

designee. For the purpose of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled only after consultation with the Department of Justice when, in the opinion of the General Counsel or his designee:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party, and the Department is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed \$25,000.

(c) An administrative claim may be adjusted, determined, compromised, or settled only after consultation with the Department of Justice when the Department is informed or is otherwise aware that the United States or an officer, employee, agent, or cost-type contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

#### § 17.9 Referral to Department of Justice.

When Department of Justice approval or consultation is required under § 17.8, the referral or request shall be transmitted to the Department of Justice by the General Counsel of the Department or his designee.

#### § 17.11 Final denial of claim.

Final denial of an administrative claim shall be in writing, and notification of denial shall be sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the Department action, he may file suit in an appropriate U.S. District Court not later than 6 months

after the date of mailing of the notification.

#### § 17.12 Action on approved claim.

(a) Payment of a claim approved under this subpart is contingent on claimant's execution of: (1) A *Claim for Damage or Injury*, Standard Form 95; (2) a claims settlement agreement; and (3) a *Voucher for Payment*, Standard Form 1145, as appropriate. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees, and the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) Acceptance by the claimant, his agent, or legal representative of an award, compromise, or settlement made under section 2672 or 2677 of Title 28, United States Code, is final and conclusive on the claimant, his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and constitutes a complete release of any claim against the United States and against any officer or employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

### Subpart B—Claims Under the Military Personnel and Civilian Employees Claims Act of 1964

AUTHORITY: Sec. 3, 78 Stat. 767 (31 U.S.C. 3721).

SOURCE: 36 FR 24427, Dec. 22, 1971, unless otherwise noted.

#### § 17.40 Scope and purpose.

(a) This subpart applies to all claims filed by or on behalf of employees of the Department of Housing and Urban Development for loss of or damage to personal property which occurs incident to their service with HUD under the Military Personnel and Civilian Employees' Claims Act of 1964. A claim must be substantiated and the possession of the property determined to be reasonable, useful, or proper. The maximum amount that can be paid under any claim under the Act is \$25,000 and property may be replaced in kind at the option of the Government. Nothing

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in this subpart shall be construed to bar claims payable under statutory authority.

(b) HUD is not an insurer and does not underwrite all personal property losses that an employee may sustain. Employees are encouraged to carry private insurance to the maximum extent practicable to avoid large losses or losses which may not be recoverable from HUD. The procedures set forth in this section are designed to enable the claimant to obtain the maximum amount of compensation for his loss or damage. Failure of the claimant to comply with these procedures may reduce or preclude payment of his claim under this subpart.

[36 FR 24427, Dec. 22, 1971, as amended at 48 FR 6536, Feb. 14, 1983]

### § 17.41 Claimants.

(a) A claim pursuant to this subpart may only be made by:

(1) An employee of HUD.

(2) A former employee of HUD whose claim arises out of an incident occurring before his separation from HUD.

(3) Survivors of a person named in paragraph (a) (1) or (2) of this section, in the following order of precedence:

(i) Spouse.

(ii) Children.

(iii) Father or mother, or both.

(iv) Brothers or sisters, or both.

(4) The authorized agent or legal representative of a person named in paragraphs (a) (1), (2), and (3) of this section.

(b) A claim may not be presented by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

### § 17.42 Time limitations.

A claim under this part may be allowed only if:

(a) Except as provided in paragraph (b) of this section, it is filed in writing within 2 years after accrual. For purposes of this part, a claim accrues at the time of the accident or incident causing the loss or damage, or at such time as the loss or damage should have been discovered by the claimant by the exercise of due diligence.

(b) It cannot be filed within the time limits of paragraph (a) of this section, because it accrues in time of war or in

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time of armed conflict in which any armed force of the United States is engaged or if such a war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, and if it is filed not later than 2 years after that cause ceases to exist, or 2 years after the war or armed conflict is terminated, whichever is earlier.

### § 17.43 Allowable claims.

(a) A claim may be allowed only if:

(1) The damage or loss was not caused wholly or partly by the negligent or wrongful act of the claimant, his agent, the members of his family, or his private employee (the standard to be applied is that of reasonable care under the circumstances); and

(2) The possession of the property lost or damaged and the quantity possessed is determined to have been reasonable, useful, or proper under the circumstances; and

(3) The claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this part shall not be disallowed solely because the property was not in the possession of the claimant at the time of the damage or loss, or solely because the claimant was not the legal owner of the property for which the claim is made. For example, borrowed property may be the subject of a claim.

(c) Subject to the conditions in paragraph (a) of this section, and the other provisions of this subpart, any claim for damage to, or loss of, personal property incident to service with HUD may be considered and allowed. The following are examples of the principal types of claims which may be allowed, but these examples are not exclusive and other types of claims may be allowed, unless excluded by §§ 17.44 and 17.45:

(1) *Property loss or damage in quarters or other authorized places.* Claims may be allowed for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, while such property is located at:

(i) Quarters within the 50 States or the District of Columbia that were assigned to the claimant or otherwise provided in kind by the United States;