

**§ 281.2 Applicability.**

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as “the DoD Components”).

(b) The Coast Guard, when it is not operating as a Service in the Navy, and the Commissioned Corps of the Public Health Service and the National Oceanic and Atmospheric Administration, to the extent of the authority provided by law or delegated by the Director, Office of Management and Budget (hereafter referred to collectively as “the non-DoD Components”).

**§ 281.3 Definitions.**

(a) *Armed Forces.* The Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

(b) *Claim.* A demand for money or property under one of the following statutes: 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, or 32 U.S.C. 714.

(c) *Secretary concerned.* The Secretary of the Army, with respect to matters concerning the Army. The Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a Service in the Navy. The Secretary of the Air Force, with respect to matters concerning the Air Force. The Secretary of Transportation, with respect to matters concerning the Coast Guard when it is not operating as a Service in the Navy. The Secretary of Commerce, with respect to matters concerning the NOAA. The Secretary of Health and Human Services, with respect to matters concerning the PHS.

(d) *Settlement.* A claim and the amount due that is administratively determined to be valid.

(e) *Uniformed Services.* The Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Commissioned Corps of the PHS and the NOAA.

**§ 281.4. Policy.**

It is DoD policy that:

(a) The claim settlement and advance decision authorities that, by statute or delegation, are vested in the Department of Defense or the Secretary of Defense shall be exercised by the officials designated in this part. Appendix A to

this part describes the claims included under these functional authorities.

(b) Claims shall be settled and advance decisions shall be rendered in accordance with pertinent statutes and regulations, and after consideration of other relevant authorities.

**§ 281.5 Responsibilities and functions.**

(a) The *General Counsel of the Department of Defense* shall:

(1) Settle claims that the Secretary of Defense is authorized to settle under 31 U.S.C. 3702 (including claims under 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, and 32 U.S.C. 714).

(2) Consider, and grant or deny, a request by the Secretary concerned under 31 U.S.C. 3702 to waive the time limit for submitting certain claims.

(3) Render advance decisions under 31 U.S.C. 3529 that the Secretary of Defense is authorized to render, and oversee the submission of requests for an advance decision arising from the activity of a DoD Component that are addressed to officials outside the Department of Defense.

(4) Develop overall claim settlement and advance decision policies; and promulgate procedures for settling claims, processing requests for an advance decision (including overseeing the submission of requests for an advance decision arising from the activity of a DoD Component that are addressed to officials outside the Department of Defense), and rendering advance decisions. Procedures for settling claims shall include an initial determination process and a process to appeal an initial determination.

(b) The *Heads of the DoD Components* shall:

(1) Establish procedures within the Component for processing claims and for submitting requests for an advance decision arising from the Component's activity in accordance with this part and procedures promulgated under paragraph (a)(4) of this section.

(2) Pay claims under 10 U.S.C. 2771 and 32 U.S.C. 714, if applicable.

(3) Ensure compliance with this part and policies and procedures promulgated under paragraph (a)(4) of this section.

(c) The *Heads of the Non-DoD Components*, with respect to claims arising from that Component's activity under 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, or 37 U.S.C. 554, shall:

(1) Establish procedures within the Component for processing claims and for submitting requests for an advance decision in accordance with this part and procedures promulgated under paragraph (a)(4) of this section.

(2) Pay claims under 10 U.S.C. 2771, if applicable.

**Appendix A to Part 281—Claims Description**

The Secretary of Defense is authorized to perform the claim settlement and advance decision functions for claims under the following statutes:

(a) 31 U.S.C. 3702, concerning claims in general when there is no other settlement authority specifically provided for by law.<sup>1</sup>

(b) 10 U.S.C. 2575, concerning the disposition of unclaimed personal property on a military installation.

(c) 10 U.S.C. 2771, concerning the final settlement of accounts of deceased members of the armed forces (but not the National Guard).<sup>2</sup>

(d) 24 U.S.C. 420, 10 U.S.C. 4712, and 10 U.S.C. 9712 concerning the disposition of the effects of deceased residents of the Armed Forces Retirement Home.

(e) 37 U.S.C. 554, concerning the sale of personal property of members of the Uniformed Services who are in a missing status.

(f) 32 U.S.C. 714, concerning the final settlement of accounts of deceased members of the National Guard.<sup>3</sup>

Dated: November 4, 2002.

**Patricia L. Toppings,**  
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 282****RIN 0790–AG89****Procedures for Settling Personnel and General Claims and Processing Advance Decision Requests**

**AGENCY:** Defense Office of Hearings and Appeals, Office of the General Counsel of the Department of Defense.

**ACTION:** Proposed rule.

<sup>1</sup> This includes claims involving Uniformed Services members' pay, allowances, travel, transportation, payment for unused accrued leave, retired pay, and survivor benefits, and claims for refunds by carriers for amounts collected from them for loss or damage to property they transported at Government expense; also included are other claims arising from the activity of a DoD Component. However, the Director of the Office of Personnel Management performs these functions for claims involving civilian employees' compensation and leave; and the Administrator of General Services performs these functions for claims involving civilian employees' travel, transportation, and relocation expenses.

