

GENERAL INFORMATION

4-00-10 Delegation

20 Statutory Provisions Under Which Claims Are Made
By Or Against the Department

4-00-10 DELEGATION**A. The Department Claims Officer**

Section Z-300-40 of the Organization Manual, issued by the Secretary of Health, Education, and Welfare, establishes the position of Department Claims Officer, and vests in him, as designee of the Secretary for the purpose, the Secretary's authority to dispose of claims. It 8180 grants the Claims Officer authority to (a) prescribe rules, regulations, procedures, etc., for investigating, collecting, evidence, reporting, processing and otherwise handling within the Department claims or situations out of which claims or suits by or against the United States may arise; (b) arrange for the maintenance and control of the necessary files and records; (c) direct and coordinate the activities of the operating agencies and offices of the Department in carrying out the provisions of the section; and (d) report to the Secretary accident trends, practices and procedures and other circumstances which may indicate the need for administrative action.

B. Responsibilities

It is the duty of the Claims Officer to safeguard the interests of the Federal Government by allowing only meritorious claims and, by taking the necessary administrative action, to obtain collection of claims due the Government. He is also charged with the responsibility of protecting the rights of private citizens by promptly and expeditiously settling claims in a fair and just manner. In order to carry out these duties and responsibilities the Claims Officer requires the cooperation of every unit of the Department and of every officer and employee in order that a prompt, thorough, and efficient investigation will be made into every situation governed by these instructions and an adequate report made.

(2/16/68)

Supersedes Ch 4-00, TN-136

**4-00-20 STATUTORY PROVISIONS UNDER WHICH CLAIMS ARE MADE
BY OR AGAINST THE DEPARTMENT****A. Claims Against the Department****1. Federal Tort Claims Acts**

Under the Federal Tort **Claims Act** (28 U.S.C. §§ 2671-2680), the **Government** may be liable for property **damage** or loss or personal injury **caused** by the **negligence of its employees** in the performance of official duties. See Chapter 4-20 of this Manual. **This Act** is implemented by **Department Tort Claims Regulations** (45 **CFR** Part 35). See Chapter 4-20 of this Manual.

2. Small Claims Act

This Act (42 Stat. 1066, 31 U.S.C. §215) was repealed by the Federal Tort **Claims Act** (60 Stat. §846, 28 U.S.C. 5424(a), 8/2/46) only with respect to **domestic** claims.

The **Government** is **still** liable under this Act for any claim not in excess of \$1000 for damages or loss of privately owned property caused by the negligence of any officer or employee of the **Government** acting within the **scope of his employment** in a foreign country. The claim must be filed within one year from the date of accrual. The amount determined to be due shall then be certified to Congress as a legal claim for payment.

The Federal Tort Claims Procedures relating to investigations and reports should be followed where applicable in processing **claims** under this Act.

3. Military Personnel and Civilian Employees' Claims Act

Under this Act, 31 U.S.C. §§ 240-242, military personnel and civilian **employees may make** claims against the **Government** for **damage** to or **loss** of personal property which are incurred incident to service or employment. See Chapter 4-35 of this **Manual**.

4. Personnel Claims

42 U.S.C. § 227 (5509 of the PUS Act) and 24 U.S.C. §185 provide, inter alia, for **availability** of appropriations **to reimburse** officers and employees of the Public **Health Service** and St. **Elizabeths** Hospital, respectively, subject to regulations of the Secretary, for the cost of repair or replacement of **personal** belongings **damaged** or destroyed by patients while such **personnel** are engaged in the **performance** of their **official** duties.

Claims under **these** Acts may be processed in conformity with the **procedures** outlined in Chapter 4-35 of this Manual with regard to claim under the Military Personnel and Civilian Employees' **Claims Act**, to the extent applicable.

(4-00-20 continued)

B. Claims By the Department

1. Federal Claims Collection Act of 1966

This Act, 31 U.S.C. §§ 951-953, **authorizes** the head of an agency, **pursuant** to regulations **issued** by him and in conformity with standards **set** forth in the joint regulations of the General Accounting Office and the Department of Justice (4 **CFR** Chapter **II**, Parts **101-105**), to collect, compromise, and terminate claims of the United States **in** an amount not to exceed \$20,000. The **Department** Regulations appear in 43 CFR Subtitle A, Part **30**.

CHAPTER 4-10

T A G F E D E R A L T O R T C L A I M S A C T

- 4-10-10 Administrative Adjustment of Claims
 - 20 Disposition by Federal Agency as Prerequisite; Evidence
 - 30 Time Within Which to Make Claim
 - 40 Attorney Fees
 - 50 Exclusiveness of Remedy
 - 60 Exceptions

4-10-10 ADMINISTRATIVE ADJUSTMENT OF CLAIMS

28 U.S.C. §2672 provides as follows:

"Administrative adjustment of claim

"The head of each Federal agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, ~~compromise~~, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred: Provided, That any award, ~~compromise~~, or settlement in excess of \$25,000 shall be effected only with the prior written approval of the Attorney General or his designee.

"Subject to the provisions of this title relating to civil actions on tort claims against the United States, any such award, compromise, ~~settlement~~, or determination shall be final and conclusive on all officers of the Government, except when procured by means of fraud.

"Any award, ~~compromise~~, or settlement, in an amount of \$2,500 or less made pursuant to this section shall be paid by the head of the Federal agency concerned out of appropriations available to that agency. Payment of any award, ~~compromise~~, or settlement in an amount in excess of \$2,500 made pursuant to section 2677 of this title shall be paid in a manner similar to judgments and ~~compromises~~ in like causes and appropriations or funds available for the payment of such judgments and ~~compromises~~ are hereby made available for the payment of awards, ~~compromises~~, or settlements under this chapter.*"

4-10-20 DISPOSITION BY FEDERAL AGENCY AS PREREQUISITE; EVIDENCE

28 U.S.C. §2675 provides as follows:

- (a) An action shall not be instituted upon a claim against the United States for money damages for injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.
- (b) Action under this section shall not be instituted for any sum in excess of the amount of the claim presented to the Federal agency, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the Federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.

4-10-30 TIME WITHIN WHICH TO MAKE CLAIM

28 U.S.C. 52401(b) provides as follows:

- "(b) A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented."

4-10-40 ATTORNEY FEES

28 U.S.C. §2678 provides as follows:

'Attorney fees: penalty

"No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 25 per centum of any judgment rendered pursuant to section 1346(b) of this title or any settlement made pursuant to section 2677 of this title, or in excess of 20 per centum of any award, compromise, or settlement made pursuant to section 2672 of this title."

4-10-50 EXCLUSIVENESS OF REMEDY

28 U.S.C. §2679 provides as follows:

- (a) The authority of any Federal agency to sue and be sued in **its** own name shall not be construed to authorize **suits** against **such** Federal agency on claim which are cognizable under section 1346(b) of **this** title, and the **remedies** provided by **this** title in such cases shall be exclusive.
- (b) The **remedy** against the United States provided by **sections 1346(b)** and 2672 of **this** title for injury or loss of property or **personal** injury or death, resulting from the operation by any employee of the **Government** of any motor vehicle while **acting** within the scope of **his** office or **employment**, shall hereafter be **exclusive** of any other civil action or proceeding by reason of the **same** subject matter against the employee of his **estate** whose act or **omission** gave **rise** to the claim.
- (c) The Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Government or his estate for any such damage or injury. The employee **against whom** such civil action or proceeding is brought shall deliver within such **time** after date of **service** or knowledge of service as **determined** by the Attorney General, all process **served** upon him or an **attested** true copy thereof to his **immediate** superior or to whomever was designed by the head of his **department** to receive **such** papers and **such person** shall promptly **furnish** copies of the pleadings and process therein to the United States attorney for the **district** embracing the place wherein the proceeding is brought, to the Attorney General, and to the head of his employing Federal agency,
- (d) Upon a certification by the Attorney General that the defendant employee **was** acting within the scope of his employment at the time of the incident out of which the suit arose, any **such** civil action or proceeding **commenced** in a State court shall be removed without bond at any time before trial by the Attorney General to the **district** court of the United States for the **district** and **division** embracing the place wherein it is pending and the **proceedings** deemed a tort action brought **against** the United States **under** the provisions of **this** title and all references thereto. Should a United States **district** court determine on a hearing on a motion to remand held before a trial on the merits that the **case** so removed is one in which a remedy by suit within the meaning of **subsection (b)** of **this** section is not available against the United States, the case shall be remanded to the State court.
- (e) The Attorney General may **compromise or settle** any claim asserted in **such** civil action or proceeding in the manner provided in section 2677, and with the same effect.

4-10-60 **EXCEPTIONS**

28 U.S.C. §2680 provides in part as follows:

The provisions of this Chapter and **section 1346(b)** of this title shall not apply to •

"(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion involved be • based.

"(b) * * * *.

"(c) Any claim arising in respect to the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer.

"(d) Any claim for which a remedy is provided by sections 741-752, 781-790 of Title 46, relating to claims or suits in admiralty against the United States.

"(e) * * * *.

"(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

"(g) * * * *.

"(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentations, deceit, or interference with contract rights.

"(i) * * * *.

"(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

"(k) Any claim arising in a foreign country.

"(l) * * * *.

"(m) * * * *."

CHAPTER **4-20**
REGULATIONS

4-20-10 REGULATIONS

The **following** regulations (32 **FR** 197 of October 11, 1967) govern the **presentation** and **processing** of tort **claims** asserted **against** the **Government** based upon activities of **officers** and **employees** of the Department of **Health, Education, and Welfare**.

Title 45 • PUBLIC WELFARE

Subtitle A • Department of **Health, Education, and Welfare**,
General Administration

Part 35 • Tort Claims Against
the Government

Subpart A • General

Sec.

35.1 Scope of regulations.

Subpart B • Procedure

- 35.2 **Administrative** claim; when presented; place of filing.
- 35.3 Administrative claim; who may file.
- 35.4 Administrative claims; evidence and information to be submitted.
- 35.5 **Investigation; examination, and determination of claims.**
- 35.6 Final denial of claim.
- 35.7 **Payment of approved claims.**
- 35.8 **Release.**
- 35.9 Penalties.
- 35.10 Limitation on Department's authority.

AUTHORITY: The **provisions** of this Part 35 **issued** under Sec. 1(a), 80 Stat. 306, 28 U.S.C. 2672; 28 **CFR** Part 14.

Subpart A - General

535.1 Scope of regulations.

These regulations shall apply only to claims asserted under the Federal **Tort Claims Act, as amended**, 28 U.S.C. §§ 2671-2680, accruing on or after January 18, 1967, for **money** damages against the United **States** for **damage** to or loss of property or personal injury or death caused by the negligent or wrongful act or **omission** of any employee of the Department of **Health, Education and Welfare** while acting within the scope of his office or employment.

(4-20-10 continued)

Subpart B - Procedures

§35.2 Administrative claim; when presented; place of filing.

(a) For **purposes** of these **regulations**, a **claim** shall be deemed to have been presented when the **Department of Health, Education, and Welfare** receives, at a place **designated in paragraph (c)** of this section, an executed Standard Form **95** or other written **notification** of an **incident** accompanied by a claim for **money damages in a sum** certain for **damage** to or loss of property, for personal injury, or for death, alleged to have occurred by **reason** of the incident. A claim which **should have been presented to the Department** but which **was mistakenly** addressed to or filed with **another Federal agency**, shall be **deemed** to be presented to **the Department** as of **the date** that the claim is received by **the Department**. A claim **mistakenly** addressed to or **filed** with the **Department** shall **forthwith be transferred** to the **appropriate Federal agency**, if ascertainable, or **returned** to the claimant.

(b) A claim presented in compliance with paragraph (a) of this section may be **amended** by **the** claimant at any **time** prior to final action by the **Department Claims Officer** or prior to the **exercise** of the claimant's option to bring **suit under 28 U.S.C. 2675(a)**. **Amendments** shall be **submitted** in writing and signed by **the claimant** or his duly authorized agent or legal representative. **Upon the timely filing of an amendment to a pending claim**, the Department shall have **six months** in which to make a final disposition of the claim as **amended** and the claimant's option under 28 U.S.C. 2675(a) shall **not accrue** until six months after the filing of an **amendment**.

(c) **Forms** may be **obtained** and claims **may** be filed with the office, local, regional, or headquarters, of the **constituent organization** having jurisdiction over the employee involved in the **accident or** Incident, or with **the Department of Health, Education, and Welfare Claims Officer**, Washington, D. C. 20201.

§35.3 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property interest **which is** the subject of the claim, his duly authorized agent, or **his** legal representative.

(b) A claim for personal injury may be **presented** by the injured person, his duly **authorized** agent, or his legal representative.

(c) A claim based on death **may be presented** by the executor or administrator of the decedent's **estate** or by any **other person** legally entitled to assert **such** a claim under applicable state law.

(d) A claim for loss wholly compensated by an insurer with the rights of a **subrogee** may be presented by **the insurer**. A claim for loss **partially** compensated by an insurer with the **rights** of a **subrogee** may be presented by the insurer or the insured individually, as their respective interests appear, or **jointly**. **Whenever an insurer presents**

(4-20-10 continued)

8 claim • sserti8g the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights Of 8 subrogee.

(e) A claim presented by an agent or leg81 representative shall be presented in the name Of the claimant, be signed by the 8geBt or leg81 representative, show the title OR legal capacity of the person signing, and be accompanied by evidence of his authority to present 8 claim on behalf Of the claimant 88 agent, executor, administrator, parent, guardian, or other representative.

§35.4 Administrative claims: evidence and information to be submitted.

(8) Death. In support of a claim based on death, the claimant may be required to submit the following evidence or information:

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

(2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payments for such expenses.

(7) If damages for pain and suffering prior to death are claimed, 8 physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have 8 bearing on the responsibility of the United States for the death or the damages claimed. .

(4-20-10 continued)

(b) **Personal injury.** In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period 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 or designated by the Department or the constituent organization. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that claimant has, upon request, furnished the report referred to in the first sentence of this subparagraph and he has made or agrees to make available to the Department or the operating agency any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected duration of and expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing the time lost from employment, whether he is a full or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have bearing on the responsibility of the United States for the person injured or the damages claimed.

(c) **Property damage.** In support of a claim for damage to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4-20-10 continued)

(4) A statement listing date of purchase, purchase price, market value of t&e property of date of damage, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have bearing either on the responsibility of the United States for the injury to or loss of property or the damages claimed.

(d) Time limit. All evidence required to be submitted by this section shall be furnished by the claimant within a reasonable time. Failure of a claimant to furnish evidence necessary to a determination of his claim within three months after a request therefor has been mailed to his last known address may be deemed an abandonment of the claim. The claim may be thereupon disallowed.

§35.5 Investigation, examination, and determination of claims.

When a claim is received, the constituent agency out of whose activities the claim arose shall make such investigation as may be necessary or appropriate for a determination of the validity of the claim and thereafter shall forward the claim, together with all pertinent material, and a recommendation based on the merits of the case, with regard to allowance or disallowance of the claim, to the Department Claims Officer to whom authority has been delegated to adjust, determine, compromise and settle all claims hereunder.

§35.6 Final denial of claim.

(a) Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the Department's action, he may file suit in an appropriate United States District Court not later than six months after the date of mailing of the notification.

(b) Prior to the commencement of suit and prior to the expiration of the 6-month period after the date of mailing, by certified or registered mail of notice of final denial of the claim as provided in 28 U.S.C. 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the Department for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration the Department shall have 6 months from the date of filing in which to make a final disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) to bring suit shall not accrue until 6 months after the filing of a request for reconsideration. Final Department action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a).

(4-20-10 continued)

§35.7 Payment of approved claims.

(8) Upon allowance of his claim, claimant or his duly authorized agent shall sign the voucher for payment, Standard Form 1145, before payment is made.

(b) When the claimant is represented by an attorney, the voucher for payment (SF 1145) shall designate both the claimant and his attorney as "payees." The check shall be delivered to the attorney whose address shall appear on the voucher.

§33.8 Release.

Acceptance by the claimant, his agent or legal representative, of any award, compromise or settlement made hereunder, shall be final and conclusive on the claimant, his agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

135.9 Penalties.

A person who files a false claim or makes a false or fraudulent statement in a claim against the United States may be liable to a fine of not more than \$10,000 or to imprisonment of not more than 5 years, or both (18 U.S.C. 287, 1001), and, in addition; to a forfeiture of \$2,000 and a penalty of double the loss or damage sustained by the United States (31 U.S.C. 231).

§35.10 Limitation on Department's authority.

