



U.S. Department of Justice
Federal Bureau of Prisons

PROGRAM STATEMENT

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Federal Tort Claims Act

/s/

Approved: Colette S. Peters
Director, Federal Bureau of Prisons

1. § 543.30 Purpose and scope.

Pursuant to the Federal Tort Claims Act, a claim for money damages for personal injury or death and/or damage to or loss of property must be filed against the United States by the injured party with the appropriate Federal agency for administrative action. General provisions for processing administrative claims under the Federal Tort Claims Act are contained in 28 CFR part 14. The provisions in this subpart describe the procedures to follow when filing an administrative tort claim with the Bureau of Prisons.

Under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b) and 28 U.S.C. § § 2671-2680, the Government may be liable for the negligent or wrongful acts or omissions of its employees while acting within the scope of their employment.

Inmate work-related claims are not compensable under the FTCA's provisions. Such claims should be processed under the Inmate Accident Compensation Act, 28 C.F.R. §§ 301.301 to .318.

Most Federal employee work-related claims are also not paid under the FTCA's provisions. Work-related personal injury or death claims are processed under the Federal Employees' Compensation Act (FECA), 5 U.S.C. §§ 8101 – 8193. Please see Program Statement, **Workers' Compensation Program** for more information. Work-related personal property claims are processed under 31 U.S.C. § 3721, commonly known as The Military Personnel and Civilian Employees Claims Act (CECA), or under 31 U.S.C. § 3722, commonly known as the Bureau of Prisons Claims Act (BOPCA), unless the claim involves government negligence. For more information, please reference the Program Statement, **Staff Personal Property Claims**.

a. **Summary of Changes**

Policy Rescinded

P1320.06 Federal Tort Claims Act (8/1/2003)

- Provides more details regarding the delegation of authority to settle administrative tort claims.
- Adds guidance claims regarding inmates' privately owned property will be considered for settlement under 31 U.S.C. § 3723.
- Provides guidance the Bureau may reject a claim only if a claimant or representative fails to sign the administrative claim or fails to provide a sum certain for damages.
- Specifies the Associate General Counsel, Litigation Branch, will investigate and propose settlement of Central Office tort claims within the delegated authority.
- Removes the reference to the depreciation guidelines because inmate property claims will be processed under 31 U.S.C. § 3723.
- Adds guidance regarding what denial letters should include and how they should be sent.
- Adds guidance regarding the process of requesting settlement authority and approving administrative tort claim settlements.
- For the purposes of this Program Statement, the term "employee" is used in black implementing text and is intended to have the same meaning as the term "staff" used in blue regulatory text. The terms "staff" and "staff member (s)" have been replaced with the term "employee (s)" throughout the black implementing text.

b. **Program Objective.** The expected result of this program is:

Appropriate compensation will be made under the FTCA if individuals suffer proven monetary loss, personal injury, or wrongful death caused by an employee's negligent or wrongful act or omission, while the employee is acting within the scope of their employment.

c. **Institution Supplement.** Required. Each institution will develop an Institution Supplement detailing procedures for conducting investigations under Section 4.c.

2. **DELEGATION OF AUTHORITY**

The Director of the Federal Bureau of Prisons (Bureau) is authorized to settle administrative tort claims that do not exceed \$50,000 under 28 C.F.R. § 0.172. The Director has redelegated this authority to the General Counsel under 28 C.F.R. § 0.96 and 0.97, who has redelegated the authority to the Regional Counsels and the Associate General Counsel, Litigation Branch.

3. § 543.31 Presenting a claim.

(a) **Claimant.** You may file a claim if you are the injured person or the owner of the damaged or lost property. A person acting on your behalf as an agent, executor, administrator, parent, guardian, or other representative may file a claim for you if the person provides a written statement signed by you giving that person permission to act for you. A representative may also file a claim for wrongful death. If you hire a lawyer or authorize a representative to act on your behalf, the agency will correspond only with that representative, and will not continue to correspond with you.

A claim may be filed by any individual (e.g., inmate, employee, visitor, or private citizen). You must file a claim within two years after your claim arises under 28 U.S.C. § 2401(b). Should a settlement offer be made, the voucher will contain both your name and the name of your representative, if applicable.

Regional Counsel employees track all claims that are filed properly within their regions.

Claims are closed after they are either settled, denied, rejected, or transferred to another agency pursuant to 28 C.F.R. § 14.2.

Claims for damage to, or loss of, an inmate's privately owned property is considered for settlement under 31 U.S.C. § 3723. Please see Program Statement, **Inmate Property Claims** for more information.

(b) **Claim form.** You may obtain a form from staff in the Central Office, Regional Offices, Bureau institutions, or staff training centers.

Employees will provide a SF-95, Claim for Damage, Injury, or Death form, which is available on the public U.S. General Services Administration (GSA) website in the GSA Forms Library and on the Employee Resources page of the Bureau intranet.

