounds of severe financial hardship or for some other reasonable cause. All installment arrangements will contain a confession of judgment note. See 31 C.F.R. § 901.8 for specific procedures.

c. Damage to NAF Activity Property

(1) Any amount collected for loss or damage to NAF activity property shall be forwarded to the headquarters of the NAF activity for deposit with that activity.

(2) Where the recovery involves damage to both NAF activity property and other Government property, the portion of the recovery for the NAF activity property will be forwarded to the NAF activity.

d. Damage to Industrial-Commercial Property. When a loss or cost of repair has been borne by an industrial-commercial activity (e.g., NAVFAC), payment shall be forwarded to the Navy

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Industrial Fund of the activity suffering the loss for deposit in accordance with the provisions of the Navy Comptroller Manual.

8. Waiver, Compromise, and Referral of Claims

a. Waiver. Collection action may be terminated for the convenience of the Government if the tortfeasor cannot be located, is found to be judgment-proof, has grounds to deny and has denied liability, or has refused to respond to repeated demands for payment of a small claim. A termination of collection efforts (waiver) for the convenience of the Government is made if it is determined that litigation is not warranted or that it is not cost-effective to pursue recovery efforts.

b. Officials Authorized to Waive or Compromise Claims. The Office of the Judge Advocate General (OJAG), Tort Claims Unit (TCU) may collect the full amount on all claims, and may compromise or waive (terminate collection action) claims of \$20,000 or less. Claims between \$20,000 and \$100,000 may only be compromised or waived with the approval of the Director, Claims and Tort Litigation (OJAG Code 15). Claims in excess of \$100,000 may only be compromised or waived with approval from the Department of Justice (DOJ).

c. Referral. When a tortfeasor denies liability or settlement cannot be reached, TCU will make the appropriate determination as to whether further action should be taken. Said action would consist either of forwarding the matter to the DOJ for pursuit of a collection action in Federal District Court (see 31 C.F.R. Chapter IX) or of forwarding the matter to the Department of the Treasury for collection by means of administrative offset against future federal benefits or tax refunds to which the debtor would be otherwise entitled (see 31 U.S.C. § 3716).

9. Repair or Replacement in Kind

a. Authority. Individual commands have no authority to assert a claim or collect any money for lost or damaged property. However, if the property is repairable or can be replaced, the Commanding Officer (CO) or Officer in Charge (OIC) of the activity sustaining the loss is authorized to accept the repair or replacement of the property in lieu of payment of a claim if it is in the best interests of the United States.

b. Process. Repair or replacement in kind is not a claim. The command may not provide an insurance company with an estimate of damages or accept any money as payment for those damages as doing so would constitute the assertion of a claim. To effect repair or replacement in kind, the command should contact the tortfeasor or his insurance company and ask if they would like to hire someone to repair or replace the damaged property. The tortfeasor/insurance company must pay the repair firm directly. No money can exchange hands between the command and the tortfeasor/insurance company. The CO or OIC of any Navy or Marine command may execute a release when he certifies all repairs have been completed in compliance with all applicable standards, directives, or instructions and all repair bills have been paid.

PROCEDURES FOR PROCESSING
MEDICAL CARE RECOVERY ACT (MCRA) AND
THIRD PARTY PAYERS ACT (TPPA) CLAIMS

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1. Scope. This enclosure describes the assertion and collection of claims to recover the cost of medical care provided to eligible injured parties (IP) against third parties who are legally responsible under third-party tort or contract liability for the injury or disease. IPs include Navy and Marine Corps active-duty personnel, retirees or their dependents, or any other person who has been provided medical treatment at a Military Treatment Facility (MTF) or paid for by the Department of the Navy (DON) or Defense Health Agency (DHA) at a facility that does not belong to the Federal Government.

