

# **MS 776 Claims Against the U. S. Government Under the Federal Tort Claims Act**

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**Responsible Office:** D/GCLL

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MS 776 "Claims Against the U. S. Government Under the Federal Tort Claims Act" was approved by the Director of the Peace Corps and first published in the Federal Register on March 28, 1969.

MS 776 is currently in the process of again being revised from a version issued on 1/07/2013 so that it comports with changes in the law governing claims against the U.S. government under the Federal Tort Claims Act. These revisions cannot be issued as part of the Peace Corps Manual until they have been reviewed by the Office of Management and Budget in accordance with its processes and published in the Federal Register. In the meantime, the 1/07/2013 version of MS 776 continues in effect.

## **Part 304 - Claims Against the U.S. Government Under the Federal Tort Claims Act**

Part 304 is added to Chapter III of Title 22 of the Code of Federal Regulations to read as follows:

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Authority:

The provision of this Part 304 issued under 28 U. S. C. 2672; 28 CFR 14.11; secs. 4 and 5( h), 75 Stat. 612, 22 U. S. C. 2503; E. O. 11041 , as amended, 3 CFR, 1959-1963 Comp.; Sec. 2( 6), State Department Delegation of Authority No. 85-11A, as amended.

General Provisions

#### **§304.1 Scope; definitions.**

- a. This subpart applies to claims asserted under the Federal Tort Claims Act, as amended, accruing on or after January 18, 1967, for money damages against the United States for injury to or loss of property or personal injury to or death caused by the negligent or wrongful act or omission of an officer or employee of the Peace Corps, a person serving the Peace Corps under invitational travel orders, or a Peace Corps Volunteer or trainee while acting within the scope of his office or employment.
- b. This subpart is not applicable to claims arising in a foreign country; it is applicable to claims arising in Puerto Rico and the Virgin Islands.
- c. This subpart is issued subject to and consistent with applicable regulations on administrative claims under the Federal Tort Claims Act issued by the Attorney General (31 F. R. 16616; 28 CFR Part 14).
- d. For the purposes of this subpart, the term "General Counsel" means the General Counsel of the Peace Corps or his designee.

Procedures

#### **§304.2 Administrative claim; when presented; appropriate Peace Corps Office.**

- a. For purposes of this subpart, a claim shall be deemed to have been presented when the Peace Corps receives, at a place designated in

paragraph (b.) of this section, an executed " Claim for Damages or Injury," Standard Form 95, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, for personal injury, or for death alleged to have occurred by reason of the incident. A claim which should have been presented to the Peace Corps, but which was mistakenly addressed to or filed with another Federal agency, is deemed to have been presented to the Peace Corps as of the date that the claim is received by the Peace Corps. If a claim is mistakenly addressed to or filed with the Peace Corps, the Peace Corps shall forthwith transfer it to the appropriate Federal agency, if ascertainable, or return it to the claimant.

- b. A claimant shall mail or deliver his claim to the Office of the General Counsel, Peace Corps, 1275 First Street, N.E., Washington, D. C. 20526.

#### **§304.3 Administrative claim: who may file.**

- a. A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent, or his legal representative.
- b. A claim for personal injury may be presented by the injured person, his duly authorized agent, or his legal representative.
- c. A claim based on death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.
- d. A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. Claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights of a subrogee.
- e. A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant.

#### **§304.4 Administrative, evidence and information to be submitted.**

a. *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

1. A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of the treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed or designated by the Peace Corps or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that he has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to the Peace Corps any other physician's report previously or thereafter made of the physical or mental condition which is the subject matter of his claim.
2. Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.
3. If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.
4. If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full-or part-time employee, and wages or salary actually lost;
5. If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earning actually lost.
6. Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

b. *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

1. An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of decedent.
2. Decedent's employment or occupation at the time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

3. Full names, addresses, birth dates, kinship, and marital status of decedent's survivors, including identification of those survivors who were dependent for support upon decedent at the time of his death.
  4. Degree of support afforded by decedent to each survivor dependent upon him for support at the time of his death.
  5. Decedent's general physical and mental condition before death.
  6. Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.
  7. If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and decedent's physical condition in the interval between injury and death.
  8. Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.
- c. *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information.
1. Proof of ownership.
  2. A detailed statement of the amount claimed with respect to each item of property.
  3. Two or more itemized written estimates of the cost of such repairs and any itemized receipt of payment for necessary repairs.
  4. A statement listing date of purchase, purchase price, and salvage value where repair is not economical.
  5. Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

## **§304.5 Investigations.**

The Peace Corps may investigate, or the General Counsel may request any other Federal agency to investigate, a claim filed under this subpart.

