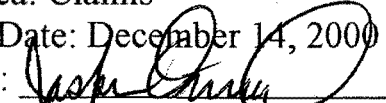


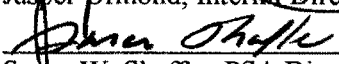
POLICY STATEMENT

Policy Statement 1105.1

Policy Area: Claims

Effective Date: December 14, 2000

Approved: 
Jasper Ormond, Interim Director


Susan W. Shaffer, PSA Director

FEDERAL TORT CLAIMS ACT PROCEDURE

I. PURPOSE AND SCOPE

The purpose of this Policy Statement is to advise employees of the Court Services and Offender Supervision Agency and the D.C. Pretrial Services Agency (collectively "the Agency") the extent to which the Agency could be held liable for acts or omissions of its employees and to establish the tort claims procedure for the Agency. In general, persons who suffer proven monetary loss, personal injury, or wrongful death caused by an employee's negligent or wrongful act or omission while acting within the scope of his/her employment will be compensated by the government pursuant to the Federal Torts Claim Act ("FTCA").

This Policy Statement applies to all claims against the Agency for personal injury, death or loss of property caused by the negligent or wrongful acts of its employees. It does not apply to claims by employees of the Agency for loss or damage to property incident to service, such as loss or damages to vehicles or other personal property. Such claims are processed pursuant to the Military Personnel and Civilian Employee's Claims Act of 1964. Federal employee work-related claims are also processed pursuant to the Federal Employee's Compensation Act.

II. STATUTORY AND REGULATORY AUTHORITY

A. Statutes

28 U.S.C. § 1346(b) United States as Defendant
28 U.S.C. §§ 2671 - 2680 Tort Claims Procedure

B. Regulations

28 C.F.R. §§ 14.1 - 14.11 Administrative Claims Under the FTCA

III. DELEGATION OF AUTHORITY

The General Counsel is delegated authority pursuant to 28 U.S.C. § 2672 to consider, ascertain, adjust, determine, compromise, and settle any tort claim for money damages against the Agency filed under this Policy Statement, as long as such claim is one where the United States would be liable if it were a private person under the circumstances alleged. Prior to payment of an award or settlement of a claim in excess of \$25,000, the General Counsel shall first obtain the written approval of the Attorney General.

IV. SCOPE OF AGENCY AND EMPLOYEE LIABILITY

A. Policy

Government employees are often sued in their official capacities for actions or omissions undertaken as part of their duties which result in injury, loss, or death to another. Pursuant to the FTCA, the government may be held liable for the negligent or wrongful acts or omissions of its employees while the employee was acting within the scope of his/her employment. If it is determined by the Attorney General that the employee was, in fact, acting within the scope of his/her employment at the time of the incident in question, the action will be deemed one against the United States and the United States will be substituted as the defendant in the action. The suit will no longer be against the employee. If, however, it is determined that the employee was *not* acting within the scope of his/her employment, the government will *not* defend the action on the employee's behalf. The employee may thereafter petition the court to find that he/she was acting within the scope of his/her employment. If the court declines to make such a finding, the action will proceed against the employee in state court, rather than federal court.

If the claim against the employee is one in which the claimant is alleging a violation of a Constitutional right, that action *will* proceed against the individual but will be defended by the United States as long as the employee was acting within the scope of his/her employment and it is in the interest of the United States to represent the individual. In addition, actions against employees for violation of a federal statute which *authorizes* such action will proceed against the individual.

B. Scope of Employment

For purposes of this policy and the FTCA, conduct is considered to be within the scope of employment when: (1) the conduct or activity is one that the employee was employed to perform; (2) the conduct occurs substantially within the time and in the place where authorized by the Agency; and (3) the purpose of the activity or conduct is, at least partially, to serve the Agency. Conduct is *not* within the scope of employment if it is different from conduct authorized by the Agency, does not occur within the time and

place authorized by the Agency, or is not sufficiently motivated by a purpose to serve the Agency.