2. Statutory Authorities

a. The Medical Care Recovery Act (MCRA), 42 U.S.C. §§ 2651-2653, as amended by the National Defense Authorization Act for Fiscal Year 2020, PL 116-92, 10 U.S.C. § 1075, 116 Stat. 1790 authorizes the Government to recover the reasonable value of treatment provided to an eligible beneficiary from any third party who is legally liable for the injury or disease.

b. The Third Party Payers Act (TPPA), 10 U.S.C. § 1095 and 10 U.S.C. §1095b, allows for the collection of the costs of medical care to eligible beneficiaries from a third party, such as an insurance company.

c. Title 10 U.S.C. § 1079a (CHAMPUS: Treatment of refunds and other amounts collected) authorizes the recovery of medical care costs expended to eligible beneficiaries.

3. Statute of Limitations

a. Federal. Generally, claims asserted under the MCRA are founded in tort and must be brought within three years after the action first accrues (28 U.S.C. § 2415(b)).

b. Claims Asserted under the TPPA. Generally, claims asserted under the TPPA are presumably founded in a contract or “implied in law” and must be brought within six years after the action first accrues (28 U.S.C. § 2415(a)).

4. Responsibilities

a. Medical Care Recovery Units. Responsibility for investigating, asserting, and collecting DON MCRA/TPPA claims or, if required, properly forwarding claims to other Federal departments or agencies, rests with the Claims and Tort Litigation Division’s Medical Care Recovery Units (MCRUs) located in Norfolk, San Diego and Pensacola, and RLSO EURAFCENT for claims arising in their area of responsibility (see Appendix 8-a). All other claims arising overseas and outside the RLSO EURAFCENT area of operations will be asserted by either Norfolk or San Diego depending upon the country of origin. The location where the injury occurred determines the area of responsibility.

b. MTFs

(1) MTFs are responsible for ensuring potential MCRA/TPPA claims are identified and forwarded to the appropriate MCRU.

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(2) The MTF reports all potential cases by forwarding a copy of any injury logs and treatment records to the MCRU. The MCRU will coordinate with MTF personnel to ensure that inpatient and outpatient records and emergency room and clinic logs are properly screened to identify potential cases.

c. DHA Fiscal Intermediary (DI). The DI is required to identify and promptly forward claims involving certain diagnostic codes to the cognizant MCRU. The DI is required to provide the MCRU with a personal injury questionnaire completed by the IP.

5. Claims Asserted

a. Independent Cause of Action. The MCRA creates an independent cause of action for the United States, and the Government can administratively assert and litigate MCRA claims in its own name and for its own benefit. Procedural defenses, such as a failure of the IP to properly file and/or serve a complaint on the third party, which may prevent the IP from recovering damages, do not prevent the United States from pursuing its own action to recover the value of medical treatment provided to the IP. In creating an independent right for the Government, the MCRA prevents a release given by the IP to a third party from affecting the Government's claim.

b. Alternate Theories of Recovery. Recovery under the MCRA may not be possible if third-party tort liability does not exist. In those cases, the TPPA may provide the Government an alternate means for recovery as a third-party beneficiary of an insurance contract. This includes but is not limited to:

- (1) Medical Payments Coverage in an automobile or homeowner's policy;
- (2) Uninsured/Underinsured Coverage in an automobile policy;
- (3) No-fault coverage in an automobile policy; and
- (4) On-the-job injury compensable under a worker's employment contract at the job.

c. Responsible Parties. MCRA/TPPA claims may be asserted against individuals, corporations, associations, and non-Federal Government agencies subject to the limitations described in paragraph 6 below.

d. Determination of Amount Asserted

(1) The costs of care provided by the MTF are based on Diagnostic Related Group (DRG) rates or a Relative Value Unit (RVU). Rates are established by the Office of Management and Budget (OMB) and/or the Department of Defense (DOD), and published annually in the Federal Register.

(2) The costs of care provided by DHA (formally referred to as TRICARE costs) are the actual amounts that DHA paid even if this amount exceeds the amount that the civilian hospital billed DHA.

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e. Demands in Foreign Countries. The provisions of the MCRA and TPPA are not extraterritorial. The United States may have a right to recover the cost of medical care or property damage under a foreign country's laws, the provisions of a treaty or international agreement, or if the tortfeasor was a U.S. citizen and has a U.S. insurance policy.