<sup>2</sup> Claims under this statute are actually settled under the authority in 31 U.S.C. 3702, because there is no specific settlement authority in the statute.

<sup>3</sup> Claims under this statute are actually settled under the authority in 31 U.S.C. 3702, because there is no specific settlement authority in the statute.

**SUMMARY:** This rule proposes policy and prescribes procedures for processing and settling personnel and general claims and for processing requests for an advance decision. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense. Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding \$1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignments of the Comptroller General's former duties within the Department of Defense with little impact on the public.

**DATES:** Consideration will be given to all comments received on or before January 13, 2003.

**ADDRESSES:** Send comments to the Defense Office of Hearings and Appeals, ATTN: Claims Division, P.O. Box 3656, Arlington, VA 22203-1995.

**FOR FURTHER INFORMATION CONTACT:** Michael Hipple, 703-696-8510.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866, "Regulatory Planning and Review"**

The Director of the Defense Office of Hearings and Appeals has determined that this rule is not a significant rule because it does not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact on entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive order.

**Public Law 96-354, "Regulatory Flexibility Act"**

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have a significant economic impact on a substantial number of small entities because this rule affects members of the Uniformed Services, Federal employees and transportation carriers and provides procedures by which their claims against the United States will be adjudicated. The same minimal requirements for submitting a claim are applicable to members and transportation carriers.

**Public Law 96-511, "Paperwork Reduction Act"**

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not impose information collection requirements.

**Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"**

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not involve a Federal Mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

**Executive Order 13132, "Federalism"**

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

**List of Subjects in 32 CFR Part 282**

Administrative practice and procedure, Armed forces, Claims.

Accordingly, 32 CFR part 282 is proposed to be added to subchapter M to read as follows:

**PART 282—PROCEDURES FOR SETTLING PERSONNEL AND GENERAL CLAIMS AND PROCESSING ADVANCE DECISION REQUESTS**

Sec.

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- 282.2 Applicability.
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- 282.5 Responsibilities and functions.
- 282.5 Submitting a claim.
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282.9 Disposition of claims upon settlement in general.

282.10 Requests for an advance decision.

282.11 Publication.

Appendix A to Part 282—Claims Description

Appendix B to Part 282—Submitting a Claim

Appendix C to Part 282—Processing a Claim

Appendix D to Part 282—Appeals

Appendix E to Part 282—Requests for an Advance Decision Affecting a Claim

**Authority:** 5 U.S.C. 552a; 10 U.S.C. 2575, 2771, 4712, 9712; 24 U.S.C. 420; 31 U.S.C. 3529, 3702; 32 U.S.C. 714; 37 U.S.C. 554.

**§ 282.1 Purpose.**

This part implements policy under 32 CFR part 281 and prescribes procedures for processing and settling personnel and general claims under 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, 32 U.S.C. 714 and for processing requests for an advance decision under 31 U.S.C. 3529 related to those personnel and general claims.

**§ 282.2 Applicability.**

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as "the DoD Components").

(b) The Coast Guard, when it is not operating as a Service in the Navy, and the Commissioned Corps of the Public Health Service and the National Oceanic and Atmospheric Administration, to the extent of the authority provided by law or delegated by the Director, Office of Management and Budget (hereafter referred to collectively as "the non-DoD Components").

(c) Certain claim settlement and advance decision functions that, by statute or delegation, are vested in the Department of Defense or the Secretary of Defense. Appendix A to this part describes the claims included under these functional authorities.

**§ 282.3 Definitions.**

(a) *Armed Forces.* The Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

(b) *Claim.* A demand for money or property under one of the following statutes: 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, or 32 U.S.C. 714.

(c) *Committee.* The person or persons invested, by order of a proper court, with the guardianship of a minor or

incompetent person and/or the estate of a minor or incompetent person.

(d) *Component concerned.* The Component from whose activity a claim arose.

(e) *Final action.* A finding by the appropriate official under this part concerning a claim from which there is not right to appeal or request reconsideration, or concerning which the time limit prescribed in this part for submitting an appeal or request for reconsideration has expired without such a submission.

(f) *Member.* A member or former member of the Uniformed Services.

(g) *Secretary concerned.* The Secretary of the Army, with respect to matters concerning the Army. The Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a Service in the Navy. The Secretary of the Air Force, with respect to matters concerning the Air Force. The Secretary of Transportation, with respect to matters concerning the Coast Guard when it is not operating as a Service in the Navy. The Secretary of Commerce, with respect to matters concerning the NOAA. The Secretary of Health and Human Services, with respect to matters concerning the PHS.

(h) *Settlement.* A claim and the amount due that is administratively determined to be valid.

(i) *Uniformed Services.* The Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Commissioned Corps of the PHS and the NOAA.

#### § 282.4 Policy.

It is DoD policy that claims shall be processed and settled and advanced decisions rendered in accordance with all pertinent statutes and regulations, and after consideration of other relevant authorities.

