

of whom it is aware that it believes may be eligible for benefits under this part. Any eligible former spouse who does not have an application at the time this part is published in the FEDERAL REGISTER (October 7, 1988) must communicate with the Department as soon as possible and request an application. Request may be in person or by mail to the address in §20.9(a) or by telephoning the Retirement Division on area code 202-647-9315. A request by letter must include the typed or printed full name and current address of the former spouse.

It shall also give the dates of marriage and divorce or annulment that establish eligibility and fully identify the Foreign Service employee or former employee in question and state the agency of current or last employment.

(c) *Payment of Benefits Delayed.* Payment of benefits cannot be made to a former spouse until the application for benefits is approved by the Retirement Division of the Department. Upon such approval, benefits will be paid to an eligible former spouse retroactively, if necessary, back to the commencing date determined under this part.

PART 21—INDEMNIFICATION OF EMPLOYEES

AUTHORITY: 5 U.S.C. 301; 22 U.S.C. 2658.

SOURCE: 60 FR 29988, June 7, 1995, unless otherwise noted.

§21.1 Policy.

(a) The Department of State may indemnify an employee for any verdict, judgment, or other monetary award which is rendered against such employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of employment and that such indemnification is in the interest of the United States, as determined as a matter of discretion by the Under Secretary for Management or his or her designee.

(b) The Department of State may settle or compromise a personal damages claim against an employee by the payment of available funds at any time, provided the alleged conduct giving

rise to the personal damages claim was taken within the scope of employment and that such settlement or compromise is in the interest of the United States, as determined as a matter of discretion by the Under Secretary for Management or his or her designee.

(c) The Director General of the Foreign Service and Director of Personnel ("Director General") shall be the designee of the Under Secretary for Management with respect to determinations under paragraphs (a) and (b) of this section in cases which involve:

(1) Foreign courts or foreign administrative bodies and

(2) Requests of less than five thousand dollars.

(d) Absent exceptional circumstances as determined by the Under Secretary for Management or his or her designee, the Department will not entertain a request either to agree to indemnify or to settle a personal damages claim before entry of an adverse verdict, judgment, or award.

(e) When an employee in the United States becomes aware that an action has been filed against the employee in his or her personal capacity as a result of conduct taken within the scope of his or her employment, the employee shall immediately notify the Department through the Executive Director of the Office of the Legal Adviser that such an action is pending. Employees overseas shall notify their Administrative Counselor who shall then notify the Assistant Legal Adviser for Special Functional Problems. Employees may be authorized to receive legal representation by the Department of Justice in accordance with 28 CFR 50.15.

(f) The employee may thereafter request indemnification to satisfy a verdict, judgment, or award entered against the employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal if on appeal, to the Legal Adviser. Except as provided in paragraph (g) of this section, the Legal Adviser and the Director General shall then, in coordination with the Bureau of Finance and Management Policy, forward the request with their recommendation to the Under Secretary for Management for decision.

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The Legal Adviser may seek the views of the Department of Justice, as appropriate, in preparing this recommendation.

(g) Cases in which the Director General is the designee under paragraph (c) of this section may be forwarded by the Assistant Legal Adviser for Special Functional Problems, along with the views of the employee and the bureau or post as appropriate, to the Director General for decision.

(h) Personal services contractors of the Department are considered employees for purposes of the policy set forth in this part.

(i) Any payment under this part either to indemnify a Department of State employee or to settle a personal damages claim shall be contingent upon the availability of appropriated funds.

(j) In addition to the indemnification provisions contained in the regulations in this part, the Department will also follow any specific policies or regulations adopted with respect to damages awarded against Department health care personnel for malpractice claims within the scope of 22 U.S.C. 2702.

[60 FR 29988, June 7, 1995]