(8) An award, compromise or settlement of a claim hereunder in excess of \$25,000 shall be effected only with the prior written approval of the Attorney General or his designee. For the purposes of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised or settled hereunder only after consultation with the Department of Justice when, in the opinion of the Department:

(1) a new precedent or a new point of law is involved; or

(2) a question of policy is or may be involved; or

(4-20-10 continued)

(3) the **United States** is **or may** be entitled to **indemnity** or contribution from a third **party** and the **Department is** unable to adjust the third **party** claim; or

(4) the **compromise** of a particular claim, **as a particular** **utter, will** or **may** control **the disposition** of a related claim **in** **which the amount to be paid may exceed \$25,000.**

(c) An administrative claim **may** be **•** **adjudicated, determined,** compromised or **settled** only after **consultation with** the **Department** of Justice **when it is learned that the** United States or an employee, **agent** or **cost plus** contractor of the United States is **involved** in litigation based on a claim **arising** out of the **same** incident or **transaction.**



CHAPTER 4-30

PROCEDURE

- 4-30-10** Investigations
20 Transmittal to **Claims** Officer
30 Notice of **Commencement** of Legal Proceedings
40 **Issuance** of **Instructions** by **Constituent** Organization⁸
50 The Department Claims Officer
60 Final Action on Claims
70 Form⁸ • Tort **Claims**

4-30-10 INVESTIGATIONS

- A. An **immediate** investigation must **be** made by the appropriate office, local, regional **or** headquarter⁸ whenever:
1. private property is damaged, destroyed, or lost or when anyone suffer⁸ personal injury or death as a result of an incident involving the Department of Health, Education, and Welfare or an officer or employee of the Department or any **person** detailed to or serving the Department;
 2. a claim or **suit** for damage **is** filed **pursuant** to the Act, if no **previous** investigation ha⁸ been made;
 3. **requested** by the Claims Officer.
- B. Responsibility for investigations
1. Responsibility for conducting prompt and thorough investigations shall **rest** with the head **of** the operating agency or the Office **of** Field Coordination or the Director **of** Administrative **Services** under **whose jurisdiction** the officer or employee involved in the accident, or the **Government** property damaged, **is assigned**.
 2. **At least** out employee **shall be designated by** the **responsible** officer a⁸ an Investigating Officer in **each station** or office, local, regional **or** headquarters who **shall** be charged with the duty **of investigating** accidents and incidents occurring within the jurisdiction of hi⁸ office or **station**.
- C. Manner of Conducting Investigations
- Every employtt involved in an accident or incident **shall make a complete and** accurate report which shall be transmitted to the **Investigating Officer** before the **close** Of **business for the following** work day.
- The **Investigating** Officer, upon receipt of notice of an accident, claim, or **suit**, shall **promptly** interview and obtain *complete*, signed

(4-30-U-X continued)

statements from all witnesses, visit the scene of the accident or incident to obtain first hand information and do what is necessary to **conduct** a thorough investigation including the following, whenever possible:

1. interview the employee involved to **determine** whether the information *furnished* in his report is both complete and accurate;
2. interview and obtain **complete** signed **statements** on Standard Form 94 (Revised) **from** all other persons who witnessed the accident or incident or who have information pertinent thereto. Each such statement should contain the Post Office address • and the witnessed signature of the witness. If the witness declines to sign a **statement**, the Investigating Officer shall prepare a **statement** covering the information given by the witness and indicate the **reasons why** the witness **refused** to give such **information** in writing. When the Investigating Officer has reason to believe any statement obtained is biased or untrue, he shall attach thereto a written **statement** setting forth the reasons for his opinion, which shall **become** part of the file. See item 12 herein;
3. if a motor vehicle accident occurred through the negligence of one other than the **Government** driver, obtain photographs pertinent to the accident, if practicable; and attach thereto a signed statement of the photographer showing the time, place, view, and other pertinent data;
4. in case of damage to **Government** property, obtain two signed estimates of the cost of repair. If property is lost, damaged beyond **economical** repair, or destroyed, two signed estimates should be obtained as to the property's value before the accident or incident and its salvage value, if any;
5. where a claim for damage, loss, or destruction of private property has been filed, the claimant shall submit at least two signed estimates from disinterested qualified persons of the cost of repairing the private property. If a claim for personal injury or death has been or appears likely to be filed, signed reports **from** attending physicians, hospitals, etc., should be obtained as well as an exact copy of the death certificate, and coroner's report, if any. The head of the constituent organization may, in his **discretion**, and as provided herein, arrange for a medical **examination** of the injured claimant. The facilities and personnel of the United States Public Health Service should be used when practicable.
6. obtain a copy of any police report and other official investigation or COURT action;
7. obtain a copy or extract of any pertinent local laws, ordinances or regulations;

(4-30-10C continued)

8. where an accident occurs in a building leased by the Government involving a person not employed by the Government, either a copy of the lease should be obtained or information on whether or not the provisions of the lease impose the responsibility for maintenance and upkeep of the building upon the lessor or the lessee.
9. prepare a diagram of the scene of the accident or incident showing all pertinent physical facts, with particular reference in vehicular accidents to distances in feet within points of impact and points where danger was first observed or point where vehicle's motion ceased, width of streets, skid marks, etc.
10. prepare a statement setting forth the nature of the duties of the employees involved in the accident or incident, and containing all facts tending to indicate whether the employees involved in the accident or incident were acting at the time within the scope of their employment or line of duty (GSA OF 26);
11. Completely fill out the Accident Report (HEW 516).
12. If the investigator wishes to note in the file his own personal comments, opinions, or recommendations regarding the accident **or** incident, he should record them in a memorandum separate and apart from the official, investigative report.

4-30-20 TRANSMITTAL TO CLAIMS OFFICER

A. Notice of Accident

Notice of the happening of every accident or incident that is required to be investigated pursuant to **4-30-10** above, shall be transmitted without delay by sending a copy of Form HEW 516 through the head of the constituent organization involved, or his designee, to the Claims Officer (See Part 18 of the Department Safety Management Manual). The investigation file shall be retained until the investigation is completed and the claim is filed.

B. If a Claim has been Filed

After a claim has been filed, the head of the constituent organization concerned, or his designee, upon completion of his investigation shall send the complete investigation file to the Claims Officer, including his recommendation as to disposition. If he recommends allowance of claim, the amount he recommends should be stated and **supported** by the evidence, and a completed voucher (SF-1145) shall be submitted with the file.

(4-30-20 continued)

C. If Damage to Government Vehicle is Involved

1. Where the **circumstances** of the accident or incident indicate that a claim may be filed **against** the **Government** by a third party, no determination **shall** be made regarding the negligence of a **Government** employee in connection with causing damage to **Government** property. This is **especially true where** a **Government** vehicle **is** involved in an accident. Such a determination regarding negligence **shall** be **made** only by the Department Claims Officer.
2. If the **Government** may have **lost** or **gained** a third party **arising from** an accident or incident in which a claim **is** made against **the Government** under **this** Chapter, any collection action taken **shall** be in accordance with the Claim Collection Act and the regulations and procedure⁸ issued thereunder.

D. If Suit has been Instituted Against the Government

The report **should** be **transmitted** through the head of **the** constituent **organization** or his designee to the **Department** Claim⁸ Officer.

4-30-30 NOTICE OF COMMENCEMENT OF LEGAL PROCEEDINGS

A. Suit Based on Cause of Action or Claim Arising Prior to January 18, 1967

1. **Where the claim is** over \$2500, claimant's sole **remedy** is to file suit. **The procedure herein is** to be followed so that the Department of Justice may **assume** defense of the action.

B. Suit Based on Cause of Action or Claim Arising on or After January 18, 1967

1. Regardless **of** the amount of the claim, claimant must **first** file an administrative claim against the **Government**. Suit may thereafter be filed only within six months after the date of mailing, by certified or registered mail, of Notice of Final Denial of the claim. Failure of the **Government** to **make** final disposition of **the** claim-within **six** month⁸ after **it** is filed, may, at the option of the claimant, be **deemed** a final denial of the **claim** for the **purpose** of bringing suit.

The procedure herein is to be followed in order that the Department of **Justice** may **assume** **defense** of the action or, in the alternative, file a Motion to **Dismiss** the Action in those **cases where** the claimant failed to **first** file an **administrative** claim which had been subsequently denied.

(4-30-30 continued)

C. Suits Involving Operation of Motor Vehicles (28 U.S.C. 2679)**1. Responsibility of the Employee Sued**

Any employee of this Department who gains whom a lawsuit is brought for damage to property, or for personal injury or death, or who receives information that such action will be brought against him on account of the employee's operation of a motor vehicle in the scope of his Federal employment, shall immediately advise his superior in person, by telephone or telegraph, as appropriate, and shall deliver to him, as soon as possible, all pleadings or other documents served upon the employee.

2. Responsibility of the Supervisor

- a. The employee's supervisor shall immediately advise the agency designee (the official designated for the purposes of 28 U.S.C. §2679, as shown in Exhibit X4-30-1) and forward all documents to him with any other pertinent information.
- b. The supervisor of a defendant-employee who dies subsequent to the motor vehicle accident shall inform the employee's personal representative of the provisions of 28 U.S.C. §2679 and appropriate Department procedures.

3. Responsibility of the Agency Designee

- a. The agency designee shall promptly, upon receipt of information concerning the commencement of such action or proceeding, forward such information, and shall submit, as soon as practicable, one copy of all pleadings and proceedings to each of the following:
- (1) the United States Attorney for the District embracing the place wherein the action or proceeding is brought (see Exhibit X-40-30-2);
 - (2) the Chief of the Tort Section, Civil Division, Department of Justice, Washington, D.C. 20530;
 - (3) the Department Claims Officer, Office of General Counsel, Department of Health, Education, and Welfare, Washington, D.C. 20201. (May be sent through regular tort claim reporting channels.)
- b. The designated official shall also submit to the above listed as soon as possible a report containing all data bearing upon the question whether the employee involved was acting within the scope of his office or employment with the Federal Government at the time of the

(4-30-30b continued)

automobile accident out of which the suit arose. The report must contain information on:

- (1) the nature of the driver's duties;
- (2) his authorized destination at the time of the accident ;
- (3) whether he had departed from any authorized route or disobeyed any instructions;
- (4) whether he was engaged in the furtherance of his own personal interests in any way; and
- (5) any other relevant data.

D. Suits Not Involving Operation of Motor Vehicle by HEW Employee

1. Any officer, employee or other person detailed to or serving this Department (or his personal representative, if the action is brought against his estate) against whom a suit or legal action of either civil or criminal nature is commenced, on account of such person within the scope of his Federal employment or who receives information that such action will be brought against him, shall advise his immediate supervisor as soon as possible after receiving information of such action or proceedings.
2. The immediate supervisor by telegraph or long distance telephone (if necessary) shall inform the head of the operating agency or his designee of this matter. The latter shall transmit this information immediately to the Department Claims Officer. The notification must be received by the Department Claims Officer before the close of business of the first working day immediately following initial receipt of suit information by officer or employee concerned.
3. The Department of Justice, or a United States Attorney normally shall not be contacted, except as directed by the Office of the General Counsel. Further investigation may be requested either by the United States Attorney or the Office of the General Counsel.
4. In the event there is not time to follow the normal procedure, a local official of the Department may request a United States Attorney to furnish counsel and representation. The Department Claims Officer should be notified immediately of such requests.

493040 **ISSUANCE OF INSTRUCTIONS BY CONSTITUTENT ORGANIZATIONS**

The head of each constituent organization is authorized to prescribe necessary **instructions** approved by the **Claims** Officer, not **inconsistent** herewith, to **implement** the foregoing. Such **instructions shall also** include a direction to all **personnel**, when **requested**, to cooperate with and assist the United States Attorney in **prosecuting** and defending **suits** by or against the United States or its employees arising out of accidents or **incidents**, investigation of which **is** required by 4-30-10 supra. **Copies** of all such **instructions** shall be filed with the Department Claims Officer.

4-30-50 **THE DEPARTMENT CLAIMS OFFICER**A. Determination

The Department Claims Officer will make a determination on an **administrative** claim **against** the **Government** after the case has been reviewed with respect to applicable law by the **Division** of **Business** and **Administrative Law** of the Office of **General Counsel**.

B. Referral to Department of Justice

When **Department** of Justice approval or **consultation is** required under §35.10 of the Regulations of this Department or the advice of the Department of **Justice** is **otherwise** to be requested, the referral or request of the **Department shall** be in writing and directed to the **Assistant Attorney General, Civil Division, Department** of Justice, and **must** contain (a) a short and **concise statement** of the facts and of the reasons for the referral or request, (b) copies of relevant portions of the claim file, and (c) a **statement** of the **recommendations** or views of the constituent agency involved. Such referrals or requests to the Department of **Justice** shall be **made** by the **Department Claims Officer** and **may be** made at any **time** after **presentation** of a claim to the Department.

4-30-60 **FINAL ACTION ON CLAIMS**A. Allowed Claims

1. When a claim **is** approved by the Department **Claims** Officer, he will certify the voucher for **payment**. (In case of subrogation, the voucher will be **made** payable jointly to both **subrogee** and subrogor. If **claimant is represented** by an attorney he will be jointed as co-payee.)
2. He will **return** the file to the appropriate **Claims** Office from which it had been received.
3. The Claims Office **shall** obtain a signed release **from** the claimant on the voucher and then forward it to the appropriate **fiscal** officer for payment. (See Voucher Audit Manual Chapter 4-80-70.)

(4-30-60A continued)

4. After payment of the claim a copy of the voucher shall be furnished to the **Department** Claims Officer.
5. The original file is to be retained by the appropriate Claims Office.

B. Claims Denied

The appropriate Claims Office shall mail the notice **of denial** of claim to the claimant or his legal representative by certified or registered mail, stating the reasons **therefor** and advising of his right to file suit. (§35.6 of the Department Tort Claims Regulations.)

4-30-70 FORMS - TORT CLAIMS

- A. The following standard forms are required to be completed promptly after every accident:
 1. Operator's Report of Motor Vehicle Accident (Standard Form 91, Revised) **is** to be prepared at the time and on the scene of the accident insofar as possible regardless of the extent of injury or damage. Blank forms are to be carried in each Government operated motor vehicle.
 2. Data Bearing Upon Scope of Employment of Motor Vehicle Operator (Optional Form 26).
 3. Statement of Witness (Standard Form 94, Revised) **for** every type of accident.
 4. Accident Report (HEW 516) for every type of accident. The Department Claims Officer will also receive a copy of this report as his preliminary notice of the occurrence of the accident (See **4-30-20A**).
 5. Claim for Damage or Injury (Standard Form 95, Revised) is to be prepared by or on behalf of the claimant after he has determined the extent of his injury or **damage** sustained as a result of the alleged negligence of the Federal employee.

DESIGNEES FOR PURPOSES OF P.L. 87-258
(28 U.S.C. 2679); SUITS INVOLVING
OPERATION OF **MOTOR** VEHICLES

This exhibit indicates by position title the designees, and their areas of responsibility, for purposes of performing the duties listed in Paragraph **4-30-30** of this Chapter, to **comply** with the requirements of P.L. 87-258 (28 U.S.C. 2679) **and** the Department of Justice regulations 28 Code of Federal Regulations 15.1.

AREA OF RESPONSIBILITYDESIGNEEHeadquarters

All employees of the Department stationed in the District of Columbia except employees of the Public Health Service

Department Claims Officer,
Deputy General Counsel

Food and Drug Administration

Employees assigned to Field Districts

District Director

Regional Offices

Employees located in or assigned to respective regional offices

Regional Attorney for Regions I, II, III, IV, V, VII, VIII, and IX

Assistant Regional Attorney for Region VI

Public Health Service

Public Health Service Claims Officer
7915 **Eastern** Avenue, Silver Spring,
Maryland 20910. Phone: Area Code
301 **495-5427** (with authority to
designate additional persons);
except **for Saint Elizabeths Hospital**
whose designee is the Chief,
Administrative **Services**.

