

MS 775 Settlement of Claims Arising Abroad

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Attachments

Attachment A – Template for Release for Claims of US \$5,000 or Less

Attachment B – Template for Release for Claims of US \$500 or Less

1.0 Purpose and Authority

Section 10(b) of the Peace Corps Act is intended to permit the Peace Corps to settle certain claims brought by foreign citizens or their organizations against the U.S. expeditiously and without undue formality. Payment of claims under Section 10(b) may not exceed \$20,000. The regulations contained in this Section establish procedures under which Country Directors may exercise the authority of Section 10(b) in certain cases, and initiate a process whereby the Peace

Corps Director may exercise it in others. This Section also describes authorities available to the Peace Corps to settle claims which Section 10(b) does not cover.

Settlement and payment of claims under Section 10(b) are discretionary and may be effected without regard to legal liability to further the purposes of the Peace Corps Act. Thus, although claims settled under this authority will normally involve negligence or other wrongful conduct by a Volunteer or employee, the authority may also be used when the U.S. would not legally be held responsible for the injury or damage.

2.0 Delegation of Authority

2.1 Authority of Country Director

Each Country Director or person acting in that capacity is hereby authorized:

- (a) To determine, with regard to claims of \$5,000 or less which meet each of the requirements below, that settlement and payment thereof will further the purposes of the Peace Corps Act; and
- (b) To settle and pay such claims in accordance with the procedures set forth below.

Claims over \$5,000 that the Country Director recommends for settlement will be referred to the Regional Director for review and clearance by the General Counsel before the Regional Director presents such recommendations to the Peace Corps Director. Such claims must be accompanied by the Country Director's written recommendation for settlement and the pre-settlement documentation described below.

This authority is not re-delegable.

2.2 Authority of Director of Management and Operations (DMO) and Director of Programming and Training (DPT) in Emergencies

Each DMO and DPT is hereby authorized:

- (a) To determine, with regard to claims of \$500 or less in emergency circumstances per section 6.1, which meet each of the requirements below, that settlement and payment thereof will further the purposes of the Peace Corps Act; and
- (b) To settle and pay such claims in accordance with section 6.1.

This authority is not re-delegable.

3.0 Policy

3.1 Criteria for Settlement and Payment of Claims under Section 10(b)

In order to qualify for settlement under Section 10(b), a claim must satisfy all the following conditions:

- (a) It must be against the U.S. Government or the Peace Corps as its agency, rather than against individual Volunteers, Direct Hire employees, or personal services contractors.
- (b) It must be for personal injury or death, or loss or damage of property, of a person or entity who is neither a citizen nor resident of the U.S.

- (1) Claims brought by Volunteers or U.S. citizen employees may not be entertained under Section 10(b).

- (2) Claims brought by non-U.S. citizen employees may not be entertained under Section 10(b) without prior approval of the General Counsel.

- (c) It must result from an act or omission by a U.S. Direct Hire employee, personal services contractor, or Volunteer in a situation in which there is no expressed or implied contractual obligation.

Claims arising from the act or omission of an independent contractor's employee may not be entertained under Section 10(b). The most common of such claims are those arising from vehicle accidents.

This authority is not available for the settlement of contractual claims such as unpaid rent, overdrawn bank accounts, or other debts.

If there is any doubt, the General Counsel will advise whether a claim may be entertained under Section 10(b).

- (d) It must arise abroad. In Puerto Rico and the Virgin Islands, the Federal Tort Claims Act is applicable, and tort claims arising there must be referred to the General Counsel. (See MS 776, *Claims Against U.S. Government Under Federal Tort Claims Act.*)
- (e) It must be presented in writing within one year after the claim accrues.
- (f) It must be presented by the owner of the property or the injured person in question, that person's authorized agent or legal representative, or, if for death, by the executor or administrator of the decedent's estate, or any other person legally or beneficially entitled to assert such a claim under applicable local law governing the rights of survivors. A claim filed by an agent or representative will:
 - (1) State that it is presented in the name of the real claimant;

- (2) Be signed by the agent or representative, showing the agent's title or legal capacity; and
- (3) Be accompanied by evidence of the agent's authority to present the claim on the claimant's behalf.

3.1.1 Receipt and Release

Other than as provided under section 6.1 for settlement of claims in emergencies where it may not be possible to secure a release, no settlement and payment of a claim under Section 10(b) may be made unless the claimant agrees and accepts the amount paid as full satisfaction of the claim, and provides the Country Director with a written statement (signed by the claimant, authorized agent, or legal representative) releasing the U.S. Government, the Peace Corps, and the employee or Volunteer out of whose act or omission the claim arose, from any further liability. (See MS 775 Attachment A and MS 775 Attachment B for applicable Receipt and Release (Release) templates.)

The exact form and content of the Release may vary from country to country. Each Country Director must seek the advice of a host country attorney and the Office of the General Counsel with respect to the Releases to finalize the Releases before they are issued and ensure that they comply with applicable local and US laws and regulations. (See MS 774 *Retention of Counsel and Payment of Expenses.*)

3.1.2 Counterclaims

If the Peace Corps or any employee or Volunteer has a counterclaim against the claimant arising out of the same incident, the Country Director should not make any settlement unless the counterclaim is also settled at the same time.

