U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON IMMIGRATION AND CLAIMS

ONE HUNDRED SIXTH CONGRESS

RULES OF PROCEDURE FOR PRIVATE CLAIMS BILLS

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RULES OF PROCEDURE FOR THE CONSIDERATION OF PRIVATE CLAIMS BILLS

In connection with its jurisdiction over claims, the subcommittee considers private bills extending relief to individuals who have no other existing remedy. The right to petition for a redress of grievances is guaranteed by the first amendment to the Constitution. When called upon to decide whether relief should be granted to persons seeking redress of grievances, the subcommittee is guided by principles of equity and justice. The task of the subcommittee is to determine whether the equities and circumstances of a case create a moral obligation on the part of the Government to extend relief to an individual.

House rule XI provides that the rules of the House are the rules of its committees and subcommittees so far as they are applicable to committee and subcommittee functions. That rule contains specific provisions concerning committee operation and further, in rule XI (2), provides for written committee rules which are to be consistent with the rules of the House. Subject to these requirements, each committee is free to prescribe additional rules it finds necessary to conduct its business. This is recognized in Judiciary Committee rule I which expressly incorporates the applicable House rules. The balance of the committee's rules are addressed to subjects and situations which, from a procedural standpoint, are peculiar to it: Days of meetings; publication of agenda; hearings; proxy voting; broadcasting; jurisdiction, powers, and duties of standing subcommittees; and non-legislative reports. Committee rule VII provides that—

> * * * Subcommittee chairmen shall set dates for hearings and meetings of their respective subcommittees after consultation with the chairman and other subcommittee chairmen with a view toward avoiding simultaneous scheduling of full Committee and subcommittee meetings or hearings whenever possible.

The Subcommittee rules set out in this booklet implement these purposes and principles. These rules have been developed based upon the past exercise of its jurisdiction over private legislation and are intended to im-

plement the provisions of the rules of the House governing the consideration and disposition of private bills.

RULES

1. No consideration shall be given to any bill until the subcommittee has received sufficient evidence. Upon request, the clerk will secure departmental or agency comments on the bill.

2. The chairman may, at his or her discretion, schedule the bill for a hearing.

3. Presentation or oral evidence at hearings on private bills shall be limited to 15 minutes for each side. This rule may be modified by order of the chairman in his discretion.

4. The subcommittee shall not consider any claim which accrued more than 15 years before January 1 of the year in which the first session of the current Congress convenes, unless the claim was favorably reported during the immediately preceding Congress, but this rule will not bar the consideration of those claims which were finally disposed of after that date by a court of Government agency. This rule may be waived only upon order of two-thirds of the subcommittee, present and voting.

NOTE

TIME RULE

An exception is provided in the rule for claims antedating the time limit which had been favorably reported during the immediately preceding Congress. This enables the subcommittee to continue its consideration of claims which had previously been approved by the committee, but not enacted by the Congress.

The rule applies to all claims regardless of the form of the bill. Thus, the rule cannot be avoided by changing a bill which would ordinarily call for settlement by decision of the Congress and direct appropriation into a jurisdictional bill, so as to require determination of the claim by a court or some other authority. It should be noted that the rule applies to the date a claim "accrued," not the date it was presented to the Congress, thereby differing from the ordinary statute of limitations, the operation of which is estopped by formal presentation of the matter, or the filing of suit. Consequently, many claims heretofore presented to the committee cannot, and will not, under the rule, be considered by it. The rule penalizes either for delay in presentation of a claim or delay in the assertion of the claim before the Congress after its presentation.

5. The subcommittee shall not consider any claim adversely reported by it at a previous consideration and tabled by the full committee except upon presentation of new and substantial evidence disclosing a material change in facts which, in the chairman's opinion, is sufficient to warrant reopening the case.

NOTE

BILLS ADVERSELY REPORTED OR REJECTED

While this rule is of long standing, many of the private bills referred to the subcommittee concern claims considered and rejected by it in previous years. The number of bills referred to the subcommittee make it impossible to continue to review cases which were the subjects of unfavorable consideration at a prior time. The subcommittee has adopted the position that a claim considered by it and rejected at a previous consideration should be viewed in the same light as a case which has been adversely decided by a court. In a judicial proceeding, a second case involving the same subject matter would be summarily dismissed by the court, and the subcommittee has concluded that the same considerations apply in matters brought before it.

In applying the exception contained in the rule, the subcommittee has required that the evidence be material in that it relate to the facts of the case and the change in the facts referred to in the rule. Further, the evidence must not have been available, or, with due diligence, capable of having been presented at the time of the prior consideration.

6. The subcommittee shall not consider any claim filed with the Office of Workers' Compensation Programs, Department of Labor, considered on its merits and disallowed; or any bill awarding or increasing compensation to an employee or his dependents in lieu of that prescribed by Chapter 81.—Compensation for Work Injuries, of title 5, United States Code (formerly the Federal Employees' Compensation Act of September 7, 1916, as amended), or otherwise interfering with the provisions and compensation of that chapter, except bills to waive the limitations of time contained in sections 8119, 8121 and 8122, of chapter 81 of title 5 (or of sections 15 to 20, inclusive, of the previous act), and these sections may be waived only upon order of two-thirds of the subcommittee, present and voting.

NOTE

EMPLOYEES' COMPENSATION

This rule has the effect of removing from the committee's jurisdiction the subject of employees' compensation in any but the one permissible form, the time limitation waiver. The subject is not now nor has it ever been considered a proper one for the committee, and it is specifically covered, in all phases, by the codified provisions of the Federal Employees' Compensation Act of September 7, 1916, as amended, now set forth in chapter 81 of title 5, U.S.C. and administered thereunder by the Office of Workers' Compensation Programs, Department of Labor.

Bills to waive the limitations of time contained in sections 8119, 8121 and 8122 of chapter 81 of title 5, U.S.C. (formerly sections 15 to 20, inclusive, of the Employees' Compensation Act of September 7, 1916), may be considered upon vote of two-thirds of the subcommittee. These limitations relate to the time within which claims must be filed with the Office of Workers' Compensation Programs, Department of Labor, the longest allowable period being 5 years. Bills authorizing

their waiver do not in any manner adjudicate the claim involved, a function which is performed by the Office of Workers' Compensation Programs, Department of Labor, under the remaining provisions of chapter 81 (Compensation for Work Injuries) of title 5, U.S.C., as if timely claim has been made direct to that Office in the first instance. As a matter of policy, these bills will include, if approved by the committee, a provision precluding the receipt of benefits for any period prior to their date of approval. In addition, it is customary for such bills to include a limitation requiring presentation of claims thereunder within 6 months from the date of approval. The showing required by the committee to warrant favorable consideration of such a bill is at least a prima facie case, coupled with justification for failure to file within the time prescribed by the act. These are the only bills relating to employees' compensation which the committee will entertain. In the past, private bills have been referred to the committee which would have modified the application of the substantive provisions of the Federal Employee's Compensation Act (now codified in chapter 81 of title 5, U.S.C.) in specific cases. For example, a bill might provide for the granting of compensation in a case where a claim was denied by the Bureau of Employee's Compensation (or the successor Office of Workers' Compensation Programs), or it might provide for greater compensation than that stated in the act, or it might provide compensation in an instance not recognized under the act. The subcommittee will not consider such bills, for rule 7 explicitly bars such consideration.

In the past, the provisions of the Employees' Compensation Act have been extended in a limited manner to employees of the Civil Works Administration, the Civil Conservation Corps, the Works Progress Administration, and to other categories of Claimants. Rule 7 would bar the consideration of bills varying the application of the law in any such instance which would extend the provisions of the act to an individual employee for a disease disability, or compensate him therefor, or which would grant compensation over and above the limited amount, or in any manner interfere with the provisions of the act as extended to specific categories of claimants. The committee has concluded that if relief is extended to Government employees or persons entitled to such benefits under the general law, the remedy is that provided by general law, and alternative remedies cannot be provided by enactment of discriminatory private legislation in selected cases.

7. The subcommittee shall not consider any claim for benefits, compensation, pension, or gratuity by an employee or retiree of the Government, or a member of the Armed Forces or the Reserves, or by his dependents, when the benefits, compensation, pension, or gratuity to which such person claims to be entitled is specifically covered by statutes, which apply in a uniform manner to all similarly situated individuals.

NOTE

BENEFITS, COMPENSATION, PENSION, OR GRATUITY

Civil-service retirement benefits, the persons entitled thereto, the amount thereof, and upon what conditions they may be awarded are fully covered by Chapter 83.—Retirement, of title 5, United States Code.

Similarly, the other benefits and compensation accruing to Federal employees and retirees are provided for by laws that have general ap-

plication. The committee will not entertain private legislation interfering with the general provisions of such laws by conferring a special benefit or privilege on a claimant. Private legislation of this class has not, at any time, been considered proper under the jurisdiction of this committee.

The subjects of benefits, compensation, retirement or pension rights of persons who serve or who previously served in the Armed Forces of the United States are fully covered by public law. Private bills providing for the award of such benefits to persons or their dependents contrary to the system of benefits awarded under applicable law to other similarly situated individuals, will not be entertained by the committee. Such bills would be discriminatory and would set the precedent for an unending stream of similar private legislation. Consideration of these bills is not regarded as included within the proper functions of the subcommittee. As employed in the rule, the term "Armed Forces" is construed to include all members of the Army, Navy, Air Force, Marine Corps, and Coast Guard, and their respective Reserves, and all other persons not engaged in the civil pursuits of the Government.

8. The subcommittee shall not consider any claim for injuries or damage, either to a member or to third persons, resulting from service in or activities by the National Guard maintained within the several States.

NOTE

NATIONAL GUARD

In the application of this rule, the subcommittee is guided by the original authority for the establishment of the National Guard as is set forth in article 1, section 8, clause 16 of the Constitution which includes the following as within the powers of Congress:

"To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of officers and the authority of training the militia according to the discipline prescribed by Congress."

Pursuant to the foregoing and other constitutional provisions, the Congress has provided the necessary laws and authorized the necessary regulations to carry them into execution as in the National Defense Act of 1916, as amended, the National Guard Regulations, and others. While the guard may be employed by the Federal Government under certain conditions, such as war or other national emergency, the statutes are careful in defining the extent to which Federal control may be exercised. In order to insure the effectiveness of the Guard in case of their need and use in emergencies affecting the whole Nation, the Government has some authority over their training, and to compensate for this it provides money for maintenance of the Guard, in part, and loans property for its use. Claims against the United States arising from such training activities may be settled administratively under the authority of section 715 of title 32, U.S.C. or pursuant to the tort claims provisions of chapter 171 of title 28 as amended by the National Guard Tort Claims Act (December 29, 1981, Pub. L. 97–124, 95 Stat. 1666). While the Government assists in National Guard maintenance and training since it is a Reserve component of the Armed Forces of the United States, as to State-directed activity it remains primarily a State organization. State-directed activity may take the form of a mobilization of National Guard units by State executive officers in time of disasters or other disorders, and claims arising from that activity are barred by the rule.

9. The subcommittee shall not consider any claim over which another tribunal, court, or department has jurisdiction, until all remedies under such jurisdiction are exhausted.

NOTE

JURISDICTION OF ANOTHER TRIBUNAL

In the settlement of claims, Congress, is always the place of last resort. If another manner of obtaining redress against the Government has been provided (as in the jurisdiction of the United States Court of Federal Claims, the revenue laws, and bond redemption statutes, for example), it obviously was provided by the Congress, and the committee will insist that such jurisdiction be exhausted. A failure by claimant to furnish the proof required by the court or department for determination of his claim is not exhausting the remedy provided, and the committee will not recognize such cases.

10. The subcommittee shall not consider any claim approved by the Congress and vetoed by the President, except upon a material change in the facts or written evidence that administration disapproval has been withdrawn; and this rule may be waived only upon order of two-thirds of the subcommittee, present and voting.

NOTE

VETOES

In the absence of material change in the facts or written evidence that the administration has withdrawn its disapproval, this rule bars the consideration of a claim which was the subject of a private claims bill vetoed by the President. Concurrence of the House, the Senate, and the President is essential to payment by an act of Congress and disagreement thereto by any one of the three effectively bars enactment. Further action on a bill vetoed by the President is futile in the absence of a material change in the facts or written evidence that administration disapproval has been withdrawn.

11. In all bills carrying an appropriation, a provision shall be added limiting any attorney's fees to not more than 10 percent. This limitation shall not apply to claims based upon findings of the Chief Judge of the United States Court of Federal Claims, court decisions, or where extraordinary services have been rendered. In such cases the committee will determine the amount of fee to be allowed.

12. The subcommittee shall not consider any claim for retirement benefits, compensation, pension, or gratuity under the Railroad Retirement Act when such claim has been considered on its merits and disallowed, or otherwise conflicts with the provisions and compensation of the act, except bills to waive the limitation

of time. This rule may be waived only upon order of two-thirds of the subcommittee, present and voting.

13. The subcommittee shall not consider any claims bill for benefits under the Social Security Act, as amended, when an application for such benefits has been considered on its merits and disallowed or the provisions of the bill otherwise modify or extend the provisions or benefits payable under the Act, but this prohibition shall not apply to bills to waive limitations of time. This rule may be waived only upon order of two-thirds of the subcommittee, present and voting.

14. The subcommittee shall not consider a bill which has twice passed the House and been rejected by a Senate committee, unless and until the bill has first passed the Senate. Such rule shall be waived only upon a vote of two-thirds of the subcommittee.

GENERAL INFORMATION

AS TO PROCEDURE, JURISDICTION, AND CLAIMS AGAINST THE UNITED STATES

In addition to setting forth the rules governing the consideration of private claims bills, an effort has been made in this booklet to set forth some of the basic facts concerning the jurisdiction, policies, and procedures of the subcommittee with reference to its jurisdiction over claims and, in addition, to give some general information concerning claims against the United States. The committee constantly endeavors to keep such information available to those who are seeking or will seek relief from the Government through the Congress. This information is included to further explain this aspect of the subcommittee's jurisdiction.

RULES OF THE HOUSE OF REPRESENTATIVES CONCERNING PRIVATE CLAIMS BILLS

Committee Jurisdiction

Clause 4, Rule XXI:

"4. No bill for the payment or adjudication of any private claim against the Government shall be referred except by unanimous consent to any other than the following committees, namely: To the Committee on Foreign Affairs or to the Committee on the Judiciary."

Private Bills That May Not Be Considered in the House

Clause 2, Rule XXII:

"2. No private bill or resolution (including so-called omnibus claims or pension bills), and no amendment to any bill or resolution, authorizing or directing (1) the payment of money for property damages, for personal injuries or death for which suit may be instituted under the Tort Claims Procedure as provided in title 28, United States Code, or for a pension (other than to carry out a provision of law or treaty stipulation); (2) the construction of a bridge across a navigable stream; or (3) the correction of a military or naval record, shall be received or considered in the House."

Clause 3, Rule XXII:

"3. Any petition or memorial or private bill excluded under this rule shall be returned to the Member from whom it was received; and petitions and private bills which have been inappropriately referred may, by the direction of the committee having possession of the same be properly referred in the manner originally presented; and an erroneous reference of a petition or private bill under this clause shall not confer jurisdiction upon the committee to consider or report the same."

Private Calendar

Clause 1, Rule XIII:

"1. There shall be three calendars to which all business reported from committees shall be referred, viz.:

* * * * *

"Third. A calendar of the Committee of the Whole House, to which shall be referred all bills of a private character."

Call of the Private Calendar

Clause 6, Rule XXIV:

"6. On the first Tuesday of each month after disposal of such business on the Speaker's table as requires reference only, the Speaker shall direct the Clerk to call the bills and resolutions on the Private Calendar. Should objection be made by two or more Members to the consideration of any bill or resolution so called, it shall be recommitted to the committee which reported the bill or resolution, and no reservation of objection shall be entertained by the Speaker. Such bills and resolutions, if considered, shall be considered in the House as in the Committee of the Whole. No other business shall be in order on this day unless the House, by two-thirds vote on motion to dispense therewith, shall otherwise determine. On such motion debate shall be limited to 5 minutes for and 5 minutes against said motion.