#### § 282.5 Responsibilities and functions.

(a) The *General Counsel of the Department of Defense*, or designee, shall:

(1) Upon the request of the Director, DOHA, consult on, or render legal opinions concerning, questions of law that arise in the course of the performance of the Director's responsibilities under paragraph (b) of this section.

(2) Render advance decisions under 31 U.S.C. 3529 and oversee the submission of requests for an advance decision arising from the activity of a DoD Component that are addressed to officials outside DoD in accordance with this part.

(b) The *Director, Defense Office of Hearings and Appeals (DOHA)*, or

designee, under the General Counsel of the Department of Defense (as the Director, Defense Legal Services Agency), shall:

(1) Consider, and grant or deny, a request by the Secretary concerned under 31 U.S.C. 3702(e) to waive the time limit for submitting certain claims in accordance with 32 CFR part 281 and this part.

(2) Consider appeals from an initial determination, and affirm, modify, reverse, or remand the initial determination in accordance with 32 CFR part 281, this part, and relevant DoD Office of General Counsel opinions.

(c) The *House of the DoD Components*, or designees, shall:

(1) Process claims under 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, and 32 U.S.C. 714 in accordance with this part.

(2) Ensure that requests for an advance decision that originate in the Component are prepared and submitted in accordance with this part.

(3) Pay claims as provided in a final action in accordance with this part.

(d) The *Heads of the Non-DoD Components*, or designees, with respect to claims arising from the Component's activity under references 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, or 37 U.S.C. 554, shall:

(1) Process claims in accordance with this part.

(2) Ensure that requests for an advance decision that originate in the Component are prepared and submitted in accordance with this part.

(3) Pay claims as provided in a final action in accordance with this part.

#### § 282.6 Submitting a claim.

The procedures a claimant must follow to submit a claim are at Appendix B to this part.

#### § 282.7 Processing a claim.

The procedures a Component must follow in processing a claim are at Appendix C to this part.

#### § 282.8 Appeals.

The procedures for appealing findings in initial determinations are at Appendix D to this part.

#### § 282.9 Disposition of claims upon settlement in general.

(a) The appropriate official for the Component concerned shall pay a claim in accordance with the final action concerning the claim.

(b) Where state law requires, a committee must be appointed for a minor or incompetent person in accordance with state law before payment may be made.

#### § 282.10 Requests for an advance decision.

Procedures for requesting an advance decision under 31 U.S.C. 3529 concerning the propriety of a payment or voucher certification related to claims addressed in this part are at Appendix E to this part.

#### § 282.11 Publication.

In accordance with 5 U.S.C. 552a, the Director, DOHA, or designee, shall make redacted copies of responses to request for reconsideration and advance decisions by the General Counsel of the Department of Defense, or designee, available for public inspection and copying at DOHA's public reading room and on the worldwide web.

#### Appendix A to Part 282—Claims Description

The Secretary of Defense is authorized to perform the claims settlement and advance decision functions for claims under the following statutes:

(a) 31 U.S.C. 3702, concerning claims in general when there is no other settlement authority specifically provided for by law.<sup>1</sup>

(b) 10 U.S.C. 2575, concerning the disposition of unclaimed personal property on a military installation.

(c) 10 U.S.C. 2771, concerning the final settlement of accounts of deceased members of the armed forces (but not the National Guard).<sup>2</sup>

(d) 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, concerning the disposition of the effects of deceased residents of the Armed Forces Retirement Home.

(e) 37 U.S.C. 554, concerning the sale of personal property of members of the Uniformed Services who are in a missing status.

(f) 32 U.S.C. 714, concerning the final settlement of accounts of deceased members of the National Guard.<sup>3</sup>

#### Appendix B to Part 282—Submitting a Claim

(a) *Who May Submit a Claim.* Any person ("claimant") may submit a claim who has a demand for money or property against the government under 31 U.S.C. 3702, 10 U.S.C.

<sup>1</sup> This includes claims involving Uniformed Services members' pay, allowances, travel, transportation, payment for unused accrued leave, retired pay, and survivor benefits, and claims for refund by carriers for amounts collected from them for loss or damage to property they transported at Government expense; also included are other claims arising from the activity of a DoD Component. However, the Director of the Office of Personnel Management performs these functions for claims involving civilian employees' compensation and leave; and the Administrator of General Services performs these functions for claims involving civilian employees' travel, transportation, and relocation expenses.

<sup>2</sup> Claims under this statute are actually settled under the authority in 31 U.S.C. 3702, because there is no specific settlement authority in the statute.

<sup>3</sup> Claims under this statute are actually settled under the authority in 31 U.S.C. 3702, because there is no specific settlement authority in the statute.

2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, or 32 U.S.C. 714.

(b) *Where to Submit a Claim.* A claimant must submit a claim to the Component concerned<sup>4</sup> (that is, to the Component from whose activity the claim arose) in accordance with guidance provided by that Component. A claim that is submitted somewhere other than to the Component concerned does not stop the running of the time limit in paragraph (f) of this Appendix. It is the claimant's responsibility to submit a claim properly.