AREA OF RESPONSIBILITY**DESIGNEE**Social Security Administration**Tort Claims Officer**

District Offices

District **Manager** or Acting
District Manager

Payment Centers

Investigating Officer or
Acting **Investigating** OfficerBPCU**FCU Examiners**Respective FCU Regional
Representatives**BHA**Rearing Examiners in Regions: **II,**
III, IV, v, VII, IX**Respective** Regional Hearing
Representative

Region I

Region 11 Regional Hearing
Representative

Region VIII

Region VI Regional Rearing
Representative

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
ALABAMA		
Northern	354 Post Office Building 5th Avenue 6 19th Street Birmingham (35202)	FTS-205- 325-3721
Middle	302 Post Office 6 Courthouse Building or Post Office Box 197 Montgomery (36101)	FTS-205- 263-7388
Southern	311 Federal Building Mobile (36602)	FTS-205- 433-3245
ALASKA	Federal Building 4th & G Streets Anchorage (99501)	Dial 100 277-1491
ARIZONA	5000 Federal Building 230 N. First Avenue Phoenix (85025)	FTS-602- 261-3131
ARKANSAS		
Eastern	Post Office & Courthouse 600 W. Capitol Little Rock (72203)	FTS-501- 372.5342
Western	Post Office & Federal Building Rogers Avenue & 6th Street Fort Smith (72901)	FTS-501- 782-3406
CALIFORNIA		
Northern	16th Floor Federal Building & U.S. Courthouse 450 Golden Gate Avenue San Francisco (94102)	FTS-415- 556-2309
Central	600 U.S. Courthouse 312 N. Spring Street Los Angeles (90012)	FTS-213- 688-2434
CANAL ZONE	Post Office Box 716 District Courthouse Herrick 6 Colombia Roads Balboa	Dial Opr. Balboa 2697 & 2792
COLORADO	Post Office Box 1776 Denver (80201)	FTS-303- 297-4184

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
CONNECTICUT	Federal Building 450 Main Street Hartford (06103)	FTS-203- 244-2570
DELAWARE	200 Federal Building 11th & Market Streets Wilmington (19801)	FTS-302- 654-6345
DISTRICT OF COLUMBIA	3600 District Court Building Washington, D.C. (20001)	FTS-202- 783-6511 or 187-2070
FLORIDA Northern	Box 1308 U.S. Post Office & Courthouse Building 110 E. Park Avenue Tallahassee (32301)	FTS-904- 377-4217
Middle	Post Office Building 611 Florida Avenue Tampa (33601)	FTS-813- 228-7146
Southern	U.S. Post Office & Courthouse Building 300 N.E. First Avenue Miami (33101)	FTS-305- 350-5255-56
GEORGIA Northern	402 Old Post Office Building 56 Forsyth Street, N.W. Atlanta (30301)	FTS-404- 526-6606
Middle	303 Federal Building Mulberry & 3rd Streets Macon (31202)	FTS-912- 743-2235
Southern	309 Post Office Building Bull 6 York Streets Savannah (31402)	FTS-912- 232-4261
GUAM	Post Office Box Z Agana (96910)	Dial Opr. 72-6445 & 72-6458
HAWAII	320 Federal Post Office Building Richard & Merchants Streets Honolulu (96809)	Dial Opr. 58831 Ext. 760

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
IDAHO	217 Post Office Building 8th 6 Jefferson Boise (83701)	FTS-208- 342-2211
ILLINOIS	1500 New U.S. Courthouse 219 S. Dearborn Street Chicago (60604)	FTS-312- 828-5333
Eastern	Post Office Building 750 Missouri Avenue East St. Louis (62202)	FTS-618 274-2361
Southern	Post Office Box 375 600 E. Monroe Street Springfield (62705)	FTS-217- 525-4450
INDIANA	U.S. Post Office & Courthouse	FTS-219-
Northern	1300 S. Harrison Street Fort Wayne (46801)	422-6121 6122
Southern	246 Federal Building Ohio & Meridian Streets Indianapolis (46204)	FTS-317- 633-7581
IOWA		
Northern	327 Post Office Building & Courthouse 6th & Douglas Streets Sioux City (51102)	
Southern	202 U.S. Courthouse Des Moines (50300)	
KANSAS	Post Office Building 5th Street & Kansas Avenue Topeka (66601)	
KENTUCKY		
Eastern	326 Federal Building Limestone & Barr Streets Lexington (40501)	
Western	211 Federal Building 6th 6 Broadway Louisville (40202)	

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
LOUISIANA Eastern	509 St. Louis Street New Orleans (70130)	FTS-504- 527-2921
Western	U.S. Courthouse & Post Office 424 Texas Street Shreveport (71102)	FTS-318 425-6641
MAINE	Federal Courthouse 156 Federal Street Portland (04112)	FTS-207 775-3258
MARYLAND	409 Post Office Building Calvert & Fayette Streets Baltimore (21202)	FTS-301- 962-3361
MASSACHUSETTS	1107 Post Office & Courthouse Building Devonshire Street Boston (02109)	FTS-617 223-3258
MICHIGAN Eastern	813 Federal Building Detroit (48226)	FTS-31- 226-3100
Western	313 Federal Building 135-37 Ionia Avenue, N.W. Grand Rapids (49502)	FTS-616- 456-2404
MINNESOTA	596 U.S. Courthouse 4th 6 Marquette Avenue Minneapolis (55401)	FTS-612- 334-2681
MISSISSIPPI Northern	Post Office Building 106 S. Lamar Oxford (38655)	Dial 100 601-234- 3351
Southern	U.S. Post Office & Courthouse Capitol & S.W. Streets Jackson (39205)	FTS-601- 948-2562
MISSOURI Eastern	U.S. Courthouse & Customhouse 1114 Market Street St. Louis (63101)	FTS-314- 622.4205

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
MISSOURI - Cont'd Western	549 U.S. Courthouse 811 Grand Avenue Kansas City (64106)	FTS-816- 374-3124
MONTANA	Federal Building 400 N. Main Street Butte (59701)	FTS-406- 723-3316
NEBRASKA	Federal Building 215 N. 17th Street Omaha (68101)	FTS-402- 221-4774
NEVADA	U.S. Post Office & Courthouse 301 Stewart Street Las Vegas (89101)	Dial 100 FTS-702- 382-5696
NEW HAMPSHIRE	Post Office Building Capitol & State Streets Concord (03302)	FTS-603- 224-7735
NEW JERSEY	Post Office Building Federal Square Newark (07102)	FTS-201- 645-2155
NEW MEXICO	U.S. Courthouse & Office Building 500 Gold Avenue, S.W. Albuquerque (87103)	FTS-505- 247-2901
NEW YORK Northern	Federal Post Office Building 445 Broadway Albany (12207)	FTS-518- 472-5522
Southern	U.S. Courthouse Foley Square New York (10007)	FTS-212- 264-6118
Eastern	U.S. Courthouse & Federal Building 225 Washington Street Brooklyn (11201)	FTS-212- 596-5600
Western	502 U.S. Courthouse Niagara Square Buffalo (14202)	FTS-716- 842-3484

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
NORTH CAROLINA		
Eastern	303 Post Office Building 300 Fayetteville Street Raleigh (27602)	FTS-919- 828-9143
Middle	Federal Building Post Office & Courthouse 324 W. Market Street Greensboro (27401)	FTS-919- 275-9351
Western	310 U.S. Courthouse & Post Office Building Post & Otis Streets Asheville (28802)	FTS-704- 254.0655
NORTH DAKOTA	705 - First Avenue North Fargo (58103)	FTS-701- 237-5293
OHIO		
Northern	400 Federal Building Public Square Cleveland (44114)	FTS-216- 522-4380
Southern	U.S. Post Office & Courthouse 85 Marconi Boulevard Columbus (43216)	FTS-614- 469-5715
OKLAHOMA		
Northern	406 U.S. District Court, Federal Building 3rd & Boulder Streets Tulsa (74103)	FTS-918- 584-7161(opr) LU 4-7161 Ext. 463 & LU 5-1987
Eastern	333 Federal Building 5th 6 Broadway Streets Muskogee (74402)	FTS-918- 683-3471
Western	4th Floor (Post Office Box 778) 200 N.W. 4th Street Federal Building & New Courthouse Oklahoma City (73102)	FTS-405- 236-2623
OREGON	U.S. Courthouse S.W. Broadway & Main Streets Portland (97207)	FTS-503- 226-351

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
PENNSYLVANIA		
Eastern	U.S. Courthouse 9th & Chestnut Streets Philadelphia (19107)	FTS-215- 597-3311 (opr) WA 2-5850
Middle	424 U.S. Courthouse 6 Post Office Building Washington Avenue & Linden Street Scranton (18501)	FTS-717- 344-7297
Western	633 U.S. Post Office & Courthouse 7th Avenue & Grant Street Pittsburgh (15219)	FTS-412- 644-3500
PUERTO RICO	U.S. Courthouse & Post Office Building Conercio Street San Juan (00904)	Opr. 722- 1550
RHODE ISLAND	U.S. District Court, Federal Building Kennedy Plaza Providence (02901)	FTS-401- 528-4311
SOUTH CAROLINA		
Eastern	U.S. Courthouse Laurel & Assembly Streets Columbia (29201)	FTS-803- 253-3451 (opr)
Western	Federal Building 300 E. Washington Street Greenville (29603)	FTS-803- 232-4326
SOUTH DAKOTA	211 Federal Building & U.S. Courthouse Phillips Avenue 6 12th Street Sioux Falls (57102)	FTS-605- 336-2256
TENNESSEE		
Eastern	U.S. Courthouse & Post Office Building Chattanooga (37402)	FTS-615- 266-3211
Middle	879 U.S. Courthouse 801 Broadway Nashville (37203)	FTS-615- 242-5791

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
TENNESSEE • Cont'd		
Western	1058 Federal Building 167 N. Main Street Memphis (38101)	FTS-901- 534-3311
TEXAS		
Northern	U.S. Courthouse 10th at Lamar Fort Worth (76102)	FTS-817- 334-3291
Southern	12000 U.S. Courthouse 515 Rusk Avenue Houston (77061)	FTS-713- 228-4765
Eastern	Post Office Box 1049 & U.S. Courthouse W. Ferguson Street Tyler (75701)	100-214- LY 2-1472 or LY 4-7756
Western	U.S. Courthouse Post Office Box 1301 615 Houston Street San Antonio (78206)	FTS-512- 225-4221
UTAH	U.S. Post Office & Courthouse 350 s. Main Salt Lake City (84101)	FTS-801- 524-5685
VERMONT	Federal Building 151 West Street Rutland (05702)	100-802- PR 3-9133
VIRGIN ISLANDS	District Court Building Annex, Charlotte Amalie Post Office Box 1441 St. Thomas (00801)	OPR. 774-1430
VIRGINIA		
Eastern	U.S. Post Office Building Main Street Richmond (23210)	703-649- 3611 opr. MI 44097
Western	Post Office Building 2d Street at Church Avenue Roanoke (24008)	FTS-703- 343-6384
WASHINGTON		
Eastern	334 Federal Building W. 904 Riverside Spokane (99210)	FTS-5- 838-3601

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
WASHINGTON • Cont'd Western	U.S. Courthouse 1010 5th Avenue Seattle (98104)	FTS-206- 583-4735
WEST VIRGINIA Northern	Federal Building Post Office Box 591 1125-1141 Chapline Wheeling (26003)	FTS-304- 343-1042
Southern	U.S. Courthouse 500 Quarrier Street Huntington (25701)	P-m-304- 343-6181
WISCONSIN Eastern	390 Federal Building 517 E. Wisconsin Avenue Milwaukee (53202)	FTS-414- 272-3381
Western	241 Federal Building 215 Monona Avenue Madison (53701)	FTS-608- 256-4658
WYOMING	2141 U.S. Post Office & Courthouse 2120 Capitol Avenue Post Office Box 668 Cheyenne (82001)	FTS-307- 778-2367

CHAPTER 4-35

CLAIMS

4-35-00	Scope
10	Definitions
20	Claimants
30	Types of Claims Payable
40	Claims Generally Not Payable
50	Computation of Award
60	Claims Involving Carriers or Insurers
70	Claims Procedures
80	Reimbursement Procedure

4-35-00

SCOPE

This Chapter provides policies and procedures for handling claims not in excess of \$15,000 under the Military Personnel and Civilian Employees' Claims Act of 1964 (31 U.S.C. 240-243) for damage to or loss of property of employees of the Department. The loss must be incident to employment and the employee must be free of negligence in connection with the loss. Nothing in this Chapter shall be construed to bar other types of claims heretofore payable under other statutory authority such as, but not limited to, the Federal Tort Claims Act (28 U.S.C. 2671-2680).

4-35-10

DEFINITIONS

- A. Claim. "Claim" means any claim filed by or on behalf of an employee for damage to or loss of such employee's personal property incident to his employment.
- B. Employee. An "employee" means any officer or employee of this **Department**, including but not limited to officers of the Public Health Service.
- C. Damage or loss. "Damage or loss" includes total or partial destruction, capture or abandonment under the circumstances set forth in Section 4-35-30 of this Chapter.

(4-35-10 continued)

3. Quarters. "Quarters" means living quarters or any place of employment, **including** but not limited to offices, storerooms, warehouses, garages, hospitals, **etc.**, where an employee is assigned by competent authority to perform duties within the scope of his employment.
- E. Department. "Department" means the Department of Health, Education, and Welfare.

4-35-20

CLAIMANTS

Claims under the Military Personnel and Civilian Employee's Claims Act may be presented by:

- A. An employee.
- B. The authorized agent of an employee entitled to submit a claim, but only if the employee is alive at the time of the submission of the claim and evidence of authority is submitted.
- C. The survivor of an employee, regardless of whether the claim arose before, concurrent with, or after the employee's death. Survivors claims will be considered in the following order:
1. Spouse
 2. Children
 3. Parents
 4. Brothers and sisters
- D. A former employee or his survivors, but the claim must be for damage or loss to property which occurred prior to separation from the Department.

4-35-30

TYPES OF CLAIMS PAYABLE

A claim is payable: .

1. In an amount not to exceed **\$15,000.00**.
2. If presented in writing within two **years** after it accrues.
3. If it did not arise in whole or in part by the negligent or wrongful act of the claimant or his/her agent or employee.

Provided that the damage or loss occurred under the following circumstances:

A. In Government Quarters

Where property is damaged or lost by fire, flood, hurricane, theft, or other serious occurrence while located at:

1. Quarters which have been assigned or provided by the Government.
2. Quarters outside the United States whether assigned by the Government or not. Exception - A civilian employee outside the U.S. who is a local inhabitant is only covered by this Act if quarters are assigned by the Government.
3. Any warehouse, office, hospital, baggage loading area or **cther** place designated by superior authority for the reception of the property.

B. Transportation Losses

Damage or loss of personal property, including baggage and household effects, while being transported by a carrier, an agent or agency of the Government, or private conveyance, is payable only if the property is shipped under orders or in connection with travel under orders.

C. Miscellaneous

Claims for damage to or loss of property may also be allowed when caused by:

1. Marine and air disaster, enemy action, and other extraordinary risks incurred incident to the performance of official duties by the claimant.
2. Property used for the benefit of the Government at the direction or request of superior authority.

(4-35-30 continued)

3. Money deposited with other employees acting within the scope of their employment and at the direction of superior authority, which was not applied as directed by the owner, nor returned to him. Money which is stolen from an employee whose duties require him to carry it is also covered by this Act.
4. Theft but only if it is determined as a result of positive evidence that: the claimant exercised due care in the protection of his property and, there was a larceny, burglary or housebreaking.
5. Certain other meritorious claims in exceptional cases may be allowed by the Department Claims Officer or his delegate.

4-35-40

CLAIMS GENERALLY NOT PAYABLE

Damage to or loss of personal property must be incident to employment. Generally claims are not payable for personal property if the Department Claims Officer or authorized delegate determines that its possession was not reasonable, useful, or proper under the existing circumstances, or where damage to or loss of property was caused in whole or in part by any negligent or wrongful act on the part of the claimant, his agent or his employee.

Claims shall not be allowed for the following specific types of property:

- A. Money or currency (except as provided in Section 4-35-30 C.3 above); intangible property such as bankbooks, checks, money orders, baggage checks, warehouse receipts, bills of lading, promissory notes, stock certificates, bonds, etc.
- B. Worn-out or unserviceable property.
- C. Easily pilferable articles such as jewelry, cameras, watches, and binoculars when they are shipped with household goods or by ordinary means or as unaccompanied baggage at normal or released valuation. (This does not apply to checked property or property in personal custody of the claimant or his agent provided proper security measures have been taken.)

'4-35-40 continued)

- D. Wearing apparel being worn at the time of damage or loss, except in the circumstances listed in 4-35-30 C.1 and 2.
- E. Property owned by the United States, except such property belong to an agency other than the Department for which the claimant is responsible.
- F. Claims for damage or loss of motor vehicles except when they are being shipped or transferred due to an employee's permanent change of station. Other exceptional cases may be considered for payment by the Department Claims Officer or authorized delegate.
- G. Losses of insurers and other subrogees.
- H. Losses which have been recovered or are recoverable from an insurer, carrier or other subrogee.
- I. Losses which have been recovered or are recoverable pursuant to contract.
- J. Property normally used for business or profit.
- K. Claims for fees paid to obtain estimates of repair to support a claim under this Act. However, if the Department Claims Officer or authorized delegate determines that the claimant could not have obtained an estimate without paying the fee, it may be payable provided that the estimate clearly shows that the estimate fee will not be deducted from the costs of repair.
- L. Claims for property acquired, possessed, or transported in violation of laws or regulations issued by or applying to DHEW or to its employees. (This does not apply to limitations imposed on weights of shipments of household effects.)
- M. Claims under \$10.00.

(4-35-40 continued)

- N. Claims which are otherwise within the provisions of this section shall not be disapproved for the sole reason that the property was not in the possession of the claimant at the time of its damage or loss or for the reason that the claimant was not the legal owner of the property. Borrowed property may be the subject of a claim if its possession was reasonable, useful, or necessary to the claimant.

4-35-50

COMPUTATION OF AWARD

A. Cost of Property as a Basis

The amount awarded on any item of property shall not exceed the adjusted cost of the item based upon the cost of replacing it with a similar one of the same quality minus the appropriate depreciation rate (explained below). The amount normally payable on property damaged beyond economical repair shall not exceed its depreciated value. If the cost of repairs is less than the depreciated value it shall be considered economically repairable and the costs of repairs shall be the amount payable.

B. Depreciation

Depreciation in value of an item shall be determined by considering the type of article involved, its replacement cost, condition when lost or damaged beyond economical repair, and the time elapsed between the date of acquisition and the date of accrual of the claim. Exhibit X4-35-2 to this Chapter contains a schedule of depreciation to be used for determining the estimated life of various classes of items.

4-35-60

CLAIMS INVOLVING CARRIERS OR INSURERSA. Claim against Carrier

1. Whenever property is damaged, lost, or destroyed while being shipped pursuant to authorized travel orders, the owner shall file a written claim for **reimbursement** against the carrier at once. **[See Exhibit X4-35-1: Demand on Carrier - Format]** **Innoeventshallitbepresentedlater than within nine months from the date delivery .** was or should have been made according to the terms of the bill of lading or contract. It shall be filed before or concurrent with submitting a claim against the Government under these regulations.
2. The demand shall be made against the responsible carrier. If more than one bill of lading or contract was issued, a separate demand shall be made against the last carrier on each such document, unless claimant knows which carrier was in possession of the property when the damage or loss occurred.

B. Claim against Insurer

Whenever property which is damaged, lost, or destroyed incident to the claimant's service is insured in whole or in part, the claimant shall make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage. Such demand shall be made within the time limit provided in the policy, and prior to or concurrent with the filing of the claim against the Government.

C. Assistance in Presenting Claims to Carrier and Insurer

1. The Department Claims Officer, authorized delegate, or the appropriate Claims Investigating Officer (4-35-70.B below) shall assist the claimant in the preparation of the claim against the carrier or insurer.