V. PROPER CLAIMANTS

Any injured person or owner of damaged property may file a claim for money damages against the Agency. Persons acting on behalf of injured or deceased persons, or owners of damaged property as agents, executors, administrators, parents, guardians, or other representatives may also file a claim provided that such person has a signed written statement authorizing his/her representation.

VI. PRESENTATION AND DETERMINATION OF ADMINISTRATIVE CLAIM

A. Presentation of a Claim

Prior to instituting an action against CSOSA or PSA, persons having claims for money damages against the Agency under the FTCA must *first* present the claim to the appropriate agency by submitting a completed Standard Form 95 (SF 95) or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occurred on the basis of the incident. All claims, whether against CSOSA or PSA, will be forwarded to CSOSA's Office of the General Counsel ("OGC") for intake, investigation, and final action. Any claims presented to PSA should be date-stamped and forwarded to the OGC.

A claim must be presented to either CSOSA or PSA within two (2) years after it accrues. A claim is deemed presented when it is received by the Agency. A court action shall not be commenced against CSOSA or PSA until the claim is denied by the Agency and written notice is sent by certified or registered mail to the claimant. Claimants have six (6) months after the mailing date of the letter to file an action.

If the Agency fails to make a decision on the claim within six (6) months after it is filed, the claimant may, at his/her option, deem the claim denied and proceed with instituting an action in court at any time.

Claims are presented to the agency whose acts or omissions are the basis for the claim. If a claim has been presented to CSOSA or PSA in error, the OGC will forward it to the appropriate agency and advise the claimant of the transfer. If the appropriate agency cannot be determined, or if transfer is otherwise not feasible, the claim will be returned to the claimant.

B. Acknowledgment Letter

As soon as a proper claim is submitted to CSOSA or PSA, including all necessary information such as date, time and place where the incident occurred, the OGC will send the claimant an acknowledgment letter indicating the filing date and assigned claim number. The claim will thereafter be identified by the claim number. In the event that the claimant has failed to include all necessary information in his/her claim, the claim will be returned to the claimant with a request for additional information.

VII. PROCESSING OF CLAIMS

A. Investigating the Claim

Upon receipt of the claim, OGC staff will investigate the claim and prepare a written report of the incident, including a recommendation as to how the claim should be disposed. The written report should include the following: the SF 95 or other written notification provided by the claimant; relevant background materials (witness statements, photographs, etc.); relevant administrative remedy requests; and the recommendation. Agency employees whose actions gave rise to the claim should be aware that they may be questioned concerning the incident at issue. The report will then be forwarded to the General Counsel for action.

B. Determining the Claim

After considering the merits of the claim, the General Counsel may deny or propose settlement of the claim. In the case of claims against PSA, all final actions proposed by the OGC shall be forwarded to PSA's Deputy Director for approval prior to final disposition. No claim against PSA shall be settled or denied without the prior approval of PSA.

Final denials of administrative claims must be in writing and sent to the claimant, his/her attorney, or legal representative by certified or registered mail. The notification should include a brief statement of the reasons the claim is denied and must include a statement that the claimant has a right to file suit in the appropriate U.S. District Court no later than six (6) months after the date of mailing of the notification.

A claimant whose claim has been denied may seek reconsideration of the Agency's decision any time prior to the end of the six-month limitation period in which he/she may file suit in court. The Agency shall have six (6) months from the date of the filing of the request to make a final disposition of the claim. The six-month time frame within which a claimant may institute an action in court will not accrue until six (6) months after the filing of a request for reconsideration.

C. Award or Settlement of the Claim

If the General Counsel reviews a claim and determines that settlement is in the best interest of the government, a settlement offer may be made to the claimant. In certain circumstances, consultation with the Department of Justice may be required prior to determination or settlement of a claim. The General Counsel may also believe that further negotiations with the claimant would be useful. Any such negotiations will be conducted by OGC staff.

Awards or settlements in an amount of \$2,500 or less will be paid out of the Agency's respective annual appropriations. If the proposed award exceeds \$2,500, the Agency shall submit a completed SF 1145 (available on "InForms") to the General Accounting Office, Claims Division. If it is greater than \$25,000, the SF 1145 must be accompanied by evidence that the award has been approved by the Attorney General or his/her designee and shall be executed by the claimant (or accompanied by an executed settlement agreement or claim form). If the claimant is represented, the claim voucher shall list the claimant and attorney as payees. Settlement of claims in excess of \$2,500 will be forwarded to the Judgment Fund Section, Financial Management Service, Department of Treasury for payment.