"On the third Tuesday of each month after the disposal of such business on the Speaker's table as requires reference only, the Speaker may direct the Clerk to call the bills and resolutions on the Private Calendar preference to be given to omnibus bills containing bills or resolutions which have previously been objected to on a call of the Private Calendar. All bills and resolutions on the Private Calendar so called, if considered, shall be considered in the House as in the Committee of the Whole. Should objection be made by two or more Members to the consideration of any bill or resolution other than an omnibus bill, it shall be recommitted to the committee which reported the bill or resolution and no reservation of objection shall be entertained by the Speaker."

[Omnibus Bills]

"Omnibus bills shall be read for amendment by paragraph, and no amendment shall be in order except to strike out or to reduce amounts of money stated or to provide limitations. Any item or matter stricken from an omnibus bill shall not thereafter during the same session of Congress be included in any omnibus bill.

"Upon passage of any such omnibus bill, said bill shall be resolved into the several bills and resolutions of which it is composed, and such original bills and resolutions, with any amendments adopted by the House, shall be engrossed, where necessary, and proceedings thereon had as if said bills and resolutions had been passed in the House severally.

"In the consideration of any omnibus bill the proceedings as set forth above shall have the same force and effect as if each Senate and House bill or resolution therein contained or referred to were considered by the House as a separate and distinct bill or resolution."

CONGRESSIONAL REFERENCE CASES

Sections 1492 and 2509 of title 28 of the United States Code authorize either House of Congress to refer bills to the chief judge of the United States Court of Federal Claims and provide that the chief judge shall report the findings of fact and conclusion in each case to the House which made the reference. The sections are as follows:

§ 1492. Congressional reference cases

Any bill, except a bill for a pension, may be referred by either House of Congress to the chief judge of the United States Court of Federal Claims for a report in conformity with section 2509 of this title.

(June 25, 1948, ch. 646, 62 Stat. 941; Oct. 15, 1966, Pub. L. 89–681, § 1, 80 Stat. 958; Apr. 2, 1982, Pub. L. 97–164, title I, § 133(b), 96 Stat. 40; Oct. 29, 1992, Pub. L. 102–572, § 902(a)(1), 106 Stat. 4516.)

§ 2509. Congressional reference cases

(a) Whenever a bill, except a bill for a pension, is referred by either House of Congress to the chief judge of the United States Court of Federal Claims pursuant to section 1492 of this title, the chief judge shall designate a judge as hearing officer for the case and a panel of three judges of the court to serve as a reviewing body. One member of the review panel shall be designated as presiding officer of the panel.

(b) Proceedings in a congressional reference case shall be under rules and regulations prescribed for the purpose by the chief judge who is hereby authorized and directed to require the application of the pertinent rules of practice of the Court of Federal Claims insofar as feasible. Each hearing officer and each review panel shall have authority to do and perform any acts which may be necessary or proper for the efficient performance of their duties, including the power of subpoena and the power to administer oaths and affirmations. One of the rules, rulings, findings, or conclusions authorized by this section shall be subject to judicial review.

(c) The hearing officer to whom a congressional reference case is assigned by the chief judge shall proceed in accordance with the applicable rules to determine the facts, including facts relating to delay or laches, facts bearing upon the question whether the bar of any statute of limitation should be removed, or facts claimed to excuse the claimant for not having resorted to any established legal remedy. He shall append to his findings of fact conclusions sufficient to inform Congress whether the demand is a legal or equitably claim or a gratuity, and the amount, if any, legally or equitably due from the United States to the claimant.

(d) The findings and conclusions of the hearing officer shall be submitted by him, together with the record in the case, to the review panel for review by it pursuant to such rules as may be provided for the purpose, which shall include provision for submitting the report of the hearing officer to the parties for consideration, exception, and argument before the panel. The panel, by majority vote, shall adopt or modify the findings or the conclusions of the hearing officer.

(e) The panel shall submit its report to the chief judge for transmission to the appropriate House of Congress.

(f) Any act or failure to act or other conduct by a party, a witness, or an attorney which would call for the imposition of sanctions under

the rules of practice of the Court of Federal Claims shall be noted by the panel or the hearing officer at the time of occurrence thereof and upon failure of the delinquent or offending party, witness, or attorney to make prompt compliance with the order of the panel or the hearing officer a full statement of the circumstances shall be incorporated in the report of the panel.

(g) The Court of Federal Claims is hereby authorized and directed, under such regulations as it may prescribe, to provide the facilities and services of the office of the clerk of the court for the filing, processing, hearing, and dispatch of congressional reference cases and to include within its annual appropriations the costs thereof and other costs of administration, including (but without limitation to the item herein listed) the salaries and traveling expenses of judges serving as hearing officers and panel members, mailing and service of process, necessary physical facilities, equipment, and supplies, and personnel (including secretaries and law clerks).

(June 25, 1948, ch. 646, 62 Stat. 977; Oct. 15, 1966, Pub. L. 89–681, § 2, 80 Stat. 958; Apr. 2, 1982, Pub. L. 97–164, title I, § 139(h), 96 Stat. 42; Oct. 29, 1992, Pub. L. 102–572, Sec. 902(a), 106 Stat. 4516.)

WAIVER OF CLAIMS OF THE UNITED STATES

The jurisdiction of the committee includes proposed legislation, in the form of both public and private bills, which would relieve individuals of obligations to the United States. Administrative authority to waive certain obligations have been granted in a number of laws. Representative provisions of law are set forth below.

(TITLE 5.—EXECUTIVE DEPARTMENTS-OFFICERS-EMPLOYEES)

(Chapter 55, Subchapter VIII)

§ 5584. Claims for overpayment of pay and allowances, and of travel transportation and relocation expenses and allowances

(a) A claim of the United States against a person arising out of an erroneous payment of pay or allowances made on or after July 1, 1960, or arising out of an erroneous payment of travel, transportation or relocation expenses and allowances, to an employee of an agency, the collection of which would be against equity and good conscience and not in the best interests of the United States, may be waived in whole or in part by—

(1) the Comptroller General of the United States; or

(2) the head of the agency when—

(A) the claim is in an amount aggregating not more than $1,500;

(B) the claim is not the subject of an exception made by the Comptroller General in the account of any accountable official; and

(C) the waiver is made in accordance with standards which the Comptroller General shall prescribe.

(b) The Comptroller General or the head of the agency, as the case may be, may not exercise his authority under this section to waive any claim—

(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim;

(2) except in the case of employees of the Government Printing Office, the Library of Congress, the Office of the Architect of the Capitol, or the Botanic Garden, if application for waiver is received in his office after the expiration of 3 years immediately following the date on which the erroneous payment of pay was discovered or 3 years immediately following October 21, 1968, whichever is later;

(3) except in the case of employees of the Government Printing Office, the Library of Congress, the Office of the Architect of the Capitol, or the Botanic Garden, if application for waiver is received in his office after the expiration of three years immediately following the date on which the erroneous payment of allowances was discovered or three years immediately following October 2, 1972, whichever is later;

(4) in the case of employees of the Government Printing Office, the Library of Congress, the Office of the Architect of the Capitol, or the Botanic Garden, if application for waiver is received in his office after the expiration of 3 years immediately following the date on which the erroneous payment of pay or allowances was discovered or 3 years immediately following July 25, 1974, whichever is later; or

(5) in the case of a claim involving an erroneous payment of travel, transportation or relocation expenses and allowances, if application for waiver is received in his office after the expiration of 3 years immediately following the date on which the erroneous payment was discovered.

(c) A person who has repaid to the United States all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the employing agency at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that employing agency for the refund within two years following the effective date of the waiver. The employing agency shall pay that refund in accordance with this section.

(d) In the audit and settlement of the accounts of any accountable official, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.

(e) An erroneous payment, the collection of which is waived under this section, is deemed a valid payment for all purposes.

(f) This section does not affect any authority under any other statute to litigate, settle, compromise, or waive any claim of the United States.

(g) For the purpose of this section, "agency" means—

(1) an Executive agency;

(2) the Government Printing Office;

(3) the Library of Congress;

(4) the Office of the Architect of the Capitol; and

(5) the Botanic Garden.

(Added Pub. L. 90–616, § 1(a), Oct. 21, 1968, 82 Stat. 1212, and amended Pub. L. 92–453, § 3(1), Oct. 2, 1972, 86 Stat. 760; Pub. L. 93–359, § 1, July 25, 1974, 88 Stat. 393; Pub. L. 96–54, § 2(a)(35), Aug. 14, 1979, 93 Stat. 383; Pub. L. 99–224, § 1(a), Dec. 28, 1985, 99 Stat. 1741; Pub. L. 102–190, § 657(a), Dec. 5, 1991, 105 Stat. 1393.)

* * * * *

(TITLE 10.—ARMED FORCES)

* * * * *

§ 2774. Claims for overpayment of pay and allowances, and travel and transportation allowances

(a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances, to or on behalf of a member or former member of the uniformed services, as defined in section 101(3) of title 37, the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—

(1) the Comptroller General; or

(2) the Secretary concerned, as defined in section 101(5) of title 37, when—

(A) the claim is in an amount aggregating not more than $1,500;

(B) the claim is not the subject of an exception made by the Comptroller General in the account of any accountable officer or official; and

(C) the waiver is made in accordance with standards which the Comptroller General shall prescribe.

(b) The Comptroller General or the Secretary concerned, as the case may be, may not exercise his authority under this section to waive any claim—

(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member of any other person having an interest in obtaining a waiver of the claim; or

(2) if application for waiver is received in his office after the expiration of three years immediately following the date on which the erroneous payment was discovered.

(c) A person who has repaid to the United States all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the department concerned at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that department for that refund within 2 years following the effective date of the waiver. The Secretary concerned shall pay from current applicable appropriations that refund in accordance with this section.

(d) In the audit and settlement of accounts of any accountable officer or official, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.

(e) An erroneous payment, the collection of which is waived under this section, is considered a valid payment for all purposes.

(f) This section does not affect any authority under any other law to litigate, settle, compromise, or waive any claim of the United States.

(Added Pub. L. 92–453, § 1(1), Oct. 2, 1972, 86 Stat. 758, amended Pub. L. 96–513, Title V, § 511(98), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 99–224, § 2(a), Dec. 28, 1985, 99 Stat. 1741; Pub. L. 100–26, sec. 7(j)(7)(A), (B), Apr. 21, 1987, 101 Stat. 283; Pub. L. 102–190, div. A, Title VI, § 657(b), Dec. 5, 1991, 105 Stat. 1393.)

* * * * *

[Army]

§ 4837. Settlement of accounts; remission or cancellation of indebtedness of enlisted members

If he considers it in the best interest of the United States, the Secretary may have remitted or cancelled any part of an enlisted member's indebtedness to the United States or any of its instrumentalities

remaining unpaid before, or at the time of, that member's honorable discharge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 273; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(27), 72 Stat. 1566; Sept. 7, 1962, Pub. L. 87–649, § 14c(10), 76 Stat. 501, Dec. 12, 1980, Pub. L. 96–513, Title V, § 512(24)(A), (B), 94 Stat. 2930.)

* * * * *

[Navy]

§ 6161. Remission of indebtedness of enlisted members upon discharge

If he considers it in the best interest of the United States, the Secretary of the Navy may have remitted or cancelled any part of an enlisted member's indebtedness to the United States or any of its instrumentalities remaining unpaid before, or at the time of, that member's honorable discharge.

(Added Pub. L. 86–511, § 1(a), June 11, 1960, 74 Stat. 207.)

* * * * *

[Air Force]

§ 9837. Settlement of accounts; remission or cancellation of indebtedness of enlisted members

If he considers it in the best interest of the United States, the Secretary may have remitted or cancelled any part, of an enlisted member's indebtedness to the United States or any of its instrumentalities remaining unpaid before, or at the time of, that member's honorable discharge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 594; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(45), 72 Stat. 1567; Sept. 7, 1962, Pub. L. 87–649, § 14c(58), 76 Stat. 502; Dec. 12, 1980, Pub. L. 96–513, Title V, § 514(22)(A), (B), 94 Stat. 2936.)

* * * * *

(TITLE 14.—COAST GUARD)

* * * * *

§ 461. Remission of indebtedness of enlisted members upon charge

If he considers it in the best interest of the United States, the Secretary may have remitted or cancelled any part of an enlisted member's indebtedness to the United States or any of its instrumentalities remaining unpaid before, or at the time of, that member's honorable discharge.

(Aug. 4, 1949, ch. 393, 63 Stat. 530; Sept. 3, 1954, ch. 1263, § 33(b), 68 Stat. 1238; July 10, 1962, Pub. L. 87–526, § 1(1), 76 Stat. 141; Sept. 7, 1962. Pub. L. 97–649, § 14d(7), as added Nov. 2, 1966, Pub. L. 89–718, § 73(a)(3), 80 Stat. 1124; Nov. 2, 1966, Pub. L. 89–718, § 73(c)(1), 80 Stat. 1124; Sept. 11, 1967, Pub. L. 90–83, § 2, 81 Stat. 220; Oct. 18, 1976, Pub. L. 94–546, § 1(29), 90 Stat. 2521.)

§ 513. Retroactive payment of pay and allowances delayed by administrative error or oversight

Under regulations prescribed by the Secretary, the Coast Guard may authorize retroactive payment of pay and allowances, including selective reenlistment bonuses, to enlisted members if entitlement to

the pay and allowances was delayed in vesting solely because of an administrative error or oversight.

(Added Pub. L. 100–448, Sept. 28, 1988, 102 Stat. 1844, § 13(a).)

(TITLE 32.—NATIONAL GUARD)

§ 716. Claims for overpayment of pay and allowances, and travel and transportation allowances

(a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances, to or on behalf of a member or former member of the National Guard, the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—

(1) the Comptroller General; or

(2) the Secretary concerned, as defined in section 101(5) of title 37, when—

(A) the claim is in an amount aggregating not more than $1,500;

(B) the claim is not the subject of an exception made by the Comptroller General in the account of any accountable officer or official; and

(C) the waiver is made in accordance with standards which the Comptroller General shall prescribe.

(b) The Comptroller General or the Secretary concerned, as the case may be, may not exercise his authority under this section to waive any claim—

(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim; or

(2) if application for waiver is received in his office after the expiration of three years immediately following the date on which the erroneous payment was discovered.

(c) A person who has repaid to the United States all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the department concerned at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that department for that refund within two years following the effective date of the waiver. The Secretary concerned shall pay from current applicable appropriations that refund in accordance with this section.

(d) In the audit and settlement of accounts of any accountable officer or official, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.

(e) An erroneous payment, the collection of which is waived under this section, is considered a valid payment for all purposes.

(f) This section does not affect any authority under any other law to litigate, settle, compromise, or waive any claim of the United States.

(Added Pub. L. 92–453, § 2(1), Oct. 2, 1972, 86 Stat. 759, and amended Pub. L. 96–513, Title V, § 515(9), Dec. 12, 1980, 94 Stat. 2937; Pub. L. 99–224, § 3(a), Dec. 28, 1985, 99 Stat. 1742; Pub. L. 102–190, § 657(c) Dec. 5, 1991, 105 Stat. 1393.)

TITLE 37.—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

* * * * *

§ 403. Basic allowance for quarters

* * * * *

(h) The Secretary concerned, or his designee, may make any determination necessary to administer this section with regard to enlisted members, including determinations of dependency and relationship, and may, when warranted by the circumstances, reconsider and change or modify any such determination. This authority may be redelegated by the Secretary concerned or his designee. Any determination made under this section with regard to enlisted members is final and is not subject to review by any accounting officer of the United States or a court, unless there is fraud or gross negligence.

* * * * *

(As amended Pub. L. 90–207, § 1(3), Dec. 16, 1967, 81 Stat. 651; Pub. L. 92–129, title II, § 204, Sept. 28, 1971, 85 Stat. 358; Pub. L. 93–64, title I, § 105, July 9, 1973, 87 Stat. 148; Pub. L. 93–419, § 3(6), Sept. 19, 1974, 88 Stat. 1152; Pub. L. 96–343, § 4(a), (1), (2), Sept. 8, 1980, 94 Stat. 1125; Pub. L. 96–513, title V, § 516(10), Dec. 12, 1980, 94 Stat. 2938; Pub. L. 96–579, §§ 6(a)–(c), 7, Dec. 23, 1980, 94 Stat. 3367, 3368; Pub. L. 97–22, § 11(b)(2), July 10, 1981, 95 Stat. 138; Pub. L. 98–94, Title IX, § 907(a), Sept. 24, 1983; 97 Stat. 637; Pub. L. 98–525, Title VI, § 602(c) 604(a), Oct. 19, 1984, 98 Stat. 2534, 2537; Pub. L. 99–145, Title VI, § 604(a), 605(a), Title VIII, § 809(b), Title XIII, § 1303(b)(6), Nov. 8, 1985, 99 Stat. 638, 681, 740; Pub. L. 99–227, § 1, Dec. 28, 1985, 99 Stat. 1745; Pub. L. 103–337, sec. 604(a), (b).)