(4-35-60 continued)

2. If no action is taken by the carrier or insurer on his claim, the claimant is required to advise the Department Claims Officer or authorized delegate, and upon request, to furnish the Department Claims Officer or authorized delegate with all correspondence, documents, and other evidence pertinent to the matter.
3. All reimbursements to the claimant in settlement of his claim by the carrier or insurer shall be made payable to the claimant and addressed to him. In this event, the appropriate Claims Officer shall be notified immediately.

D. Failure to Make Demand on Carrier or Insurer

Failure to make timely demand on a carrier or insurer or to make all reasonable efforts to collect the amount recoverable from the carrier or insurer may result in reducing the amount recoverable from the Government. The maximum amount which would have been recoverable from the carrier or insurer had the claim been timely made or diligently prosecuted shall be deducted. No deduction shall be made however, where the circumstances of the claimant's service prevented him from making the claim against the carrier or insurer or the evidence indicates a demand was impracticable or would have been futile.

E. Claims against the Government

1. Concurrent with or immediately following the submission of the claim against the carrier or insurer, or both, the claimant must submit his claim against the Government.
2. He shall certify in his claim that he has or has not gained any recovery from a carrier or insurer, and enclose all correspondence pertinent to his claim **against** the carrier or insurer.

35-60 continued)

F. Assignment of Right against the Carrier or Insurer

Where claimant has asserted his rights against the carrier or insurer in a timely manner, and has not received payment from the carrier, and the Government issues a voucher in payment to claimant, the voucher shall contain his assignment to the United States of all his right, title and interest in any claim he may have against any carrier, insurer, or other party arising out of the incident on which the claim against the United States is based. He shall also, upon request, furnish such evidence as may be required to enable the United States to enforce the claim.

G. Recoveries from Carrier or Insurer

After payment of his claim by the United States the claimant shall, if he receives any payment from a carrier or insurer, reimburse the United States to the extent of the payment received from the United States.

4-35-70

CLAIMS PROCEDURES

A. Department Claims Officer

1. The Assistant General Counsel, Business and Administrative Law Division, Office of the General Counsel, is designated as the Department Claims Officer for claims arising under this Part. Full redelegations were made to the Deputy Assistant General Counsel and to the Chief, Litigation and Claims Branch in this Division. Central responsibility for this function is vested in the Litigation and Claims Branch.

(4-35-70 continued)

2. Redelegations were made to Regional Attorneys within the ten Regions to adjudicate claims not in excess of \$2500 arising from activities of employees under the appointing authority of the respective Regional Directors except claims by employees of PHS, including Commissioned Corps personnel, and the Social Security Administration.
3. Redeflegation was made to the Public Health Service Claims Officer to adjudicate claims not in excess of \$2500 arising from activities of employees of the Public Health Service, including Commissioned Corps personnel.
4. Redeflegation was made to the Social Security Administration Claims Officer to adjudicate claims not in excess of \$2500 arising from activities of employees under the appointing authority of the Commissioner of the **Social Security** Administration.

B. Claims Investigating Officers

The head of each Principal Operating Component and the Assistant **Secretary**, Management and Budget or their designees, shall each designate at least one employee in each of its stations or offices, as applicable, who shall act as and who shall be referred to herein as the Claims Investigating Officer.

C. Filing and Investigating Claims

When an incident has occurred resulting in loss of or damage to personal property, the claimant shall promptly submit his claim (as below) in duplicate on Form **HEW-481**, Employee Claim for Loss or Damage to Personal Property (Exhibit X4-35-3). However, any written communication shall be considered as a proper claim if it makes a demand for a sum certain for \$15,000 or less, sets forth the facts and

(4-35-70 continued)

circumstances in detail, contains substantially the same information required by the claim form, and if signed by the claimant or by his duly authorized agent. The local claims investigating officer shall assist claimant as to forms needed in the preparation of a claim. The completed forms shall be submitted by the claimant to his immediate supervisor or directly to the local claims investigating **officer**, depending on local arrangements. Upon receipt of the claim, the local claims investigating officer will immediately:

1. Investigate as completely as is practicable the nature and circumstances of the occurrence causing the loss or damage of the claimant's property;
2. Ascertain the extent of loss or damage to claimant's property;
3. Prepare a statement describing the occurrence in detail and setting forth the results of the investigation on Form HEW-482, Report of Damage or Loss, (Exhibit X4-35-4) together with a statement whether the claim satisfied the requirements of this Chapter with particular reference to whether the claim is within the purview of Sections **4-35-20** and **4-35-30** of this Chapter;
4. Forward the claim and related papers to the Chief, Litigation and Claims Branch, Regional Attorney, or Claims Officer within ten days. The Regional Attorney or appropriate Claims Officer will adjudicate all claims within existing delegation of authority from the Department Claims Officer.

In the case of a claim in excess of Regional Attorneys' or Claims Officers' authority that official shall submit forms and statements to the Department Claims Officer together with the original signed copy of the claimant's Form HEW-481, Employee Claim for Loss or Damage to Personal Property, all of the claimant's

(i-35-70 continued)

supporting papers attached hereto, and any papers or documents generated by or because of the investigation by the local claims investigating officer.

D. Evidence Required in Support of a Claim for Damage or Loss to the **Property**

A claimant shall submit together with his Form HEW-481, all other pertinent evidence, such as:

1. Not less than two itemized signed estimates or **statements** by competent bidders or persons concerning the costs of repairs; or, in the alternative, an itemized bill of repair for damaged property which has been repaired;
2. If the property is not economically repairable or is totally lost or destroyed, proof of this fact and of its market value before and after the loss. In most instances, the purchase price and date of acquisition of the property should be satisfactory;
3. Proof of ownership or right to recover for the damage. Other evidence may be required by the Department Claims Officer.

E. Time Limits for Filing of Claims and Reports

1. Limit for filing claims -- A claim shall be allowed under this part only if it is presented in writing within two years after its accrual. If the claim accrues in time of war or in time of armed conflict in which any armed forces of the United States is engaged or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim shall be presented not later than two years after that cause ceases to exist, or two years

(4-35-70 continued)

after the war or armed conflict is terminated, whichever is earlier. For the purposes of this section, the dates of beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

2. The claim and all evidence required **to be** submitted by the claimant under this **chapter** shall be submitted **within** a reasonable time after the damage or loss of the property. Failure of the claimant to furnish evidence as required by this section within six months after a request therefore may be deemed an abandonment of his claim which may thereupon be disallowed.

F. Approval of Claims

Claims submitted under this Chapter shall be approved or denied in whole or in part only by the Department Claims Officer or authorized delegates **within their** respective authority.

G. Signatures

The claim and all other papers requiring the signature of the claimant shall be signed by the claimant personally or by a duly authorized agent or legal representative. 18 U.S.C. 287 imposes a fine of not more than \$10,000 and imprisonment for not more than 5 years, or both, for presenting false claims against the Government. 18 U.S.C. 1001 imposes a fine of \$10,000 and imprisonment for not more than 5 years, or both, for making false or fraudulent statements or representations in connection with making claims against the Government. A civil penalty of forfeiture of \$2,000 plus double the amount of damages sustained by the United States is provided for presenting false or fraudulent claims. (See 31 U.S.C. 231.)

(4-35-70 continued)

All information relating to the presentation of a false or fraudulent claim shall be forwarded to the Chief, Litigation and Claims Branch for submission to the Department of Justice. The Department of Justice has the responsibility for determining whether or not legal action is warranted in such cases.

H. Reconsideration of Action

The actions of ~~the~~ Department Claims Officer and ~~authorized~~ delegates within their respective authority in ~~disapproving~~ a claim in whole or in part shall be ~~final~~ and conclusive for all purposes. No ~~appeal~~ is provided to the Secretary of ~~Health,~~ Education, and Welfare, or to any other Government agency.

However, a claim may be reconsidered. Requests for reconsideration or appeal shall be referred to the Chief, Litigation and Claims Branch together with evidence showing errors or irregularities in the submission or settlement of the claim or new evidence which was not previously available. Requests for such reconsideration or review must be submitted in writing within 60 days after the date of mailing of the notification of disapproval or partial approval of a claim.

If, upon reconsideration, it is determined that a further amount is due the claimant, a supplemental voucher will be prepared which will show the check and voucher numbers of the initial payment, and indicate that the amount thereof is in addition to the previous payment.

35-80

REIMBURSEMENT PROCEDUREA. Reimbursement in Cash

Claims approved in whole or part shall be vouchered by the Department Claims Officer or authorized delegate on Form HEW-483, Voucher for Payment and Release. These vouchers shall be mailed to the claimant by the authorized delegate with instructions to sign where indicated and to return the signed voucher, the authorized delegate will transmit it to the finance office in the agency employing the claimant to have the Treasury Department issue a check to the claimant in the sum allowed.

B. Reimbursement in Kind

Whenever a claim cognizable under these regulations includes property of a type which is available for gratuitous replacement in kind from Government stocks, the Department Claims Officer or authorized delegates may initiate action to secure such replacement in kind.

If replacement in kind is effected by such action, any claim for the property so replaced will be considered settled for all purposes. If replacement in kind is not effected, or if only a part of the property lost or damaged **is** replaced in kind, the claimant will be allowed monetary compensation for those claimed items not replaced or replaced at his own expense. The claim will include statements or other evidence to establish that any claimed items, appropriate for gratuitous issue, have not been and will not be replaced in kind.

C. Funds paid for settlement of claims made and allowed under this Chapter **shall be** made from appropriations of the office employing the claimant.

(Date)

(Name of Carrier)

(Address)

GENTLEMEN: Claim is presented by the undersigned for _____

in connection with a shipment from _____

(Loss or damage)

(Consignor)

(City, town or station)

, to

(Consignee)

(City, town or station)

under

(Bill of lading, contract, or baggage check) No. _____

dated _____, issued by _____

covering shipment of _____
(Household goods, footlocker, flight bag, etc.)

described as follows:

Description of container (or of article if uncreated)	Approximate Weight (pounds)	Nature and Extent of damage	Amount Claimed
----------------------------------------------------------	-----------------------------------	-----------------------------------	-------------------

Total amount of claim _____

Remarks: _____

Please mail all correspondence in regard to this claim to the undersigned in care of:

Claims Investigating Officer
(Office and Address at Which Claim Was Filed)
Attn: Department Claims Officer

Signature of Claimant

General Discussion: Use in connection with **4-35-50B**. An item less than 6 months old will not be depreciated. This includes items to which a flat rate depreciation is applied. When only the year of purchase is shown, use the month of June to compute depreciation. The depreciation rates have been developed to adjust the value of property in consideration of average wear and should be applicable to most **claims**. In some claims, where property is determined through personal inspection to have been subjected to either more or less than average wear, an appropriate adjustment in the standard depreciation rate may be made. Any such adjustment must be fully explained in the file. Similarly, the strict adherence to a maximum allowance may in a given claim create injustice. Consequently, the Department Claims Officer and authorized delegates have reserved the right to waive such allowance limitation upon proper application.

Item	Depreciation (%)			Comment
	Per Year	Flat Rate	Max-imum	
1. Adding machines, calculators	5		75	
2. Air conditioners	5		75	Maximum payment--\$750 per item.
3. Antiques				Maximum payment--\$3,000 per claim See Note 1.
4. Aquariums	5		75	
5. Artificial flowers and fruit		25		
6. Automobiles	Varies			Use local used car retail value.
7. Automobile batteries	30		75	Compute depreciation on length of use/guaranty period ratio; otherwise, use 30%.
8. Automobile convertible tops, seat and floor coverings	20		75	
9. Automobile paint jobs	15		75	Complete paint jobs only; minor jobs--no depreciation.
10. Automobile radios and accessories	10		75	
11. Automobile tires	30		75	Compute applicable depreciation on basis of miles used/30,000 miles, or mileage guarantee period ratio if mileage is known. Otherwise, use 30%.
12. Baby bassinets and carriages	10	75	75	See Furniture, Item 65.
13. Bags, clothes and shoes (fabric or plastic)	20		75	
14. Barbecue grills (include Hibachi Pots)	10		75	
15. Barber equipment (electric razors, clippers, shears, scissors)	10		75	See Item 58.
16. Baskets and hampers				
a. Wicker or Plastic	20		75	
b. Metal	10		75	
17. Bathroom scales	10		75	

Item	Depreciation (%)		Comment
	Per Year	Flat Maximum	
18. Bedding (includes mattresses, box springs, pillows, comforters, quilts and blankets, except electric)	5	75	See Blankets (electric), Item 22. See Linens, Item 82, for quilts.
19. Bedspreads	20	75	Heirloom or crocheted maximum payable-\$250.
20. Bicycles	10	75	
21. Binoculars, microscopes, telescopes, etc.	5	50	
22. Blankets (electric)	10	75	
23. Blinds (Venetian)	5	75	See Item 55, Drapes, for curtain rods, drapery rods, etc.
24. Boats	Varies		Use local used boat retail value.
25. Boating equipment and supplies	20	75	Maximum payment-\$500. Exclusive of outboard motors, see Item 93.
26. Bookends	10		
27. Books (bibles, classics, current encyclopedias, professional texts and similar works, and cookbooks).	25		Maximum payment-\$1500 per claim for all books. Does not include lecture notes and theses, see Item 123.
28. Books (current fiction and all noncurrent works, other than classics)	50		See Item 27.
29. Boxes (jewelry, cigarette, collar, music, etc.)	5	75	
30. Bric-a-Brac (all types)	10		
31. Brief cases	5	75	
32. Brushes (hair, clothes, etc.)	20	75	
33. Camel saddles (footstools)	5	75	
34. Cameras			Maximum payment is \$350 per item and \$750 per claim. See Item 102.
a. Inexpensive (\$50 or less)	10	75	
b. Expensive (more than \$50)	5	75	
35. Cards (greeting) includes Christmas and other religious cards	50		If boxes unopened or unused, no depreciation.
36. Cards (playing)	25		Same rule as Item 35.
37. Card tables	10	50	

Item	Depreciation (%)		Comment
	Per Year	Flat Max-imum	
58. Chess sets	25		If ivory, precious metal, or hand-carved wood, reduce to 10% flat rate.
39. Chests (fee. picnic, etc.)	10	7s	
40. China (fine)			Maximum payment-\$1000 per claim. No depreciation on replacement price. See Crockery, Item 47.
41. Clothing (men's, women's and children, includes fur coats, stoles, capes, hats, collars, etc.)	30-1st yr; 10-each succeeding yr	75	See Note 12. See Wedding Gowns, Item 140. If commercial pressing is required to restore wrinkled clothing to a wearable or usable condition, the reasonable cost thereof will be paid.
42. Clocks a. Inexpensive (\$25 or less) b. Expensive (Over \$25)	10 5	75 Varies	Maximum payment on Grandfather and Grandmother clocks only is \$1000 per claim unless collection. Grandfather and Grandmother clocks at maximum of 50%, and other expensive clocks at 73% maximum. See Collections, Item 43. See Note 1, if antique.
43. Collections (coin and stamp, electric trains, firearms and ammunition, bottles, phonograph records, tape recordings, sporting equipment, tools, etc.)	US& rate if indicated for individual items elsewhere on this exhibit; otherwise, use 10% rate		Maximum payment is \$750 for single collection, and \$1500 for either combination of collection or collection belonging to the whole family. The \$1500 maximum also includes Hobbies. However, do not place reasonable recreational items in the collection or hobby category unless the quantity clearly indicates a collection or hobby. Examples: set of golf clubs, two tennis racquets, etc., are not the quantity that comprise a collection or hobby. see Note 9. Items of Substantial Value.
Lb. Comforters		75	
45. Compasses	5	50	
46. Cosmetics (includes perfume, toilet articles, medicines, soap, etc.)		50	If claimant indicates "unused or unopened", no depreciation.
47. Crockery (includes dishes, glassware, pottery, plastic ware, etc.)	10	75	Does not include fine china or crystal. See Items 40 and 48.
48. Crystal			Maximum payment is \$1000 per claim.
49. Curtains	26	75	See Item 55, Drapes, for depreciation on curtain rods.
50. Decorations (Christmas, birthday, etc.)		25	
51. Dental equipment and instruments		10	
52. Dentures	5	75	When replacement in kind cannot be effected.

Item	Depreciation (%)		Comment
	Per Year	Flat Rate Max-imum	
53. Desk and writing implements (pen and pencil sets, desk sets, fountain pens, etc.)	10	75	
54. Dishes	10	75	See Crockery, Item 47.
55. Drapes	10	75	
Draperies and curtain rods and related hardware	5	75	See Item 23.
56. Drawing, mapping, sketching and professional equipment	5	50	See Dental Equipment, Item 51, Medical Equipment, Item 59, and Books (Professional), Item 27.
57. Dryers (clothes, hair, etc.)	10	75	
58. Electrical and gas appliances			
a. (toasters, blenders, mixers, grills, small radios, irons, blankets, hair dryers, heating pads, percolators, sterilizers, heaters, razors and shavers, scissors, waffle irons, fans, pencil sharpeners, portable phonographs, etc.)	10	75	
b. (stoves, air conditioners, console radio/phonograph, tape recorders, sewing machines, vacuum cleaners, refrigerators, freezers, typewriters, etc.)	5	75	Maximum payment-\$750 per item. For Hi-Fi and Stereo Systems, see Item 74.
c. Television sets and picture tubes, washers, dryers	10	75	If part of a home entertainment center which also includes a TV, a maximum of \$1750 is permitted.
d. Dishwashers	10	75	See Note 2 on internal damage.
59. Elephants, ceramic		10	Maximum payment-\$75 each with maximum of 4.
60. Eyeglasses (includes contact lens)	5	75	When replacement in kind from Government not available.
61. Figurines		20	For objects of art, see Item 95. Apply collection maximum if quantity indicates collection, Item 43.
52. Firearms	5	50	If the current market value for a similarly used gun is higher, award that amount. Apply collection maximum if quantity indicates collection, see Item 43.
63. Flashlights	20	75	
64. Foodstuffs			\$100 maximum payment for foodstuffs in shipment-nonperishable only; reasonable payment for foodstuffs • quarters or shipped to remote area.