(c) *Format of a Claim.* A claimant must submit a claim in the format prescribed by the Component concerned. It must be written and be signed by the claimant (in the case of a claim on behalf of a minor or incompetent person, there are additional requirements explained at paragraph (e) of this Appendix) or by the claimant's authorized agent or attorney (there are additional requirements explained at paragraph (d) of this Appendix). In addition, it should:

- (1) Provided the claimant's social security number or Employee Identification number.
- (2) Provide the claimant's mailing address.
- (3) Provide the claimant's telephone number.
- (4) State the amount claimed.
- (5) State the reasons why the government owes the claimant that amount.
- (6) Have attached copies of documents referred to in the claim.
- (7) Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the claimant or other persons in support of the claim.

(d) *Claim Submitted by Agent or Attorney.* In addition to the requirements in paragraph (c) of this Appendix, a claim submitted by the claimant's agent or attorney must include or have attached a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the claimant.

(c) *Claim Submitted on Behalf of a Minor or Incompetent Person.* In addition to the requirements in paragraph (c) of this Appendix:

- (1) If a guardian or committee has not been appointed, a claim submitted on behalf of a minor or incompetent person must:
  - (i) State the claimant's relationship to the minor or incompetent person.
  - (ii) Provide the name and address of the person having care and custody of the minor or incompetent person.
  - (iii) Include an affirmation that any moneys received will be applied to the use and benefit of the minor or incompetent person, and that the appointment of a guardian or committee is not contemplated.

(2) If a guardian or committee has been appointed, a claim on behalf of a minor or incompetent person must include or have attached a certificate of the court showing the

appointment and qualification of the guardian or committee.

(f) *When to Submit a Claim.* A claimant must submit a claim so that it is received by the Component concerned within the time limit allowed by statute.

(1) Claimants must submit claims within these statutory time limits.<sup>2</sup>

(i) Claims on account of Treasury checks under 31 U.S.C. 3702(c) must be received within 1 year after the date of issuance.

(ii) Claims under 31 U.S.C. 3702(b) (most other claims, including claims under 10 U.S.C. 2771 and 32 U.S.C. 714) must be received within 6 years of the date the claim accrued. (A claim accrues on the date when everything necessary to give rise to the claim has occurred.) The time limit for claims of members of the Armed Forces that accrue during war or within 5 years before war begins, is 6 years from the date the claim accrued or 5 years after peace is established, whichever is later.

(iii) Claims under 10 U.S.C. 2575(d)(3) must be received within 5 years after the date of the disposal of the property to which the claim relates.

(iv) Claims under 24 U.S.C. 420(d)(1), 10 U.S.C. 4712, and 10 U.S.C. 9712 must be received within 6 years after the death of the deceased resident.

(v) Claims under 37 U.S.C. 554(h) must be received before the end of the 5-year period from the date the net proceeds from the sale of the missing person's personal property are covered into the Treasury.

(2) The time limits set by statute may not be extended or waived.<sup>3</sup> Although the issue of timeliness normally will be raised upon initial submission (as explained at Appendix C to this part, paragraph (b)), the issue may be raised at any point during the claim settlement process.

(g) *Claimant Must Prove the Claim.* The Claimant must prove, by clear and convincing evidence, on the written record that the United States is liable to the claimant for the amount claimed.

### Appendix C to Part 282—Processing a Claim

(a) *Initial Component Processing.* Upon receipt of a claim, the Component concerned<sup>1</sup> must:

- (1) Date stamp the claim on the date received.
- (2) Determine whether the claim was received within the required time limit (time limits are summarized at Appendix B to this

<sup>2</sup>Under the Soldiers' and Sailors' Civil Relief Act of 1940, periods of active military service are not included in calculating whether a claim has been received within these statutory time limits.

<sup>3</sup>There is an exception for certain claims described in 31 U.S.C. 3702(e). In those cases, the Secretary of Defense may, upon the request of the Secretary concerned, waive the time limits in paragraphs (f)(1)(i) and (f)(1)(ii) of this Appendix. Appendix C of this part, paragraph (d), explains which claims qualify and the procedures that apply.

<sup>1</sup>Depending on the context, the term "Component concerned" or "Component," as used in this Appendix, means the official designated by the head of the Component concerned or by Component regulations to perform the function or take the action indicated.

part, paragraph (f)), and follow the procedures in paragraph (b) of this Appendix if the claim was not timely.

(3) Investigate the claim.

(4) Decide whether the claimant provided clear and convincing evidence that proves all or part of the claim.

(5) Issue an initial determination that grants the claim to the extent proved or denies the claim, as appropriate. The initial determination must state how much of the claim is granted and how much is denied, and must explain the reasons for the findings.

(6) Notify the claimant of the initial determination. The Component must send the claimant a copy of the initial determination and a notice that explains:

(i) The action the Component will take on the claim, if the initial determination is or becomes a final action (the finality of an initial determination is explained at paragraph (c) of this Appendix); and

(ii) The procedures the claimant must follow to appeal an initial determination that denies all or part of the claim (those appeal procedures are explained at Appendix D to this part), if applicable.