(TITLE 38.—VETERANS' BENEFITS)

* * * * *

§ 5302. Waiver of recovery of claims by the United States

(a) There shall be no recovery of payments or overpayments (or any interest thereon) of any benefits under any of the laws administered by the Secretary whenever the Secretary determines that recovery would be against equity and good conscience, if an application for relief is made within 180 days from the date of notification of the indebtedness by the Secretary to the payee, or within such longer period as the Secretary determines is reasonable in a case in which the payee demonstrated to the satisfaction of the Secretary that such notification was not actually received by such payee within a reasonable period after such date. The Secretary shall include in the notification to the payee a statement of the right of the payee to submit an application for a waiver under this subsection and a description of the procedures for submitting the application.

(b) With respect to any loan guaranteed, insured, or made under chapter 37 of this title, the Secretary shall, except as provided in subsection (c) of this section, waive payment of an indebtedness to the Department by the veteran (as defined in sections 101, 3701, and 3702(a)(2)(C)(ii) of this title), or his spouse, following default and loss of the property, where the Secretary determines that collection of such indebtedness would be against equity and good conscience. An application for relief under this subsection must be made within one year after the date on which the veteran receives notice by certified mail from the Secretary of the indebtedness. The Secretary shall include in the notification a statement of the right of the veteran to submit an application for a waiver under this subsection and a description of the procedures for submitting the application.

(c) The recovery of any payment or the collection of any indebtedness (or any interest thereon) may be waived under this section if, in the opinion, there exists in connection with the claim for such waiver an indication of fraud, misrepresentation, or bad faith on the part of

the person or persons having an interest in obtaining a waiver of such recovery or the collection of such indebtedness (or any interest thereon).

(d) No certifying or disbursing officer shall be liable for any amount paid to any person where the recovery of such amount is waived under subsection (a) or (b).

(e) Where the recovery of a payment or overpayment made from the National Service Life Insurance Fund or United States Government Life Insurance Fund is waived under this section, the fund from which the payment was made shall be reimbursed from the National Service Life Insurance appropriation or the military and naval insurance appropriation, as applicable.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1230; Pub. L. 92–328, Title II, § 202(2), June 30, 1972, 86 Stat. 396; Pub. L. 96–466. Title VI, § 605(c)(3), Oct. 17, 1980, 94 Stat. 2211; Pub. L. 97–306, Title IV, § 407(a), Oct. 14, 1982, 96 Stat. 1445; Pub. L. 101–237, Dec. 18, 1989, 103 Stat. 2075; Pub. L. 102–40, § 402(b)(1), May 7, 1991, 105 Stat. 238; section transferred from 38 U.S.C. § 3102 by Pub. L. 102–40, § 402(b)(1), 105 Stat. 238; Pub. L. 102–54, § 5, June 13, 1991, 105 Stat. 268; Pub. L. 102–83, §§ 4,5, Aug. 6, 1991, 105 Stat. 403, 404, 406; Pub. L. 102–547, § 12, 106 Stat. 363.)

FEDERAL TORT CLAIMS ACT

The provisions of the Federal Tort Claims Act (act of Aug. 2, 1946, 60 Stat. 842) have been restated and codified as a part of title 28 of the United States Code. Title 28 was enacted into positive law by the act of June 25, 1948, ch. 646, § 1, 62 Stat. 869. Since the provisions of the Tort Claims Act as originally enacted have been superseded by the tort claims provisions now contained in the codified title, the relevant provisions of title 28 are included in this booklet. Those sections are as follows:

§ 1346. United States as defendant

(a) The district court shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to section 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(b) Subject to the provisions of chapter 171 of this title, the district courts, together with the U.S. district court for the District of the Canal Zone and the district court of the Virgin Islands, shall have ex-

clusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

(d) The district courts shall not have jurisdiction under this section of any civil action or claim for a pension.

(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 6226, 6228(a), 7426, or 7428 (in the case of the United States district court for the District of Columbia) or section 7429 of the Internal Revenue Code of 1954.

(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

(June 25, 1948, ch. 646, 62 Stat. 933; Apr. 25, 1949, ch. 92, § 2(a), 63 Stat. 62; May 24, 1949, ch. 139, § 80 (a), (b), 63 Stat. 101; Oct. 31, 1951, ch. 655, § 50(b), 65 Stat. 727; July 30, 1954, ch. 648, § 1, 68 Stat. 589; July 7, 1958, Pub. L. 85–508, § 12(e), 72 Stat, 348; Aug. 30, 1964, Pub. L. 88–519, 78 Stat. 699; Nov. 2, 1966, Pub. L. 89–719, Title II, § 202(a), 80 Stat. 1148; July 23, 1970, Pub. L. 91–350, § 1(a), 84 Stat. 449; Oct. 25, 1972, Pub. L. 92–562, § 1, 86 Stat. 1176; Oct. 4, 1976, Pub. L. 94–455, Title XII, § 1204(c)(1), Title XIII, § 1306(b)(7), 90 Stat. 1697, 1719; Nov. 1, 1978, Pub. L. 95–563, § 14(a), 92 Stat. 2389; Apr. 2, 1982, Pub. L. 97–164, Title I, § 129, 96 Stat. 39; Sept. 3, 1982, Pub. L. 97–248, Title IV, § 402(c)(17), 96 Stat. 669; Oct. 29, 1992, Pub. L. 102–572, § 902(b)(1), 106 Stat. 4516.)

§ 2401. Time for commencing action against United States

(a) Except as provided by the Contract Disputes Act of 1978, every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

(b) A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

(June 25, 1948, ch. 646, 62 Stat. 971; Apr. 24, 1949, ch. 92, § 1, 63 Stat. 62; Sept. 8, 1959, Pub. L. 86–238, § 1(3), 73 Stat. 472; July 13, 1966, Pub. L. 89–506, § 7, 80 Stat. 307; Nov. 1, 1978, Pub. L. 95–563, § 14(b), 92 Stat. 2389.)

Chapter 171—TORT CLAIMS PROCEDURE

Sec.
2671. Definitions.
2672. Administrative adjustment of claims.
2673. Reports to Congress.
2674. Liability of United States.
2675. Disposition by federal agency as prerequisite evidence.
2676. Judgment as bar.
2677. Compromise.
2678. Attorney fees; penalty.
2679. Exclusiveness of remedy.
2680. Exceptions.

§ 2671. Definitions[1]

As used in this chapter and sections 1346(b) and 2401(b) of this title, the term "Federal agency" includes the executive departments, the judicial and legislative branches, the military departments, independent establishment of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States.

"Employee of the Government" includes 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 section 316, 502, 503, 504, or 505 of title 32, 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.

"Acting within the scope of his office or employment," in the case of a member of the military or naval forces of the United States or a member of the National Guard as defined in section 101(3) of title 32, means acting in line of duty.

(June 25, 1948, ch. 646, 62 Stat. 982; May 24, 1949, ch. 139, § 124, 63 Stat. 106; July 18, 1966, Pub. L. 89–506, § 8, 80 Stat. 307; Dec. 29, 1981; Pub. L. 97–124, § 1, 95 Stat. 1666; Nov. 18, 1988, Pub. L. 100–694, § 3, 102 Stat. 4564.)

§ 2672. Administrative adjustment of claims[2]

The head of each Federal agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred: *Provided,* That any award, compromise, or settlement in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his designee. Notwithstanding the proviso

[1] The application of these provisions to particular agencies or employees may be determined by separate statutes: *e.g.* Energy Security Act, 42 U.S.C. 8786 (1976 ed. Sup. IV) (Synfuels Corporation shall be treated as if it were a Federal agency); Panama Canal Act of 1979, 22 U.S.C. 3761(e) (1976 ed. Sup. V) (claims arising out of operation of the Panama Canal are not cognizable under Federal Tort Claims provisions); Peace Corps Act, 22 U.S.C. 2504(h) (1976 ed. Sup. V) (Peace Corps Volunteers are covered employees); Comprehensive Employment and Training Act, 29 U.S.C. 938(a)(3) (1976 ed. Sup. V) (C.E.T.A. enrollees are covered employees).

[2] The receipt of a settlement or award may affect an individual's right to other Federal compensation of benefits, *e.g.* Veterans' Administration disability compensation, 38 U.S.C. 1151 (1991 ed.); compensation for vessels seized by the United States pursuant to the Merchant Marine Act of 1936, 46 App. U.S.C. 1242(d) (1991 ed.) or compensation for communications equipment seized by the United States pursuant to the Communications Act of 1934, 47 U.S.C. 606(e) (1991 ed.).

contained in the preceding sentence, any award, compromise, or settlement may be effected without the prior written approval of the Attorney General or his or her designee, to the extent that the Attorney General delegates to the head of the agency the authority to make such award, compromise, or settlement. Such delegations may not exceed the authority delegated by the Attorney General to the United States attorneys to settle claims for money damages against the United States. Each Federal agency may use arbitration, or other alternative means of dispute resolution under the provisions of subchapter IV of chapter 5 of title 5, to settle any tort claim against the United States, to the extent of the agency's authority to award, compromise, or settle such claim without the prior written approval of the Attorney General or his or her designee.

Any award, compromise, or settlement in an amount of $2,500 or less made pursuant to this section shall be paid by the head of the Federal agency concerned out of appropriations available to that agency. Payment of any award, compromise, or settlement in an amount in excess of $2,500 made pursuant to this section or made by the Attorney General in any amount pursuant to section 2677 of this title shall be paid in a manner similar to judgments and compromises in like causes and appropriations or funds available for the payment of such judgments and compromises are hereby made available for the payment of awards, compromises, or settlements under this chapter.

The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States and against the employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

(June 25, 1948, ch. 646, 62 Stat. 983; Apr. 25, 1949, ch. 92, § 2(b), 63 Stat. 62; May 24, 1949, ch. 139, § 125, 63 Stat. 106; Sept. 23, 1950, ch. 1010, § 9, 64 Stat. 987; Sept. 8, 1959, Pub. L. 86–238, § 1(1), 73 Stat. 471; July 18, 1966; Pub. L. 89–506, §§ 1, 9(a), 80 Stat. 306, 308; Pub. L. 101–552, Nov. 15, 1990, 104 Stat. 2746.)

§ 2673. Repealed. Pub. L. 89–348, § 1(1), Nov. 8, 1965, 79 Stat. 1310

(The section as contained in the Act of June 25, 1948, ch. 646, 62 Stat. 983, required that the head of each Federal agency shall report annually to Congress all claims paid by it under section 2672 of this title, stating the name of each claimant, the amount claimed, the amount awarded, and a brief description of the claim.)

§ 2674. Liability of United States

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

If, however, in any case wherein death was caused, the law of the placed where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof.

With respect to any claim under this chapter, the United States shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available to the employee of the United States whose act or omission gave rise to the claim, as well as any other defenses to which the United States is entitled.

With respect to any claim to which this section applies, the Tennessee Valley Authority shall be entitled to assert any defense which otherwise would have been available to the employee based upon judicial or legislative immunity, which otherwise would have been available to the employee of the Tennessee Valley Authority whose act or omission gave rise to the claim as well as any other defenses to which the Tennessee Valley Authority is entitled under this chapter.

(June 25, 1948, ch. 646, 62 Stat. 983; Nov. 18, 1988, Pub. L. 100–694, § 4 and § 9, 102 Stat. 4564 and 4567.)

§ 2675. Disposition by Federal agency as prerequisite; evidence

(a) An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within 6 months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, crossclaim, or counterclaim.

(b) Action under this section shall not be instituted for any sum in excess of the amount of the claim presented to the federal agency, except where the increased amount is based upon newly discovered evidence not reasonably discovered at the time of presenting the claim to the federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.

(c) Disposition of any claim by the Attorney General or other head of a federal agency shall not be competent evidence of liability or amount of damages.

(June 25, 1948, ch. 646, 62 Stat. 983; May 24, 1949, ch. 139, § 126, 63 Stat. 107; July 18, 1966, Pub. L. 89–506, § 2, 80 Stat. 306.)

§ 2676. Judgment as bar

The judgment in an action under section 1346(b) of this title shall constitute a complete bar to any action by claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim.

(June 25, 1948, ch. 646, 62 Stat. 984.)

§ 2677. Compromise

The Attorney General or his designee may arbitrate, compromise, or settle any claim cognizable under section 1346(b) of this title, after the commencement of an action thereon.

(June 25, 1948, ch. 646, 62 Stat. 984; July 18, 1966, Pub. L. 89–506, § 3, 80 Stat. 307.)

§ 2678. Attorney fees; penalty

No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 25 per centum of any judgment rendered pursuant to section 1346(b) of this title or any settlement made pursuant to section 2677 of this title, or in excess of 20 per centum of any award, compromise, or settlement made pursuant to section 2672 of this title.

Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of

that allowed under this section, if recovery be had, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 646, 62 Stat. 984; July 18, 1966, Pub. L. 89–506, § 4, 80 Stat. 307.)

§ 2679. Exclusiveness of remedy

(a) The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive.

(b)(1) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property or personal injury or death, arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

(2) Paragraph (1) does not extend or apply to a civil action against an employee of the Government—

(A) which is brought for a violation of the Constitution of the United States, or

(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized.

(c) The Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Government or his estate for any such damage or injury. The employee against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the head of his department to receive such papers and such person shall promptly furnish copies of the pleadings and process therein to the United States Attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the head of his employing Federal agency.

(d)(1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

(2) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

(3) In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. A copy of the petition shall be served upon the United States in accordance with the provisions of Rule 4(d)(4) of the Federal Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Attorney General to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

(4) (Upon) certification, any action or proceeding subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of this title and shall be subject to the limitations and exceptions applicable to those actions.

(5) Whenever an action or proceeding in which the United States is substituted as the party defendant under this subsection is dismissed for failure first to present a claim pursuant to section 2675(a) of this title, such a claim shall be deemed to be timely presented under section 2401(b) of this title if—

(A) the claim would have been timely had it been filed on the date the underlying civil action was commenced, and

(B) the claim is presented to the appropriate Federal agency within 60 days after dismissal of the civil action.

(e) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677, and with the same effect.

(June 25, 1948, ch. 646, 62 Stat, 984; Sept. 21, 1961, Pub. L. 97–258; § 1, 75 Stat. 539; July 18, 1966, Pub. L. 89–506, § 5(a), 80 Stat. 307; Nov. 18, 1988, Pub. L. 100–694, § 5 and § 6, 102 Stat. 4564–5.)

§ 2680. Exceptions

The provisions of this chapter and section 1346(b) of this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer.

(d) Any claim for which a remedy is provided by sections 741–752, 781–790 or Title 46, relating to claims or suits in admiralty against the United States.

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of sections 1–31 of Title 50, Appendix.

(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

(g) Repealed. Sept. 26, 1950, ch. 1049, § 13(5), 64 Stat. 1043.

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights: *Provided, That,* with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claim arising, on or after the date of the enactment of this proviso, out of assault, battery, false imprisonment, false arrest, abuse or process, or malicious prosecution. For the purpose of this subsection, "Investigative or law enforcement officer" means any officer of the United States who is empowered by law to execute searches, or size evidence, or to make arrests for violations of Federal law.

(i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

(k) Any claim arising in a foreign country.

(l) Any claim arising from the activities of the Tennessee Valley Authority.

(m) Any claim arising from the activities of the Panama Canal Company.

(n) Any claim arising from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.

(June 25, 1948, ch. 646, 62 Stat. 984; July 16, 1949, ch. 340, 63 Stat. 444; Sept. 26, 1950, ch. 1049, §§ 2(a) (2), 13(5), 64 Stat. 1038, 1043; Aug. 18, 1959, Pub. L. 86–168, Title II, § 202(b), 73 Stat. 389; March 16, 1974, Pub. L. 93–253, § 2, 88 Stat. 50.)