6. Claims Not Asserted. In some cases, public policy considerations limit the DON's assertion of claims against apparent third-party tortfeasors or contract insurers:

a. Federal Government Agencies. Claims are not asserted against any department, agency or instrumentality of the United States, including self-insured NAF activities but not private associations (e.g., flying clubs or equestrian clubs).

b. Injured Service Members, Family Members, and Employees of the United States. Claims are not asserted directly against a service member, a dependent family member of a service member, or an employee of the United States who is injured as a result of his/her own willful or negligent acts or the willful or negligent acts of others. The United States does assert claims, however, against insurance policies that cover the IP.

c. Employers of Merchant Seaman. Claims are not asserted against the employer of a merchant seaman who receives medical care in a Federal facility pursuant to 42 U.S.C. § 249.

d. Department of Veterans Affairs (VA) Care for Service-Connected Disabilities. Claims are not asserted for care provided to a veteran by the VA when the care is for a service-connected disability. The United States will, however, claim for the reasonable value of care provided a member before transfer to a VA hospital or in those instances where DHA pays a VA hospital directly.

7. Asserting The Claim

a. Initial Action. When the MCRU receives notice of a potential claim, the MCRU will determine the Federal agency or department responsible for investigating and asserting the claim.

(1) If DON has reimbursed a non-Federal provider for health care or if DHA has made payment for a DON health care beneficiary, the MCRU will assert the claim.

(2) If care is provided in an MTF, the claim is asserted by the military service of the IP, unless the claim arose in assigned areas of single-service responsibility as set forth in reference (c). Monies collected are deposited in the account of the MTF that provided or paid for the treatment, regardless of which military service makes the collection.

(a) Where DON members, retirees, or their dependent family members receive medical treatment from another Federal agency or department, the MCRU will assert any claim on behalf of the United States based on information provided by the treating facility, agency, or department. When recovery is made, the MCRU will ensure funds are deposited to the applicable agency or department.

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(b) Similarly, where an MTF provides care to personnel of another Federal agency or department, that other agency or department will assert any claim on behalf of the United States and deposit any recovered funds to the appropriate MTF.

b. Notice of Claim

(1) The MCRU will promptly assert claims by mailing a notice of claim or demand for payment to identified third-party tortfeasors and their insurers or to the insurer for any third party beneficiary coverage. The notice of claim or demand will outline the facts and cite the applicable Federal statutes.

(2) The MCRU will notify the IP or the IP's legal representative of the Government's claim. This notice will advise that:

(a) The United States may be entitled to recover the reasonable value of medical care it furnished or paid for; and

(b) The IP is required to cooperate in its recovery efforts.

c. Administering the Claim

(1) The MCRU will attempt to coordinate collection of the claim with any action brought by the IP.

(a) When the IP is represented by counsel, the MCRU will request to have the IP's attorney agree to protect the Government's interests.

(b) The IP's attorney who agrees to protect the Government's interest may be authorized to include the Government's claim as an item of special damages with the IP's claim or suit. The agreement must be in writing and signed and clearly indicate that the attorney will cooperate in facilitating the satisfaction of the Government's claim.

(c) In order to include the Government's claim, the IP's attorney will be informed that 5 U.S.C. § 3106 prohibits the payment of a fee for assertion or collection of the Government's claim. As such, attorney's fees and costs will not be paid by the Government or computed on the basis of the Government's portion of recovery.

(2) Claims Involving a Lien Resolution Group.

(a) Where the MCRU has a prior agreement with the IP's attorney, the MCRU will require written documentation from the IP's attorney authorizing a lien resolution group to facilitate the satisfaction of claims. Written documentation should be dated and properly identify the IP, the nature of the injury, the correct date of incident and any other information that will assist the MCRU in the pursuit of the Government's claims.

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(b) In the alternative, the MCRU may accept a properly entered court order identifying the IP as authorization that a lien resolution group may satisfy claims.

(c) If the MCRU receives proper authorization from the IP's attorney but does not have an agreement from the IP's attorney to protect the Government's interests, it will request that a licensed attorney from the lien resolution group agree to protect the Government's interests. This agreement should be in writing and should resemble the terms normally set forth and agreed upon between the Government and IP's attorney.

(3) If the IP is not pursuing a claim or has expressly refused to include the Government's claim, the MCRU will pursue independent collection.