Item	Depreciation (%)		c o - t
	Per Year	Flat Maximum Rate	
65. Furniture			
a. Fine (expensive solid woods)	2	75	Apply 2% depreciation only when price and brand name verify classification of "expensive."
b. Ordinary	5	75	Majority of furniture falls into this category.
c. Infants (lawn and patio)	10	75	See Note 3.
66. Furs			Maximum payment is \$750 per item, and \$1500 per claim. For depreciation rate, see Item 41.
67. Game equipment (poker chips, chess and checker sets, etc.)		25	For chess sets, see Item 38 for special rule.
68. Garden equipment (all implements for upkeep of lawns and yards)	10	75	See Item 65 for lawn furniture.
69. Glassware (includes pyrex)	10	75	See Crockery, Item 47.
70. Hairpieces			See Wigs, Item 141.
71. Baskets (wicker or plastic)	10	75	
72. Handbags and purses (leather or fabric)	20	75	
73. Hearing aids	5	75	When replacement in kind from Government is not available.
74. Hi-Fi and stereo systems	5	75	Maximum payment-\$1500 per claim. For non-hi-fi or non-stereo systems, see Item 58 for individual listings.
75. Hobbies			Maximum payment-\$1500. See Collections, Item 43.
76. Irons (electric)	10	75	See Appliances, Item 58.
77. Jewelry			
a. Costume (\$50 or less per item)	10	75	Maximum payment-\$250 per claim if lost in transportation; \$500 per claim under other circumstances.
b. Expensive (over \$50 per item).		10	Maximum payment-\$500 per item: \$1000 per claim. (See Note 9, Items of Substantial Value).
78. Kitchen utensils			
a. Pots, pans, knives, heavy aluminum, copper, cast iron, stainless steel, corningware, etc.	5	50	All long lasting kitchen tools should be considered in the 5% = 50% category. Items such as potato peelers, ice picks, cake cooling racks, cookie sheets, bowl scrapers, and items described in the advertisements as "kitchen gadgets" should be considered in the 20% = 75% category.
b. Other items	20	75	
79. Lamps (includes sunlamps)	5	75	
so. Lampshades	20	75	This applies only when shades are claimed separately. However, if shades are made of glass of any type, apply 5% per year depreciation.

Item	Depreciation (%)		Comment
	Per Year	Maximum	
81. Lawn mowers	10	75	See Garden Equipment, Item 68.
82. Linens			
a. Fine (expensive)	5	75	Maximum payment-\$250 for handmade or manufactured crocheted spreads, quilts or tablecloths. Apply this maximum per item only when value is established. Otherwise, award reasonable replacement as for other fine linens.
b. Ordinary (household items such as sheets, pillowcases, towels, bath mats, spreads, tablecloths, etc.)	20	75	Most linens should fall in this category.
83. Lighters (cigar, cigarette, etc.)	20	75	
84. Lighting supplies (chandeliers, globe domes, electric candlesticks or candelabra, etc.)	5	50	Payable only when the items belong to the claimant and have not lost their character as personal property by being affixed to real property.
85. Lithograph prints		10	
86. Luggage (all types including footlockers)	5	75	
87. Material (includes yard goods and yarn)		10	
88. Mattresses (includes box springs)	5	75	See gadding, Item 18.
89. Medical equipment and instruments		10	See Dental Equipment, Item 51.
90. Memorabilia (includes snapshots, snapshot albums, baby album, scrapbooks, souvenir album, emblems, award plaques, trophies, movie film, photographic slides)			Maximum payment-\$500 per claim (except where volume indicates hobby). Exclude scenic slides and wedding albums from memorabilia. Use \$.18 per slide as rule of thumb cost of slide. Collection Rule (see Item 43) • apply if quantity indicates a hobby. See Item 139, for wedding albums.
91. Mirrors (includes frames)	5	75	Mirrors which are integral parts of furniture items depreciate at the same rate as those items.
92. Mobile homes	Varies		Use local wed mobile home retail value.
93. Motors (outboard)	20	75	Use depreciation factor only if local used motor retail value is not obtainable.
94. Musical instruments			
a. Pianos and organs	5	75	Maximum payment-\$1750 per item.
b. All Other Instruments			Maximum payment-\$1000 per claim.
1. Under \$50	20	75	
2. \$50 to \$250	10	75	
3. Over \$250	5	75	

Item	Depreciation (%)		Comment
	Per Flat Year Rate	Max- imum	
95. Objects of art (rare artistic items of sculpture, etc.)	10		Maximum payment-\$350 per item; \$1000 per claim. Does not include figurines. See Items 61 and 96.
96. Paintings and pictures (includes frames) paintings include hand painted or hand reproduced pictures, etchings, photographic portraits, lithographic prints, etc.	10		Maximum payment-\$350 per item; \$1250 per claim. No depreciation will be taken on paintings having a value in excess of \$350 each.
97. Pen and pencil sets	10	75	If sterling silver, no depreciation.
98. Percolators {other than electric)	10	75	See Appliances. Item 58.
99. Personal memorabilia			See Memorabilia, Item 90.
100. Phonographs (concole or portable)			See Appliances, Item 58.
101. Phonograph records	50		See Recordings, Item 110 and Collections, Item 43.
102. Phonographic equipment (cameras, projectors, lens, screens, etc.)			Maximum payment-\$350 per item; \$750 per claim. See Items 34.
a. Inexpensive (\$50 or less)	10	75	
b. Expensive (more than \$50)	5	75	See Note 9, Items of Substantial Value.
103. Pillows	5	75	See Bedding, Item 18.
104. Pipes (smoking) includes pouches	20	75	
105. Pots and pans	Varies	Varies	See Kitchen Utensils, Item 78.
106. Professional equipment	Varies		See Items 27, 51, 56, and 89. If not Dental or Medical equipment or instruments, apply 5% -75% depreciation.
107. Quilts	5	75	See Bedding, Item 18.
108. Radios	Varies	75	See Appliances, Item 58.
109. Razors (other than electric)	5	75'	For electric razors, see Item 58.
110. Recordings, (tape) including tapes in automobile	25		Maximum payment-\$60 for tapes in automobile. See Items 43 and 75.
111. Refrigerators	5	75	See Item 58.
112. Rugs			
a. Under \$100	10	75	Maximum payment-\$1000 per item.
b. \$100 to \$999	5	75	
c. \$1000 or over	2	75	

Item	Depreciation (%)		Comment
	Per Year	Flat Rate Maximum	
113. Schrenck (German)	2	75	Maximum payment-\$1000 per item.
114. Screens (fireplace and room divider)	5	75	
115. Scissors, shears, etc. (other than electric)	5	75	For Electric, see Item 58.
116. Sewing machines (other than electric)	5	75	For Electric, see Item 58.
117. Silverware			
a. Silverplate and stainless steel flatware and holloware (includes pewter, copperware, bronzeware)	5	75	Consider fine pewter in same category sterling silver
b. Sterling silver flatware and holloware	2		Maximum payment-\$2000 per claim. No depreciation price of sterling silver.
118. Slipcovers	10	75	
119. Sporting Equipment (includes uniforms and riding togs, bowling balls, golf sets, badminton sets, croquet sets, tennis racquets, etc.)	10	75	
120. Sporting supplies (baseballs, footballs, golf balls, tennis balls, volleyballs, basketballs, etc.)	50		If boxes of golf balls and canisters of tennis balls are unopened or unused, no depreciation.
121. Stationery	50		If boxes unopened or unused, no depreciation.
122. Stenotype machines	5	75	
123. Theses and lecture notes			Out-of-pocket expenses only.
124. Tools (all types)			
a. Manual	5	50	Maximum payment-\$1000 per claim. See Items 43 and 75. See Note 11 Craftsman-Type tools.
b. Power	5	75	
c. Tools shipped in automobile-includes related emergency equipment, e.g., flares, tow rope, battery jumper cable, trouble lights, fire extinguisher, first aid kit, etc.			Maximum payment-\$50 per claim.
125. Toys (includes all children's playtoys and games; does not include electric trains, bicycles, tricycles, wagons).	50		Maximum payment-\$500.

Item	Depreciation (%)		Comment
	Per Flat Year Rate	Maximum	
126. Trailers (house, boat, etc.)	Varies		See Items 25 or 92, as appropriate.
127. Trains (electric)	10	75	See Items 43 and 75, if appropriate.
128. Tricycles	20	75	
129. TV trays	10	75	
130. Typewriters	5	75	
131. Umbrellas	20	75	
132. Vacuum cleaners	5	75	See Item 58.
133. Vases	5	75	If china, crystal or sterling silver, see those categories. If other expensive material, use rules for china, etc., categories.
134. wagons (children's)	20	75	
135. Washers	10	75	See Item 58.
136. Wastebaskets			
a. Metal	10	75	
b. Plastic	20	75	
137. Watches			Maximum payment-\$150 per item. See Note 9 if over \$100.
a. \$50 or less	10	75	
b. More than \$50	5	75	
138. Waterbeds	20	75	
139. Wedding albums			Maximum payment-\$250 per claim.
140. Wedding gowns	10	75	Maximum payment-9250 per claim.
141. Wigs (includes hairpieces)			
a. Under \$100	20	75	Maximum payment-\$500 per claim.
b. \$100 - \$250	10	75	
c. Over \$250	5	75	

NOTE 1. ANTIQUES :

If the value of antiques exceeds \$3,000 and some or all of the antiques serve a utilitarian purpose (e.g. furniture), a claim for those antique items which serve a utilitarian purpose may be allowed in excess of \$3,000 but the amount allowed shall be limited to the reasonable cost of a replacement item which will serve a similar utilitarian purpose. In making such calculations, items which are primarily of decorative or artistic value and serve no utilitarian purpose other than satisfying personal taste shall first be listed so that the exception may be applied to permit some reasonable compensation for antique items which do serve a utilitarian purpose. Since there is usually a wide variance of opinion as to antique value, unassailable evidence of the same must be presented to justify payment. In order to qualify prima facie as an antique, an item must be, according to the U.S. Customs Service, at least 100 years old. For items newer than that, independent evidence will have to be presented or be available to prove that the item so qualifies. In respect to those items which qualify as antiques, the claimant may be compensated up to the generally recognized value of the items. In such instances, the claimant will be required to prove that the item possesses a demonstrably inherent value regardless of its purchase price, the place where it was purchased,

the prestige of the label it bears, or its **sentimental** or personal attraction. The mere fact that an isolated appraiser might be found who could assign a value to it in excess of its purchase price does not meet this burden of proof. In **the** absence of credible evidence of value, reimbursement should be limited to out-of-pocket loss, or the reasonable replacement price of a substantially similar substitute item.

NOTE 2. INTERNAL DAMAGE TO APPLIANCES **WHEN** NO EXTERNAL DAMAGE **TO** CABINET OR TRANSPORTATION CONTAINER IN EVIDENCE:

In these circumstances, consideration should be given to paying for such damage if there **is** evidence of rough handling of other items in the shipment; that the item is relatively new in comparison to its useful life; that the claimant is apparently honest based upon an examination of the entire claim; and/or the opinions of qualified repairmen. as to whether or not the damage was as a result of transit handling. With respect to color TV sets for which color realignment may be claimed, consider the charge for color realignment payable only **when it** is part of the cost to repair internal damage to the television set or when the cabinet of the set has external damage that was not present at the time of pickup, thereby indicating rough handling.

NOTE 3. REUPHOLSTERING:

In the event partial damage to a matching set requires reupholstering of the entire set because matching material to reupholster the damaged portion is not available, the cost to reupholster the entire set, less depreciation, may be paid. This includes replacing chair seats. **HOWEVER**, there must be a measurable decrease in the value of the complete set due to the inability to match the materials before this rule is employed. Consideration should be given to diminution in value of the damaged items if the damage is merely minor. An example of this is a three-inch tear in the back of a sofa which can be repaired by reweaving but not to the extent that the repair isn't visible under scrutiny: This rule is not applicable to recovering mattresses, box springs, etc., which do not lose their intended use merely because the coverings do not match. In considering the award to be made for the cost of reupholstering, use the per year rate of depreciation indicated for the furniture, i.e., ordinary or fine, for the fabric. Labor charges, if itemized separately, will not be included in depreciation computation. If labor charges are **unitemized**, 50% of the total amount of the repair estimate will be considered to be labor charges.

NOTE 4. LEGEND OF ABBREVIATIONS:

In order to maintain uniformity, the **following** list of abbreviations should be indicated in the **"Remarks"** section of the *claim form* to describe **the** intention of the **Examiner:**

- AC - **Amount** claimed.
- AGC - Agreed cost of repairs **in lieu** of estimate.
- BX = PX or - **Replacement** price through local exchange retail store (rate
PACX = EES of depreciation. if applicable, to be included).
- CR - Amount paid by carrier prior to settlement of this claim entered on this line
and deducted **from total amount** allowed.
- D - Depreciation computed. preceded by appropriate percentage, i.e., 20% D.
- DV - Depreciated value awarded - cost **of** repairs exceeds depreciated value of item.
- ER - Estimate of Repair (add exhibit **number** of repair estimate).
- EX - Exhibit (include appropriate exhibit designation, e.g., **Ex G**).
- FR - Flat rate depreciation, preceded by appropriate percentage, i.e., 25% **FR**.
- F&R - Fair and reasonable award.
- M/A - **Maximum** allowable.
- N/P - Not payable (appropriate rule **for** basing denial should be included, e.g., Rule **3**, Table
6-2, **AFM 112-1**).

- PED ■ Preexisting damage (percentage to be indicated, e.g., 30% PED).
- PF - Purchase Price.
- RC - Reasonable replacement cost applied (rate of depreciation, if applicable, to be included in block).
- SV/N** ■ Salvage value - beyond economical/reasonable repair; no salvage value; turn-in not required.
- SV/T** ■ Salvage value with turn required (amount of salvage value to be entered).

NOTE 5. DEPRECIATION WHILE IN STORAGE:

No depreciation will be taken for substantiated periods of storage of property regardless of the type of property.

NOTE 6. DEPRECIATION:

To compute yearly depreciation, the following yardstick should be used.

6 - 17 months = 1 year
 18 - 29 months = 2 years, etc.
 (increments of 11 months will be counted as one year, up to 173 months. For items 174 months or over in age, depreciation is 75% (maximum)). When dates of purchase are listed, for example, as 'between 1966 and 1970,' use the median date, i.e., 1968 to compute depreciation.

NOTE 7. REPAIRABLE ITEMS:

The amount allowable for repairs may not exceed the depreciated replacement value of an item.

NOTE 8. EXPENSIVE ITEMS - REASONABLE SUBSTITUTE PRICES:

This does not relate to items of extraordinary value. It pertains to items of everyday use, household furnishings, wearing apparel, and the like, which serve a utilitarian purpose, even though the items are expensive. A fixed award cannot be set as the amount allowed will vary with the type of article. The award should be just and not arrived at by considering only low-priced or popular-priced substitutes. Rule 6c as well as Rule 3c, Table 6-3, AFM 112-1 should be employed when arriving at a suitable award. This is especially important in the areas of fine furniture as opposed to ordinary furniture.

NOTE 9. ITEMS OF SUBSTANTIAL VALUE:

Easily pilferable items usually worn or carried costing over \$100 are considered of substantial value. Nonexclusive examples of items fitting this category are Watches, Jewelry (Pins, Rings, Earrings, Bracelets, Locketts, Pendants, Necklaces, Tie Clips, Cuff Links, Belt Buckles, Identification Bracelets and Artistic Charms) Ornate Cigarette Cases and Compacts, and Small Coin and Stamp Collections.

NOTE 10. ITEMS OF EXTRADORDINARY VALUE:

An item of extraordinary value may be defined as one which, because of exceptional qualities of workmanship or design, the high value of the materials it contains, or its association with a past event or period, or historical figure, possesses a value far beyond the usual value of an item of like nature. The term "item of extraordinary value" normally should be limited to items which primarily serve an artistic or decorative purpose, or which are collectors' items.

NOTE 11. CRAFTSMAN (SEARS) AND OTHER LIFETIME GUARANTEED TOOLS:

Do not deduct for depreciation on tools which are covered by such guarantees. Catalogs reflect items covered by such guarantees.

NOTE 12. CLOTHING:

The following maximums are suggested maximums only: female service member or female adult dependent - \$2000; male service member or male adult dependent - \$1500; school-age child - \$500; pre-school child - \$250. They

are to be employed when the approving authority must reach a determination of what is considered 'reasonable, useful or proper' in the attendant circumstances. Therefore, they must be viewed as 'guidance' primarily and flexible if the evidence justifies the possession of clothing of a value which exceeds the suggested maximums.