* * * * *

Former Court of Claims Jurisdiction Over Appeals of Final Judgments in Tort Actions.

§ 1504. Repealed, Pub. Law 97-164, title I, § 133(f), April 2, 1982, 96 Stat. 41

(The section as contained in the Act of June 25, 1948, ch. 646, 62 Stat. 942, provided that Court of Claims would have jurisdiction to review by appeal final judgments in the district courts in civil actions based on tort claims brought under section 1346(b) of this title if the notice of appeal filed in the district court had affixed thereto the written consent on behalf of all the appellees that the appeal be taken to the court of Claims.)

HISTORICAL NOTE

This section was based upon provisions of the original Tort Claims Act as enacted on August 2, 1946. Section 412(a)(2) of that Act (ch. 753, 60 Stat. 844) contained those provisions which were revised and included in this section at the time of the enactment of codified title 28, United States Code, on June 25, 1948. At that time a sentence of the original law was omitted. It provided that in tort claims appeals to the Court of Claims, that court should have the same powers and duties as those of a court of appeals. These powers and duties were viewed as being inherent in the provisions of this section conferring appellate jurisdiction.

* * * * *

§ 2110. Repealed. Pub. L. 97-164, title I, § 136, April 2, 1982, 96 Stat. 41

(The section as contained in the Act of June 25, 1948, ch. 646, 62 Stat. 964, and as amended by the Act of May 24, 1949, ch. 139, § 109, 63 Stat. 105 provided that appeals to the Court of Claims in tort claims cases under former section 1504 of title 28, would be taken within ninety days after the entry of the final judgment of the district court.)

* * * * *

ATOMIC TESTING LIABILITY ACT

In 1984, section 1631 of the Department of Defense Authorization Act of 1985 (P.L. 98-525), (otherwise known as the "Warner Amendment") was enacted. This provision in title 42 removed any liability from government contractors for injuries resulting from atomic weapons testing programs. It then substituted the United States as the potentially liable party in such cases, under the provisions of the Federal Tort Claims Act.

In 1990, section 3140 of the National Defense Authorization Act for fiscal year 1991 (P.L. 101-510) repealed the Warner Amendment, but section 3141 of the 1990 Act re-enacted it with a new title (the "Atomic Testing Liability Act") and some minor technical changes. The provision is found in the U.S. Code where the repealed provision used to be: 42 U.S.C. 2212.

§ 2212. Contractor liability for injury or loss of property arising out of atomic weapons testing programs

(a) Short Title

This section may be cited as the "Atomic Testing Liability Act."

(b) Federal remedies applicable; exclusiveness of remedies

(1) Remedy

The remedy against the United States provided by sections 1346(b) and 2672 of title 28, by the Act of March 9, 1920 (46 U.S.C. App. 741-752), or by the act of March 8, 1925 (46 U.S.C. App. 781-790), as appropriate, for injury, loss of property, personal injury, or death shall apply to any civil action for injury, loss of property, personal injury, or death due to exposure to radiation based on acts or omissions by a contractor in carrying out an atomic weapons testing program under a contract with the United States.

(2) Exclusivity

The remedies referred to in paragraph (1) shall be exclusive of any other civil action or proceeding for the purpose of determining civil liability arising from any act or omission of the contractor without regard to when the act or omission occurred. The employees of a contractor referred to in paragraph (1) shall be considered to be employees of the Federal Government, as provided in section 2671 of title 28, for the purposes of any such civil action or proceeding; and the civil action or proceeding shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of such title 28 and shall be subject to the limitations and exceptions applicable to those actions.

(c) Procedure

A contractor against whom a civil action or proceeding described in subsection (b) of this section is brought shall promptly deliver all processes served upon that contractor to the Attorney General of the

United States. Upon certification by the Attorney General that the suit against the contractor is within the provisions of subsection (b) of this section, a civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings shall be deemed a tort action brought against the United States under the provisions of section 1346(b), 2401(b), or 2402, or sections 2671 through 2680 of title 28. For purposes of removal, the certification by the Attorney General under this subsection establishes contractor status conclusively.

(d) Actions covered

The provisions of this section shall apply to any action, within the provisions of subsection (b) of this section, which is pending on November 5, 1990 or after such date. Notwithstanding section 2401(b) of title 28, if a civil action or proceeding to which this section applies is pending on November 5, 1990 and is dismissed because the plaintiff in such action or proceeding did not file an administrative claim as required by section 2672 of title 28, the plaintiff in that action or proceeding shall have 30 days from the date of the dismissal or two years from the date upon which the claim accrued, whichever is later, to file an administrative claim, and any claim or subsequent civil action or proceeding shall thereafter be subject to the provisions of section 2401(b) of title 28.

(e) "Contractor" defined

For purposes of this section, the term "contractor" includes a contractor or cost reimbursement subcontractor of any tier participating in the conduct of the United States atomic weapons testing program for the Department of Energy (or its predecessor agencies, including the Manhattan Engineer District, the Atomic Energy Commission, and the Energy Research and Development Administration). Such term also includes facilities which conduct or have conducted research concerning health effects of ionizing radiation in connection with the testing under contract with the Department of Energy (or any of its predecessor agencies).

(Pub. L. 101–510, Title XXXI, § 3141, Nov. 5, 1990, 104 Stat. 1837.)

* * * * *

HISTORICAL NOTE

On October 19, 1984, H.R. 5167, the Department of Defense Authorization Act, 1985, was approved as Public Law 98–525. Section 1631 of that Act (42 U.S.C. 2212) concerned contractor liability for injury or loss of property arising out of atomic weapons testing programs. On November 5, 1990, H.R. 4739, the National Defense Authorization Act for Fiscal Year 1991, was approved as Public Law 101–510. Section 3140 of that Act repealed section 1631 of the earlier Act, but section 3141 of the 1990 Act re-enacted it with a new title (the "Atomic Testing Liability Act") and some minor technical changes. The Atomic Testing Liability Act provides that the remedy provided by sections 1346(b) and 2672 of title 28, United States Code, or by the Act of March 9, 1920 (46 U.S.C. App. 741–752) or by the Act of March 3, 1925 (46 U.S.C. App. 781–790), as appropriate, for injury, loss of property, personal injury, or death, shall apply to any civil action arising from such injury or death based on the acts or omissions by a contractor carrying out a contract with the United States for an atomic weapons testing program. The remedy therein provided is to be exclusive of any other civil action or proceeding arising from any act or omission of the contractor, without regard to

when the act or omission occurred. Any action against a contractor falling within the provisions of this section is to be deemed an action against the United States subject to the procedures provided in this Act.

MEDICAL MALPRACTICE ACTIONS

The following provisions of the United States under the tort claims provisions of title 28 is to be the exclusive remedy for damages for personal injury, including death, allegedly arising from malpractice or negligence of medical, dental, or paramedical personnel of the department or agency concerned.

TITLE 10.—ARMED FORCES

§ 1089. Defense of certain suits arising out of medical malpractice

(a) The remedy against the United States provided by section 1346(b) and 2672 of title 28 for damages for personal injury, including death, caused by the negligent or wrongful act or omission of any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the armed forces, the National Guard while engaged in training or duty under section 316, 502, 503, 504 or 505 of title 32, the Department of Defense, the Armed Forces Retirement Home, or the Central Intelligence Agency in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of his duties or employment therein or therefor shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) whose act or omission gave rise to such action or proceeding.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or the estate of such person) for any such injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the action or proceeding is brought, to the Attorney General and to the head of the agency concerned.

(c) Upon a certification by the Attorney General that any person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the District Court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to any cause of action arising out of a negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations).

(f) The head of the agency concerned may, to the extent that the head of the agency concerned considers appropriate, hold harmless or provide liability insurance for any person described in subsection (a) for damages for personal injury, including death, caused by such person's negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope or such person's duties if such person is assigned to a foreign country or detailed for service with other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(g) In this section, the term "head of the agency concerned" means—

(1) the Director of Central Intelligence, in the case of an employee of the Central Intelligence Agency;

(2) the Secretary of Transportation, in the case of a member or employee of the Coast Guard when it is not operating as a service in the Navy;

(3) the Armed Forces Retirement Home Board, in the case of an employee of the Armed Forces Retirement Home; and

(4) the Secretary of Defense, in all other cases.

(Added Pub. L. 94–464, § 1(2), Oct. 8, 1976, 90 Stat. 1985, and amended Pub. L. 97–124, § 2, Dec. 29, 1981, 95 Stat. 1666, as amended Pub. L. 98–94, Title IX, § 934 (a)–(c), Sept. 24, 1983, 97 Stat. 651, 652; Pub. L. 101–510, Nov. 5, 1990, 104 Stat 1733.)

TITLE 22.—FOREIGN RELATIONS AND INTERCOURSE

§ 817. Repealed. Pub. L. 96–465 title II, § 2205, Oct. 17, 1980, 94 Stat. 2159

(The section contained the Act of August 13, 1946, ch. 957, title X, § 1901, as added July 12, 1976, Pub. L. 94–350, title I, § 119, 90 Stat. 827, which provided for malpractice protection for employees of the Department of State. Those provisions, as amended now appear as § 2702 of title 22 and are reprinted below.)

* * * * *

§ 2702. Malpractice protection

(a) Exclusiveness of designated remedies

The remedy—

(1) against the United States provided by sections 1346(b) and 2672 of title 28, or

(2) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under such sections,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (including medical and dental assistants and technicians, nursing assistants, and therapists) or other supporting personnel of the Department of State in furnishing medical care or related services, including the conducting of clinical studies or inves-

tigations, while in the exercise of his or her duties in or for the Department of State or any other Federal department, agency, or instrumentality shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentists, nurse, pharmacist, or paramedical or other supporting personnel (or his or her estate) whose act or omission gave rise to such claim.

(b) Defense of civil actions by United States; delivery of process; furnishing of copies of pleadings

The United States Government shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his or her estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as may be determined by the Attorney General, all process served upon him or her or an attested true copy thereof to whomever was designated by the Secretary to receive such papers. Such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought to the Attorney General, and to the Secretary.

(c) Removal of actions; remand or dismissal; suspension of limitations

Upon a certification by the Attorney General that the defendant was acting within the scope of his or her employment in or for the Department of State or any other Federal department, agency, or instrumentality at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place where it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28, and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court except that where such remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in that event, the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

(d) Compromise or settlement of claims

The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) Inapplicability of section 2680(h) of title 28

For purposes of this section, the provisions of section 2680(h) of title 28, shall not apply to any tort enumerated therein arising out of negligence in the furnishing of medical care or related services, including the conducting of clinical studies or investigations.

(f) Holding harmless or providing for liability insurance

The Secretary may, to the extent he deems appropriate, hold harmless or provide liability insurance for any person to whom the immunity provisions of subsection (a) of this section apply for damages for

personal injury, including death, negligently caused by any such person while acting within the scope of his or her office or employment and as a result of the furnishing of medical care or related services, including the conducting of clinical studies or investigations, if such person is assigned to a foreign area or detailed for service with other than a Federal agency or institution, or if the circumstances are such as are likely to preclude the remedies of third persons against the United States provided by section 1346(b) and 2672 of title 28, for such damage or injury.

(g) Medical care or related service within scope of employment

For purposes of this section, any medical care or related service covered by this section and performed abroad by a covered person at the direction or with the approval of the United States chief of mission or other principal representative of the United States in the area shall be deemed to be within the scope of employment of the individual performing the service.

(Aug. 1, 1956, ch. 841, Title I, § 30, as added Oct. 17, 1980, Pub. L. 94–465, Title II, § 220(a), 94 Stat. 2155 and renumbered Aug. 24, 1982, Pub. L. 97–241, Title II, § 202(a), 96 Stat. 282.)

TITLE 32.—NATIONAL GUARD

§ 334. Repealed Pub. L. 97–124, § 3, Dec. 29, 1981, 95 Stat. 1666

(This section contained in the Act of October 8, 1976, Pub. L. 94–464, § 2(b), 90 Stat. 1986 provided malpractice protection for National Guard medical personnel. Currently National Guard medical personnel are covered in section 1089 of title 10 U.S.C.)

TITLE 38.—VETERANS' BENEFITS

§ 7316. Malpractice and negligence suits: defense by United States

(a)(1) The remedy—

(A) against the United States provided by sections 1346(b) and 2672 of title 28, or

(B) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under section 1346(b) or 2672 of title 28,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a medical care employee of the Administration in furnishing medical care or treatment while in the exercise of that employee's duties in or for the Administration shall be exclusive of any other civil action or proceeding by reason of the same subject matter against the medical care employee (or employee's estate) whose act or omission gave rise to such claim.

(2) For purposes of paragraph (1), the term "medical care employee of the Administration" means a physician, dentist, podiatrist, optometrist, nurse, physician assistant, expanded-function dental auxiliary, pharmacist, or paramedical (such as medical and dental technicians, nursing assistants, and therapists), or other supporting personnel.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) (or such person's estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the Secretary to receive

such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

(c) Upon a certification by the Attorney General that the defendant was acting in the scope of such person's employment in or for the Administration at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. After removal the United States shall have available all defenses to which it would have been entitled if the action had originally been commenced against the United States. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the employee whose act or omission gave rise to the suit was not acting within the scope of such person's office or employment, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) The Secretary may, to the extent the Secretary considers appropriate, hold harmless or provide liability insurance of any person to whom the immunity provisions of this section apply (as described in subsection (a)), for damage for personal injury or death, or for property damage, negligently caused by such person while furnishing medical care or treatment (including the conduct of clinical studies or investigations) in the exercise of such person's duties in or for the Administration, if such person is assigned to a foreign country, detailed to State or political division thereof, or is acting under any other circumstances which would preclude the remedies of an injured third person against the United States, provided by sections 1346(b) and 2672 of title 28, for such damage or injury.

(f) The exception provided in section 2680(h) of title 28 shall not apply to any claim arising out of a negligent or wrongful act or omission of any person described in subsection (a) in furnishing medical care or treatment (including medical care or treatment furnished in the course of a clinical study or investigation) while in the exercise of such person's duties in or for the Administration.

(Added Pub. L. 89–311, § 6(a), Oct. 31, 1965, 79 Stat. 1156, and amended Pub. L. 89–506, § 5(b), July 18, 1966, 80 Stat. 307; Pub. L. 93–82, Title II, § 207, Aug. 2, 1973, 87 Stat. 193; Pub. L. 94–581, Title I, § 110(11), Title II, §§ 209(a)(7), 210(c)(8), Oct. 21, 1976, 90 Stat. 2849, 2861, 2864; Pub. L. 100–322, May 20, 1988, 102 Stat. 509, sec. 203(a)(1). Repealed and re-enacted Pub. L. 102–40, § 401(a)(3), May 7, 1991, 105 Stat. 220.)

AMENDMENT NOTE

Pub. L. 100–322, May 20, 1988, 100 Stat. 509, Section 203(a)(1) provided the above new subsection (f) of Section 7316 (then Section 4116) of title 38.

Section 203(a)(2) provided that the amendment made by paragraph (1) shall apply with respect to claims as to which a final judgment has not been rendered as of the date of enactment of this Act (May 29, 1988).

TITLE 42.—THE PUBLIC HEALTH AND WELFARE

CHAPTER 6A—PUBLIC HEALTH SERVICES

SUBCHAPTER I—ADMINISTRATION

* * * * *

§ 233. Civil actions or proceedings against commissioned officers or employees—Exclusiveness of remedy

(a) Exclusiveness of remedy

The remedy against the United States provided by sections 1346(b) and 2672 of title 28, or by alternative benefits provided by the United States where the availability of such benefits precludes a remedy under section 1346(b) of title 28, for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigation, by any commissioned officer or employee of the Public Health Service while acting within the scope of his office or employment, shall be exclusive of any other civil action or proceeding by reason of the same subject matter against the officer or employee (or his estate) whose act or omission gave rise to the claim.