(b) *Untimely Claims.* When the Component concerned determines that a claim was not received within the statutory time limit, the component must make an initial determination of untimely receipt.

(1) The initial determination must cite the applicable statute and explain the reasons for the finding of untimely receipt. The Component must send the initial determination to the claimant with a notice that:

(i) States the claim was not received within the statutory time limit and, therefore, may not be considered, unless that finding is reversed on appeal, and explains how the claimant may appeal the finding (those appeal procedures are explained at Appendix D to this part); and either

(ii) If the claim does not qualify under 31 U.S.C. 3702(e), states that the statutory time limit may not be extended or waived; or

(iii) If the claim does qualify under 31 U.S.C. 3702(e), states that the claim may be further considered only if the time limit is waived, and explains how the claimant may apply for a Secretarial request for waiver (paragraph (d) of this Appendix explains which claims qualify and the procedures for Secretarial requests).

(2) Except in cases where a claimant has applied under paragraph (d) of this Appendix to have the Secretary concerned request a waiver of the time limit, the Component must return the claim to the claimant when the initial determination becomes a final action with a notice that the finding in the initial determination is final and, therefore, the claim may not be considered. If the claim qualifies under 31 U.S.C. 3702, the notice must also state that the claimant may resubmit the claim with an application under paragraph (d) of this Appendix.

(c) *Finality of an Initial Determination.* An initial determination that grants all of a claim is a final action when it is issued. Otherwise, an initial determination (including one of untimely receipt) is a final action of the Component concerned does not receive an

<sup>4</sup>Depending on the context, the term "Component concerned" or "Component," as used in this enclosure, means the official designated by the head of the Component concerned or by Component regulations to perform the function or take the action indicated.

appeal within 30 days of the date of the initial determination (plus any extension of up to 30 additional days granted by the Component concerned for good cause shown).

(d) *Secretarial Requests for Waiver of Certain Time Limits.* When the Component concerned determines that a claim was not received within the statutory time limit is 31 U.S.C. 3702(b) or (c), the claimant may apply to have the Secretary concerned request a waiver of the time limit. Waiver is permitted only for those claims that satisfy the requirements of 31 U.S.C. 3702(e).<sup>2</sup> This provision confers no right or entitlement on a claimant. It is solely within the discretion of the Secretary concerned whether to request such a waiver in a particular case.

(1) The claim must contain the information and documents that are generally required for claims (those requirements are explained at Appendix B to this part).

(2) The Component concerned must investigate the claim and make an initial determination concerning the merits of the claim (these are the actions required in paragraphs (b), (c), and (d) of this Appendix).

(3) If the initial determination grants all or part of the claim, and if the Secretary concerned agrees with the determination, the Secretary may request that the time limit be waived. Requests must be in writing and signed by the Secretary concerned. (This authority may not be delegated below the level of Under Secretary.)

(i) The Secretary concerned shall forward the request to: Defense Office of Hearings and Appeals, Claims Division, P.O. Box 3656, Arlington, VA 22203-1995.

(ii) The entire record concerning the claim, including the initial determination, must be attached to the request.

(4) The Director, DOHA, must review the request and the written record and must:

(i) Grant the request and waive the statutory time limit, if the Director finds that all or part of the claim has been proven. The Director may also modify the finding concerning the amount of the claim that has been proven.

(ii) Deny the request, if the Director finds that no part of the claim has been proven.

(iii) Notify the Secretary concerned and the claimant of the decision and the reasons for the findings.

(5) In the event the Director, DOHA, denies the request, or grants the request but modifies the finding concerning the amount of the claim proven, the Secretary concerned or the claimant may request reconsideration (the procedures are explained at Appendix D to this part). The Director's decision is a final action if the Director does not receive a request for reconsideration within 30 days of the date of the Director's decision (plus any extension of up to 30 additional days granted by the Director for good cause shown).

<sup>2</sup>When this Instruction was issued, 31 U.S.C. 3702(e) allowed time limit waivers only for claims up to \$25,000 for either pay, allowances, and payment for unused accrued leave under title 37, U.S.C., or retired pay under title 10, U.S.C. Since 31 U.S.C. 3702(e) could be amended at any time to modify these restrictions, always consult the current provisions of that Section to determine which claims are included.

## Appendix D to Part 282—Appeals

(a) *Who May Appeal.* A claimant may appeal if an initial determination denies all or part of a claim or finds that the claim was not received by the Component concerned within the time limit required by statute; however, the decision of the Secretary concerned not to request waiver of the time limit is not appealable except to the Secretary concerned, if the Secretary as a matter of discretion provides for such appeals.

(b) *When and Where to Submit an Appeal.* A claimant's appeal must be received by the Component concerned<sup>1</sup> within 30 days of the date of the initial determination. The Component may extend this period for up to an additional 30 days for good cause shown. No appeal may be accepted after this time has expired. An appeal sent directly to the Defense Office of Hearings and Appeals (DOHA)<sup>2</sup> is not properly submitted.