3.1.3 Insurance

Before settling any claim, the Country Director must first determine whether Peace Corps liability insurance in effect in that country covers the claim. (See MS 522 *Motor Vehicle Use and Insurance* and related procedures.)

If insurance coverage is applicable, refer the claimant to the appropriate insurer, unless direct and immediate settlement is required for pressing program reasons.

If liability insurance is in effect but does not cover the claim, or is not used due to pressing program reasons, the Country Director should include a memorandum of explanation with other claim documentation.

3.1.4 Conflict of Interest

To avoid the appearance of a conflict of interest, no employee may participate in the negotiation and settlement of a claim based on that same individual's acts or omissions, except in emergencies (see 6.1 below). The Director of Management and Operations (DMO) or Director of Programming and Training (DPT) will handle all claims arising from the act or omission of the

Country Director, and will refer recommendations for settlement to the Regional Director for review and clearance by the General Counsel before the Regional Director presents such recommendations to the Peace Corps Director.

3.2 Determination of Damages Under Section 10(b)

The Country Director, DMO, or DPT should determine amounts to be paid in settlement of claims under Section 10(b) in light of the law and custom of the host country. Local attorneys may be able to provide guidance on this point. The following are the primary considerations under U.S. legal principles:

- (a) In the case of damaged property, what is the cost of its repair?
- (b) In the case of property damaged beyond repair or destroyed, what was its market value prior to the accident, minus the salvage value after the accident?
- (c) In the case of personal injury, what are the actual medical and other out-of-pocket expenses related to the treatment of the injury, loss of wages, and, if disability resulted, compensation therefore (In severe cases, an amount for "pain and suffering" may be added).
- (d) In the case of death, what are the actual medical and other related out-of-pocket expenses, loss of wages between time of the accident and death, and compensation to the legal survivors for loss of the economic benefits they would have received had the decedent survived (usually based on the decedent's projected earnings). If death was preceded by a period of "pain and suffering," an amount may be added for this. Local custom and usage may be an important guide in determining whether a settlement will be acceptable in such cases.

3.3 Further Guidance

Country Directors may elect to seek additional guidance on local laws and standard procedures for claims settlement from the appropriate Embassy officer and/or the detailed State Department tort claim settlement regulations in 2 FAM 280-281. However, note that claims settlement authorities available to the Secretary of State and discussed in 2 FAM 281 are not available to the Peace Corps to settle claims arising out of Peace Corps operations.

4.0 Procedures

4.1 Documenting and Reporting Claims and Settlement Under Section 10(b)

The Country Director should document a claim before settling it.

Documentation should include a copy of the written claim and a full report on the circumstances out of which the claim arose, as well as any of the following which are applicable:

- (a) Statements of witnesses;

- (b) Police reports; or
- (c) Estimates of property damage or doctor's reports of injuries.

Retention of such documentation should comply with agency records retention requirements.

4.2 Settlement Report

After settlement, the Country Director should forward a brief report to the General Counsel with a copy to the Regional Director, summarizing the circumstances out of which the claim arose, stating the amount paid in settlement, and verifying that the claim was presented in writing and a Release was secured from the claimant. The Country Director should attach a copy of the Release and any police report.

5.0 Commencement of Legal Proceedings

Report immediately the commencement or threat of commencement of a legal proceeding in support of any claim to the General Counsel, including the name of the plaintiff, the nature of the action, the amount of damages claimed and copies of all pleadings, briefs, or other documents filed. Please refer to the guidance regarding service of process issued by the Office of the General Counsel. (See [OGC Guidance Regarding Service of Process](#).)

No claim upon which legal proceedings have been commenced may be settled, nor any judgment satisfied, without prior written approval of the General Counsel.

6.0 Claims not Covered by Section 10(b)

The Country Director should report promptly to the applicable Regional Director and the General Counsel cases in which settlement of a claim is necessary to carry out the purposes of the Peace Corps Act, but for which Section 10(b) does not authorize settlement.

The Country Director should include in the report a full statement of the circumstances out of which the claim arose, and a breakdown of claimed expenses, plus a request for authorization to settle the claim, the amount of settlement recommended, and reasons for the recommendation.

When the Country Director recommends settlement, with the Regional Director's concurrence, the General Counsel will advise the Peace Corps Director of the availability of any extraordinary authority for settlement of such claims. Only the Peace Corps Director may authorize payment of such claims under extraordinary authority, and only on a case-by-case basis.

6.1 Settlement Authority in Emergencies

In emergency circumstances, a Country Director, DMO, or DPT may determine that a payment of \$500 or less needs to be made to the injured party in the immediate aftermath of an accident to forestall a situation that is potentially harmful or adverse to the Peace Corps, without requiring a written claim or securing any prior authorization. In these instances, the Country Director, DMO, or DPT may authorize in writing any employee to convey a settlement offer, and if the offer is

accepted, to make such payment. A Release (per Template B modified if necessary per advice from local counsel) should be obtained upon payment.

Consistent with section 4.2, the Country Director should provide a settlement report to the Regional Director and the General Counsel, and, if the Country Director did not personally make the payment, the Country Director's agreement regarding the emergency settlement.

7.0 Effective Date

This Manual Section shall take effect on the date of issuance.