(b) Attorney General to defend action or proceeding; delivery of process to designated official; furnishing of copies of the pleading and process to U.S. attorney, Attorney, and Secretary

The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the Secretary to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the U.S. attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

(c) Removal to U.S. district court; procedure; proceeding upon removal deemed a tort action against United States; hearing on motion to remand to determine availability of remedy against United States; remand to State court or dismissal

Upon a certification by the Attorney General that the defendant was acting in the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a U.S. district court determine on a hearing on a motion to remand held before a trial on the merit that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State Court: *Provided,* That where such a remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed,

but in the event the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

(d) Compromise or settlement of claim by Attorney General

The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28 and with the same effect.

(e) Assault or battery

For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to assault or battery arising out of negligence in the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations.

(f) Authority of Secretary or designee to hold harmless or provide liability insurance for assigned or detailed employees

The Secretary or his designee may, to the extent that he deems appropriate, hold harmless or provide liability insurance for any officer or employee of the Public Health Service for damage for personal injury, including death, negligently caused by such officer or employee while acting within the scope of his office or employment and as a result of the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations, if such employee is assigned to a foreign country or detailed to a State or political subdivision thereof or to a nonprofit institution, and if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 2679(b) of title 28, for such damage or injury.

(g) Liability protections for certain health care professionals

(1) For purposes of this section, an entity described in paragraph (4) and any officer, employee, or contractor (subject to paragraph (5) of such an entity who is a physician or other licensed or certified health care practitioner shall be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer of the full amount estimated under subsection (k)(1)(A) was made under subsection (k)(3) (subject to paragraph (3)). The remedy against the United States for an entity described in paragraph (4) and any officer, employee, or contractor (subject to paragraph (5)) of such an entity who is deemed to be an employee of the Public Health Service pursuant to this paragraph shall be exclusive of any other civil action or proceeding to the same extent as the remedy against the United States is exclusive pursuant to subsection (a).

(2) If, with respect to an entity or person deemed to be an employee for purposes of paragraph (1), a cause of action is instituted against the United States pursuant to this section, any claim of the entity or person for benefit under an insurance policy with respect to medical malpractice relating to such cause of action shall be subrogated to the United States.

(3) This subsection shall apply with respect to a cause of action arising from an act or omission which occurs on or after January 1, 1993. This subsection shall not apply with respect to a cause of action arising from an act or omission which occurs on or after January 1, 1996.

(4) An entity described in this paragraph is a public or nonprofit private entity receiving Federal funds under any of the following grant programs:

(A) Section 329 (relating to grants for migrant health centers).

(B) Section 330 (relating to grants for community health centers).

(C) Section 340 (relating to grants for health services for the homeless).

(D) Section 340A (relating to grants for health services for residents of public housing).

(5) For purposes of paragraph (1), an individual may be considered a contractor of an entity described in paragraph (4) only if—

(A) the individual normally performs on average at least 32½ hours of service per week for the entity for the period of the contract; or

(B) in the case of an individual who normally performs on average less than 32½ hours of services per week for the entity for the period of the contract and is a licensed or certified provider of obstetrical services—

(i) the individual's medical malpractice liability insurance coverage does not extend to services performed by the individual for the entity under the contract, or

(ii) the Secretary finds that patients to whom the entity furnishes services will be deprived of obstetrical services if such individual is not considered a contractor of the entity for purposes of paragraph (1).

(h) Requirement of appropriate polices and procedures regarding health care professionals

Notwithstanding subsection (g)(1), the Secretary, in consultation with the Attorney General, may not deem an entity described in subsection (g)(4) to be an employee of the Public Health Service Act for purposes of this section unless the entity—

(1) has implemented appropriate policies and procedures to reduce the risk of malpractice and the risk of lawsuits arising out of any health or health-related functions performed by the entity;

(2) has reviewed and verified the professional credentials, references, claims history, fitness, professional review organization, findings, and license status of its physicians and other licensed or certified health care practitioners, and, where necessary, has obtained the permission from these individuals to gain access to this information;

(3) has no history of claims having been filed against the United States as a result of the application of this section to the entity or its officers, employees, or contractors as provided for under this section, or, if such a history exists, has fully cooperated with the Attorney General in defending against any such claims and either has taken, or will take, any necessary corrective steps to assure against such claims in the future; and

(4) has fully cooperated with the Attorney General in providing information relating to an estimate described under subsection (k).

(i) Authorization for the Attorney General to exclude certain health care professionals from coverage

(1) Notwithstanding subsection (g)(1), the Attorney General, in consultation with the Secretary, may determine, after notice and opportunity for a hearing, that an individual physician or other licensed or certified health care practitioner who is an officer, employee, or contractor of an entity described in subsection (g)(4) shall not be deemed to be an employee of the Public Health Service for purposes of this section, if treating such individuals as such an employee would expose the Government to an unreasonably high degree of risk of loss because such individual—

(A) does not comply with the policies and procedures that the entity has implemented pursuant to subsection (h)(1);

(B) has a history of claims filed against him or her as provided for under this section that is outside the norm for licensed or certified health care practitioners within the same specialty;

(C) refused to reasonably cooperate with the Attorney General in defending against any such claims;

(D) provided false information relevant to the individual's performance of his or her duties to the Secretary, the Attorney General, or an applicant for or recipient of funds under this Act; or

(E) was the subject of disciplinary action taken by a State medical licensing authority or a State or national professional society.

(2) A final determination by the Attorney General under this subsection that an individual physician or other licensed or certified health care professional shall not be deemed to be an employee of the Public Health Service shall be effective upon receipt by the entity employing such individual of notice of such determination, and shall apply only to acts or omissions occurring after the date such notice is received.

(j) Hospital admitting privileges for certain health care providers

In the case of a health care provider who is an officer, employee, or contractor of an entity described in subsection (g)(4), section 335(e) shall apply with respect to the provider to the same extent and in the same manner as such section applies to any member of the National Health Service Corps.

(k) Payment of judgments

(1)(A) For each of the fiscal years 1993, 1994, and 1995, the Attorney General, in consultation with the Secretary, shall estimate by the beginning of the year (except that an estimate shall be made for fiscal year 1993 by December 31, 1992, subject to an adjustment within 90 days thereafter) the amount of all claims which are expected to arise under this section (together with related fees and expenses of witnesses) for which payment is expected to be made in accordance with section 1346 and chapter 171 of title 28, United States Code, from the acts or omissions, during the calendar year that begins during that fiscal year, of entities described in subsection (g)(4) and of officers, employees, or contractors (subject to subsection (g)(5)) of such entities.

(B) The estimate under subparagraph (A) shall take into account—

(i) the value and frequency of all claims for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by entities described in subsection (g)(4) or by officers, employees, or contractors (subject to subsection (g)(5)) of such entities who are deemed to be employees of the Public Health Service under subsection (g)(1) that, during the preceding 5-year period, are filed under this section or, with respect to years occurring before this subsection takes effect, are filed against persons other than the United States.

(ii) the amounts paid during that 5-year period on all claims described in clause (i), regardless of when such claims were filed, adjusted to reflect payments which would not be permitted under section 1346 and chapter 171 of title 28, United States Code, and

(iii) amounts in the fund established under paragraph (2) but unspent from prior fiscal years.

(2) Subject to appropriations, for each of the fiscal years 1993, 1994, and 1995, the Secretary shall establish a fund of an amount equal to the amount estimated under paragraph (1) that is attributable to entities receiving funds under each of the grant programs described in

paragraph (4) of subsection (g), but not to exceed a total of $30,000,000 for each such fiscal year. Appropriations for purposes of this paragraph shall be made separate from appropriations made for purposes of sections 329, 330, 340, and 340A.

(3) In order for payments to be made for judgments against the United States (together with related fees and expenses of witnesses) pursuant to this section arising from the acts or omissions of entities described in subsection (g)(4) and of officers, employees, or contractors (subject to subsection (g)(5)) of such entities, the total amount contained within the fund shall be transferred not later than the December 31 that occurs during the fiscal year to the appropriate accounts in the Treasury.

(July 1, 1944, c. 373, Title II, § 224, formerly § 223, as added Dec. 31, 1970, Pub. L. 91–623, § 4, 84 Stat. 1870, and renumbered Nov. 18, 1971, Pub. L. 92–157, Title III, § 301(c), 85 Stat. 463, Pub. L. 102–501, §§ 2–4, Oct. 24, 1992, 106 Stat. 3268–3270; Pub. L. 103–183, Title VII, § 706(a).)

42 UNITED STATES CODE 2458a

[Title III of the National Aeronautics and Space Act of 1958, an amended.]

§ 2458a. Malpractice and negligence suits against the United States

(a) Exclusive remedy. The remedy against the United States provided by sections 1346(b) and 2672 of title 28, for damages for personal injury, including death, caused by the negligent or wrongful act or omission of any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the Administration in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting with the scope of his duties or employment therein or therefor shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) whose act or omission gave rise to such action or proceeding.

(b) Attorney General to defend any civil action or proceeding for malpractice or negligence; service of process. The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or the estate of such person) for any such injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the Administrator to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States Attorney for the district embracing the place wherein the proceeding is brought to the Attorney General and to the Administrator.

(c) Removal of actions: certification by the Attorney General: remand to State court. Upon a certification by the Attorney General that any person described in subsection (a) of this section was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the

place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28, and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court.

(d) Compromise or settlement of claims. The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) Applicability of other provisions of laws. For purposes of this section, the provisions of section 2680(h) of title 28, shall not apply to any cause of action arising out of a negligent or wrongful act of omission in the performance of medical, dental or related health care functions (including clinical studies and investigations).

(f) Liability insurance for persons assigned to foreign countries for non-Federal agencies. The Administrator or his designee may, to the extent that the Administrator or his designee deem appropriate, hold harmless or provide liability insurance for any person described in subsection (a) of this section for damages for personal injury, including death, caused by such person's negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 2679(b) of title 28, for such damage or injury.

(Pub. L. 85–568, Title III, § 307, as added Pub. 94–464, § 3, Oct. 8, 1976, 90 Stat. 1988.)

TITLE 42—UNITED STATES CODE

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CHAPTER 66—DOMESTIC VOLUNTEER SERVICES

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Subsection (f) of the following section 5055 provides for an exclusive remedy against the United States when such a remedy is provided by 1346(b) and 2672 of title 28, or by "proceedings for compensation or other benefits from the United States by any other law" when such benefits preclude a tort remedy under title 28, and the injury giving, rise to a claim is allegedly the result of malpractice or negligence of medical, dental, or paramedical personnel.

§ 5055. Application of Federal law

(a) General rule

Except as provided in subsections (b), (c), (d), and (e) of this section, volunteers under this chapter shall not be deemed Federal employees and shall not be subject to the provisions of laws relating to Federal officers and employees and Federal employment.

(b) Specific Federal legislation

Individuals enrolled as volunteers for periods of full-time service, or, as the Director deems appropriate in accordance with regulations, for periods of part-time service of not less than 20 hours per week for not less than 26 consecutive weeks, under subchapter I of this chapter

shall, with respect to such service or training, (1) for the purposes of subchapter III of chapter 73 of title 5, be deemed persons employed in the executive branch of the Federal Government, (2) for the purposes of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.) be deemed employees of the United States, and any service performed by an individual as a volunteer (including training) shall be deemed to be performed in the employ of the United States, (3) for the purposes of the Federal Tort Claims provisions of title 28, be deemed employees of the United States, (4) for the purposes of subchapter I of chapter 81 of title 5 (relative to compensation to Federal employees for work injuries), shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, and the provisions of that subchapter shall apply except as follows: (A) in computing compensation benefits for disability or death, the annual rate of pay of a volunteer enrolled for a period of full-time service under such subchapter I of this chapter shall be deemed to be that received under the entrance salary for an employee at grade GS–5 of the General Schedule under section 5332 of title 5, United States Code, and the annual rate of pay of a volunteer enrolled for a period of part-time service under such subchapter I of this chapter shall be deemed to be such entry salary or an appropriate portion thereof as determined by the Director, and subsections (a) and (b) of section 8113 of title 5 shall apply, and (B) compensation for disability shall not begin to accrue until the day following the date on which the injured volunteer is terminated, and (5) be deemed employees of the United States for the purposes of section 5584 of title 5 (and stipends and allowances paid under this chapter shall be considered as pay for such purposes).

(c) Subsequent government employment

Any period of service of a volunteer enrolled in a program for a period of service of at least one year under part A of subchapter I of this chapter, and any period of full-time service of a volunteer enrolled in a program for a period of service of at least one year under part B or C of subchapter I of this chapter, shall be credited in connection with subsequent employment in the same manner as a like period of civilian employment by the United States Government—

(1) for the purposes of any Act establishing a retirement system for civilian employees of any United States Government agency; and

(2) except as otherwise determined by the President, for the purposes of determining seniority, reduction in force, and layoff rights, leave entitlement, and other rights and privileges based upon length of service under the laws administered by the Office of Personnel Management, the Foreign Service Act of 1980 [22 U.S.C. 3901 et seq.], and every other Act establishing or governing terms and conditions of service of civilian employees of the United States Government: *Provided:* That service of a volunteer shall not be credited toward completion of any probationary or trial period or completion of any service requirement for career appointment.

(d) Competitive service

Volunteers serving in programs for periods of service of at least one year under part A of subchapter I of this chapter, and volunteers serving for such periods under title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2991–2994d), including those whose service was completed under such Act, who the Director determines, in accordance with regulations the Director shall prescribe, have successfully completed their periods of service, shall be eligible

for appointment in the competitive service in the same manner as Peace Corps volunteers as prescribed in Executive Order Number 11103 (April 10, 1963).

(e) Reference in other laws to service under provisions relating to Volunteers in Service to America deemed references to service under subchapter I of this chapter

Notwithstanding any other provision of law, all references in any other law to persons serving as volunteers under title VIII of the Economic Opportunity Act of 1964, as amended [42 U.S.C. 2991 et seq.] shall be deemed to be references to persons serving as full-time volunteers in a program of at least one year's duration under part A, B, or C of subchapter I of this chapter.

(f) Civil actions

(1) The remedy—

(A) against the United States provided by sections 1346(b) and 2672 of title 28, or

(B) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under section 1346(b) or 2672 of such title 28,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, podiatrist, optometrist, nurse, physician assistant, expanded-function dental auxiliary, pharmacist, or paramedical (for example, medical and dental technicians, nursing assistants, and therapists) or other supporting personnel in furnishing medical care or treatment while in the exercise of such person's duties as a volunteer enrolled under subchapter I of this chapter shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such person (or such person's estate) whose action or omission gave rise to such claim.

(2) The Attorney General of the United States shall defend any civil action or proceeding brought in any court against any person referred to in paragraph (1) of this subsection (or such person's estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate supervisor or to whomever is designated by the Director to receive such papers, and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought and to the Attorney General.

(3) Upon a certification by the Attorney General that the defendant was acting in the scope of such person's volunteer assignment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28, and all references thereto. After removal the United States shall have available all defenses to which it would have been entitled if the action had originally been commenced against the United States. Should a district court of the United States determine on a hearing on a motion to remand held before at trial on the merits that the volunteer whose act or omission gave rise to the suit was not acting within the scope of such person's volunteer assignment, the case shall be remanded to the State court.

(4) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28 and with the same effect.

(Pub. L. 93–113, Title IV, § 415, Oct. 1, 1973, 87 Stat. 411; Pub. L. 96–143, §§ 11, 18(c)(2), Dec. 13, 1979, 93 Stat. 1078, 1083; Pub. L. 96–465, Title II, §§ 2206(h), Oct. 17, 1980, 94 Stat. 2163; Pub. L. 99–551, § 10(i)(9), Oct. 27, 1986, 100 Stat. 3078; Pub. L. 103–82, Title III, § 366.)

CLAIMS AGAINST THE UNITED STATES GOVERNMENT

MERITORIOUS CLAIMS ACT

TITLE 31.—UNITED STATES CODE—MONEY AND FINANCE

CHAPTER 37—CLAIMS

SUBCHAPTER I—GENERAL

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SUBCHAPTER I—GENERAL

§ 3701. Definitions and application

(a) In this chapter—

(1) "administrative offset" means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(2) "calendar quarter" means a 3-month period beginning on January 1, April 1, July 1, or October 1.

(3) "consumer reporting agency" means—

(A) a consumer reporting agency as that term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)); or

(B) a person that, for money or on a cooperative basis, regularly—

(i) gets information on consumers to give the information to a consumer reporting agency; or

(ii) serves as a marketing agent under an arrangement allowing a third party to get the information from a consumer reporting agency.