(c) *Content of an Appeal.* No specific format is required; however, the appeal must be written and be signed by the claimant, the claimant's authorized agent, or the claimant's attorney. It also should:

(1) Provide the claimant's mailing address;

(2) Provide the claimant's telephone number;

(3) Provide the claimant's social security number or Employer Identification Number, if the claimant is a business firm;

(4) State the amount claimed on appeal, or that the appeal is from a finding of untimely receipt, whichever applies;

(5) Identify specific:

(i) Errors or omissions of material and relevant fact,

(ii) Legal considerations that were overlooked or misapplied, and

(iii) Findings that were arbitrary, capricious, or an abuse of discretion;

(6) Present evidence of the correct or additional facts alleged;

(7) Explain the reasons the findings should be reversed or modified;

(8) Have attached copies of documents referred to in the appeal; and

(9) Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the claimant or other persons in support of the appeal.

(d) *Component's Review.* The Component concerned must review a claimant's appeal, and affirm, modify, or reverse the initial determination.

(1) If the appeal concerns the denial of all or part of the claim and the Component grants the entire claim, or grants the claim to the extent requested in the appeal, the Component must notify the claimant in writing and explain the action the

<sup>1</sup>Depending on the context, the term "Component concerned" or "Component," as used in this Appendix, means the official designated by the head of the Component concerned or by Component regulations to perform the function or take the action indicated.

<sup>2</sup>Depending on the context, "DOHA" as used in this Enclosure, means the Director, Defense Office of Hearings and Appeals, or the DOHA Claims Appeals Board or other designee designated by the Director to perform the function or take the action indicated.

Component will take on the claim. This is a final action.

(2) If the appeal concerns the untimely receipt of the claim and the Component determines that the claim was received within the time limit required by statute, the Component must notify the claimant in writing and process the claim on the merits.

(3) In all other cases, the Component must forward the appeal to DOHA in accordance with paragraph (e) of this Appendix. If the appeal concerns an initial determination of untimely receipt, the Component should not investigate, or issue an initial determination concerning, the merits of the claim before forwarding the appeal. The Component must prepare a recommendation and administrative report (as explained in paragraph (f) of this Appendix). The Component must send a copy of the administrative report to the claimant, with a notice that the claimant may submit a rebuttal to the Component (as explained in paragraph (g) of this Appendix).

(e) *Submission of Appeal to DOHA.* No earlier than 31 days after the date of the administrative report, or the day after the claimant's rebuttal period, as extended, expires, the Component must send the entire record along with the recommendation and the administrative report required by paragraph (f) of this Appendix to: Defense Office of Hearings and Appeals, Claims Division, P.O. Box 3656, Arlington, Virginia 22203-1995. The record sent to DOHA shall include specific identification of any major policy issue(s) and a statement as to whether the amount in controversy exceeds \$100,000 either in the instant claim or in the aggregate for directly related claims. If the amount in controversy exceeds \$100,000, a full description of the financial impact shall be provided.

(f) *Recommendation and Administrative Report.* The recommendation and administrative report required by paragraph (d) of this Appendix must include:

(1) The name of any Uniformed Service member or employee involved;

(2) The Component's file reference number;

(3) The claimant's social security number or Employer Identification Number, if the claimant is a business firm;

(4) The Component's recommendation (and the reasons for it) for the disposition of the claim;

(5) Relevant and material documents (such as correspondence, business records, and witness statements), as attachments; and

(6) Complete copies of regulations, instructions, memorandums of understanding, tariffs and/or tenders, solicitations, contracts, or rules cited by the claimant or the Component, if a copy has not been previously provided, or is not available readily via electronic means.

(g) *Claimant's Rebuttal.* A claimant may submit a written rebuttal, signed by the claimant or the claimant's agent or attorney, in response to the recommendation and administrative report. The rebuttal must be submitted to the Component within 30 days of the date of the recommendation and administrative report. The Component may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should include:

(1) An explanation of the points and reasons for disagreeing with the report;

(2) The Component's file reference number;

(3) Any documents referred to in the rebuttal; and

(4) Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the claimant or other persons in support of the rebuttal.

(h) *Action by the Component.* The Component must:

(1) Date stamp the claimant's rebuttal on the date it is received;

(2) Send the entire record to DOHA, but no earlier than 31 days after the date of the report, or the day after the claimant's rebuttal period, as extended, expires (as explained in paragraph (e) of this Appendix).