A claim may be filed without a SF-95, Claim for Damage, Injury, or Death form. However, the claimant should provide all the following information:

- date of incident
- place where the incident occurred
- explanation of events
- names of witnesses
- description of injury or property loss
- date of claim

- sum certain claimed (required)
- claimant's signature (required)

Inmates should obtain forms from employees at the institution where they are incarcerated.

(c) **Presenting a claim.** You may either mail or deliver the claim to the regional office in the region where the loss or injury occurred. If the loss or injury occurred in the Central Office, you may either mail or deliver the claim to the Office of General Counsel, Central Office. A list of addresses for all the Bureau institutions and offices can be found at www.bop.gov.

Institution employees will not accept claims submitted at institutions but will transfer the claims to the correct Regional Office or the Central Office, depending on where the loss or injury occurred.

If a claim is submitted to the Bureau in error, employees will forward it to the proper agency or return it to the claimant if the agency cannot be identified. Please note, the term "agency" includes executive departments, judicial and legislative branches, military departments, and independent establishments of the United States.

Claims that are transferred to another agency will not be accepted or denied by the Bureau.

4. **§ 543.32 Processing the claim.**

(a) **Receipt of acknowledgment letters.** If you have presented a claim signed by you or a duly authorized agent or legal representative that provides all the necessary information (such as time, date, and place where the incident occurred, and a specific sum of money you are requesting as damages), you will receive an acknowledgment letter indicating the presentment date and a claim number. If your submission is unsigned, or signed by a person without legal authority to present the claim on your behalf, or you fail to provide all necessary information, your submission will be rejected and returned to you for resubmission. The presentment date is the date your submission containing all required signatures and necessary information is first received by either the Department of Justice or an office of the Bureau of Prisons. You should refer to your claim number in all further correspondence with the agency. Additionally, you must inform the agency of any changes in your address.

An inmate must inform the Bureau office that is processing their claim when they are transferred to another institution or released from custody.

Regional Counsel and Office of General Counsel employees will date-stamp all claims on the date they are received whether or not the claims are received in the proper office.

A claim that is transferred to another Bureau office will be considered filed with that office when the claim was received by the first appropriate agency office.

For example, if a claim is received by the Department of Energy on October 12, then transferred to the Department of Justice on October 19, then transferred to the Central Office, Bureau of Prisons, on October 24, then transferred to a regional office on November 1, the proper date the claim is received would be October 19.

The Bureau may reject or not accept a claim only if a claimant or representative (1) fails to sign the administrative claim, or (2) fails to provide a sum certain for damages. Claims that are unclear, illegible, or lack allegations of federal involvement should be denied instead of rejected.

(b) *Transfer of claims.* If your claim is improperly submitted to the wrong office or agency, you will be notified by the responsible office that your claim was transferred to another regional office, the Central Office, or another agency.

(c) *Investigation.* The regional office ordinarily refers the claim to the appropriate institution or office for investigation. You may also be required to provide additional information during the investigation. Your failure to respond within a reasonable time may result in the denial of the claim.

(1) *Institution Investigation.* Claims properly filed with a regional office will be referred to the appropriate institution or office for investigation. The Warden at the institution will designate employees to investigate and prepare a report on the claim. The report, with the Warden's recommendation(s), is then forwarded to the appropriate Regional Counsel. The Regional Counsel's Office will track all outstanding claims until settled or denied.

Each institution will develop an Institution Supplement detailing procedures for such investigations.

The Safety Department conducts a timely investigation of motor vehicle accidents. This investigation includes documenting the condition of the site at the time of the accident and taking photographs that depict the damage accurately.

(2) *Investigation Report.* The report will include:

- the Claim for Damage, Injury, or Death Form or other appropriate written form of notification
- background materials, including statements of witnesses, photographs, and medical case descriptions, as necessary

- relevant administrative remedy requests
- the Warden's conclusions and recommendations

A sufficient number of detailed photographs must be taken to provide the reviewing offices with a clear idea of the type and extent of damage, especially in the case of motor vehicle damage.

(3) **Central Office Claims.** Central Office employees will investigate claims filed properly in the Central Office and provide a report to the Office of General Counsel. The Office of General Counsel will track all outstanding claims in the Central Office until a claim is settled or denied.

(4) **Medical Malpractice Claims.** Institution Health Services employees should review claims alleging medical malpractice or improper medical care. After this review, a clear case description must be provided, including a history of all relevant medical treatment, medications, and services rendered to the claimant. A case description should also include any relevant medical justifications for the treatment rendered.

(5) **Witness Security (WITSEC) Claims.** Claims filed by inmates in the WITSEC Program must be handled in the same manner as other claims, except all correspondence and the resulting investigation must be sent through the Inmate Monitoring Section, Correctional Programs Division, Central Office.

