

claim has been presented, and constitutes a complete release of any claim against the United States and against any employee of the Federal Government whose act or omission gave rise to the claim, by reason of the same subject matter.

PART 178—PROCEDURES FOR SETTLING CLAIMS

Subpart A—Administrative Claims—Compensation and Leave, Deceased Employees' Accounts and Proceeds of Canceled Checks for Veterans' Benefits Payable to Deceased Beneficiaries

Sec.

- 178.101 Scope of subpart.
- 178.102 Procedures for submitting claims.
- 178.103 Claim filed by a claimant's representative.
- 178.104 Statutory limitations on claims.
- 178.105 Basis of claim settlements.
- 178.106 Form of claim settlements.
- 178.107 Finality of claim settlements.

Subpart B—Settlement of Accounts for Deceased Civilian Officers and Employees

- 178.201 Scope of subpart.
- 178.202 Definitions.
- 178.203 Designation of beneficiary.
- 178.204 Order of payment precedence.
- 178.205 Procedures upon death of employee.
- 178.206 Return of unnegotiated Government checks.
- 178.207 Claims settlement jurisdiction.
- 178.208 Applicability of general procedures.

SOURCE: 62 FR 68139, Dec. 31, 1997, unless otherwise noted.

Subpart A—Administrative Claims—Compensation and Leave, Deceased Employees' Accounts and Proceeds of Canceled Checks for Veterans' Benefits Payable to Deceased Beneficiaries

AUTHORITY: 31 U.S.C. 3702; 5 U.S.C. 5583; 38 U.S.C. 5122; Pub. L. No. 104-53, 211, Nov. 19, 1995; E.O. 12107.

§ 178.101 Scope of subpart.

(a) *Claims covered.* This subpart prescribes general procedures applicable to claims against the United States that may be settled by the Director of the Office of Personnel Management pursuant to 31 U.S.C. 3702, 5 U.S.C. 5583

and 38 U.S.C. 5122. In general, these claims involve Federal employees' compensation and leave and claims for proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries.

(b) *Claims not covered.* This subpart does not apply to claims that are under the exclusive jurisdiction of administrative agencies pursuant to specific statutory authority or claims concerning matters that are subject to negotiated grievance procedures under collective bargaining agreements entered into pursuant to 5 U.S.C. 7121(a). Also, these procedures do not apply to claims under the Fair Labor Standards Act (FLSA). Procedures for FLSA claims are set out in part 551 of this chapter.

§ 178.102 Procedures for submitting claims.

(a) *Content of claims.* Except as provided in paragraph (b) of this section, a claim shall be submitted by the claimant in writing and must be signed by the claimant or by the claimant's representative. While no specific form is required, the request should describe the basis for the claim and state the amount sought. The claim should also include:

- (1) The name, address, telephone number and facsimile machine number, if available, of the claimant;
- (2) The name, address, telephone number and facsimile machine number, if available, of the agency employee who denied the claim;
- (3) A copy of the denial of the claim; and,
- (4) Any other information which the claimant believes OPM should consider.

(b) *Agency submissions of claims.* At the discretion of the agency, the agency may forward the claim to OPM on the claimant's behalf. The claimant is responsible for ensuring that OPM receives all the information requested in paragraph (a) of this section.

(c) *Administrative report.* At OPM's discretion, OPM may request the agency to provide an administrative report. This report should include:

- (1) The agency's factual findings;
- (2) The agency's conclusions of law with relevant citations;

§ 178.103

(3) The agency's recommendation for disposition of the claim;

(4) A complete copy of any regulation, instruction, memorandum, or policy relied upon by the agency in making its determination;

(5) A statement that the claimant is or is not a member of a collective bargaining unit, and if so, a statement that the claim is or is not covered by a negotiated grievance procedure that specifically excludes the claim from coverage; and

(6) Any other information that the agency believes OPM should consider.

(d) *Canceled checks for veterans' benefits.* Claims for the proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries must be accompanied by evidence that the claimant is the duly appointed representative of the decedent's estate and that the estate will not escheat.

(e) *Where to submit claims.* (1) All claims under this section should be sent to the Program Manager, Office of Merit Systems Oversight and Effectiveness, Room 7671, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415. Telephone inquiries regarding these claims may be made to (202) 606-7948.

(2) FLSA claims should be sent to the appropriate OPM Oversight Division as provided in part 551 of this chapter.

[62 FR 68139, Dec. 31, 1997, as amended at 65 FR 40967, July 3, 2000]

§ 178.103 Claim filed by a claimant's representative.

A claim filed by a claimant's representative must be supported by a duly executed power of attorney or other documentary evidence of the representative's right to act for the claimant.

§ 178.104 Statutory limitations on claims.

(a) *Statutory limitations relating to claims generally.* Except as provided in paragraphs (b) and (c) of this section or as otherwise provided by law, all claims against the United States Government are subject to the 6-year statute of limitations contained in 31 U.S.C. 3702(b). To satisfy the statutory limitation, a claim must be received by the Office of Personnel Management,

5 CFR Ch. I (1-1-06 Edition)

or by the department or agency out of whose activities the claim arose, within 6 years from the date the claim accrued. The claimant is responsible for proving that the claim was filed within the applicable statute of limitations.

(b) *Claims under the Fair Labor Standards Act.* Claims arising under the FLSA, 29 U.S.C. 207, *et seq.*, must be received by the Office of Personnel Management, or by the department or agency out of whose activity the claim arose, within the time limitations specified in the FLSA.

(c) *Other statutory limitations.* Statutes of limitation other than that identified in paragraph (a) of this section may apply to certain claims. Claimants are responsible for informing themselves regarding other possible statutory limitations.

§ 178.105 Basis of claim settlements.

The burden is upon the claimant to establish the timeliness of the claim, the liability of the United States, and the claimant's right to payment. The settlement of claims is based upon the written record only, which will include the submissions by the claimant and the agency. OPM will accept the facts asserted by the agency, absent clear and convincing evidence to the contrary.

§ 178.106 Form of claim settlements.

OPM will send a settlement to the claimant advising whether the claim may be allowed in whole or in part. If OPM requested an agency report or if the agency forwarded the claim on behalf of the claimant, OPM also will send the agency a copy of the settlement.

§ 178.107 Finality of claim settlements.

(a) The OPM settlement is final; no further administrative review is available within OPM.

(b) Nothing in this subpart limits the right of a claimant to bring an action in an appropriate United States court.

Subpart B—Settlement of Accounts for Deceased Civilian Officers and Employees

AUTHORITY: 5 U.S.C. 5581, 5582, 5583.