(i) *DOHA Appeal Decision.* Except as provided in paragraph (p) of this Appendix, DOHA must base its decision on the written record, including the recommendation and administrative report and any rebuttal by the claimant. DOHA shall coordinate its decision in advance with the Office of the General Counsel of the Department of Defense when the appeal decision affects:

(1) Major policy issues;

(2) A claim that is quasi-contractual in nature and arises from the activity of a DoD Component, but the claim was not settled under usual acquisition procedures; or

(3) When the amounts in controversy exceed \$100,000, either for the instant claim or in the aggregate for directly related claims. The written decision must:

(i) Affirm, modify, reverse, or remand the Component's determination (and, if the issue is untimely receipt and there is a finding that the claim was timely received, may either consider and decide the claim on the merits or return the claim to the Component concerned for investigation and initial determination on the merits);

(ii) State the amount of the claim that is granted and the amount that is denied and/or state that the claim was or was not received within the statutory time limit, as appropriate; and

(iii) Explain the reasons for the decision.

(j) *Processing After the Appeal Decision.* After issuing an appeal decision, DOHA must:

(1) Send the claimant the decision and notify the claimant of:

(i) The appropriate Component action on the claim as a consequence of the decision, if it is or becomes a final action (as explained in paragraph (k) of this Appendix); and

(ii) The procedures under this enclosure to request reconsideration (as explained in paragraphs (l) through (n) of this Appendix), if the decision does not grant the claim to the extent requested, or does not contain a finding of timely receipt, as the case may be.

(2) Notify the Component concerned of the decision, and of the appropriate Component on the claim as a consequence of the decision.

(k) *Finality of a DOHA Appeal Decision.* An appeal decision that finds that the claim was timely received is a final action when issued. Otherwise, an appeal decision is a final action if DOHA does not receive a request for reconsideration within 30 days of the date of the appeal decision (plus any

extension of up to 30 additional days granted by DOHA for good cause shown). NOTE: In the case of a DOHA appeal decision issued before [the effective date of this part] that denied all or part of the claim, a request for reconsideration by the General Counsel of the Department of Defense, or designee, may be submitted within 60 days of [the effective date of this part]. The General Counsel of the Department of Defense, or designee, shall consider such requests and affirm, modify, reverse, or remand the DOHA appeal decision. Requests for reconsideration by the General Counsel of the Department of Defense, or designee, received more than 60 days after [the effective date of this part] will not be accepted. Requests must be submitted to the address in paragraph (e) of this Appendix. The provisions of paragraph (n) of this Appendix apply.

(l) *Who May Request Reconsideration.* A claimant or the Component concerned, or both, may request reconsideration of a DOHA appeal decision.

(m) *When and Where to Submit a Request for Reconsideration.* DOHA must receive a request for reconsideration within 30 days of the date of the appeal decision.<sup>3</sup> DOHA may extend this period for up to an additional 30 days for good cause shown. No request for reconsideration may be accepted after this time has expired. A request for reconsideration must be sent to DOHA at the address in paragraph (e) of this Appendix.

(n) *Content of a Request for Reconsideration.* The requirements of paragraph (c) of this Appendix, concerning the contents of an appeal, apply to requests for reconsideration.

(o) *DOHA's Review of a Request for Reconsideration.*

(1) No earlier than 31 days after the date of the appeal decision, or the day after the last period for submitting a request, as extended, expires, DOHA must:

(i) Consider a request or requests for reconsideration;

(ii) Affirm, modify, reverse, or remand the appeal decision (and, if the issue is untimely receipt and there is a finding that the claim was timely received, may either consider and decide the claim on the merits or return the claim to the Component concerned for investigation and initial determination on the merits);

(iii) Prepare a response that explains the reasons for the finding.

(iv) Send the response to the claimant and the Component concerned and notify both of the appropriate action on the claim.

(2) The response is a final action. It is precedent in the consideration of all claims covered by this part unless otherwise stated in the document.

(p) *Consideration of Appeals and Requests for Reconsideration.* When considering an appeal or request for reconsideration, DOHA may:

(1) Consider additional evidence not included in the record as presented. The claimant and the Component concerned must

be provided a copy of the additional evidence and must be given a reasonable time to comment.

(2) Take administrative notice of matters that are generally known or are capable of confirmation by resort to sources whose accuracy cannot reasonably be questioned.

(3) Remand a matter to the Component with instructions to provide additional information.

#### **Appendix E to Part 282—Requests for an Advance Decision Affecting a Claim**

(a) *Who May Request an Advance Decision.* A disbursing or certifying official or the head of a Component may request an advance decision on a question involving:

(1) A payment the disbursing official or head of the Component will make; or

(2) A voucher presented to a certifying official for certification.

(b) *Who May Render an Advance Decision.* The following officials are authorized to render advance decision concerning the matters indicated:

(1) The Secretary of Defense for requests involving claims under:

(i) 31 U.S.C. 3702 for Uniformed Services members' pay, allowances, travel, transportation, retired pay, and survivor benefits, and by carriers for amounts collected from them for loss or damage to property they transported at Government expense.

(ii) 31 U.S.C. 3702 that are not described in paragraph (b)(1)(i) of this Appendix and that arise from the activity of a DoD Component, when there is not other settlement authority specifically provided by law.

(iii) 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, and 32 U.S.C. 714. (Appendix A to this part describes these claims.)

(2) The Director of the Office of Personnel Management for requests involving claims for civilian employees' compensation and leave.