(d) *Administrative claim decisionmaker.* The Regional Counsel or his or her designee reviews the investigation and the supporting evidence and renders a decision on all claims properly presented to the regional office and within regional settlement authority. The Regional Counsel has limited settlement authority (up to an amount established by the Director of the Bureau of Prisons). After considering the merits of the claim, the Regional Counsel may deny or propose a settlement of the claim. The Associate General Counsel, Litigation Branch, will investigate and propose settlement for all claims properly presented in the Central Office in accordance with delegated settlement authority. If the proposed settlement exceeds the Bureau of Prisons' authority, the General Counsel will seek approval from the appropriate Department of Justice officers.

(e) *Central Office review.* If the Regional Counsel recommends a proposed settlement in excess of the settlement authority, the claim will be forwarded, with a recommendation, to the Office of General Counsel, Central Office for their review.

If the Regional Counsel or the Associate General Counsel, Litigation Branch, review a claim and determine that a settlement is in the best interest of the Government, a settlement offer may be made to the claimant.

The Regional Counsel and the Associate General Counsel, Litigation Branch, have settlement authority up to \$50,000, except for claims involving a significant event. If a settlement agreement will likely exceed \$50,000, Counsel must request settlement authority from the General Counsel before negotiating a settlement amount. Counsel is to provide the Office of General Counsel with the complete investigation report, copies of all supporting materials, and a detailed memorandum requesting settlement authority.

If a settlement agreement is then reached that exceeds \$50,000, the General Counsel must submit the agreement to the Torts Branch, Civil Division, U.S. Department of Justice, for final approval. The Torts Branch will not consider requests for settlement authority without a final settlement agreement signed by the claimant and claimant's attorney if claimant is represented.

Settlement of claims over \$2,500 will be forwarded to the Judgment Fund Branch, Bureau of the Fiscal Service, U.S. Department of the Treasury, for payment.

Payment of claims for \$2,500 or less will be paid from institution funds of the institution where the claim arose.

(f) *Options if claim is denied or settlement offer is unsatisfactory.* If your claim is denied or you are dissatisfied with a settlement offer, you may request in writing that the Bureau of Prisons reconsider your claim in the administrative stage. You should include additional evidence of injury or loss to support your request for reconsideration. If you are dissatisfied with the final agency action, you may file suit in an appropriate United States District Court, as no further administrative action is available.

All denial letters must be sent via certified or registered mail. The denial letter must state that if the claimant is dissatisfied with the denial, they may file suit in the appropriate District Court within six months after the mailing of the denial.

(g) *Acceptance of settlement.* If you accept a settlement, you give up your right to bring a lawsuit against the United States or against any employee of the government whose action or lack of action gave rise to your claim.

(h) *Response timeline.* Generally, you will receive a decision regarding your claim within six months of when you properly present the claim. If you have not received a letter either proposing a settlement or denying your claim within six months after the date your claim was presented, you may assume the claim is denied. You may then proceed to file a lawsuit in the appropriate United States District Court.

REFERENCES

Program Statements

- P1601.05 Workers' Compensation Program (3/25/2016)
- P1120.20 Staff Personal Property Claims (1/3/2018)
- P5580.09 Inmate Property Claims (3/20/2018)

Other Forms

SF-95, Claim for Damage, Injury, or Death

Federal Statutes

- 5 U.S.C. §§ 8101 – 8193, Federal Employees' Compensation Act (FECA)
- 28 U.S.C. § 1346(b), United States as Defendant
- 28 U.S.C. §§ 2671-2680, Tort Claims Procedure
- 28 U.S.C. § 2401(b), Statutory Time Period
- 31 U.S.C. § 3723, Small claims for privately owned property damage or loss
- 31 U.S.C. § 3721, Claims of personnel of agencies and the District of Columbia government for personal property damage or loss, The Military Personnel and Civilian Employees Claims Act (CECA)
- 31 U.S.C. § 3722, Claims of officers and employees at Government penal and correction institutions, Bureau of Prisons Claims Act (BOPCA)

Federal Regulations

- 28 C.F.R. §§ 0.96 & 0.97, Delegation and Redelelegation of authority
- 28 C.F.R. § 0.172, Authority: Federal tort claims
- 28 C.F.R. §§ 14.1 through 14.11, Administrative Claims under FTCA
- 28 C.F.R. § 301.301 to .318, Inmate Accident Compensation Act

ACA Standards

- Performance-Based Standards and Expected Practices for Adult Correctional Institutions (5th Edition): 5-ACI-1B-17, 5-ACI-3A-27, 5-ACI-5F-05
- Performance-Based Standards for Adult Local Detention Facilities (4th Edition): 4-ALDF-7D-14, 4-ALDF-1B-02, 4-ALDF-5B-18

Records Retention

Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) on the Bureau's intranet site.