Prior to making a proposed settlement offer to be paid out of the Agency's appropriations, the General Counsel must obtain certification of the availability of funds from CSOSA's or PSA's finance office, whichever is appropriate. In the case of claims against PSA, a proposed settlement must be approved by PSA's Director of the Office of Finance and Administration, prior to being offered to the claimant. Final approved settlements must be forwarded to CSOSA's and PSA's finance offices, respectively, for payment.

In the case of lost or damaged property, appreciation and/or depreciation will be considered in determining a proposed award or settlement.

VIII. FINALITY OF CLAIMS

All awards, compromises, or settlements made pursuant to this Policy Statement and accepted by the claimant shall be final and conclusive on the claimant and shall constitute a complete release of any claim against the United States (i.e., the Agency) and against the employee upon whose act or omission the claim is based.

IX. THE FILING OF A CIVIL ACTION

Persons suffering damage or injury based upon alleged acts or omissions of employees of the Agency are authorized to file a civil action in the appropriate U.S. District Court under

the FTCA after his/her administrative claim has been denied by the Agency or a settlement offer has been rejected.

A. Service of Process

The Office of the General Counsel is authorized to receive all complaints and summonses served upon CSOSA or PSA. In the event that an employee of CSOSA or PSA is personally served, or any other office or division within the Agency receives service of process, such papers shall immediately be forwarded to the OGC. The OGC shall thereafter promptly forward copies of all process and pleadings to the United States Attorney's Office for the District of Columbia and the Civil Division, U.S. Department of Justice, for representation.

B. Certification by the Attorney General

Agency employees who have been sued or whose actions form the basis of a lawsuit under the FTCA will be advised immediately as to whether the Attorney General has determined that his/her actions were within the scope of employment. In most cases, an employee's actions are within the scope of employment and the United States will substitute itself as the defendant in the action. As noted above, if the Attorney General does not certify scope of employment, the employee may petition the appropriate federal district court for a finding that his/her actions were within the scope of employment. If neither the Attorney General nor the court has certified scope of employment, the employee must seek representation on his/her own.

X. REPORTING REQUIREMENT

It shall be the responsibility of CSOSA's Office of Management and Administration, and PSA's Office of Finance and Administration in the case of claims filed against PSA, to report annually to Congress all claims paid by the Agency pursuant to the FTCA. The report shall include the name of each claimant, the amount claimed, disposition, the amount awarded, if any, and a brief description of the claim.

XI. APPLICABLE REGULATIONS

Regulations governing the administration of claims under the FTCA are found at 28 C.F.R. part 14. The Agency is authorized to issue regulations (see the Appendix to this Policy Statement) supplementing the general provisions found at part 14. Once these regulations are formally approved, they will appear in Title 28 of the Code of Federal Regulations as a final rule.

**Guidance
Disclaimer**

The contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

APPENDIX
DRAFT REGULATIONS

When approved, these regulations will be codified in
Title 28 of the Code of Federal Regulations

PART 801 – FEDERAL TORT CLAIMS ACT PROCEDURES

§ 801.1 Claims filed under the Federal Tort Claims Act.

If an agency employee is acting within the scope of his or her employment and causes injury to a member of the public, any claim for money damages for personal injury, death, damage to property, or loss of property caused by the employee's negligent or wrongful act or omission is a claim against the United States and must first be presented by the injured party to the appropriate federal agency for administrative action under the Federal Tort Claims Act. General provisions for processing such administrative claims are contained in 28 CFR part 14. The provisions in this part supplement the general provisions in order to describe specific procedures to follow when filing a claim with the Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA") or the Pretrial Services Agency of the District of Columbia ("PSA").

§ 801.2 Filing a claim.

