



**Court Services and Offender Supervision Agency**  
**Pretrial Services Agency**  
 for the District of Columbia  
 Office of the General Counsel

# **POLICY STATEMENT**

Federal Tort Claims Act  
 Number: PS 1105  
 Effective Date: 12/21/2020  
 Re-Certification Date: 3/22/2023  
 Review Due Date: 3/21/2025

**X**

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 Director, CSOSA

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## Overview

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### Background

Under the Federal Tort Claims Act (FTCA), private parties may sue the federal government for certain negligent or wrongful acts or omissions of its employees who were acting within the scope of their official duties at the time of the tort. The United States may be liable for its employees' torts to the same extent as an individual would be in similar circumstances; and such claims may result in the federal government paying monetary damages to a claimant.

The Office of General Counsel (OGC) of the Court Services and Offender Supervision Agency (CSOSA) has been delegated authority to discharge certain duties for both the Pretrial Services Agency (PSA) and CSOSA (collectively, the Agency) under the FTCA, pursuant to 28 U.S.C. § 2672.

An individual seeking redress under the FTCA must demonstrate:

1. A federal government employee caused an injury/death or property damage;
2. A federal employee was acting within the scope of their official duties;
3. The injury or loss was caused by the negligent or wrongful act or omission of a federal employee;
4. The negligent or wrongful act or omission proximately caused the claimed injury or damage; and
5. The tort occurred under circumstances where the United States, if it were a private person, would be liable to the claimant under the law of the place where the act or omission occurred.

The FTCA does not cover claims by employees of the Agencies for loss or damage to property incident to service, such as loss or damage to vehicles or other personal property. Such claims are processed under the Military Personnel and Civilian Employee's Claims Act of 1964. Federal employee work-related claims are processed pursuant to the Federal Employees' Compensation Act (FECA).

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## Overview, Continued

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### Summary of Changes

PS re-certified with minor changes to two items listed under OGC responsibilities and updated PSA Attorney Advisor role to PSA's Office of Legal Services (OLS) on the PS issued on 12/21/2020.

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### Coverage

This policy statement applies to Court Services and Offender Supervision Agency (CSOSA) and Pretrial Services Agency (PSA) employees.

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### Authorities

- 28 U.S.C. § 1346(b), United States as Defendant
  - 28 U.S.C. §§ 2671-2680, Tort Claims Procedure
  - 28 C.F.R. § 14.1-14.11, Administrative Claims under FTCA
  - 28 C.F.R. § 801, FTCA Process for CSOSA
  - 28 C.F.R. § 50.15, Representation of Federal Officials and Employees by DOJ Attorneys or Private Counsel When Sued, Subpoenaed or Charged In Their Individual Capacities
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### References

- [Standard Form 95](#), Claim for Damage, Injury or Death
  - [Standard Form 94](#), Statement of Witness
  - [Standard Form 91](#), Motor Vehicle Accident Report
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### Supersedes

PS 1105.1 *Federal Tort Claims Act Procedure*, dated December 14, 2000

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### Administrator

CSOSA's Office of General Counsel (OGC) is responsible for the contents of this policy statement in consultation with appropriate parties within PSA.

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## Policy

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### Principles

- The Agency may consider any FTCA claim or lawsuit filed against an employee who was acting within the scope of their employment at the time of the alleged wrongful act to be one against the United States; and the United States will be substituted as the defendant in the action. The suit will no longer name the Agency or be against the employee.
- The Agency considers the conduct to be within the scope of employment when:
  - 1) The conduct or activity is one that the employee was hired to perform by either CSOSA or PSA, that is, a non-discretionary duty;
  - 2) The conduct occurs within the time and in the place where the employee is authorized to be by their employing agency; and
  - 3) The purpose of the activity or conduct, in some part, is to serve the employing agency.
- The Agency will **not** defend the action on the employee's behalf if it is determined that the employee was *not* acting within the scope of their employment.
- The Agency may use arbitration or other alternative means of dispute resolution to settle any tort claim against it, consistent with Title 28 United States Code § 2672 (hereafter 28 U.S.C. § 2672).
- No attorney may charge, demand, receive or collect for services rendered, fees in excess of 25 percent of any judgment rendered pursuant to [§1346\(b\) of Title 28 U.S.C.](#) or any settlement made pursuant to [§ 2677 of this Title](#), or in excess of 20 percent of any award, compromise, or settlement made pursuant to [§ 2672 of this Title](#).

**NOTE:** If the claim against an individual employee is one in which the claimant is alleging a FTCA claim or Constitutional violation, that action will proceed against the individual, but will be defended by the Department of Justice, as long as the employee was acting within the scope of their employment, and it is in the interest of the United States to represent the individual.