(4) If the IP is not asserting the Government's claim and independent collection efforts have failed, the claim may be referred to the cognizant U.S. Attorney for litigation. The United States may intervene in any action brought by the IP, file suit in its own name or in the name of the IP.

d. Access to DON Records and Information

(1) To facilitate payment of the Government's claim, the MCRU may provide medical and billing records as a routine release to:

(a) an insurance company or attorney when the MCRU is pursuing independent collection;

(b) an IP's attorney who has agreed to protect the Government's interest or who has provided an entered court order; or

(c) a lien resolution group upon receipt of authorization from the IP's attorney, the group's agreement to protect the Government's interest, or an entered court order.

(2) Records will be protected in accordance with the provisions of the Privacy Act, 5 U.S.C. § 552a, and confidentiality of quality assurance medical records, 10 U.S.C. § 1102.

(3) Non-routine releases must be done by the keepers of the records, the MTFs, and require an authorization from the IP or the IP's legal representative or an order signed by a judge from a court of competent jurisdiction.

(4) Requests for testimony of any DON or DHA employee will be processed in accordance with DoD Directive 5405.2, 32 C.F.R. Part 725, and SECNAVINST 5820.8 (series). OJAG Code 15 will process any requests for factual testimony involving MCRA/TPPA claims with the legal staffs at Navy Medicine East/West and/or the appropriate MTFs' or DHA's legal staffs. All other requests for testimony (including any request for expert testimony) will be processed by the General Litigation Division of the Office of the Judge Advocate General (OJAG Code 14).

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8. Closing the Claim

a. Full or Partial Payment. A claim will be closed upon full payment or payment in accordance with the Government's granting a waiver or compromise as in paragraph c. below.

b. Unable to Collect. A claim may be closed when the tortfeasor cannot be located, is judgment proof, or has refused to pay and litigation is not feasible or when collection costs outweigh potential recovery.

c. Waiver and Compromise. Waiver or compromise of the claim may be appropriate when the IP, his attorney, or a lien resolution group files a written request, and it is determined that collection of the full amount of the claim would result in undue hardship to the IP.

(1) Hardship Factors to be Considered.

- (a) Permanent disability or disfigurement;
 - (b) Lost earning capacity;
 - (c) Out-of-pocket expenses;
 - (d) Financial status;
 - (e) Amount of settlement or award from a third-party tortfeasor or contract insurer;
- and
- (f) Any other factors that objectively indicate that fairness requires waiver.

(2) Authority to Compromise or Waive.

(a) Only the Department of Justice may authorize the compromise or waiver of a MCRA/TPPA claim in excess of \$300,000.00.

(b) The Director and the Head, Affirmative and Personnel Claims Branch, Claims and Tort Litigation (OJAG Code 15), may authorize the compromise or waiver of a MCRA/TPPA claim up to \$300,000.00.

(c) The Director and the Head, Affirmative and Personnel Claims Branch, may further delegate authority to compromise or waive MCRA/TPPA claims to personnel in the MCRUs.

d. Receipt of Funds and Release

(1) If medical care was provided by multiple sources, the recovery will be apportioned and distributed pro rata to each MTF, regardless of service, and to DHA.

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(2) The MCRU will deposit affirmative claims collections in accordance with the check depositing procedures of the Defense Finance and Accounting Service (DFAS), Cleveland, and provide copies of each deposit voucher to each activity, MTF, or DHA for which a deposit was made.

(3) Upon request, the MCRUs will execute and deliver releases to third parties who have made full or compromised payments or whose claims have been waived

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TABLE OF TERRITORIAL RESPONSIBILITY FOR ASSERTION OF MCRA/TPPA CLAIMS

<u>RESPONSIBLE MEDICAL CARE RECOVERY UNIT (MCRU)</u>	<u>TERRITORY</u>
MCRU Norfolk	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Jersey, New Hampshire, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, Puerto Rico
MCRU Pensacola	Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio, Tennessee, Wisconsin, U.S. Virgin Islands
MCRU San Diego	Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, American Samoa, Guam, Northern Mariana Island

OCONUS claims are processed in accordance with references (c) and (d)