

INDEMNIFICATION OF EMPLOYEES ACTING IN OFFICIAL CAPACITY

I. Purpose

This Management Directive (MD) establishes Department of Homeland Security (DHS) policy regarding indemnification of an employee of DHS acting in his or her official capacity.

II. Scope

This MD applies to DHS Headquarters and all DHS Component's . The provisions of this MD define the circumstances under which the Department may indemnify a Department employee if he or she is named as a party in a legal proceeding in his or her individual capacity as a result of conduct within the scope of his or her employment.

III. Authorities and References

- A. 5 U.S.C., "Government Organization and Employees."
- B. 28 CFR § 50.15, "Representation of Federal officials and employees by Department of Justice attorneys or by private counsel furnished by the Department in civil, criminal, and congressional proceedings in which Federal employees are sued, subpoenaed, or charged in their individual capacities."

IV. Definitions

- A. **Component**: As used in this MD, the term DHS Component shall have the meaning given to the former term "Organizational Element" in DHS MD 0010.1, Management Directives System and DHS Announcements.
- B. **Employee**: An individual who has been appointed in the Federal civil service, is engaged in the performance of a Federal function under authority of law or regulation, and is not otherwise exempt from 5 USC, Sections 2301 and 2302. For purposes of this Management Directive a former employee shall be considered an employee if the actions resulting in the adverse legal proceeding occurred when he or she was an employee under this definition.

V. Responsibilities

The General Counsel: The General Counsel shall be responsible for reviewing the merits of requests for indemnification made under this MD and for preparing a recommendation to the Secretary.

VI. Policy & Procedures

A. The Department of Homeland Security may indemnify, in whole or in part, a Department employee for any verdict, judgment or other monetary award rendered against such employee, provided the Secretary determines that (1) the conduct giving rise to such verdict, judgment or award was within the scope of the employee's employment and (2) such indemnification is in the interest of the United States.

B. The Department of Homeland Security may pay for the settlement or compromise of a claim against a Department employee at any time, provided the Secretary determines that (1) the alleged conduct giving rise to the claim was within the scope of the employee's employment and (2) such settlement or compromise is in the interest of the United States.

C. Absent exceptional circumstances, as determined by the Secretary, the Department will not entertain a request to indemnify or to pay for settlement of a claim before entry of an adverse judgment, verdict or other determination.

D. When a Department employee becomes aware that he or she has been named as a party in a proceeding in his or her individual capacity as a result of conduct within the scope of his or her employment, the employee should immediately notify his or her supervisor that such an action is pending. The supervisor shall promptly thereafter notify the chief counsel, principal legal advisor or judge advocate general assigned by the General Counsel to the employee's Component, who shall inform the Office of the General Counsel. The employee shall immediately apprise the chief counsel, principal legal advisor or judge advocate general of the employee's Component of any offer to settle the proceeding. The employee is required to comply with any and all requests for information from the chief counsel, principal legal advisor or judge advocate general assigned to the employee's Component, the Office of the General Counsel, and the Department of Justice. The employee may be required to comply with substitution of the United States or representation by the United States in accordance with 28 CFR 50.15, if the Secretary deems it applicable or appropriate.

E. A Department employee may request indemnification to satisfy a verdict, judgment or monetary award entered against the employee or to compromise a claim pending against the employee. The employee shall submit a written request, with appropriate documentation including a copy of the verdict, judgment, award or other order or settlement proposal, in a timely manner to the

chief counsel, principal legal advisor or judge advocate general assigned to the employee's Component by the General Counsel for review and recommendation to the General Counsel, and for further review and recommendation to the Secretary for decision.

F. Any payment under this section either to indemnify a Department employee or to settle a claim shall be contingent upon the availability of appropriated funds for the payment of salaries and expenses of the employing Component.

VII. Questions

Address any questions or concerns regarding this MD to the Office of the General Counsel.