(4) "executive or legislative agency" means a department, agency, or instrumentality in the executive or legislative branch of the Government.

(5) "military department" means the Departments of the Army, Navy, and Air Force.

(6) "system of records" has the same meaning given that term in section 552(a)(5) of title 5.

(7) "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the National Oceanic and Atmospheric Administration, and Commissioned Corps of the Public Health Service.

(b) In subchapter II of this chapter, "claim" includes amounts owing on account of loans insured or guaranteed by the Government and other amounts due the Government.

(c) In sections 3716 and 3717 of this title, "person" does not include an agency of the United States Government, of a State government, or of a unit of general local government.

(d) Sections 3711(f) and 3716–3719 of this title do not apply to a claim or debt under, or to an amount payable under, the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.), the Social Security Act (42 U.S.C. 301 et seq.), except to the extent provided under section 204(f) of such Act (42 U.S.C. 404(f)), or the tariff laws of the United States.

(Pub. L. 97–258, Sept. 13, 1982, 86 Stat. 970; Pub. L. 97–452, § 1(13)(A), Jan. 12, 1983, 96 Stat. 2469; Pub. L. 103–387, § 5(b).)

REVISION NOTE

Public Law 101–163, title I, section 11(a), Nov. 21, 1989, 103 Stat. 1046, *Provided that:* "For purposes of subchapters I and II of chapter 37 of title 31, United States Code (relating to claims of or against the United States Government), the United States Senate shall be considered to be a legislative agency (as defined in section 3701(a)(4) of such title), and the Secretary of the Senate shall be deemed to be the head of such legislative agency."

§ 3702. Authority of the Comptroller General to settle claims

(a) Except as provided in this chapter or another law, the Comptroller General shall settle all claims of or against the United States Government. A claim that was not administratively examined before submission to the Comptroller General shall be examined by 2 officers or employees of the General Accounting Office independently of each other.

(b)(1) A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the Comptroller General within 6 years after the claim accrues except—

(A) as provided in this chapter or another law; or

(B) a claim of a State, the District of Columbia, or a territory or possession of the United States.

(2) When the claim of a member of the armed forces accrues during war or within five years before war begins, the claim must be presented to the Comptroller General within five years after peace is established or within the period provided in clause (1) of this subsection, whichever is later.

(3) The Comptroller General shall return a claim not received in the time required under this subsection with a copy of this subsection and no further communication is required.

(c) ONE-YEAR LIMIT FOR CHECK CLAIMS.—(1) Any claim on account of a Treasury check shall be barred unless it is presented to the agency that authorized the issuance of the check or the effective date of this subsection, whichever is later.

(2) Nothing in this subsection affects the underlying obligation of the United States, or any agency thereof, for which a Treasury check was issued.

(d) The Comptroller General shall report to Congress on a claim against the Government that is timely presented under this section that may not be adjusted by using an existing appropriation, and that the Comptroller General believes Congress should consider for legal or equitable reasons. The report shall include recommendations of the Comptroller General.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 970; Pub. L. 97–452. § 1(14), Jan. 12, 1983, 96 Stat. 2470; Pub. L. 100–86, Aug. 10, 1987, 101 Stat. 659, § 1004(b).)

REVISION NOTE

The Act of April 10, 1928 (ch. 334, 45 Stat. 413), formerly classified as 236, and the Act of October 9, 1940 (ch. 788, 54 Stat. 1061), formerly classified as 237, were restated as positive law by the codification of title 31 (Pub. L. 97–258, 96 Stat. 877). Those Acts were restated as section 3702(d) and (b) of title 31, respectively. As classified to former section 236 of title 31 of the United States Code, the Meritorious Claims Act was previously carried in the United States Code as follows:

"§ 236. Meritorious claims against United States not subject to lawful adjustments; submission to Congress by Comptroller General

"When there is filed in the General Accounting Office a claim or demand against the United States that may not lawfully be adjusted by the use of an appropriation theretofore made, but which claim or demand in the judgment of the Comptroller General of the United States contains such elements of legal liability or equity as to be deserving of the consideration of the Congress, he shall submit the same to the Congress by a special report containing the material facts and his recommendation thereon.

"(Apr. 10, 1928, ch. 334, 45 Stat. 413.)"

SUBCHAPTER II—CLAIMS AGAINST THE UNITED STATES GOVERNMENT

§ 3721. Claims of personnel of agencies and the District of Columbia government for personal property damage or loss

(a) In this section

(1) "agency" does not include a nonappropriated fund activity or a contractor with the United States Government.

(2) "head of an agency" means—

(A) for a military department, the Secretary of the military department;

(B) for the Department of Defense (except the military departments), the Secretary of Defense; and

(C) for another agency, the head of an agency.

(3) "settle" means consider, determine, adjust, and dispose of a claim by disallowance or by complete or partial allowance.

(b)(1) the head of an agency may settle and pay not more than $25,000 for a claim against the Government made by a member of the uniformed services under the jurisdiction of the agency or by an offi-

cer or employee of the agency for damage to, or loss of, personal property incident to service. A claim allowed under this subsection may be paid in money or the personal property replaced in kind.

(2) The Secretary of State may waive the settlement and payment limitation referred to in paragraph (1) for claims for damages or loss by United States Government personnel under the jurisdiction of a chief mission in a foreign country if such claims arise in circumstances where there is in effect a departure from the country authorized or ordered under circumstances described in section 5522(a) of title 5, if the Secretary determines that there exists exceptional circumstances that warrant such a waiver.

(c)(1) The head of an agency may settle and pay not more than $40,000 for a claim against the Government made by a member of the uniformed services under the jurisdiction of the agency or by an officer or employee of the agency for damage to, or loss of, personal property in a foreign country that was incurred after December 30, 1978, incident to service, and—

(A)(i) the member, officer, or employee was evacuated from the country after December 30, 1978, on a recommendation or order of the Secretary of State or other competent authority that was made in responding to an incident of political unrest or hostile act by people in that country; and

(ii) the damage or loss resulted from the evacuation, incident, or hostile act; or

(B) the damage or loss resulted from a hostile act directed against the Government or its members, officers, or employees.

(2) on paying a claim under this subsection, the Government is subrogated for the amount of the payment to a right or claim that the claimant may have against the foreign country for the damage or loss for which the Government made the payment.

(3) Amounts may be obligated or expended for claims under this subsection only to the extent provided in advance in appropriation laws.

(d) The Mayor of the District of Columbia may settle and pay a claim against the District of Columbia government made by an officer or employee of the District of Columbia government to the same extent the head of an agency may settle and pay a claim under this section.

(e) A claim may not be allowed under this section if the personal property damage or loss occurred at quarters occupied by the claimant in a State or the District of Columbia that were not assigned or provided in kind by the United States Government or the District of Columbia government.

(f) A claim may be allowed under this section only if—

(1) the claim is substantiated;

(2) the head of the agency decides that possession of the property was reasonable or useful under the circumstances; and

(3) no part of the loss was caused by any negligent or wrongful act of the claimant or an agent or employee of the claimant.

(g) A claim may be allowed under this section only if it is presented in writing within two years after the claim accrues. However, if a claim under subsection (b) of this section accrues during war or an armed conflict in which an armed force of the United States is involved, or has accrued within two years before war or an armed conflict begins, and for cause shown, the claim must be presented within two years after the cause no longer exists or after the way or armed conflict ends, whichever is earlier. An armed conflict begins and ends as stated in a concurrent resolution of Congress or a decision of the President.

(h) The head of the agency—

(1) may settle and pay a claim made by the surviving spouse, child, parent, or brother or sister of a dead member, officer, or employee if the claim is otherwise payable under this section; and

(2) may settle and pay the claims by the survivors only in the following order:

(A) the spouse's claim

(B) a child's claim

(C) a parent's claim

(D) a brother's or sister's claim.

(i) Notwithstanding a contract, the representative of a claimant may not receive more than 10 percent of a payment of a claim made under this section for services related to the claim. A person violating this subsection shall be fined not more than $1,000.

(j) The President may prescribe policies to carry out this section (except subsection (b) to the extent that subsection (b) applies to the military departments, the Department of Defense, and the Coast Guard). Subject to those policies, the head of each agency shall prescribe regulations to carry out this section.

(k) Settlement of a claim under this section is final and conclusive.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 973; Pub. L. 97–452, § 1(17), Jan. 12, 1983, 96 Stat. 2474; Pub. L. 100–565, Oct. 31, 1988, 102 Stat. 2833; Pub. L. 103–236, § 172(b).)

REVISION NOTE

The Military Personnel and Civilian Employees' Claims Act of 1964, formerly classified as sections 240–243a of title 31, United States Code, was restated as positive law by the codification of title 31 (Pub. L. 97–258, 96 Stat. 877). The Act was restated as sections 3701 (5) and (7) and 3721 of title 31.

Public Law 97–226, approved July 28, 1982, increased the limit for payment, under former sections 3(a)(1) and 3(b)(1) of the Military Personnel and Civilian Employees' Claims Act of 1964, of claims arising after that date from $15,000 to $25,000, and codified section 3721 provides the same authority.

§ 3722. Claims of officers and employees at Government penal and correctional institutions

(a) The Attorney General may settle and pay not more than $1,000 in any one case for a claim made by an officer or employee at a United States Government penal or correctional institution for damage to, or loss of, personal property incident to employment.

(b) A claim may not be allowed under this section if the loss occurred at quarters occupied by the claimant that were not assigned or provided in kind by the Government.

(c) A claim may be allowed only if—

(1) no part of the loss was caused by any negligent or wrongful act of the claimant or an agent or employee of the claimant;

(2) the Attorney General decides that possession of the property was responsible or useful under the circumstances; and

(3) it is presented in writing within one year after it accrues.

(d) A claim may be paid under this section only if the claimant accepts the amount of the settlement in complete satisfaction of the claim.

(e) Necessary amounts are authorized to be appropriated to carry out this section.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 974.)

§ 3723. Small claims for privately owned property damage or loss

(a) The head of an agency (except a military department of the Department of Defense or the Coast Guard) may settle a claim for not more than $1,000 for damage to, or loss of, privately owned property that—

(1) is caused by the negligence of an officer or employee of the United States Government acting within the scope of employment; and

(2) may not be settled under chapter 171 of title 28.

(b) A claim under this section may be allowed only if it is presented to the head of the agency within one year after it accrues.

(c) A claim under this section may be paid as provided in section 1304 of this title only if the claimant accepts the amount of the settlement in complete satisfaction of the claim against the Government.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 975.)

§ 3724. Claims for damages caused by investigative or law enforcement officers of the Department of Justice

(a) The Attorney General may settle, for not more than $50,000 in any one case, a claim for personal injury, death, or damage to, or loss of, privately owned property, caused by an investigative or law enforcement officers as defined in section 2680(h) of title 28 who is employed by the Department of Justice acting within the scope of employment that may not be settled under chapter 171 of title 28. An officer or employee of the United States Government may not present a claim arising during the scope of employment. A claim may be allowed only if it is presented to the Attorney General within one year after it accrues.

(b) The Attorney General shall report annually to the Congress on all settlements made under this section. With respect to each such settlement, the Attorney General shall include a brief statement on the type of the claim, the amount claimed, and the amount of the settlement.

(c) A claim may be paid under this section only if the claimant accepts the amount of the settlement in complete satisfaction of the claim against the Government.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 975, as amended by Pub. L. 101–203, Dec. 7, 1989, 103 Stat. 1805.)

§ 3725. Claims of non-nationals for personal injury or death in a foreign country

(a) The Secretary of State may settle, for not more than $1,500 in any one case, a claim for personal injury or death of an individual not a national of the United States in a foreign country in which the United States exercises privileges of extraterritoriality when the injury or death is caused by an officer, employee, or agent of the United States Government (except of a military department of the Department of Defense or the Coast Guard). An officer or employee of the Government may not present a claim. A claim under this section may be allowed only if it is presented to the Secretary within one year after it accrues.

(b) The Secretary shall certify to Congress a settlement under this section for payment out of an appropriation that may be made to pay the settlement. The Secretary shall include a brief statement on the type of claim, the amount claimed, and the amount of the settlement.

(c) A claim may be paid under this section only if the claimant accepts the amount of the settlement in complete satisfaction of the claim against the Government.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 975.)

§ 3726. Payment for transportation

(a) A carrier or freight forwarder presenting a bill for transporting an individual or property for the United States Government shall be paid before the Administrator of General Services conducts an audit. A claim under this section shall be allowed only if it is received by the Administrator not later than three years (excluding time of war) after the later of the following dates:

(1) accrual of the claim;

(2) payment for the transportation is made;

(3) refund for an overpayment for the transportation is made; or

(4) a deduction under subsection (b) of this section is made.

(b) Not later than three years (excluding time of war) after the time a bill is paid, the Government may deduct from an amount subsequently due a carrier or freight forwarder an amount paid on the bill that was greater than the rate allowed under—

(1) a lawful tariff on file with the Interstate Commerce Commission, the Secretary of Transportation with respect to foreign air transportation (as defined in section 40102(a) of title 49), the Federal Maritime Commission, or a State transportation authority; or

(2) sections 10721–10724 of title 49 or an equivalent arrangement or an exemption.

(c) Expenses of transportation audit postpayment contracts and contract administration, and the expenses of all other transportation audit and audit-related functions conferred upon the Administrator of General Services, shall be financed from overpayments collected from carriers on transportation bills paid by the Government and other similar type refunds, not to exceed collections. Payment to any contractor for audit services shall not exceed 50 percent of the overpayment identified by contract audit.

(d) At least annually, and as determined by the Administrator, after making adequate provision for expense of refunds to carriers, transportation audit postpayment contracts, contract administration, and other expenses authorized in subsection (c), overpayments collected by the General Services Administration shall be transferred to miscellaneous receipts of the Treasury. A report of receipts, disbursements, and transfers (to miscellaneous receipts) pursuant to this section shall be made annually in connection with the budget estimates to the Director of the Office of Management and Budget and to the Congress.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 976; Pub. L. 103–123, Title IV, § 620A.)

§ 3727. Assignments of claims

(a) In this section, "assignment" means—

(1) a transfer or assignment of any part of a claim against the United States Government or of an interest in the claim; or

(2) the authorization to receive payment for any part of the claim.

(b) An assignment may be made only after a claim is allowed, the amount of the claim is decided, and a warrant for payment of the claim has been issued. The assignment shall specify the warrant, must be made freely, and must be attested to by two witnesses. The person making the assignment shall acknowledge it before an official who may acknowledge a deed, and the official shall certify the assignment. The certificate shall state that the official completely explained the assignment when it was acknowledged. An assignment under this subsection is valid for any purpose.

(c) Subsection (b) of this section does not apply to an assignment to a financing institution of money due or to become due under a contract providing for payments totaling at least $1,000 when—

(1) the contract does not forbid an assignment;

(2) unless the contract expressly provides otherwise, the assignment—

(A) is for the entire amount not already paid;

(B) is made to only one party, except that it may be made to a party as agent or trustee for more than one party participating in the financing; and

(C) may not be reassigned; and

(3) the assignee files a written notice of the assignment and a copy of the assignment with the contracting official or the head of the agency, the surety on a bond on the contract, and any disbursing official for the contract.

(d) During a war or national emergency proclaimed by the President or declared by law and ended by proclamation or law, a contract with the Department of Defense, the General Services Administration, the Department of Energy (when carrying out duties and powers formerly carried out by the Atomic Energy Commission), or other agency the President designates may provide, or may be changed without consideration to provide, that a future payment under the contract to an assignee is not subject to reduction or setoff. A payment subsequently due under the contract (even after the war or emergency is ended) shall be paid to the assignee without a reduction or setoff for liability of the assignor—

(1) to the Government independent of the contract; or

(2) because of renegotiation, fine, penalty (except an amount that may be collected or withheld under, or because the assignor does not comply with, the contract), taxes, social security contributions, or withholding or failing to withhold taxes or social security contributions, arising from, or independent of, the contract.

(e)(1) An assignee under this section does not have to make restitution or, refund, or repay the amount received because of the liability of the assignor to the Government that arises from or is independent of the contract.

