

### § 33.40

(1) Unless a petition for review is filed as provided in 31 U.S.C. 3805, after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Department head serves the defendant with a copy of the Department head's decision, a determination that a defendant is liable under §33.3 is final and is not subject to judicial review.

(Authority: 31 U.S.C. 3805(a)(2))

### §33.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Department head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the Department head stays the process immediately. The Department head orders the process resumed only upon receipt of the written authorization of the Attorney General.

(Authority: 31 U.S.C. 3803(b)(3))

### §33.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Department head.

(b) No administrative stay is available following a final decision of the Department head.

(Authority: 31 U.S.C. 3809)

### §33.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Department head imposing penalties or assessments under this part and specifies the procedures for the review.

(Authority: 31 U.S.C. 3805)

### §33.43 Collection of civil penalties and assessments.

Section 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and

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specify the procedures for those actions.

(Authority: 31 U.S.C. 3808(b))

### §33.44 Right to administrative offset.

The amount of any penalty or assessment that has become final, or for which a judgment has been entered under §33.42 or §33.43, or any amount agreed upon in a compromise or settlement under §33.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be under this section against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

(Authority: 31 U.S.C. 3806)

### §33.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part are deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

(Authority: 31 U.S.C. 3807(b))

### §33.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(Authority: 31 U.S.C. 3809)

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(Authority: 31 U.S.C. 3803(j))

(c) The Department head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under §33.42 or during the pendency of any action to collect penalties and assessments under §33.43.

(Authority: 31 U.S.C. 3803(i)(2)(C))

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under §33.42 or of

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any action to recover penalties and assessments under 31 U.S.C. 3806.

(Authority: 31 U.S.C. 3806(f))

(e) The investigating official may recommend settlement terms to the reviewing official, the Department head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Department head, or the Attorney General, as appropriate.

(Authority: 31 U.S.C. 3809)

(f) Any compromise or settlement must be in writing.

(Authority: 31 U.S.C. 3809)

### § 33.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 33.8 within six years after the date on which the claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 33.10(b) is deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

(Authority: 31 U.S.C. 3808)

## PART 35—TORT CLAIMS AGAINST THE GOVERNMENT

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AUTHORITY: Sec. 1(a), 80 Stat. 306; 28 U.S.C. 2672; 28 CFR, part 14.

SOURCE: 45 FR 30834, May 9, 1980, unless otherwise noted.

### Subpart A—General

#### § 35.1 Scope of regulations.

The regulations in this part shall apply only to claims asserted under the Federal Tort Claims Act, as amended, 28 U.S.C. 2671-2680, for money damages against the United States for damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Department of Education while acting within the scope of his office or employment.

### Subpart B—Procedures

#### § 35.2 Administrative claim; when presented; place of filing.

(a) For purposes of the regulations in this part, a claim shall be deemed to have been presented when the Department of Education receives, at a place designated in paragraph (b) of this section, an executed Standard Form 95 or other written notification of an incident accompanied by a claim for money damages in a sum certain for damage to or loss of property, for personal injury, or for death, alleged to have occurred by reason of the incident. A claim which should have been presented to the Department but which was mistakenly addressed to or filed with another Federal agency, shall be deemed to be presented to the Department as of the date that the claim is received by the Department. A claim mistakenly addressed to or filed with the Department shall forthwith be transferred to the appropriate Federal agency, if ascertainable, or returned to the claimant.

(b) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final action by the Secretary or prior to the exercise of the claimant's option to bring suit under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the Department shall have 6 months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C.