(3) The Administrator of General Services for requests involving claims for civilian employees' travel, transportation, and relocation expenses.

(c) *Where to Submit a Request.* All requests described in paragraph (b)(1) of this Appendix and all other requests arising from the activity of a DoD Component (even if addressed to an official outside the Department of Defense) must be sent through the General Counsel of the Component concerned to: General Counsel, Department of Defense, 1600 Defense Pentagon, Washington, DC 20301-1600.

(d) *Content of a Request.* Requests for an advance decision must:

(1) Specifically request an advance decision pursuant to 31 U.S.C. 3529.

(2) Describe all the relevant facts.

(3) Explain the reasons (both factual and legal) the requester considers the proposed payment to be questionable.

(4) Have attached vouchers, if any, and copies of all other relevant documents relating to the proposed payment.

(5) Have attached a legal memorandum from the General Counsel of the Component concerned that discusses the legality of the proposed payment under the circumstances presented in the request.

<sup>3</sup> With respect to appeal decisions issued before [the effective date of this part], the request for reconsideration by DOHA must be received within 30 days of [the effective date of this part].

(6) Comply with any other requirements established by an advance decision authority outside DoD.

(e) *Advance Decisions.* The General Counsel of the Department of Defense, or designee, must take action under paragraphs (e)(1), (e)(2), or (e)(3) of this Appendix, whichever applies.

(1) If the request is described in paragraph (b)(1) of this Appendix, the General Counsel of the Department of Defense, or designee, must review the request and issue an advance decision, unless the General Counsel of the Department of Defense, or designee, elects to proceed under paragraph (e)(3) of this Appendix.

(i) The General Counsel of the Department of Defense, or designee, must send the decision, through the General Counsel of the Component concerned, to the requester, and must send a copy of the decision to the Director, Defense Office of Hearings and Appeals.

(ii) The decision is controlling in the case; the reliance of certifying and disbursing officials on it in their disposition of the case is evidence that those officials have exercised due diligence in the performance of their duties.

(iii) An advance decision is precedent in similar claims under this Instruction unless otherwise stated in the decision.

(2) If the request is not described in paragraph (b)(1) of this Appendix, the General Counsel of the Department of Defense, or designee, must review the request and either:

(i) forward the request to the appropriate advance decision authority and notify the requester of that action; or

(ii) Return the request, through the General Counsel of the Component concerned, to the requester, with a memorandum explaining that under existing legal authorities a request for an advance decision is not necessary. After considering the memorandum, the requester may resubmit the request, through the General Counsel of the component concerned, to the General Counsel of the Department of Defense, or designee. The General Counsel of the Department of Defense, or designee, must forward the request to the appropriate advance decision authority, and notify the requester of that action.

(3) If the request is described in paragraph (b)(1) of this Appendix, and the claim is for not more than \$250, the General Counsel of the Department of Defense, or designee, may refer the request to the General Counsel of the Department of Defense, or designee, may refer the request to the General Counsel, Defense Finance and Accounting Service (DFAS). The General Counsel, DFAS, shall review the request and issue an advance decision.

(i) The General Counsel, DFAS, must send the decision, through the General Counsel of the Component concerned, to the requester, and must send a copy of the decision to the General Counsel of the Department of Defense, or designee.

(ii) The decision is controlling in the case; the reliance of certifying and disbursing officials on it in their disposition of the case is evidence that those officials have exercised

due diligence in the performance of their duties.

(iii) An advance decision issued by the General Counsel, DFAS, under this paragraph is not precedent in similar claims under this part.

Dated: November 4, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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**BILLING CODE 5001-08-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 283

#### RIN 0790-AG90

### Waiver of Debts Resulting From Erroneous Payments of Pay and Allowances

**AGENCY:** Defense Office of Hearings and Appeals, Office of the General Counsel of the Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes policy and assigns responsibilities for considering applications for the waiver of debts resulting from erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services and civilian Department of Defense (DoD) employees. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense. Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding \$1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignment of the Comptroller General's former duties within the Department of Defense with little impact on the public.

**DATES:** Consideration will be given to all comments received on or before January 13, 2003.

**ADDRESSES:** Send comments to the Defense Office of Hearings and Appeals, ATTN: Claims Division, P.O. Box 3656, Arlington, VA 22203-1995.

**FOR FURTHER INFORMATION CONTACT:** Michael Hipple, 703-696-8510.

#### **SUPPLEMENTARY INFORMATION:**

### **Executive Order 12866, "Regulatory Planning and Review"**

The Director of the Defense Office of Hearings and Appeals has determined that this rule is not a significant rule because it does not: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact on entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

### **Public Law 96-354, "Regulatory Flexibility Act"**

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have a significant economic impact on a substantial number of small entities because this rule affects members of the Uniformed Services and Federal employees and provides procedures by which their claims against the United States will be adjudicated.

### **Public Law 96-511, "Paperwork Reduction Act"**

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not impose information collection requirements.

### **Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"**

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not involve a Federal Mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.