(2) The Government may not collect or reclaim money paid to a person receiving an amount under an assignment or allotment of pay or allowances authorized by law when liability may exist because of a death of the person making the assignment or allotment.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 976.)

§ 3728. Setoff against judgment

(a) The Comptroller General shall withhold paying that part of a judgment against the United States Government presented to the Comptroller General that is equal to a debt the plaintiff owes the Government.

(b) The Comptroller General shall—

(1) discharge the debt if the plaintiff agrees to the setoff and discharges a part of the judgment equal to the debt; or

(2)(A) withhold payment of an additional amount the Comptroller General decides will cover legal costs of bringing a civil action for the debt if the plaintiff denies the debt or does not agree to the setoff; and

(B) have a civil action brought if one has not already been brought.

(c) If the Government loses a civil action to recover a debt or recovers less than the amount the Comptroller General withholds under this section, the Comptroller General shall pay the plaintiff the balance and interest of 6 percent for the time the money is withheld.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 977.)

MILITARY CLAIMS STATUTES

TITLE 10.—UNITED STATES CODE—ARMED FORCES

CHAPTER 163—MILITARY CLAIMS

Sec.
2731. Definition.
2732. Payment of claims; availability of appropriations.
2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force.
2734. Property loss; personal injury or death: incident to noncombat activities of the armed forces; foreign countries.
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2734b. Property loss; personal injury or death: incident to activities of armed forces of foreign countries in United States; international agreements.
2735. Settlement: final and conclusive.
2736. Property loss; personal injury or death: advance payment.
2737. Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law.

§ 2731. Definition

In this chapter, "settle" means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

(Aug. 10, 1956, ch. 1041, 70A Stat. 152).

§ 2732. Payment of claims; availability of appropriations

Appropriations available to the Department of Defense for operation and maintenance may be used for payment of claims authorized by law to be paid by the Department of Defense (except for civil functions), including—

(1) claims for damages arising under training contracts with carriers; and

(2) repayment of amounts determined by the Secretary concerned to have been erroneously collected—

(A) from military and civilian personnel of the Department of Defense; or

(B) from States or territories or the District of Columbia (or members of the National Guard units thereof).

(Added Pub. L. 101–510, Div. A, Title XIV, § 1481(j)(1), Nov. 5, 1990, 104 Stat. 1708.)

§ 2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force

(a) Under such regulations as the Secretary concerned may prescribe, he, or, subject to appeal to him, the Judge Advocate General or an armed force under his jurisdiction, or the chief counsel of the Coast Guard, as appropriate, if designated by him, may settle, and pay in an amount not more than $100,000, a claim against the United States for—

(1) damage to or loss of real property, including damage or loss incident to use and occupancy;

(2) damage to or loss of personal property, including property bailed to the United States and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be; or

(3) personal injury or death;

either caused by a civilian officer or employee of that department, or the Coast Guard, or a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, acting within the scope of his employment, or otherwise incident to noncombat activities of that department, or the Coast Guard.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;

(2) it is not covered by section 2734 of this title or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or civilian officer or employee whose injury or death is incident to his service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee; or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

For the purposes of clause (1), the dates of the beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

(c) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States.

(d) If the Secretary concerned considers that a claim in excess of $100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Comptroller General for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) For the purposes of this section, a member of the National Oceanic and Atmospheric Administration or of the Public Health Service who is serving with the Navy or Marine Corps shall be treated as if he were a member of the armed force.

(g) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed $25,000. A decision of the officer or employee who makes a final settlement decision under this section may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.

(h) Under such regulations as the Secretary of Defense may prescribe, he or his designee has the same authority as the Secretary of a military department under this section with respect to the settlement of claims based on damage, loss, personal injury, or death caused by a civilian officer or employees of the Department of Defense

acting within the scope of his employment or otherwise incident to noncombat activities of that department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 153; Aug. 23, 1958, Pub. L. 85–729, § 1, 72 Stat. 813; Sept. 2, 1958, Pub. L. 85–861, § 1(54), 72 Stat. 1461; Nov. 2, 1966, Pub. L. 98–718, § 8(a), 80 Stat. 1117; Sept. 26, 1968, Pub. L. 90–522, 82 Stat. 875; Sept. 26, 1968, Pub. L. 90–525, §§ 1, 3–5, 82 Stat. 877, 878; July 8, 1970, Pub. L. 91–312, § 2, 84 Stat. 412; July 8, 1974, Pub. L. 93–336, § 1, 88 Stat. 291; Dec. 12, 1980, Pub. L. 96–513, Title V, § 511 (94), 94 Stat. 2928; Pub. L. 98–564, Oct. 30, 1984, 98 Stat. 2918.)

§ 2734. Property loss; personal injury or death: incident to noncombat activities of the armed forces; foreign countries

(a) To promote and to maintain friendly relations through the prompt settlement of meritorious claims, the Secretary concerned, or an officer or employee designated by the Secretary, may appoint, under such regulations as the Secretary may prescribe, one or more claims commissions, each composed of one or more officers or employees or combination of officers or employees of the armed forces, to settle and pay in an amount not more than $100,000, a claim against the United States for—

(1) damage to, or loss of real property of, any foreign country or of any political subdivision or inhabitant of a foreign country, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property of any foreign country or of any political subdivision or inhabitant of a foreign country, including property bailed to the United States; or

(3) personal injury to, or death of, any inhabitant of a foreign country;

if the damage, loss personal injury, or death occurs outside the United States or the Territories, Commonwealths, or possessions, and is caused by, or is otherwise incident to noncombat activities of, the armed forces under his jurisdiction, or is caused by a member thereof or by a civilian employee of the military department concerned or the Coast Guard, as the case may be. The claim of an insured, but not that of a subrogee, may be considered under this subsection. In this section, "foreign country" includes any place under the jurisdiction of the United States in a foreign country. An officer or employee may serve on a claims commission under the jurisdiction of another armed force only with the consent of the Secretary of his department, or his designee, but shall perform his duties under regulations of the department appointing the commission.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented within two years after it accrues;

(2) in the case of a national of a country at war with the United States, or of any ally of that country, the claimant is determined by the commission or by the local military commander to be friendly to the United States; and

(3) it did not arise from action by an enemy or result directly or indirectly from an act of the armed forces of the United States in combat, except that a claim may be allowed if it arises from an accident or malfunction incident to the operation of an aircraft of the armed forces of the United States, including its airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission.

(c) The Secretary concerned may appoint any officer or employee under the jurisdiction of the Secretary to act as an approval authority for claims determined to be allowable under subsection (a) in an amount in excess of $10,000.

(d) If the Secretary concerned considers that a claim in excess of $100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Comptroller General for payment under section 1034 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) Upon the request of the department concerned, a claim arising in that department and covered by subsection (a) may be settled and paid by a commission appointed under subsection (a) and composed of officers of an armed force under the jurisdiction of another department.

(g) Payment of claims against the Coast Guard arising while it is operating as a service in the Department of Transportation shall be made out of the appropriation for the operating expenses of the Coast Guard.

(h) The Secretary of Defense may designate any claims commission appointed under subsection (a) to settle and pay, as provided in this section, claims for damage caused by a civilian employee of the Department of Defense other than an employee of a military department. Payments of claims under this subsection shall be made from appropriations as provided in section 2732 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 154; Sept. 2, 1958, Pub. L. 85–861, § 1 (55), 72 Stat. 1461; Sept. 1, 1959, Pub. L. 86–223, § 1 (1), 73 Stat. 453; Apr. 8, 1960, Pub. L. 86–411, 74 Stat. 16; Sept. 16, 1968, Pub. L. 90–521, §§ 1, 3, 82 Stat. 874; July 8, 1970, Pub. L. 91–312, § 1, 84 Stat. 412; July 8, 1974, Pub. L. 93–336, § 2, 88 Stat. 292; Dec. 12, 1980, Pub. L. 96–513, Title V, § 511 (95), 94 Stat. 2928; Pub. L. 98–564, Oct. 30, 1984, 98 Stat. 2918; Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1709.)

§ 2734a. Property loss; personal injury or death; incident to noncombat activities of armed forces; foreign countries; international agreements

(a) When the United States is a party to an international agreement which provides for the settlement or adjudication and cost sharing of claims against the United States arising out of the acts or omissions of a member or civilian employee of an armed force of the United States done in the performance of official duty, or arising out of any other act, omission, or occurrence for which an armed force of the United States is legally responsible under the law of another party to the international agreement, and causing damage in the territory of such party, the Secretary of Defense or the Secretary of Transportation or their designees may—

(1) reimburse the party to the agreement for the agreed pro rata share of amounts, including any authorized arbitration costs, paid by that party in satisfying awards or judgments on claims, in accordance with the agreement; or

(2) pay the party to the agreement the agreed pro rata share of any claim, including any authorized arbitration costs, for damage to the property owned by it, in accordance with the agreement.

(b) A claim arising out of an act of an enemy of the United States or arising, directly or indirectly, from an act of the armed forces, or a member thereof, while engaged in combat may not be considered or paid under this section.

(c) A reimbursement or payment under this section shall be made by the Secretary of Defense out of appropriations as provided in section 2732 of this title except that payment of claims against the Coast Guard arising while it is operating as a service of the Department of

Transportation shall be made out of the appropriations for the operating expenses of the Coast Guard. The appropriations referred to in this subsection may be used to buy foreign currencies required for the reimbursement or payment.

(d) Upon the request of the Secretary of Transportation or his designee, any payments made relating to claims arising from the activities of the Coast Guard and covered by subsection (a) may be reimbursed or paid to the foreign country concerned by the authorized representative of the Department of Defense out of appropriations as provided in section 2732 of this title, subject to reimbursement from the Department of Transportation.

(Added Pub. L. 87–651, Title I, § 113(a), Sept. 7, 1962, 76 Stat. 512, and amended Pub. L. 90–521, § 4, Sept. 26, 1968, 82 Stat. 874; Pub. L. 94–390, § 1(1), Aug. 19, 1976, 90 Stat. 1191; Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1709.)

§ 2734b. Property loss; personal injury or death; incident to activities of armed forces of foreign countries in United States; international agreements

(a) When the United States is a party to an international agreement which provides for the settlement or adjudication by the United States under its laws and regulations and subject to agreed pro rata reimbursement, of claims against another party to the agreement arising out of the acts or omissions of a member or civilian employee of an armed force of that party done in the performance of official duty, or arising out of any other act, omission, or occurrence for which that armed force is legally responsible under applicable United States law, and causing damage in the United States, or a territory, Commonwealth, or possession thereof; those claims may be prosecuted against the United States, or settled by the United States, in accordance with the agreement, as if the acts or omissions upon which they are based were the acts or omissions of a member or a civilian employee of an armed force of the United States.

(b) When a dispute arises in the settlement or adjudication of a claim under this section whether an act or omission was in the performance of official duty, or whether the use of a vehicle of the armed forces was authorized, the dispute shall be decided under the international agreement with the foreign country concerned. Such a decision is final and conclusive. The Secretary of Defense may pay that part of the cost of obtaining such a decision that is chargeable to the United States under that agreement.

(c) A claim arising out of an act of an enemy of the United States may not be considered or paid under this section.

(d) A payment under this section shall be made by the Secretary of Defense out of appropriations as provided in section 2732 of this title.

(Added Pub. L. 87–651, title I, § 113(a), Sept. 7, 1962, 76 Stat. 512, and amended Pub. L. 94–390, § 1(2), Aug. 19, 1976, 90 Stat. 1191; Pub. L. 101–510, Nov. 5, 1990, 104 Stat. (1709.)

§ 2735. Settlement: final and conclusive

Notwithstanding any other provision of law, the settlement of a claim under section 2733, 2734, 2734a, 2734b, or 2737 of this title is final and conclusive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 155; Aug. 31, 1964, Pub. L. 88–558, § 5(1), 78 Stat. 768; Aug. 29, 1972, Pub. L. 92–413, 86 Stat. 649.)

§ 2736. Property loss; personal injury or death: advance payment

(a)(1) In the case of a person who is injured or killed, or whose property is damaged or lost, under circumstances for which the Sec-

retary of a military department is authorized by law to allow a claim, the Secretary of the military department concerned may make a payment to or for the person, or the legal representatives of the person, in advance of the submission of such a claim or, if such a claim is submitted, in advance of the final settlement of the claim. The amount of such a payment may not exceed $100,000.

(2) Payments under this subsection are limited to payments which would otherwise be payable under section 2733 or 2734 of this title or section 715 of title 32.

(3) The Secretary of a military department may delegate the authority to make payments under this subsection to the Judge Advocate General of an armed force under the jurisdiction of the Secretary. The Secretary may delegate such authority to any other officer or employee under the jurisdiction of the Secretary, but only with respect to the payment of amounts of $25,000 or less.

(4) Payments under this subsection shall be made under regulations prescribed by the Secretary of the military department concerned.

(b) Any amount paid under subsection (a) shall be deducted from any amount that may be allowed under any other provision of law to the person, or his legal representative, for injury, death, damage, or loss attributable to the accident concerned.

(c) So far as practicable, regulations prescribed under this section shall be uniform for the military departments.

(d) Payment of an amount under subsection (a) is not an admission by the United States of liability for the accident concerned.

(Added Pub. L. 87–212, § 1(1), Sept. 8, 1961, 75 Stat. 448; and amended Pub. L. 90–521, § 2, Sept. 26, 1968, 82 Stat. 874; Pub. L. 98–564, Oct. 30, 1984, 98 Stat. 2919; Pub. L. 100–456, Sept. 9, 1988, 102 Stat. 2006, § 735(a).)

AMENDMENT NOTE

Pub. L. 100–456, Sept. 9, 1988, 102 Stat. 2005, Section 735(a) amends subsection (a) of section 2736 of title 10, United States Code.

Section 735(b) provides that the effective date of the amendment made by subsection (a) shall apply to any claim which would otherwise be payable under section 2733 or 2734 of title 10, United States Code, or under section 715 of title 32, United States Code, and which has not been finally settled on or before the date of enactment of this Act (Sept. 9, 1988).

§ 2737. Property loss; personal injury or death; incident to use of property of the United States and not cognizable under other law

(a) Under such regulations as the Secretary concerned may prescribe, he or his designee may settle and pay, in an amount not more than $1,000, a claim against the United States, not cognizable under any other provision of law, or—

(1) damage to, or loss of, property; or

(2) personal injury or death;

caused by a civilian official or employee of a military department or the Coast Guard, or a member of the armed forces, incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation.

(b) Under such regulations as the Secretary of Defense may prescribe, he or his designee has the same authority as the Secretary of a military department with respect to a claim, not cognizable under any other provision of law, for—

(1) damage to, or loss of, property; or

(2) personal injury or death;

caused by a civilian official or employee of the Department of Defense not covered by subsection (a), incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation.

(c) A claim may not be allowed under subsection (a) or (b) if the damage to, or loss of, property, or the personal injury or death was caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee.

(d) A claim for personal injury or death under this section may not be allowed for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States.

(e) No claim may be allowed under this section unless it is presented in writing within two years after it accrues.

(f) A claim may not be paid under subsection (a) or (b) unless the amount tendered is accepted by the claimant in full satisfaction.

(g) No claim or any part thereof, the amount of which is legally recoverable by the claimant under an indemnifying law or indemnity contract, may be paid under this section. No subrogated claim may be paid under this section.

(h) So far as practicable, regulations prescribed under this section shall be uniform. Regulations prescribed under this section by the Secretaries of the military departments must be approved by the Secretary of Defense.

(Added Pub. L. 87–769, § 1(1)(A), Oct. 9, 1962, 76 Stat. 767, § 2736, renumbered § 2737; Pub. L. 89–718, § 21(a), Nov. 2, 1966, 80 Stat. 1118).