## **§304.6 Claims investigation.**

- a. When a claim has been filed with the Peace Corps, the General Counsel will send a copy of the claim to the head of the office concerned and ask him to designate one employee of that office who shall act as, and who shall be referred to therein as, the Claims Investigating Officer for that particular claim. The Claims Investigating Officer shall, with the advice of the General Counsel, where necessary:
  1. Investigate as completely as is practicable the nature and circumstances of the occurrence causing the loss or damage of the claimant's property.
  2. Ascertain the extent of loss or damage of the claimant's property.
  3. Assemble the necessary forms with required data contained therein.
  4. Prepare a brief statement setting forth the facts relative to the claim (in the case of motor vehicle accidents, facts should be recorded on Standard Form 91-A), a statement whether the claim satisfies the requirements of this subpart, and a recommendation as to the amount to be paid in settlement of the claim.
  5. The head of the office concerned will be responsible for assuring that all necessary forms, statements, and all supporting papers have been procured for the file and will transmit the entire file to the General Counsel.

#### **§304.7 Authority to adjust, determine, compromise, and settle claims.**

The authority to consider, ascertain, adjust, determine, compromise, and settle claims of less than \$5,000 under section 2672 of title 28, United States Code, and this subpart, subject to 304.8, has been retained by the Director of the Peace Corps rests with the Chief Financial Officer, as the designee of the head of the agency. For claims under 28 U.S.C. 2672 and this subpart, subject to Section 304.8, the Director of the Peace Corps retains authority to consider, ascertain, adjust, determine, compromise and settle claims of \$5,000 or more.

#### **§304.8 Limitations on authority**

- a. An award, compromise, or settlement of a claim under section 2672 of title 28, United States Code, and this subpart in excess of \$25,000 may be effected only with the prior written approval of the Attorney General or his designee. For the purpose of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

- b. An administrative claim may be adjusted, determined, compromised, or settled only after consultation with the Department of Justice when, in the opinion of the General Counsel:
  1. A new precedent or new point of law is involved; or
  2. A question of policy is or may be involved; or
  3. The United States is or may be entitled to indemnity or contribution from a third party, and the Peace Corps is unable to adjust the third party claim; or
  4. The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed \$25,000.
- c. An administrative claim may be adjusted, determined, compromised, or settled only after consultation with the Department of Justice when the Peace Corps is informed or is otherwise aware that the United States or an officer, employee, agent, or cost-type contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

#### **§304.9 Referral to Department of Justice**

When Department of Justice approval or consultation is required under 304.8, the referral or request shall be transmitted to the Department of Justice by the General Counsel pursuant to 28 CFR 14.7 (1968).

#### **§304.10 Review of claim.**

- a. Upon receipt of the claim file from the head of the office concerned, the General Counsel will ascertain that all supporting papers are contained in the file.
- b. After legal review and recommendation by the General Counsel, the Director of the Peace Corps will make a written determination on the claim unless the claim is worth less than \$5,000, in which case the Chief Financial Officer will make the written determination.

#### **§304.11 Final denial of claim.**

The General Counsel will send notification of the final denial of an administrative claim to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the Peace

Corps action, he may file suit in an appropriate U. S. District Court not later than 6 months after the date of mailing of the notification.

**§304.12 Action on approved claim.**

- a. Payment of a claim approved under this subpart is contingent on claimant's execution of
  1. a "Claim for Damage or Injury," Standard Form 95; and
  2. a "Voucher for Payment," Standard Form 1145, as appropriate.

When a claimant is represented by an attorney, the voucher for payment shall designate the claimant and his attorney as co-payees, and the check shall be delivered to the attorney whose address shall appear on the voucher.
- b. Acceptance by the claimant, his agent, or legal representative of an award, compromise, or settlement made under section 2672 or 2677 of title 28, United States Code, is final and conclusive on the claimant, his agent, or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and constitutes a complete release of any claim against the United States and against any officer or employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

*Effective date:* Date of publication in the Federal Register.