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## PERSONAL PROPERTY CLAIMS AND TORT CLAIMS

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### I. Purpose

This directive establishes the Department of Homeland Security (DHS) policy for personal property claims and tort claims.

### II. Scope

This directive applies to all DHS organizational elements serviced by the DHS Office of the Chief Financial Officer. All organizational elements that receive financial management support from another Federal agency or that have existing programs, should continue to use those procedures until a DHS-wide system is developed and implemented.

### III. Authorities

This directive is governed by numerous Public Laws and national policy, such as:

- A. Military Personnel and Civilian Employees Claims Act of 1964, 31 U.S.C. 3721
- B. The Federal Tort Claims Act, 28 U.S.C. 2672.
- C. Treasury Financial Management Manual, Volume 1, Part 6, Chapter 3100.

### IV. Definitions

- A. ***Employee Personal Property Claim:*** A claim brought by a DHS employee (or an employee's representative) against DHS, for damage to or loss of personal property incident to services with DHS. An example of a potential employee personal property claim is where a DHS employee is working in a DHS facility containing equipment. Through no fault of the employee, one machine suddenly malfunctions and splatters the employee with grease and oil. Although the employee is not injured, his clothes are ruined. The employee may make an employee personal property claim against DHS to be compensated for the damage to the clothing.

B. **Tort Claim**: A claim against DHS, or its employees for damage to or loss of property or personal injury or death. Such claims may be brought only for property damage, injury, or death arising out of the activities of DHS. A tort claim can be filed by someone who is not a DHS employee. An example of a tort claim is where DHS airport screeners damage the carry-on baggage (including the contents of the baggage) belonging to a traveler during the passenger security screening process. The individual could file a tort claim against DHS to be compensated for the damage to the baggage and/or its contents.

C. **Judgment Fund**: A fund which is available for payment of certain court judgments and compromise settlements of actual or imminent lawsuits against the Government.

D. **Designated DHS Official**: Senior DHS officials as designated by the Secretary, Deputy Secretary or Under Secretaries.

## V. Responsibilities

A. The **Office of General Counsel** shall:

1. Interpret laws and regulations related to tort claims.
2. Offer legal advice to DHS components regarding tort claims.
3. Represent DHS (or assist attorneys from the Department of Justice or US Attorney's offices) in legal proceedings related or arising from claims and the claims process.

B. The **Chief Financial Officer (CFO)** shall:

1. Audit and process payment for claims in accordance with U.S. Treasury guidance and other applicable directives.
2. Ensure that proper internal controls are in place over payment of claims.

## VI. Policy and Procedures

A. **Policy**: Claims shall be reviewed by the DHS Office of Counsel. There are different delegations of authority to settle different types and sizes of claims. Upon settlement of a claim Counsel shall determine the appropriate payment source and direct the CFO to initiate payment.

1. Employee Personal Property Claims: Employee personal property claims generally result from government caused damage to an employee's belongings. Often, these claims result from damage to an employee's household goods related to a permanent change of station move. In general, employee personal property claims may be allowed only if:

- a. the damage or loss was not caused wholly or partly by the negligent or wrongful (based on reasonable care under the circumstances) act of the claimant.
- b. the possession of the lost or damaged property and the quantity are determined to have been reasonable, useful, or proper under the circumstances.
- c. the claim is substantiated by proper and convincing evidence.

Employees shall submit claims on forms prescribed locally by DHS component organizations; if no such form is available, a written statement will be accepted and considered as a claim if it asserts a demand for a certain sum, and substantially described the facts to support a claim.

2. If available, the following types of documentation should be included with the claim submission:

- a. corroborating statement(s) from person(s) who have personal knowledge of the facts concerning the claim.
- b. receipts, canceled checks or other documentation showing acquisition.

(1) Statements concerning any insurance coverage held by the employee and reimbursement obtained from the insurer. The statement should describe the type of insurance and give the insurer's name. If the claimant has insurance to cover the loss and has not submitted a claim, the failure to do so must be explained.

(2) Photographs or a videotape, in any case, where such would support the claim.

(3) A statement from the employee's supervisor certifying that the employee was in a duty status at the time the claim arose and providing any additional information about the validity of the claim that he or she may have.

Employee claims should be initially reviewed by the employee's supervisor and approved by the appropriate Under Secretary or Designated DHS Official. Approved claims should be forwarded to the CFO for audit and payment.

3. Tort Claims: A claim against DHS, or its employees for damage to or loss of property or personal injury or death. Such claims may be brought only for property damage, injury, or death arising out of the activities of DHS. A tort claim can be filed by someone who is not a DHS employee. An example of a tort claim is where DHS airport screeners damage the carry-on baggage (including the contents of the baggage) belonging to a traveler during the passenger security screening process. The individual could file a tort claim against DHS to be compensated for the damage to the baggage and/or its contents.

Any member of the public wishing to file a claim against DHS shall initiate the claim using Standard Form (SF) 95 (Claim for Injury, Damage, or Death). The SF-95 must be completed and state a claim for monetary damages in a sum certain amount claimed for injury to or loss of property, personal injury, or death. If a sum certain is not specified on the SF-95, the submission cannot be considered a valid claim. The completed SF-95 must be presented within two years after the claim accrues.

These claims shall be submitted directly to the Office of General Counsel for review.

B. **Procedures:**

1. If Counsel determines that the claim can be paid from the U.S. Treasury judgment fund, Treasury FMS Forms 197/197-A shall be used. After the necessary claimant acceptance has been obtained, these forms, along with any related supporting documentation will be forwarded to the accounting office designated by the CFO.

2. Once a settlement has been reached, Counsel shall prepare the necessary documentation to initiate payment of the claim. If Counsel determines that a tort claim must be paid from DHS appropriations, SF-1145 (Voucher for Payment Under the Federal Tort Claims Act) shall be used.

3. Payment of Claims:

a. Claims will be paid at a DHS accounting office designated by the CFO. Upon receipt of a completed claim from Counsel, the accounting office shall initiate the payment process immediately without delay. Although claims are generally not subject to the prompt payment act, it is DHS policy to release funds to claimants as quickly as possible after a settlement is reached, subject to availability of funds.

b. Employee Personal Property Claims and Tort Claims will generally be paid from DHS appropriations, in which case the payment shall be processed through standard DHS accounting procedures. For tort claims in the amount of \$2,500 or more (and certain other claims and judgments), payment may be made from the U.S. Treasury Judgment fund, a special fund established to allow agencies to settle certain claims and judgments, while avoiding or delaying an adverse budgetary impact.

c. Counsel shall instruct the CFO as to when claims may be paid from the judgment fund. The accounting office shall review all required forms and data for completeness and accuracy and forward to Treasury for payment. Specific guidance relative to use of the Judgment Fund can be found in the U.S. Treasury Financial Management Manual, Volume 1, Part 6, Chapter 3100, Certifying Payments and Recording Corresponding Intergovernmental Receivables in the Federal Government's Judgment Fund (September 2000), and at the Treasury Judgment Fund Internet Site, <http://www.fms.treas.gov/judgefund/index.html>.

C. **Questions or Concerns Regarding the Process:** Any questions or concerns regarding Employee Personal Property Claims should be addressed to the Office of the Under Secretary for Management. Questions or concerns regarding Tort Claims should be addressed to the Office of the General Counsel.