TITLE 32.—UNITED STATES CODE—NATIONAL GUARD

§ 715. Property loss; personal injury or death: activities under certain sections of this title

(a) Under such regulations as the Secretary of the Army or Secretary of the Air Force may prescribe, he or, subject to appeal to him, the Judge Advocate General of the armed force under his jurisdiction, if designated by him, may settle and pay in an amount not more than $100,000 a claim against the United States for—

(1) damage to, or loss of, real property, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property, including property mailed to the United States or the National Guard and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the National Guard; or

(3) personal injury or death; either caused by a member of the Army National Guard or the Air National Guard, as the case may be, while engaged in training or duty under section 316, 502, 503, 504, or 505 of this title or any other provision of law for which he is entitled to pay under section 206 of title 37, or for which he has waived that pay, and acting within the scope of his employment; or otherwise incident to noncombat activities of the Army National Guard or the Air National Guard, as the case may be, under one of those sections.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;

(2) it is not covered by section 2734 of title 10 section 2672 of title 28;

(3) it is not for personal injury or death of such a member or a person employed under section 709 of this title, whose injury or death is incident to his service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee, or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

For the purposes of clause (1), the dates of the beginning and end of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

(c) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States or of any State or the District of Columbia or Puerto Rico.

(d) If the Secretary concerned considers that a claim in excess of $100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Comptroller General for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed $25,000. A decision of the officer or employee who makes a final settlement decision under this section may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.

(g) Notwithstanding any other provision of law, the settlement of a claim under this section is final and conclusive.

(h) In this section, "settle" means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or disallowance.

(Added Pub. L. 86–740, § 1(1), Sept. 13, 1960, 74 Stat. 878, amended Pub. L. 87–649, § 8(b), Sept. 7, 1962, 76 Stat. 495; Pub. L. 90–486, § 2(3), Aug. 13, 1968, 82 Stat. 756; Pub. L. 90–525, § 6, Sept. 26, 1968, 82 Stat. 756; Pub. L. 91–312, § 3, July 8, 1970, 84 Stat. 412; Pub. L. 92–445, Sept. 29, 1972, 86 Stat. 745; Pub. L. 93–336, § 3, July 8, 1974, 88 Stat. 292; Pub. L. 98–564, § 4, Oct. 30, 1984, 98 Stat. 2919.)

MEDICAL CARE RECOVERY ACT

(Pub. L. 87–693, §§ 1–3, September 25, 1962, 76 Stat. 593; 43 U.S.C. §§ 2651–2653.)

NOTE

This law, which provides for the recovery from tortiously liable third persons of the cost of hospital and medical care and treatment furnished by the United States, originated as a bill considered by the subcommittee in the 87th Congress.

TITLE 42.—THE PUBLIC HEALTH AND WELFARE

CHAPTER 32—THIRD PARTY LIABILITY FOR HOSPITAL AND MEDICAL CARE

Sec.
2651. Recovery by United States.
(a) Conditions, exceptions; persons liable; amount of recovery; subrogation; assignment.
(b) Enforcement procedure; intervention; joinder of parties; State or Federal court proceedings.
(c) Veterans' exception.
2652. Regulations.
(a) Determination and establishment of reasonable value of care and treatment.
(b) Settlement, release and waiver of claims.
(c) Damages recoverable for personal injury unaffected.
2653. Limitation or repeal of other provisions for recovery of hospital and medical care costs.

§ 2651. Recovery by United States

(a) Conditions; exceptions; persons liable; amount of recovery; subrogation; assignment

In any case in which the United States is authorized or required by law to furnish hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) to a person who is injured or suffers a disease, after the effective date of this Act, under circumstances creating a tort liability upon some third person (other than or in addition to the United States and except employers of seamen treated under the provisions of section 249 of this title) to pay damages therefor, the United States shall have a right to recover from said third person the reasonable value of the care and treatment so furnished or to be furnished and shall, as to this right be subrogated to any right or claim that the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors has against such third person to the extent of the reasonable value of the care and treatment so furnished or to be furnished. The head of the department or agency of the United States furnishing such care or treatment may also require the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors, as appropriate, to assign his claim or cause of action against the third person to the extent of that right or claim.

(b) Enforcement procedure; intervention; joinder of parties; State or Federal court proceedings

The United States may, to enforce such right, (1) intervene or join in any action or proceeding brought by the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors, against the third person who is liable for the injury or disease; or (2) if such action or proceeding is not commenced within six months after the first day in which care and treatment is furnished by the United States in connection with the injury or disease involved, institute and prosecute legal proceedings against the third person who is liable for the injury or disease, in State or Federal court, either alone (in its own name or in the name of the injured person, his guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors.

(c) Veterans' exception

The provisions of this section shall not apply with respect to hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished by the Department of Veterans Affairs to an eligible veteran for a service-connected disability under the provisions of chapter 17 of title 38.

(Pub. L. 87–693. § 1, Sept. 25, 1962, 76 Stat. 593; as amended by Pub. L. 102–54, § 13(q)(8), June 13, 1991, 105 Stat. 281.)

REFERENCES IN TEXT

Effective date of this Act, referred to in subsec. (a), is the first day of the fourth month following September, 1962, see section 4 of Pub. L. 87–693 set out as an Effective Date note below.

EFFECTIVE DATE

Section 4 of Pub. L. 87–693 provided that: "This Act [enacting this chapter] becomes effective on the first day of the fourth month following the month [September, 1962] in which enacted."

§ 2652. Regulations

(a) Determination and establishment of reasonable value of care and treatment

The President may prescribe regulations to carry out this chapter, including regulations with respect to the determination and establishment of the reasonable value of the hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished.

(b) Settlement, release and waiver of claims

To the extent prescribed by regulations under subsection (a) of this section, the head of the department or agency of the United States concerned may (1) compromise, or settle and execute a release of, any claim which the United States has by virtue of the right established by section 2651 of this title; or (2) waive any such claim, in whole or in part, for the convenience of the Government, or if he determines that collection would result in undue hardship upon the person who suffered the injury or disease resulting in care or treatment described in section 2651 of this title.

(c) Damages recoverable for personal injury unaffected

No action taken by the United States in connection with the rights afforded under this legislation shall operate to deny to the injured person the recovery for that portion of his damage not covered hereunder.

(Pub. L. 87–693, § 2, Sept. 25, 1962, 72 Stat. 593.)

§ 2653. Limitation or repeal of other provisions for recovery of hospital and medical care costs

This chapter does not limit or repeal any other provision of law providing for recovery by the United States of the costs of care and treatment described in section 2651 of this title.

(Pub. L. 87–693, § 3, Sept. 25, 1962, 76 Stat. 594.)

GUIDING PRINCIPLES IN SPECIFIC CATEGORIES OF CLAIMS

CONTRACT CLAIMS

When based on equitable considerations, contract claims have been considered by the subcommittee. Claims based upon a contract, either express or implied, are cognizable by the United States Court of Federal Claims. The statutory provisions concerning the administrative and judicial settlement of disputes and claims arising from contracts provide the usual basis for final resolution of such matters. The Contract Disputes Act enacted in 1978 and set out as chapter 9 of title 41, United States Code, under the heading "Contract Disputes," provides the statutory basis for government-wide procedures for the administrative and judicial resolution of such disputes. This law originated as a bill considered by the subcommittee. It should be noted that many of the contract claims presented to the committee have been rejected for failure to take advantage of an existing remedy, by suit or otherwise, as prescribed by committee rule 14.

While the Congress may enact special legislation for the payment of claims on what the Supreme Court has termed "moral grounds," it is here emphasized that the matters are considered by the subcommittee in the light of settled legal or equitable principles, and relief will be granted only when the relief is consistent with such principles.

JURISDICTIONAL BILLS

These are bills conferring jurisdiction for the determination of a claim to a court or tribunal when jurisdiction does not exist under general law. In the past, the committee has considered bills to confer jurisdiction on a court for the determination of a claim for the taking of private lands for public use; for confiscation and illegal sale of property; for the value of services rendered the Government under a contract; for salary wrongfully withheld from an employee; for damage to property; for personal injury and death not covered by the tort claims provisions of title 28, United States Code; and for determination of equitable relief allegedly due under a contract.

It is relevant to note that the Federal tort claims provisions of title 28 provide a broad area of jurisdiction in the Federal courts over claims which, before the enactment of the Federal Tort Claims Act, were proper subjects for private bills.

REFUNDS—BONDS, FEES, FINES, AND OTHER AMOUNTS PAID TO THE GOVERNMENT

The refund of money wrongfully or erroneously covered into the Treasury has at times been the subject of bills considered by the subcommittee. These may include refunds of the value of a bond, either criminal or alien, forfeited to the Government. Bonds are exacted for the performance of some act, usually the appearance of an accused in a criminal case, or the appearance or deportation of an alien in immigration proceedings. A failure to comply with their terms constitutes a breach resulting in forfeiture. It has been required that the appeal for relief be grounded on more than an assertion of the fact of forfeiture and subsequent apprehension of the criminal or alien by the Government, coupled with an argument that the Government should not thus enrich itself at the bondsman's expense. In past years consideration has been given such factors as: Information showing that claimant is not a professional bondsman (received a consideration for his undertaking); that the defendant has been apprehended; that claimant contributed either funds or acts to such apprehension; and that

the Government has not been damaged by the defendant's failure to appear.

Bills seeking a refund of fees or fines have also been considered. Numerous claims for the refund of taxes, duties, and other revenue overpaid to the Government have been presented, both in past Congresses and the present. Each of these cases involved a waiver of the statute of limitations contained in all revenue laws, which stood as a bar to claimant's recovery, thus necessitating legislation for its waiver or for outright refund incidentally effecting the waiver. The subcommittee has usually required that it be established that relief should be extended because of unusual and compelling equities. For instance, it would be necessary to prove that such a waiver is justified in a unique case, such as where a claimant had been misled by Government agents in payment of the revenue, or as to his right to refund, or had apparently taken every possible precaution to protect his rights but nevertheless lost to the Government upon its assertion that the statute had expired. In other words, the situation was something more than a simple overpayment—of which there are thousands—the collection of which was precluded by the statute of limitations.

While not a subject of private bills in recent years, fees coming into the hands of fiscal officers of the Government and erroneously covered into the Treasury have been refunded by special legislation. Several bills refunding fines paid under the Lever Act of August 10, 1917, subsequently declared unconstitutional in part by the Supreme Court were enacted.

ADJUSTMENT AND SETTLEMENT OF ACCOUNTS

Bills proposing the adjustment and settlement of accounts of disbursing officers, postmasters, or other fiscal agents of the United States have been considered by the subcommittee. Such bills generally involve in appropriation of money unless the officer has been required to refund it to the Government, in which event appropriation for payment to him will be necessary. If there has been no refund, the correct action is to authorize and direct the Comptroller General of the United States (not the Secretary of the Treasury, Postmaster General, or other official) to credit, or allow credit, in the officer's account and the bills should so read. Fiscal officers are often necessarily held responsible for losses which they neither contributed to or occasioned. Bills granting relief have been favorably considered where good faith and an absence of negligence can be shown. Bills have been approved which validated unauthorized expenditures for goods or services from which the Government benefited substantially. Similarly, fiscally or certifying personnel have been granted relief in some cases for loss of funds and property; for payments made with or without higher authority, but subsequently held to be unauthorized by law; and for account shortages to overpayments, embezzlements by subordinates, post office robberies, and other losses. Aside from the mentioned good faith and absence of negligence, no general rule relative to allowance of relief in this class of claims can be laid down, but it has been granted or denied in accordance with the particular facts and circumstances in each case.

SERVICES PERFORMED FOR THE GOVERNMENT

All claims for services rendered to the Government, either as a volunteer or under some legal right or authority are cognizable by the committee, with the exception of those which can be administratively determined and settled (by the departments or the General Accounting Office in accordance with existing law). Payments have been authorized where employees were hired and performed work but were not paid because the hiring was without legal authority or no appro-

priation existed from which payment could be made. In a few cases, the payment of rewards for services rendered in apprehending law violators, usually of postal laws, has been authorized. It should be noted, however, that the offering and payment of rewards is vested in the Attorney General, the Postmaster General, and other department heads with respect to enforcement of laws administered by their departments, and special legislation is usually not warranted.

Payments have also been made for services rendered in developing a national forest; for rescues at sea of Government officers or employees; for the preparation of ship-construction plans; of preparation for burial and transportation of the body of an employee who died abroad while on official duty; for transportation of employees on official business (where the expense has been held unauthorized under existing law); for fees earned as a United States commissioner, probation officer, or doctor attached to a Federal prison, after expiration of a previous appointment.

SUPPLIES OR GOODS FURNISHED THE GOVERNMENT

Claims for supplies or goods furnished to the Government, as well as for use or loss of property loaned it, have at times been recognized in bills providing for payment for such services or goods. The history of claims before the committee indicate that such bills provided for payments for meat furnished to the Forest Service; trucks furnished to the Army; submarine valves furnished to the Navy; horses, cows, and other property leased or gratuitously bailed to the Government, and thereafter lost, through death or other cause, as result of negligent care; coal supplied under a contract which was later canceled; and also cases of furnishing both material and labor under construction controls. However, Government procurement contracts and construction contracts are governed by public laws on that subject and their implementing regulations. Only in most unusual instances has it been found appropriate to grant relief through private legislation.

As has just been observed, the Government usually obtains services, supplies, goods, or property under a contract or lease. Payment of claims of this class has, in unusual cases, required private legislation because the equities of the case justified relief and there was no right of suit against the Government, for legal or other reasons. Rule 11 requiring that claimant exhaust his remedies elsewhere prior to seeking relief from the Congress, as well as the matter previously set forth with respect to contract claims, should be kept in mind by one who desires to determine what the committee's attitude may be with respect to claims of this class.

GOVERNMENT WARDS, PRISONERS, AND CONTRACT EMPLOYEES

A statement concerning Government wards and prisoners is included in this booklet since, in past Congresses, several private bills were enacted compensating some of such persons for personal injuries sustained while performing work of which the Government received the benefit. Those included bills concerning pupils at Indian schools. They learn trades as part of their instruction and also perform duties at the school. Occasionally, injuries have occurred while performing their duties or in the course of their instruction with machinery, and the Congress has, by special act, provided compensation for those injured. Again, inmates of the Federal reformatories and prisons are required to work in shops, and the product of their labor goes to the Government. Under section 4126 of title 18, United States Code, there is provision for the payment of compensation to prisoners or their dependents for injuries suffered in any prison industry or in work in connection with maintenance or operation of the institution where confined. This provision provides for payments in a manner somewhat

similar to that provided in the Federal Employees Compensation Act. This section provides for relief previously provided for only by private bill.

Persons employed by a Government contractor who suffer injury in the performance of their duties must look to the contractor for compensation. In a few rare instances, the committee has favorably considered claims for compensation by contract employees. One was the claim of a contract mail carrier, injured by the negligent overloading of mail sacks by Government employees. Another was himself performing hazardous work under a contract with the Forest Service when he sustained injury. Two more were victims of attempted mail robberies. Of these, one was a contract carrier, the other was employed by a fourth-class postmaster and suffered severe injuries in successfully defending the post office and its contents against four armed bandits. These cases were regarded as involving unique factual situations which provided grounds for distinguishing between their merits and those of claims by persons employed by the average Government contractor.

MISCELLANEOUS

In past years, the committee has considered claims for the difference in value of purebred cows slaughtered, in the Government's disease-elimination program, as grade animals, prior to their registration as purebred; for the full value of land conveyed to the Government in an instance where payment was originally made on the basis of an erroneous survey of the tract by the Government; for personal injury suffered while assisting a United States officer in law enforcement; for one-half of a judgment recovered against a municipality by the estate of a deceased employee, killed through the joint negligence of the municipality and the Government; authorizing the cashing of two paychecks on behalf of the widow of a Government agent who disappeared while performing official duty, on the seven-year-absence death presumption; for expenses incurred in preparing to carry the mail under an awarded contract which was later canceled; for damage to property occupied, with the Government's assent, by so-called "bonus marchers"; for the refund of an inheritance tax, due the State of Pennsylvania but erroneously paid to the Federal Government; for the refund of Federal tax collected on gas furnished the Government under a contract.

The subcommittee also has jurisdiction over public claims legislation. For example, the subcommittee has considered bills amending the Federal tort claims provisions of title 28, United States Code, bills amending the military claims provisions of chapter 163 of title 10, United States Code, and other public bills concerning claims and claims procedure.

Although examples of bills considered by the subcommittee or coming within committee jurisdiction and policy have been discussed herein, other points may arise in connection with some proposed bills, and the committee suggests that the author of such a bill consider discussing the matter with the subcommittee staff. Should there be a question concerning the jurisdiction of the committee over the subject matter, it is suggested that the author of the bill contact the Parliamentarian of the House prior to introduction of the bill.

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