CHAPTER 4-40

WAIVER OF OVERPAYMENT OF PAY

- 4-40-00 Purpose
 - 10 Delegation
 - 20 The Act
 - 30 Regulations and Instructions

4-40-00 PURPOSE

This legislation (**P.L. 90-616; 5 U.S.C. §5584**) was enacted on October 21, 1968 to authorize a systematic procedure for the Comptroller General or the head of an executive agency to waive, in certain cases, claims of the United States arising out of erroneous payments of pay on or after July 1, 1960 to civilian employees of executive agencies, the collection of which would be against equity and good conscience **and not in** the best interests of the United States.

4-40-10 DELEGATION

The Secretary has delegated his authority under the Act to the Department Claims Officer.

4-40-20 THE ACT

§5584. Claims for overpayment of pay

(a) A claim of the United States against a person arising out of an erroneous **payment** of pay, on or after July 1, 1960, to an employee of an executive agency, the collection of **which** would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or part by-

(1) **the** Comptroller General of the United States; or

(2) the **head of** the executive agency when-

(A) the claim is in an amount aggregating not more than \$500;

(B) the claim is not the subject of an exception made by the Comptroller General in the account of **any** accountable official; and

(C) the waiver is made in accordance with standards which the Comptroller General shall prescribe.

(b) The Comptroller General or the head of the executive agency, as the case may be, may not exercise his authority under this section to waive any claim--

(4-40-20 continued)

(1) **if, in** his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim; or

(2) after the expiration of three years **immediately following** the date on which the erroneous payment of pay was discovered or three years **immediately following** the effective date of this section, whichever is later.

(c) A person who has repaid to the **United States** all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the employing agency at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that employing agency for that refund within two years following the effective date of the waiver. The employing agency shall pay that refund in accordance with this section.

(d) In the audit and settlement of the accounts of any accountable official, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.

(e) An erroneous **payment, the** collection of which is waived under this section, is deemed a valid payment for all purposes.

(f) This section does not affect any authority under any other statute to litigate, settle, compromise, or waive any claim of the **United States**."

4-40-30 REGULATIONS AND INSTRUCTIONS

A. The Comptroller **General**, issued Regulations on December 26, 1968 providing Standards for Waiver of Claims for Erroneous **Payment** of Pay (4 **CFR**, Ch. I, Subchapter G, Parts 91-93). See Department Personnel Manual, Exhibit X550-8-1.

B. Instructions.

Department procedures for requesting waivers are published in the Department Personnel Manual, Instruction **550-8**.

CHAPTER 4-50

THE FEDERAL CLAIMS **COLLECTION** ACT OF 1966

4-50-00	Purpose of the Act
10	The Act
20	Statute of Limitations

4-50-00 PURPOSE OF THE ACT

The Federal Claims Collection Act (31 U.S.C. **951-953**) was enacted July 19, 1966 and **became** effective January 15, 1967. The purpose of the Act is to authorize **the** Federal agencies to collect, compromise, **terminate**, or suspend collection action **on** claims for money or property arising from their activities.

4-50-10 THE ACT

§ 951. Definitions

In this chapter-

(a) "agency" means any department, office, **commission**, board, service, Government corporation, instrumentality, or other establishment or body in either the executive or legislative branch of the Federal Government;

(b) "head of an agency" includes, where applicable, commission, board, or other group of individuals having the **decision-**making responsibility for the agency.

§ 952. Collection and compromise--Agency collection; rules and regulations

(a) The head of an agency or his designee, pursuant to regulations prescribed by him and in conformity with such standards **as** may be promulgated jointly by the Attorney General and the Comptroller General, shall attempt collection of all claims of the United States for money or property arising out of the activities of, or referred to, his agency.

Compromise of claims; termination of collection action; rules and regulations; \$20,000 limitation

(b) With respect to such claims of the United States that **have** not been referred to another agency, including the General Accounting Office, for further collection action and that do not exceed \$20,000, exclusive of interest, the head of an agency or his designee, pursuant to regulations prescribed by him and in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General, may (1) compromise any such claim, or (2) cause collection action on any

(4-50-10 continued)

such claim to be terminated or suspended where it appears that **no** person liable on the claim has the present or prospective financial ability to pay any significant sum thereon or that the cost of collecting the claim **is** likely to exceed the amount of recovery. The Comptroller General or his designee shall have the foregoing authority with respect to claims referred to the General Accounting Office by another agency for further collection action. The head of an agency or his designee shall not exercise the foregoing authority with respect to a claim as to which there is an indication of fraud, the presentation of a false **claim, or** misrepresentation on the part of the debtor or any other party having an interest in the claim, or a claim based in whole or in part on conduct in violation of the antitrust laws; nor shall the head of an agency, other than the Comptroller General of the United States, have authority to compromise a claim that arises from an exception made by the General Accounting Office in the account of an accountable officer.

Conclusiveness effect of compromise; fraud, misrepresentation, false claims, mutual mistake of fact

(c) A compromise effected pursuant to authority conferred by subsection (b) of this section shall be final and conclusive on the debtor and on all officials, agencies, and courts of the United States, except if procured by fraud, misrepresentation, **the** presentation of a false claim, or mutual mistake of fact. No **accountant** officer shall be liable for any amount paid **or** for the value of property lost, damaged, or destroyed, where the recovery of such **amount or** value may not be had because of a compromise with a person primarily responsible under subsection (b).

§ 953. Existing agency authority to litigate, settle, compromise, or close claims

Nothing in this chapter shall increase or diminish the existing authority of the head of an agency to litigate claims, or diminish his existing authority to settle, compromise, **or** close **claims**.

4-50-20

STATUTE OF LIMITATIONS

The Statute of Limitations is a relevant consideration in all claims collection. It is therefore important to bear in mind pertinent provisions of 28 **U.S.C.** 2415 and 2416, which are as follows:

§ 2415. Time for **commencing** actions brought by the United States

(a) Subject to **the provisions** of section 2416 of this title, and except as otherwise provided by Congress, every action for money **damages** brought by the **United** States or an officer or agency

thereof which is founded upon any contract express or implied in law **or** fact, **shall** be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later: Provided, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment.

(b) . . .

(c) . . .

(d) Subject to the provisions of section 2416 of this title and except as otherwise provided by Congress, every action for the **recovery** of money erroneously paid to or on behalf of any civilian employee of any agency of the United States or to or on behalf of any member or dependent of any member of the uniformed services of the United States, incident to the employment or services of such employee **or** member, shall be barred unless the complaint is filed within six years after the right of action accrues: Provided, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment.

(e) In the event that any action to which this section applies is timely brought and is thereafter dismissed without prejudice, the action may be **recommenced** within one year after such dismissal, regardless of whether the action would **otherwise** then be barred by this section. In any action so recommenced the defendant shall not be barred from interposing any claim which would not have been barred in the original action.

(f) The provisions of this section shall not prevent the assertion, in an action against the United States or an officer or agency thereof, of any claim of the United States or an officer or agency thereof against an opposing party, a co-party, or a third party that arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. A claim of the United States or an officer or agency thereof that does not arise out of the transaction or occurrence that is the subject matter of the opposing party's claim may, if time-barred, be asserted only by way of offset and may be allowed in an amount not to exceed the amount of the opposing party's recovery.

(g) Any right of action subject to the provisions of this section which accrued prior to the date of enactment of this Act **shall, for** purposes of this section, be deemed to have accrued on the date of enactment of this Act.

(h) . . .

(4-50-20 continued)

**§ 2416. Time for commencing actions brought by the United States--
Exclusions**

For the purpose of computing the limitations periods established in section 2415, there shall be excluded all periods during which--

(a) the defendant or the **res** is outside the **United States, its** territories and possessions, the District of **Columbia, or** the Commonwealth of Puerto **Rico; or**

(b) the defendant is exempt from legal process because of infancy, mental incapetence, diplomatic immunity, **or** for any other reason; or

(c) facts material to the right of action are not known and reasonably could not be known by an official **of the** United States charged with the responsibility to act in the circumstances; **or**

(d) the United States is in a state of war declared pursuant to article **I**, section 8, of the Constitution **of the** United **States.**

CHAPTER 4-60

CLAIMS COLLECTION REGULATIONS

4-60-10 REGULATIONS

The following Department regulations (32 FR 241, December 14, 1967, 33 F.R. 17292, November 22, 1968, 36 F.R. 3816, February 27, 1971) implement the Federal Claims Collection Act of 1966.

Title 45 • PUBLIC WELFARE
Subtitle A • Department of Health,
Education, and Welfare
General Administration

Part 30 • CLAIMS COLLECTION

Part 30 of Title 45 of the Code of Federal Regulations is added to read as follows:

Sec.

- 30.1 Incorporation by reference.
- 30.2 Scope of regulations.
- 30.3 Delegation of authority.

AUTHORITY: The provisions of this Part 30 issued under sec. 3, Federal Claims Collection Act of 1966, Public Law 89-508, 80 Stat. 309, 31 U.S.C. 951-953; Joint Regulations of GAO and Department of Justice, 4 CFR Ch. II Parts 101-105; Statement of Organization and Delegation of Authority of the Department as amended, 31 F.R. 16375.

§ 30.1 Incorporation by reference.

The regulations of this part incorporate herein and supplement as necessary for Department operation all provisions of the Joint Regulations issued by the Comptroller General of the United States and the Attorney General of the United States under section 3 of the Federal Claims Collection Act of 1966, which prescribes standards for administrative collection of civil claims by the Government as well as compromise, suspension, or termination of agency collection action, with respect to claims not exceeding \$20,000 exclusive of interest, and the referral to the General Accounting Office, and to the Department of Justice for litigation, of civil claims by the Government.

§ 30.2 Scope of regulations.

The standards set forth in this chapter are not applicable where standards are prescribed under statutes other than the Federal Claims Collection Act of 1966, for compromise or termination of collection action, or waiver in whole or in part of claims thereunder.

(4-60-10 continued)

§ 30.3 Delegation of Authority.

- (a) The Secretary delegated to the Department Claims Officer the authority to perform the duties vested in him by the Federal Claims Collection Act of 1966 (31 U.S.C. 951-953) as amended, except with respect to erroneous payments under Titles II and XVIII of the Social Security Act.
- (b) The Department Claims Officer shall compromise, suspend, or terminate claims referred to him after administrative collection efforts have been exhausted in accordance with the provisions of this part.
- (c) The appropriate office, local, regional or headquarters, shall take all necessary administrative action required under the Act and Joint Regulations, except that, with respect to claims of \$800 or more, no compromise of a claim shall be effected, nor collection action suspended or terminated without the prior approval of the Department Claims Officer, or the following specific delegates:
1. The Deputy Assistant General Counsel, Business and Administrative Law Division, Office of General Counsel.
 2. The Chief, Litigation and Claims Branch, Business and Administrative Law Division, Office of General Counsel.
 3. The Regional Attorneys except with respect to claims arising out of activities of the Public Health Service.

Title 4 - Code of Federal Regulations
Chapter II, Parts 101-105

§ 101.1

Title 4—Accounts

PART 101—SCOPE OF STANDARDS

- Sec.
101.1 Prescription of standards.
101.2 Omissions not a defense.
101.3 Fraud, antitrust, and tax claims excluded.
101.4 Compromise, waiver, or disposition under other statutes not precluded.
101.5 Conversion claims.
101.6 Subdivision of claims not authorized.
101.7 Required administrative proceedings.
101.8 Referral for litigation.

AUTHORITY: Sec. 3, CC Stat. 309; 31 U.S.C. 952.

SOURCE: 31 FR 13381, Oct. 15, 1966, unless otherwise noted.

§ 101.1 Prescription of standards.

The regulations in this chapter, issued jointly by the Comptroller General of the United States and the Attorney General of the United States under section 3 of the Federal Claims Collection Act of 1966, 80 Stat. 309, prescribe standards for the administrative collection, compromise, termination of agency collection, and the referral of agency collection, and the referral to the General Accounting Office, and to the Department of Justice for litigation, of civil claims by the Federal Government for money or property. Additional guidance is contained in Title 4 of the General Accounting Office Manual for Guidance of Federal Agencies. Regulations prescribed by the head of an agency pursuant to section 3 of the Federal Claims Collection Act of 1966 will be reviewed by the General Accounting Office as part of its audit of the agency's activities.

144 FR 22701, Apr. 17, 1979

§ 101.2 Omissions not a defense.

The standards set forth in this chapter shall apply to the administrative handling of civil claims of the Federal Government for money or property but the failure of an agency to comply with any provision of this chapter shall not be available as a defense to any debtor.

§ 101.3 Fraud, antitrust, and tax claims excluded.

The standards set forth in this chapter do not apply to the handling of any claim as to which there is an indi-

cation of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or to any claim based in whole or in part on conduct in violation of the antitrust laws. Only the Department of Justice has authority to compromise or terminate collection action on such claims. However, matters submitted to the Department of Justice for consideration without compliance with the regulations in this chapter because there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, may be returned to the agency forwarding them for further handling in accordance with the regulations in this chapter if it is determined that action based upon the alleged fraud, false claim, or misrepresentation is not warranted. Tax claims, as to which differing exemptions, administrative consideration, enforcement considerations, and statutes apply, are also excluded from the coverage of this chapter.

§ 101.4 Compromise, waiver, or disposition under other statutes not precluded.

Nothing contained in this chapter is intended to preclude agency disposition of any claim under statutes other than the Federal Claims Collection Act of 1966, 80 Stat. 308, providing for the compromise, termination of collection action, or waiver in whole or in part of such a claim. See, e.g., "The Federal Medical Care Recovery Act," 76 Stat. 593, 42 U.S.C. 2851, et seq., and applicable regulations, 28 CFR 43.1, et seq. The standards set forth in this chapter should be followed in the disposition of civil claims by the Federal Government by compromise or termination of collection action (other than by waiver pursuant to statutory authority) under statutes other than the Federal Claims Collection Act of 1966, 80 Stat. 308, to the extent such other statutes or authorized regulations issued pursuant thereto do not establish standards governing such matters.

Chapter II—Federal Claims Collection Standards

§ 102.2

§ 101.5 Conversion claims.

The instructions contained in this chapter are directed primarily to the recovery of money on behalf of the Government and the circumstances in which Government claims may be disposed of for less than the full amount claimed. Nothing contained in this chapter is intended, however, to deter an agency from demanding the return of specific property or from demanding, in the alternative, either the return of property or the payment of its value.

§ 101.6 Subdivision of claims not authorized.

A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one of less than \$20,000, exclusive of interest, for the purpose of compromise or termination of collection action. Such a claim may not be subdivided to avoid the monetary ceiling established by the Federal Claims Collection Act of 1966, 80 Stat. 308.

§ 101.7 Required administrative proceedings.

Nothing contained in this chapter is intended to require an agency to omit or foreclose administrative proceedings required by contract or by law.

§ 101.8 Referral for litigation.

As used in this chapter referral for litigation means referral to the Department of Justice for appropriate legal proceedings, unless the agency concerned has statutory authority for handling its own litigation.

PART 102—STANDARDS FOR THE ADMINISTRATIVE COLLECTION OF CLAIMS

Sec.

- 102.1 Aggressive agency collection action.
- 102.2 Demand for payment.
- 102.3 Collection by offset.
- 102.4 Reporting delinquent debts to commercial credit bureaus.
- 102.5 Personal interview with debtor.
- 102.6 Contact with debtor's employing agency.
- 102.7 Suspension or revocation of license or eligibility.

Sec.

- 102.8 Liquidation of collateral.
- 102.9 Collection in installments.
- 102.10 Exploration of compromise.
- 102.11 Interest.
- 102.12 Analysis of costs.
- 102.13 Documentation of administrative collection action.
- 102.14 Automation.
- 102.15 Prevention of overpayments, delinquencies, and defaults.
- 102.18 Additional administrative collection action.

AUTHORITY: Sec. 3, 80 Stat. 309, 31 U.S.C. 952.

§ 102.1 Aggressive agency collection action.

The head of an agency or his designee shall take aggressive action, on a timely basis with effective followup, to collect all claims of the United States for money or property arising out of the activities of, or referred to, his agency in accordance with the standards set forth in this chapter. However, nothing contained in this chapter is intended to require the General Accounting Office or the Department of Justice to duplicate collection actions previously undertaken by any other agency.

131 FR 13381, Oct. 15, 1985]

§ 102.2 Demand for payment.

Appropriate written demands shall be made upon a debtor of the United States in terms which inform the debtor of the consequences of his failure to cooperate. In the initial notification, the debtor should be informed of the basis for the indebtedness, the applicable requirements or policies for charging interest and reporting delinquent debts to commercial credit bureaus, and the date by which the payment is to be made (date due). The date due should be specified and, normally, should be not more than 30 days from the date of the initial notification. Three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that further demand would be futile and the debtor's response does not require rebuttal. Further exceptions may be made where it is necessary to protect the Government's interests (e.g., the statute of

§ 102.3

limitations (28 U.S.C. 2415)). Agencies should respond promptly to communications from the debtor. Agencies should advise debtors who dispute the debt to furnish available evidence to support their contentions.

[44 FR 22702, Apr. 17, 1979]

§ 102.3 Collection by offset.

Collections by offset will be undertaken administratively on claims which are liquidated or certain in amount in every instance in which this is feasible. Collections by offset from persons receiving pay or compensation from the Federal Government shall be effected over a period not greater than the period during which such pay or compensation is to be received. See 5 U.S.C. 5514. Collection by offset against a judgment obtained by the debtor against the United States shall be accomplished in accordance with the Act of March 3, 1875, 18 Stat. 481, as amended, 31 U.S.C. 227. Appropriate use should be made of the cooperative efforts of other agencies in effecting collections by offset, including utilization of the Army Holdup List, and all agencies are enjoined to cooperate in this endeavor.

