Functional Series 100 – Agency Organization and Legal Affairs
Chapter 152 - Tort Claims

***This is a new ADS Chapter. These policies and procedures were formerly part of ADS 537**

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Chapter 152 - Tort Claims

152.1 OVERVIEW

This chapter establishes policy and procedures for tort claims against USAID based on the acts or omissions of USAID employees within the scope of their employment.

152.2 PRIMARY RESPONSIBILITIES

a. The Office of the General Counsel is responsible for the Agency's tort claims procedures. Under the delegation in ADS 103.3.18, the General Counsel (GC) and Deputy General Counsels (DGCs) have authority to decide tort claims against the Agency.

b. The Mission Director or Mission Tort Claims Officer are hereby delegated by the GC the authority to decide foreign tort claims of less than $25,000.

152.3 POLICY AND PROCEDURES

152.3.1 Domestic and Foreign Tort Claims

152.3.1.1 Domestic Tort Claims – Federal Tort Claims Act

USAID administers tort claims arising in the United States in accordance with this section; the Federal Tort Claims Act (FTCA), 28 U.S.C. 2671-2680 **(see Mandatory Reference, Federal Tort Claims Act, 28 U.S.C. 2671-2680)**; and 28 CFR Part 14, Administrative Claims Under Federal Tort Claims Act issued by the Department of Justice **(see Mandatory Reference, 28 CFR 14, available at the following website: http://www.access.gpo.gov/nara/cfr/cfr-table-search.html)**).

152.3.1.2 Foreign Tort Claims - Section 636(b) of the Foreign Assistance Act of 1961, as amended (FAA)

a. Foreign tort claims, i.e., where the act or omission giving rise to the tort claim occurred in a foreign country, are excluded from the FTCA by section 2680(k) of the FTCA. USAID decides non-FTCA foreign tort claims under the "expenditures outside the United States" authority of section 636(b) of the FAA. **(See Mandatory Reference, FAA 636(b))**

b. USAID administers foreign tort claims in accordance with the provisions of this section and the following provisions of 28 CFR 14:

1. 14.2 - Administrative Claim - When Presented, except that the filing deadline may be waived by the Deciding Official. **(See Mandatory Reference, 28 CFR 14.2)**

2. 14.3 - Administrative Claim - Who May File. **(See Mandatory Reference, 28 CFR 14.3)**

3. §14.4 - Administrative Claims - Evidence and Information to be Submitted. **(See Mandatory Reference, 28 CFR 14.4)**

The provisions of the FTCA and 28 CFR Part 14 on judicial review, Department of Justice approval for payments, and payment from the judgment fund do not apply to foreign claims.

c. Claims for which another law provides an exclusive remedy for the claimant are excluded. For example, the Federal Employees' Compensation Act is the exclusive remedy for employee work-related injuries.

152.3.2 Deciding Officials

a. The GC and DGCs are Deciding Officials for both domestic and foreign tort claims.

b. The Mission Director is a Deciding Official for foreign tort claims under $25,000, subject to the approval of the Regional Legal Advisor.

152.3.3 Where To File a Claim

A claimant must file the claim with the Deciding Official.

152.3.4 Reporting of Accidents by USAID Employees

a. For motor-vehicle accidents see ADS 536, Use and Control of Official Vehicles. **(See ADS 536)**

b. Accidents not involving motor vehicles must be reported by the employee involved, through the employee's immediate supervisor. The employee must fill out an AID Form 352-3, Report of Accident other than Motor Vehicle, as soon as possible after the accident. An AID Form 352-3 must be completed for each injured person. The immediate supervisor must complete sections 12 and 13 of the accident report. The Executive or Administrative Officer must complete sections 14 and 15 of the report. **(See Mandatory Reference, AID Form 352-3)**

152.3.5 Deciding a Claim

a. The Deciding Official's authority to decide a tort claim includes the authority to settle a tort claim. Pursuant to Executive Order 12988, Deciding Officials must evaluate settlement possibilities and make reasonable efforts to settle. **(See Mandatory Reference, EO 12988)**

b. For non-FTCA claims, liability and related issues (such as, but not limited to, reasonable care, scope of employment, proximate cause, joint tortfeasors, negligence, comparative negligence, contributory negligence, damages for pain and suffering and loss of earning capacity, local custom, and the rights of subrogees and lienholders) will be determined as follows:

1. For claims by non-U.S. citizens -- according to the law of the foreign country where the act or omission occurred;

2. For claims by U.S. citizens -- according to the law of the United States.

c. The Deciding Official is authorized to approve payment of hospital bills prior to final decision on a claim.

152.3.6 Payment and Release

a. For FTCA claims, a voucher for Payment Under Federal Tort Claims Act (SF-1145) is used. The SF-1145 contains a release that must be signed by the claimant. **(See Mandatory Reference, SF-1145)**

b. For non-FTCA claims, a release similar to that in the SF-1145 must be signed by the claimant prior to payment.

152.4 MANDATORY REFERENCES

152.4.1 External Mandatory References

a. **28 CFR Part 14, Administrative Claims Under Federal Tort Claims Act**

b. **28 CFR 14.2, Administrative Claim, When Presented**

c. **28 CFR 14.3, Administrative Claim, Who May File**

d. **28 CFR 14.4, Administrative Claims, Evidence and Information To Be Submitted**

e. **EO 12988, Civil Justice Reform**

f. **Federal Tort Claims Act, as amended, contained in 28 U.S.C. 2671-2680**

g. **Section 636(b) of the Foreign Assistance Act (FAA) of 1961, as amended.**

h. **SF-95, Claims for Damage, Injury, or Death**

i. **SF-1145, Voucher for Payment Under Federal Tort Claims Act**

152.4.2 Internal Mandatory References

a. **ADS 103, Delegations of Authority**

b. **ADS 536, Use and Control of Official Vehicles**

c. **AID Form 352-3, Report of Accident other than Motor Vehicle**

152.5 ADDITIONAL HELP

152.6 DEFINITIONS

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