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## Definitions

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### **Employees of the Government**

- Officers or employees of any federal agency, members of the military or naval forces of the United States, members of the National Guard while engaged in training or duty under §§ 115, 316, 502, 503, 504, or 505 of Title 32 of the United States Code, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation; and
  - Any officer or employee of a federal public defender organization, except when such an officer or employee performs professional services in the course of providing representation under [§ 3006A of Title 18 of the United States Code](#).
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### **Federal Agency**

The executive departments, the judicial and legislative branches, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States. This does not generally include contractors.

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### **Tort Claims**

A wrongful act, not including a breach of contract or trust, that results in injury or harm to another person, and to one's person, property, reputation, or the like, and for which the injured party is entitled to monetary damages or compensation.

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## Roles and Responsibilities

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### Employees

- Promptly notify their supervisor and OGC of the facts and circumstances surrounding accidents and claims.
  - Respond to inquiries and furnish information to OGC or its designee concerning accidents and claims.
  - Refrain from making a statement about the accident to a claimant or their agent or attorney.
  - Refrain from admitting liability on the sufficiency of a claim.
  - Complete all necessary incident reports and attach any supporting documentation to the reports.
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### Supervisors

- Ensure that OGC is notified of the facts and circumstances surrounding accidents and claims.
  - Ensure that direct reports promptly respond to OGC's request for information concerning claims.
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### CSOSA Office of General Counsel (OGC)

- Upon receipt of Standard Forms 95, 94 and 91 as well as other documents related to an accident or claim, verifies that the employee was sued in their official or individual capacities are currently employed, or were formerly employed (at the time of the accident giving rise to the claim), by PSA or CSOSA.
  - Reviews reports of accidents and claims and may designate an attorney advisor or paralegal to assist with investigating the facts and legal issues to determine the merits of the claim.
  - Requests, in writing, that PSA or the appropriate CSOSA program office provide to the assigned attorney advisor or paralegal all information and documents that pertain to the claim.
  - Issues litigation hold letters directing the Agencies' staff to preserve all documents and materials that pertain to the claim or litigation of the claim.
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## Roles and Responsibilities, Continued

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**CSOSA Office of  
General Counsel  
(OGC),  
continued**

- Receives a current or former employee's request for legal representation and submits the request to the Torts Branch or other appropriate litigation division of the Department of Justice (DOJ) conveying whether the employee was acting within the scope of his or her employment, together with a recommendation as to whether to provide representation.
- Prepares a litigation report at the initial stage of the litigation process.
- In claims arising from PSA employee actions, timely submits the draft litigation report to PSA's Office of Legal Services (OLS) for review and comment prior to submission to DOJ.
- Submits the final litigation report to the designated DOJ official assigned to handle the claim with a recommendation of how to resolve or dispose of the claim.
- In claims arising from PSA employee actions, timely informs the assigned PSA attorney and the appropriate PSA program office about the status of the case at each stage of the claims or litigation proceedings.
- Resolves through litigation or settlement, with advice and approval from DOJ when necessary, and when pertaining to PSA claims, with advice and approval by PSA, any FTCA claims filed against the Agencies.
- As appropriate, consults with DOJ about claims that involve:
  - A new precedent or a new point of law;
  - A question of policy;
  - A question of whether the United States is or may be entitled to indemnity or contribution; or
  - Control of the disposition of a related claim.
- Coordinates approval of a proposed settlement of a claim with the Office of the Director of CSOSA or PSA or designee, as well as with the head of the finance office of either agency, which includes certification of the availability of appropriated funds, before making an offer to the claimant.
- Provides advice, guidance, and supervision to the Agencies' personnel on all claims arising under the FTCA and 31 U.S.C. §3723.
- Forwards final approved settlements to the CSOSA or PSA finance office for payment.
- Notifies the claimant of the disposition of the claim.

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## Roles and Responsibilities, Continued

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### **PSA Office of Legal Services**

In cases of claims against PSA, with notice by OGC:

- Facilitates PSA-related discovery;
  - Attends PSA-related arbitrations, mediations, depositions, and proceedings;
  - Reviews draft PSA-related litigation reports and filings;
  - Coordinates with PSA parties; and
  - Reviews PSA settlement proposals in advance of final approval.
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### **CSOSA Office of Financial Management/ PSA Office of Finance and Administration**

- Processes payment of tort claims.
  - Submits an annual report to Congress on all FTCA claims paid by the Agency, which includes:
    - Name of the claimant(s);
    - Amount claimed;
    - Disposition;
    - Amount awarded if any; and
    - Brief description of the claim.
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### **CSOSA/PSA Directors**

- Ensure the Agency's operations are consistent with the FTCA and its implementing regulations.
  - Approve payments of awards and settlements.
  - Provide sufficient reserves for the payment of FTCA claims from the Agencies' respective appropriations.
  - Establish an FTCA claims management system based on past experience as to the number, magnitude, and complexity of claims arising from the Agencies' activities.
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