[31 FR 13352, Oct. 15, 1986]

§ 102.4 Reporting delinquent debts to commercial credit bureaus.

Agencies shall develop and implement procedures for reporting delinquent debts to commercial credit bureaus. In the absence of a different rule prescribed by statute, contract, or regulation, a debt is considered delinquent if not paid by the date due specified in the initial notification, unless satisfactory payment arrangements are made by the date due. Agency procedures for reporting delinquent debts to credit bureaus must give due regard to compliance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, which includes the following requirements: (a) Promulgate a "routine use" for the disclosure; (b) keep an accounting for disclosures and make them available to the debtor; (c) provide the credit bureaus with corrections and notations of disagreement by the debtor; and (d) make reasonable efforts to assure that the information to be re-

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ported is accurate, complete, timely, and relevant. Prior to exercising the option of reporting delinquent debts to commercial credit bureaus, agencies should send a demand letter advising the debtor that such reporting will take place within a specified period of time unless the debtor makes satisfactory payment arrangements or demonstrates some basis on which the debt is legitimately disputed.

[44 FR 22702, Apr. 17, 1979]

§ 102.5 Personal interview with debtor.

Agencies will undertake personal interviews with their debtors when this is feasible, having regard for the amounts involved and the proximity of agency representatives to such debtors.

[31 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979]

§ 102.6 Contact with debtor's employing agency.

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, the employing agency will be contacted for the purpose of arranging with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order 11222 of May 8, 1965, 3 CFR, 1965 Supp., p. 130 (30 FR 8469).

[31 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979]

§ 102.7 Suspension or revocation of license or eligibility.

Agencies seeking the collection of statutory penalties, forfeitures, or debts provided for as an enforcement aid or for compelling compliance will give serious consideration to the suspension or revocation of licenses or other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay such a claim and the debtor will be so advised. Any agency making, guaranteeing, insuring, acquiring, or participating in loans will give serious consideration to suspending or disqualifying any lender, contractor, broker, borrower or other

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debtor from doing further business with it or engaging in programs sponsored by it if such a debtor fails to pay its debts to the Government within a reasonable time and the debtor will be so advised. The failure of any surety to honor its obligations in accordance with 6 U.S.C. 11 is to be reported to the Treasury Department at once. Notification that a surety's certificate of authority to do business with the Federal Government has been revoked or forfeited by the Treasury Department will be forwarded by that Department to all interested agencies.

[31 FR 13331, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979]

§ 102.3 Liquidation of collateral.

Agencies holding security or collateral which may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a non-judicial foreclosure should do so by such procedures if the debtor fails to pay his debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure. Collection from other sources, including liquidation of security or collateral, is *not* a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

[31 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979]

3 102.9 Collection in installments.

Claims, with interest in accordance with § 102.10 should be collected in full in one lump sum whenever this is possible. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. The size and frequency of such installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than 3 years. Installment Payment of less than \$10 per month should be accepted in only the most

unusual circumstances. An agency holding an unsecured claim for administrative collection should attempt to obtain an executed confess-judgment note, comparable to the Department of Justice form USA-70a, from a debtor when the total amount of the deferred installments will exceed \$750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. Security for deferred payments, other than a confess-judgment note, may be accepted in appropriate cases. An agency may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security, at the agency's option.

131 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979]

§ 102.10 Exploration of compromise.

Agencies will attempt to effect compromises (preferably during the course of personal interviews), of claims of \$20,000 or less exclusive of interest, in accordance with the standards set forth in Part 103 of this chapter in all cases in which it can be ascertained that the debtor's financial ability will not permit payment of the claim in full, or in which the litigative risks or the costs of litigation dictate such action.

131 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979]

§ 102.11 Interest.

In the absence of a different rule prescribed by statute, contract, or regulation, interest should be charged on delinquent debts and debts being paid in installments in conformity with the Treasury Fiscal Requirements Manual. When a debt is paid in installments, the installment payments will first be applied to the payment of accrued interest and then to principal, in accordance with the so-called "U.S. Rule," unless a different rule is prescribed by statute, contract, or regulation. Prejudgment interest should not be demanded or collected on civil penalty and forfeiture claims unless the statute under which the claim arises authorizes the collection of such interest. See *Rodgers v. United States*, 332 U.S. 371.

[44 FR 22702, Apr. 17, 1979]

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§ 102.12 Analysis of costs.

Agency collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debt of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques. establish guidelines with respect to the points at which costs of further collection efforts are likely to exceed recoveries. assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken. Cost and recovery data should also be useful in justifying adequate resources for an effective collection program.

144 FR 22702, Apr. 17, 1979

§ 102.13 Documentation of administrative collection action.

All administrative collection action should be documented and the bases for compromise, or for termination or suspension of collection action, should be set out in detail. Such documentation should be retained in the appropriate claims file.

131 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979

§ 102.14 Automation.

Agencies should automate their debt collection operations to the extent it is cost effective and feasible.

144 FR 22702, Apr. 17, 1979

§ 102.15 Prevention of overpayments, delinquencies, and defaults.

Agencies should establish procedures to identify the causes of overpayments, delinquencies, and defaults and the corrective actions needed. One action that should be considered is the reporting of debts or loans, when first established, to commercial credit bureaus.

144 FR 22702, Apr. 17, 1979

§ 102.16 Additional administrative collection action.

Nothing contained in this chapter is intended to preclude the utilization of

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any other administrative remedy which may be available.

131 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979

PART 103—STANDARDS FOR THE COMPROMISE OF CLAIMS

Sec.

103.1 scope and application.

103.2 Inability to pay.

103.3 Litigative probabilities.

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103.7 Settlement for a combination of reasons.

103.8 Further review of compromise offers.

103.9 Restrictions.

AUTHORITY: sec. 3 80 stat. 309; 31 U.S.C. 952.

SOURCE: 31 FR 13382, Oct. 15, 1966, unless otherwise noted.

§ 103.1 Scope and application.

The standards set forth in this part apply to the compromise of claims, pursuant to section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, which do not exceed \$20,000 exclusive of interest. The head of an agency or his designee may exercise such compromise authority with respect to claims for money or property arising out of the activities of his agency prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General or his designee may exercise such compromise authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation. Only the Comptroller General or his designee may effect the compromise of a claim that arises out of an exception made by the General Accounting Office in the account of an accountable officer, including a claim against the payee, prior to its referral by that Office for litigation.

§ 103.2 Inability to pay.

A claim may be compromised pursuant to this part if the Government cannot collect the full amount because of (a) the debtor's inability to pay the full amount within a reasonable time.

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or (b) the refusal of the debtor to pay the claim in full and the Government's inability to enforce collection in full within a reasonable time by enforced collection proceedings. In determining the debtor's inability to pay the following factors, among others, may be considered: Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; the availability of assets or income which may be realized upon by enforced collection proceedings. The agency will give consideration to the applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Government's ability to enforce collection. A compromise effected under this section should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time which collection will take. Compromises payable in installments are to be discouraged. However, if payment of a compromise by installments is necessary, an agreement for the reinstatement of the prior indebtedness sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained, together with security in the manner set forth in 102.8 of this chapter, in every case in which this is possible. If the agency's files do not contain reasonably up-to-date credit information as a basis for assessing a compromise proposal such information may be obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income and expense. Forms such as Department of Justice form DJ-35 may be used for this purpose. Similar data may be obtained from corporate debtors by resort to balance sheets and such additional data as seems required.

§ 103.3 Litigative probabilities.

A claim may be compromised pursuant to this part if there is a real doubt concerning the Government's ability to prove its case in court for the full amount claimed either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment having due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. Proportionate weight should be given to the probable amount of court costs which may be assessed against the Government if it is unsuccessful in litigation, having regard for the litigative risks involved. Cf. 28 U.S.C. 2412, as amended by Pub. L. 89-507, 80 Stat. 308.

§ 103.4 Cost of collecting claim.

A claim may be compromised pursuant to this part if the cost of collecting the claim does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection having regard for the time which it will take to effect collection. Cost of collecting may be a substantial factor in the settlement of small claims. The cost of collecting claims normally will not carry great weight in the settlement of large claims.

§ 103.5 Enforcement policy.

Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this part if the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon. Mere accidental or technical violations may be dealt with less severely than willful and substantial violations.

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§ 103.6 Joint and several liability.

When two or more debtors are **jointly and severally liable** collection action will not be withheld against one such debtor until the other or others pay their proportionate share. The agency should not attempt to allocate the burden of paying such claims as between the debtors but should proceed to liquidate the indebtedness as quickly as possible. Care should be taken that compromise with one such debtor does not **release** the agency's claim against the remaining debtors. The amount of a compromise with one such debtor shall not be considered a precedent or as morally binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

§ 103.7 Settlement for a combination of reasons.

A claim may be compromised for one or for more than one of the reasons authorized in this part.

§ 103.8 Further review of compromise offers.

If an agency holds a debtor's firm written offer of compromise which is substantial in amount and the agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the General Accounting Office or to the Department of Justice. The General Accounting Office or the Department of Justice may act upon such an offer or return it to the agency with instructions or advice.

§ 103.9 Restrictions.

Neither a percentage of a debtor's profits nor stock in a debtor corporation will be accepted in compromise of a claim. In negotiating a compromise with a business concern consideration should be given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

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PART 104—STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTION

Sec.

104.1 Scope and application.

104.2 Suspension of collection activity.

104.3 Termination of collection activity.

104.4 Transfer of claims.

AUTHORITY: Sec. 3, 80 Stat. 309; 31 U.S.C. 952.

SOURCE: 31 FR 13383, Oct. 15, 1966, unless otherwise noted.

§ 104.1 Scope and application.

The standards set forth in this part apply to the suspension or termination of collection action pursuant to section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, on claims which do not exceed \$20,000 exclusive of interest. The head of an agency or his designee may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of his agency prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General or his designee may exercise such authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation.

§ 104.2 Suspension of collection activity.

Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim having consideration for its size and the amount which may be realized thereon. The following sources may be of assistance in locating missing debtors: Telephone directories; city directories; postmasters; drivers' license records; automobile title and license records; state and local governmental agencies; district directors of Internal Revenue; other Federal agencies; employers, relatives, friends; credit agency skip locate reports; and credit bureaus. Suspension as to a particular debtor should not defer the early liquidation of security for the debt.

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Part 105

Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of the applicable statute of limitations, such as 28 U.S.C. 505, 80 Stat. 304, to permit filing of suit if such action is warranted. If the missing debtor has confessed-judgment note and is unable to make payments on a claim when the note has no substantial equity in it and is unable to make payments on the Government's claim or effect collection thereof at the time but the prospects justify retention of the claim for periodic review and (a) the applicable statute of limitations has been tolled or started anew or (b) future collection effected by offset notwithstanding the statute of limitations.

3383, Oct. 15, 1966, as amended at 702, Apr. 17, 1979]

Termination of collection activity.

The head of an agency or his designee may terminate collection activity on a claim under the agency's file on the closed under the following conditions:

Inability to collect any substantial amount. Collection action may be terminated on a claim when it becomes clear that the Government cannot collect or enforce collection of a significant sum from the debtor due regard for the judicial remedies available to the Government, the debtor's future financial prospects, the exemptions available to the debtor under State and Federal law. In terminating the debtor's inability to collect on a claim, the following factors, among others, may be considered: Age and income of the debtor; present and potential income; inheritance prospects; possibility that assets have been liquidated or improperly transferred to the debtor; the availability of assets which may be realized upon enforced collection proceedings.

Inability to locate debtor. Collection action may be terminated on a claim when the debtor cannot be located, there is no security remaining in the claim, and the debtor is liquidated, the applicable statute

of limitations has run, and the prospects of collecting by offset notwithstanding the bar of the statute of limitations is too remote to justify retention of the claim.

(c) Cost will exceed recovery. Collection action may be terminated on a claim when it is likely that the cost of further collection action will exceed the amount recoverable thereby.

(d) Claim legally without merit. Collection action should be terminated on a claim whenever it is determined that the claim is legally without merit.

(e) Claim cannot be substantiated by evidence. Collection action should be terminated when it is determined that the evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment are unavailing.

§ 104.4 Transfer of claims.

When an agency has doubt as to whether collection action should be suspended or terminated on a claim it may refer the claim to the General Accounting Office for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a Government sponsored program an agency may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration under § 104.3 (a) or (c). Claims on which an agency holds a judgment by assignment or otherwise will be referred to the Department of Justice for further action if renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this part, unless the agency concerned has statutory authority for handling its own litigation.

PART 105—REFERRALS TO GAO OR FOR LITIGATION

- Sec.
105.1 Prompt referral.
105.1 Current address of debtor.
105.3 Credit data.

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- Sec.
105.4 Report of prior collection actions.
105.5 Preservation of evidence.
105.6 Minimum amount of referrals to the Department of Justice.
105.7 Referrals to GAO.

AUTHORITY: Sec. 3, 80 Stat. 309; 31 U.S.C. 951.

SOURCE: 31 FR 13384, Oct. 15, 1966, unless otherwise noted

§ 105.1 Prompt referral.

Claims on which collection action has been taken in accordance with Part 102 of this chapter and which cannot be compromised, or on which collection action cannot be suspended or terminated, in accordance with Parts 103 and 104 of this chapter, will be referred to the General Accounting Office in accordance with R.S. 236, as amended, 31 U.S.C. 71, or to the Department of Justice, if the agency concerned has been granted an except on from referrals to the General Accounting Office. Such referrals should be made as early as possible consistent with aggressive agency collection action and the observance of the regulations contained in this chapter and in any event well within the time limited for bringing a timely suit against the debtor.

§ 105.2 Current address of debtor.

Referrals to the General Accounting Office, and to the Department of Justice for litigation, will be accompanied by the current address of the debtor or the name and address of the agent for a corporation upon whom service may be made. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the General Accounting Office, and referrals to the Department of Justice for the institution of foreclosure or other proceedings, in which the current address of any party is unknown will be accompanied by a listing of the prior known addresses of such a party and a statement of the steps taken to locate him.

§ 105.3 Credit data. --

(a) Claims referred to the General Accounting Office, and to the Department of Justice for litigation, will be accompanied by reasonably current

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credit data indicating that there is a reasonable prospect of effecting enforced collections from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(b) Such credit data may take the form of (1) a commercial credit report, (2) an agency investigative report showing the debtor's assets and liabilities and his income and expenses, (3) the individual debtor's own financial statement executed under penalty of perjury reflecting his assets and liabilities and his income and expenses, or (4) an audited balance sheet of a corporate debtor.

(c) Such credit data may be omitted if (1) a surety bond is available in an amount sufficient to satisfy the claim in full, (2) the forced sale value of the security available for application to the Government's claim is sufficient to satisfy its claim in full, (3) the referring agency wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment, (4) the debtor is in bankruptcy or receivership, or (5) the debtor's liability to the Government is fully covered by insurance, in which case the agency will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage.

§ 105.4 Report of prior collection actions.

A checklist or brief summary of the actions previously taken to collect or compromise a claim will be forwarded with the claim upon its referral to the General Accounting Office or to the Department of Justice. If any of the administrative collection actions enumerated in Part 102 of this chapter have been omitted, the reason for their omission will be given with the referral. The General Accounting Office and the Department of Justice may return or retain claims at their option when there is insufficient justification for the omission of one or more of the administrative collection actions enumerated in Part 102 of this chapter.

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§ 105.5 Preservation of evidence.

Care **will** be taken to preserve all files, records and exhibits on **claims** referred or **to** be referred **to** the General Accounting Office, or to the Department of Justice for litigation.

§ 105.6 Minimum amount of **referrals** to the Department of Justice.

Agencies will not refer claims of less than 5600, exclusive of Interest for litigation unless **(a)** referral is important to a significant enforcement policy or **(b)** the debtor has not only *the clear* ability to pay the claim **but** the Gov-

ernment can effectively enforce payment having due regard **to** the **exemptions** available to the debtor under State or Federal **Law** and **the** judicial remedies available **to** the **Government**.

(42 FR 38891, Aug. 1, 1977)

§ 305.7 Referrals to GAO.

Referrals of **claims** to the General Accounting Office **will** be in accordance with **instructions**, including **monetary limitations**, contained in the **General Accounting Office Policy and Procedures Manual** for the **Guidance** of Federal **Agencies**.

Subject: CLAIMS COLLECTION PROCEDURES

- 4-70-00 Summary
 - 4-70-10 What Debts Are Covered
 - 4-70-20 What Debt Claims Are Not Covered; Exhaustion Requirement
 - 4-70-30 How Debts Arise
 - 4-70-40 Prevent Debt Collection Problems
 - 4-70-50 Designate a Claims Collection Officer
 - 4-70-60 How to Collect Debts
 - 4-70-70 How to Compromise Claims
 - 4-70-80 How to Suspend Collection Action
 - 4-70-90 How to End Collection Action
 - 4-70-100 How to Refer Claims to the General Accounting Office or to the Department of Justice
 - 4-70-110 Delegation of Authority Required Under the Federal Claims Collection Act
 - 4-70-120 Delegations of Authority by the Secretary Under the Federal Claims Collection Act
 - 4-70-130 Further Delegations of Authority by Department Claims Officer
- Exhibit 4-70-A - Instructions for Reporting Uncollectible Claims to the General Accounting Office and the Department of Justice

4-50-00 SUMMARY

The provisions of this part implement for the Department and its principal operating components the Federal Claims Collection Standards issued by the General Accounting Office and the Department of Justice. Whether a debt exists is generally a program question to be determined under the law and policy applicable to the activity under which the debt arises. The procedures govern the way the Department collects a debt; how the Department compromises, suspends or terminates debt collection of \$20,000 or less (exclusive of interest) under written delegations of authority from the Secretary; and how a defaulted debt claim and an uncollectible claim over \$20,000 are referred to GAO and the Department of Justice for litigation. The instructions below apply unless otherwise specified in a statute, regulations, contract or agreement. Advice on how to implement the Act and these provisions is available from the Department Claims Officer and delegates (see 4-70-130).