(a) *Who may file the claim.* You may file a claim for money damages against CSOSA or PSA if you believe that a CSOSA or PSA employee has injured you or has damaged or lost property that you own. You may file a claim on behalf of an injured or deceased person or owner of damaged or lost property if you are acting as agent, executor, administrator, parent, guardian, legal or other representative provided you submit evidence of your authority to act on behalf of the claimant.

(b) *What information do you need to submit in your claim?*

(1) The easiest way to ensure that you will include all necessary information for your claim is to submit a completed Standard Form 95 ("SF 95"). The SF 95 is available from the Office of the General Counsel, CSOSA, (see address in paragraph (c) of this section) and on the Internet at <http://www.usdoj.gov/civil/forms/forms.htm>.

(2) If you do not use the SF 95, you must submit written notification of the incident that resulted in the injury, loss, or damage. Along with this notification, you must present a claim for money damages in a sum certain (that is, a precise dollar amount) for injury to or loss of property, personal injury, or death alleged to have occurred on the basis of the incident. Failure to include the precise dollar amount for your claim may mean that you will have difficulty with pursuing your claim in court.

(c) *Where do you submit the claim?* You should submit the claim (whether against CSOSA or PSA) directly to the Office of the General Counsel, CSOSA, 633 Indiana Avenue NW., Washington, DC 20004. Claims submitted to any other office of CSOSA or PSA are forwarded to the Office of the General Counsel.

(d) *When must you submit the claim?* You must submit the claim so that CSOSA/PSA receives the claim within 2 years after the claim accrues. Mailing the claim by that date is not sufficient if CSOSA/PSA does not receive the claim by that date. Generally speaking, a claim accrues at the time of the injury. In those instances where

APPENDIX
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neither the injury nor its cause is immediately apparent, the claim accrues when you discover (or reasonably should discover) the injury and its cause.

(e) *May you amend your claim?* Yes, you may amend your claim at any time prior to final agency action or prior to your filing suit in court.

§ 801.3 Processing the claim.

(a) *Will CSOSA/PSA contact you about your claim?*

(1) If you have provided all necessary information to process your claim, you will receive an acknowledgement indicating the filing date (that is, the date CSOSA/PSA received your claim) and the assigned claim number. Refer to the claim number in any further correspondence you may have with CSOSA/PSA on the claim.

(2) If you have failed to include all necessary information, CSOSA/PSA will return your claim to you with a request for the necessary additional information.

(3) If your claim should have been filed with another agency, CSOSA/PSA will forward the claim to the appropriate agency and notify you of the transfer, or return the claim to you if the appropriate agency cannot be determined or if the transfer is otherwise not feasible.

(b) *Who is responsible for offering settlement or denial on the claim.* The General Counsel is responsible for investigating the claim and, after consultation with PSA (if the claim is against PSA) and the Department of Justice when appropriate, determining whether the claim should be settled or denied.

(c) *How long does CSOSA/PSA have to consider your claim?* CSOSA/PSA has 6 months from the date of filing to make a settlement offer or to deny your claim. If you amend your claim (see § 801.2(e)) or request that your claim be reconsidered (see § 801.4(b)(1)), CSOSA/PSA has an additional 6 months from the date of the amendment or the filing of the request for reconsideration to make a final disposition of the claim.

(d) *Will appreciation or depreciation be considered?* Yes, appreciation or depreciation is considered in settling a claim for lost or damaged property.

§ 801.4 Final disposition of claim.

(a) *What if you accept the settlement offer?* If you accept a settlement offer, you give up your right to bring a lawsuit against the United States or against any employee of the government whose action or lack of action gave rise to your claim.

(b) *What if your claim is denied?*

(1) If your claim is denied, you have 30 days from the date of CSOSA/PSA's written notification to make a written request that the agency reconsider the denial.

(2) If your claim is denied or you reject the settlement offer, you have 6 months from the date of mailing of CSOSA/PSA's notice of denial to file a civil action in the appropriate U.S. District Court.

(c) *What if you do not hear from CSOSA/PSA within 6 months of the filing date?* If you do not hear from CSOSA/PSA within 6 months of the filing date for the claim, you may consider your claim denied. You may then proceed with filing a civil action in the appropriate U.S. District Court.