4-70-10 WHAT DEBTS ARE COVERED

The procedures apply to a debt owing to the Government through this Department and its principal operating components in the form of money or property. The debtor may be an individual or corporation or another Government entity. The debt is one which remains due **after exhausting** all remedies available to the Government for **collection**, settlement or waiver under the specific statutes or regulations applicable to the programs in which **the debt** arises.

4-70-20 WHAT DEBT CLAIMS ARE NOT COVERED: EXHAUSTION REQUIREMENT

- A. The following types of debt claims are not covered by these procedures:
1. A claim arising from an **exception made** by the GAO in the account of an accountable officer, including a claim against the payee (GAO will provide guidance in such cases). Only **the** Comptroller General or his designee may compromise such **claim**.
 2. A **claim** related to fraud, **a** false claim, misrepresentation, or criminal activity. The claim should be referred promptly to the Office of the Inspector General, which may refer it to the Criminal Division of the Department of **Justice**. The Department of Justice will return the claim for collection, suspension or termination under this chapter if it determines that criminal action is not warranted.
- B. As a general rule, these standards should not be used until all statutory and other administrative procedures applicable to a particular debt are exhausted. For example:
1. Claims under the Federal Medical Care Recovery Act (42 U.S.C. 2651-2653; 28 CFR 43).
 2. Claims under the Waiver of Overpayment of Pay Act (5 U.S.C. 5584; 4 CFR 91-93; 5 U.S.C. 5514; HHS Personnel Manual Instructions 550-8 and 550-9).

3. Claims under the various statutes authorizing student loans **and** scholarships.
4. Claims **involved** in cases pending **before** the Contract Appeals Board or Grants Appeals Board (see 45 CFR 16). However, nothing precludes negotiation and settlement under these standards of claims pending before the Boards.

4-70-30 HOW DEBTS ARISE

A debt is any **property** or money owed to the Department. A debt arises when a **person** or organization such as a **Departmental** employee, a **person** with a student loan or fellowship, a grantee or **party** to a cooperative agreement (both referred to here as "**assistees**"), or a contractor, **receives** something of **value** from the Department and fails to fulfill the resulting obligation to the **Department**. Examples are: an **employee** who obtains travel allowance money and is not **entitled** to it, or doesn't use it as authorized, or has some left over; an **employee** who is erroneously overpaid and knows or should know that it is a mistake and has exhausted administrative remedies trying to obtain a waiver of the debt; an **assiste** which improperly obtains funds from more than one agency to perform identical research; an **assiste** which uses funds for **purposes** not **allowed** under the grant or cooperative agreement; an **assiste** which defaults in performing the research or other project for which it received assistance; and a contractor which fails to perform the services or supply materials according to specifications in the contract. Generally, the debt is disputed by the **debtor**, and there may be other procedures which must be completed before collection action can be initiated (see 4-70-20).

4-70-40 PREVENT DEBT COLLECTION PROBLEMS

- A. Each principal operating component should **prevent** collection problems. For example, to the extent feasible, before **approving** an initial application or renewing a contract, grant or agreement, the principal operating **component** should make sure the applicable regulations are **followed**; investigate the integrity and **responsibility** of the **assiste** or contractor; investigate the current financial soundness of the **recipient**; find out whether the **recipient** owes money to the Government (by

- certification where appropriate); check whether the recipient is in default on payment or performance; and require prospective awardees to disclose whether any present officers of the corporation were ever employed or connected in an official capacity with a corporation which defaulted on a debt to the Government.
- B. Each principal operating component may request that each prospective assistee or contractor furnish with its submission its employer identification number, the name of each corporate officer, his/her social security number, home and office addresses, as well as the name, current address, and social security number of each officer authorized to accept: service of process involving any legal action against the corporation. However, the principal operating component must by law advise the applicant that this information is relevant and necessary to accomplish the purposes of the Federal Claims Collection Act and that furnishing this information is voluntary (5 U.S.C. 552a(e); PL 93-579 §7).
- C. Each principal operating component shall promptly notify the Departmental Federal Assistance Financing Branch (of DFAPS) or other appropriate payments or finance office, when it learns of default, change of ownership, bankruptcy of the debtor, or has other reason to believe continued payments to the debtor would be contrary to good judgment.
- D. The principal operating component, its finance office or DFAPS should commence immediate collection action as outlined below. A debt owed by an employee, contractor or grantee should be reported to all offices and agencies which may be able to set off the debt against funds due to the debtor. If all reasonable efforts to collect or resolve the debt are not successful, referral to the Claims Collection Officer should not be delayed.

d-70-50 DESIGNATE A **CLAIMS** COLLECTION OFFICER

The head of each principal operating component should designate an officer to be responsible for the administrative collection of debts (the Claims Collection Officer (CCO)). The CCO shall take prompt and aggressive action to collect all debts.

4-70-63 HOW TO COLLECT DEBTS

- A. Do not delay collection efforts since delay often reduces the likelihood of collection. Collection procedures should not be overloaded with unnecessary internal clearance or review requirements.
- B. Send the first request for payment to the debtor telling the debtor how much is owed the Government, and the following:
1. The basis for the indebtedness, and the rules that apply.
 2. That payment is due within 30 days from the date of the initial request for payment. Thirty days notice generally is a reasonable time. A principal operating component may determine, however, that particular circumstances warrant earlier or later payment.
 3. That interest charges will be added starting on a specified date which is generally within 30 days from the date of the initial request for payment (see C below for percent of interest).
- C. Send no more than three progressively stronger demand letters, unless circumstances indicate this is useless (for example, where the debtor explicitly refuses to pay, or clearly cannot pay) and alternative remedies would better protect the Government's interest. Demand letters should be sent by certified mail, return receipt requested. A prompt response should be made to any communication from the debtor. Alternative remedies include promptly filing suit in the case of an imminent statutory bar (28 U.S.C. 2415); attaching property in case of imminent departure of debtor or removal of assets or dissolution of corporation; and filing a claim in bankruptcy. If alternative remedies are contemplated, contact your servicing division of the Office of General Counsel or the Department Claims Officer.
- D. Where feasible, the CCO will offset a debt against pay or compensation due the debtor from the same principal operating component or elsewhere in the Government. Examples of funds against which offset can be made are:

1. Current **pay** of an employee (with respect to travel expenses, overpayment of pay or benefits).
 2. Continuing entitlements to the **same** benefits originally overpaid.
 3. Civil service retirement annuities or contributions.
 4. Lump sum leave **payments**, severance pay of Federal **employees**.
 5. Amounts due indebted contractors and judgments obtained against the United **States**.
 6. Grant payments.
- E. if the principal operating component holds security or collateral, the **CCO** has several options:
1. **Where** there is a surety or insurance company, the **CCO** should demand payment from **that** company unless sale of **collateral** is expressly required 'by statute or contract.
 2. The **CCO** may also sell the collateral and apply it to the debt as provided in the security instrument unless the cost of sale is excessive compared to the value of the collateral or special circumstances require judicial foreclosure.
 3. Proceeds remaining after **payment** of the debt and the costs of collection must be paid over to the debtor.
- F. If a debtor cannot pay the debt in a single payment, the **CCO** may negotiate installment **payments**.
1. The **CCO** should obtain satisfactory evidence of the debtors inability to pay in a single payment. The agreement for installment payments should provide for repayment within the shortest period possible, generally not to exceed three years. All installment **payment plans** should **include** interest. If the payment plan exceeds six months, every effort should be made to reduce the agreement to writing signed by the debtor and obtain security.

2. Use an automated billing system for all payment plans where feasible.
 3. Apply installment payments first to accrued interest and then to principal. When an installment payment is past due, the entire debt should become due and payable, with interest.
- G. Repayment agreements should stipulate interest for late payments.
1. If a debt is to be paid in one lump sum, a late charge should be assessed at the current prevailing rate prescribed in Part 5 of the Treasury Fiscal Requirements Manual.
 2. Liability for interest or a late charge commences when the debtor is in default on payment. Generally, this is 30 days from the initial request for payment unless the debtor makes satisfactory arrangements to pay by the due date. If the debtor disputes the validity of the debt, the interest or late charge should be assessed pending resolution of the dispute. If the debtor was correct, appropriate adjustment should be made.
 3. If a debt is paid in installments, the interest rate should be the rate published in the Treasury Department's monthly "Schedule of Certified Interest Rates with Range of Maturities."

4-70-70 HOW TO COMPROMISE CLAIMS

- A. If the CCO finds that collection in full is unlikely, the CCO should try to settle the case. Claims may be compromised:
1. When there is a bona fide dispute as to the facts or the law. The amount accepted in compromise should fairly reflect the probability of full or partial recovery in the event of litigation based upon expected testimony of witnesses, the adequacy of evidence supporting the Government's claim and other practical considerations.

2. When the cost of further collection efforts or litigation is likely to exceed the difference between the proposed compromise amount and the full amount of the claim. This criterion carries greater weight when small claims are involved.
 3. When the debtor cannot pay the full amount within a reasonable time. In determining the debtor's inability to pay, the following factors, among others, may be considered:
 - a. Age and health of debtor.
 - b. Present and potential income.
 - c. Inheritance prospects.
 - d. Possibility that assets have been concealed or improperly transferred by the debtor.
 - e. Availability of assets or income. If the CCO's file does not contain reasonably up-to-date credit information as a basis for evaluating a compromise proposal, the CCC should try to obtain credit information from such sources as credit bureaus, a verified statement from the individual debtor and in the case of a corporate debtor, balance sheets and profit and loss statements.
- B. Discourage installment payments of a compromised amount. If installment payment is necessary based on reasonably current credit information, the CCO should enter into a compromise agreement which should provide that on default the full amount of the debt, less payments made, shall become due and payable with interest. Obtain security where possible.
- C. Where there is joint and several liability for a debt, the CCO shall collect the debt as quickly as possible without allocating the burden as between debtors. A compromise with one debtor shall neither release the remaining debtors, nor determine the amount required from the other debtors jointly and severally liable on the claim: .

4-70-80 HOW TO SUSPEND COLLECTION ACTION

- A. In the event that the whereabouts of the debtor or the debtor's assets are unknown, the CCO may need to suspend collection action. Diligent efforts should be pursued to locate the missing debtor. The following sources should be utilized: telephone directories, city directories, postmasters, drivers license records, automobile title and license records, state and local government agencies, District Directors of Internal Revenue, Social Security Administration, other Federal agencies, employees, relative, friends, and credit agency skip locator reports.
- B. The CCO should make sure all efforts listed above to collect or compromise a debt have been exhausted. Collection action may be suspended temporarily where the future prospects of the debtor to repay look good or where future offset is possible. Wherever feasible, the CCO should obtain written acknowledgement of the debt, a partial payment, or a judgment to forestall application of the statute of limitations which is generally six years. The CCO should develop a system to be sure that suspended claims will always be reviewed periodically.

d-70-90 HOW TO END COLLECTION ACTION

The official who has written delegation of authority to do so may terminate collection action on claims of \$20,000 or less when it becomes clear that one or more of the following circumstances is present:

- A. The Government, cannot collect any significant sum from the debtor and will not in the future be able to collect from the debtor, taking into account the judicial remedies available, the debtor's present and future prospects, the debtor's exemptions under State and Federal law, the age and health of the debtor, inheritance prospects present and potential income and possibly concealed or illegally transferred assets.
- B. The debt is discharged in bankruptcy.

- C. The debtor has died. An effort should be made to ascertain whether the decedent left an estate, through inquiries to relatives, representatives, or clerks of probate courts. Debts should not be reported, regardless of amount, when positive evidence shows the decedent left no estate. If decedent left an estate GAO will file the formal proof of claim. (See 70.1, **GAO Claims Manual** for details on how to report to GAO.)
- D. The corporate debtor has **been dissolved** and there are no corporate assets or security and the whereabouts of the officers and directors are unknown.
- E. The debt is barred by the statutes of limitations (28 U.S.C. 2415, 2416) and there has been no partial payment or written **acknowledgment** of the debt and no prospect for collecting by offset.
- F. The cost of collecting will exceed recovery.
- G. The claim is legally without merit or cannot be substantiated by evidence.

4-70-100 HOW TO REFER CLAIMS TO THE GENERAL ACCOUNTING OFFICE OR TO THE DEPARTMENT OF JUSTICE

- A. The **CCO** shall refer a debt **claim** which is potentially collectible through legal action and which cannot be either collected after aggressive **collection** efforts, temporarily suspended, or terminated to **the General Accounting Office** or to the **Department** of Justice. The claim must be referred promptly. Generally no later than four months from the past due date. The **CCO** will clear such referral with **the Division** of the Office of the General **Counsel** serving that principal operating component.
- B. **When** you refer claims to GAO, GAO requires certain specific information, set forth in **Exhibit** 4-70-A.
- C. **The** General Accounting Office does not accept a referred claim for less than \$600 exclusive of interest **unless** a significant policy is involved or the debtor clearly has ability to pay **and** no reasonable basis for refusing to pay.

- D. The CCO shall **preserve** all records on the referred claim until the case is closed.

4-70-110 DELEGATION OF AUTHORITY REQUIRED UNDER THE
FEDERAL CLAIMS COLLECTION ACT

Only one who has **written delegated authority** (see §120 and §130) may approve a compromise, suspension, or termination of a claim and **then only if the claim is \$20,000 or less.** Resolution of claims over \$20,000 requires the concurrence of CAO.

4-70-120 DELEGATION OF AUTHORITY BY THE SECRETARY UNDER
THE FEDERAL CLAIMS COLLECTION ACT

- A. The Secretary has delegated to the Department Claims Officer, who is the Assistant General Counsel, Business and Administrative Law Division, the authority to perform the duties and exercise the authority vested in the Secretary by the Federal Claims Collection Act of 1965, 31 U.S.C. 951-953, as amended, to collect claims in any amount; to compromise, suspend or terminate collection action in claims of \$20,000 or less, **exclusive** of interest; and to issue rules and procedures for investigating, reporting and otherwise handling claims throughout the Department. (31 FR 16375, 12/14/66). The Department Claims Officer has **redelegated** this authority. As explained under B and C, there is a concurrent **delegation** of such authority **from the Secretary** to two principal operating components.
- B. The Secretary has delegated to the Commissioner of Social Security the authority vested in the Secretary under **the Federal Claims Collection Act** insofar as such authority relates to the mission of the **Social Administration** (33 FR 5836, 5843, 4/16/63).
- C. The Secretary has delegated to the **Administrator** of Health Care Financing Administration the authority vested in the Secretary under the Federal Claims Collection Act insofar as such authority relates to the mission of **the Health Care Financing Administration** (42 FR 57352, 11/2/77; 42 CFR 405.374).

4-70-130 FURTHER DELEGATION OF AUTHORITY BY THE DEPARTMENT
CLAIMS OFFICER

The authority of the Department Claims Officer is delegated to the following officials within the scope identified:

- A. The Deputy Assistant General Counsel, Business and Administrative Law Division, Office of the General Counsel (Department-wide).
- B. The Chief, Litigation and Claims Branch, Business and Administrative Law Division, Office of the General Counsel (Department-wide).
- C. The Regional Attorneys (Region-wide) except for claims relating to Titles II and XVIII of the Social Security Administration and the Public Health Service.
- D. The Assistant Secretary for Health, insofar as such authority relates to the mission of the Public Health Service.

**Appendix A - INSTRUCTIONS FOR REPORTING UNCOLLECTIBLE DEBT
CLAIMS TO GAO AND THE DEPARTMENT OF JUSTICE**

A. Contents of Administrative Reports

1. The debtor's full name and current address. If unknown, prior known addresses and a statement of the steps taken to locate the debtor.
2. The debtor's identifying number, if known.
3. The debtor's date of birth and social security number, if known. For business firms, the employer's identification number which corresponds to the social security number of an individual, shall be shown if obtainable.
4. All evidence necessary to support the Government's claim: a complete statement of relevant facts, including the date the debt first accrued, the date of partial payments, copies of correspondence which might acknowledge the debt, in order to determine whether the statute of limitation applies (28 U.S.C. 2415); computations explaining how the amount owed was arrived at; citations to applicable laws and regulations; copies of correspondence in which the debtor has questioned his liability and copies of the Government's responses.
5. If the debtor is currently employed by the Government or serving in the uniformed services, show the actions taken to recover the amount through the agency in which the debtor is employed or serving and the results.
6. A summary of actions taken to collect or compromise the indebtedness.
7. Reasonably current credit information obtained within the last six months.

B. Where Administrative Reports Should be Sent to GAO

Reports of administratively uncollectible debts shall be mailed to the following address: Claims Division, U.S. General Accounting Office, Washington, D.C. 20548.

HHS Exhibit 4-70-A,
General Administration Manual
HHS Transmittal 81.01 (2/6/81)

C. Where Administrative Reports Should be Sent to **Department** of Justice

When authorized to send reports of **administratively** uncollectible debts to the Department of Justice, they must be sent by the appropriate Office of the **General Counsel** to the Commercial Litigation Branch, **Safeway Building, 521** 12th Street, N.W., Washington, D.C. 20530.