

(iii) Claims under 10 U.S.C. 2575(d)(3) must be received within 5 years after the date of the disposal of the property to which the claim relates.

(iv) Claims under 24 U.S.C. 420(d)(1), 10 U.S.C. 4712, and 10 U.S.C. 9712 must be received within 6 years after the death of the deceased resident.

(v) Claims under 37 U.S.C. 554(h) must be received before the end of the 5-year period from the date the net proceeds from the sale of the missing person's personal property are covered into the Treasury.

(2) The time limits set by statute may not be extended or waived.² Although the issue of timeliness normally shall be raised upon initial submission (as explained at Appendix D to this part, paragraph (b)), the issue may be raised at any point during the claim settlement process.

(g) *Claimant Must Prove the Claim.* The claimant must prove, by clear and convincing evidence, on the written record that the United States is liable to the claimant for the amount claimed. All relevant evidence to prove the claim should be presented when a claim is first submitted. In the absence of compelling circumstances, evidence that is presented at later stages of the administrative process will not be considered.

APPENDIX D TO PART 282—PROCESSING A CLAIM

(a) *Initial Component Processing.* Upon receipt of a claim, the Component concerned must:

(1) Date stamp the claim on the date received.

(2) Determine whether the claim was received within the required time limit (time limits are summarized at Appendix C to this part, paragraph (f)) and follow the procedures in paragraph (b) of this Appendix if the claim was not timely.

(3) Investigate the claim.

(4) Decide whether the claimant provided clear and convincing evidence that proves all or part of the claim.

(5) Issue an initial determination that grants the claim to the extent proved or denies the claim, as appropriate. The initial determination must state how much of the claim is granted and how much is denied, and must explain the reasons for the determination.

(6) Notify the claimant of the initial determination. The Component must send the

²There is an exception for certain claims described in 31 U.S.C. 3702(e). In those cases, the Secretary of Defense may waive the time limits in paragraph (f)(1)(i) of this Appendix. Appendix D of this part, paragraph (d), explains which claims qualify and the procedures that apply.

claimant a copy of the initial determination and a notice that explains:

(i) The action the Component shall take on the claim, if the initial determination is or becomes a final action (the finality of an initial determination is explained at paragraph (c) of this Appendix); and

(ii) The procedures the claimant must follow to appeal an initial determination that denies all or part of the claim (those appeal procedures are explained at Appendix E to this part), if applicable.

(b) *Untimely Claims.* When the Component concerned determines that a claim was not received within the statutory time limit, the Component must make an initial determination of untimely receipt. (The statutory time limits are explained in Appendix C to this part, paragraph (f).)

(1) The initial determination must cite the applicable statute and explain the reasons for the finding of untimely receipt. The Component must send the initial determination to the claimant with a notice that:

(i) States the claim was not received within the statutory time limit and, therefore, may not be considered, unless that finding is reversed on appeal, and explains how the claimant may appeal the finding (those appeal procedures are explained at Appendix E to this part); and either

(ii) If the claim does not qualify under 31 U.S.C. 3702(e), states that the statutory time limit may not be extended or waived; or

(iii) If the claim does qualify under 31 U.S.C. 3702(e), states that the claim may be further considered only if the time limit is waived, and explains how the claimant may apply for a waiver. (Paragraph (d) of this Appendix explains which claims qualify and the procedures for applying for a waiver).

(2) Except in cases where a claimant has applied under paragraph (d) of this Appendix to request a waiver of the time limit, the Component must return the claim to the claimant when the initial determination becomes a final action with a notice that the finding in the initial determination is final and, therefore, the claim may not be considered. If the claim qualifies under 31 U.S.C. 3702(e), the notice must also state that the claimant may resubmit the claim with an application under paragraph (d) of this Appendix.

(c) *Finality of an Initial Determination.* An initial determination that grants all of a claim is a final action when it is issued. Otherwise, an initial determination (including one of untimely receipt) is a final action if the Component concerned does not receive an appeal within 30 days of the date of the initial determination (plus any extension of up to 30 additional days granted by the Component concerned for good cause shown).

(d) *Waiver of Certain Time Limits.* When the Component concerned determines that a claim was not received within the statutory

time limit in 31 U.S.C. 3702(b) or (c), the claimant may request a waiver of the time limit. Waiver is permitted only for those claims that satisfy the requirements of 31 U.S.C. 3702(e).¹ This provision confers no right or entitlement on a claimant. It is solely within the discretion of the Secretary of Defense whether to grant such a waiver in a particular case.

(1) The claim must contain the information and documents that are generally required for claims (those requirements are explained at Appendix C to this part, paragraph (c)).

(2) The Component concerned must investigate the claim and make an initial determination concerning the merits of the claim.

(3) If the initial determination grants all or part of the claim, and if the Secretary concerned agrees with the determination, the Secretary may request or recommend that the time limit be waived.² Requests and recommendations must be in writing and signed by the Secretary concerned. (This authority may not be delegated below the level of an Assistant Secretary.)

(i) The Secretary concerned shall forward the request or recommendation to the following address: Defense Office of Hearings and Appeals, Claims Division, P.O. Box 3656, Arlington, VA 22203–1995.

(ii) The entire record concerning the claim, including the initial determination, must be attached to the request.

(4) The Director, DOHA, must review the request and the written record and must:

(i) Grant the request and waive the statutory time limit, if the Director finds that all or part of the claim has been proven. The Director may also modify the finding concerning the amount of the claim that has been proven.

(ii) Deny the request, if the Director finds that no part of the claim has been proven.

(iii) Notify the Secretary concerned and the claimant of the decision and the reasons for the findings.

¹When this part was issued, 31 U.S.C. 3702(e) allowed time limit waivers only for claims up to \$25,000 for Uniformed Service member's pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivors benefits. Since 31 U.S.C. 3702(e) could be amended at any time to modify these restrictions, always consult the current provisions of that Section to determine which claims are included.

²31 U.S.C. 3702(e) currently requires a Secretarial request only in the case of a claim by or with respect to a member of the Uniformed Services who is not under the jurisdiction of the Secretary of a Military Department. As a matter of policy, the Department of Defense currently requires a Secretarial recommendation in all other cases.

(5) In the event the Director, DOHA, denies the request, or grants the request but modifies the finding concerning the amount of the claim proven, the Secretary concerned or the claimant may request reconsideration (the procedures are explained at Appendix E to this part). The Director's decision is a final action if the Director does not receive a request for reconsideration within 30 days of the date of the Director's decision (plus any extension of up to 30 additional days granted by the Director for good cause shown).

APPENDIX E TO PART 282—APPEALS

(a) *Who May Appeal.* A claimant may appeal if an initial determination denies all or part of a claim or finds that the claim was not received by the Component concerned within the time limit required by statute; however, the decision of the Secretary concerned not to request or recommend waiver of the time limit is not appealable except to the Secretary concerned, if the Secretary as a matter of discretion provides for such appeals.

(b) *When and Where to Submit an Appeal.* A claimant's appeal must be received by the Component concerned within 30 days of the date of the initial determination. The Component may extend this period for up to an additional 30 days for good cause shown. No appeal may be accepted after this time has expired. An appeal sent directly to the DOHA is not properly submitted.

(c) *Content of an Appeal.* No specific format is required; however, the appeal must be written and be signed by the claimant, the claimant's authorized agent, or the claimant's attorney. It also should:

(1) Provide the claimant's mailing address;

(2) Provide the claimant's telephone number;

(3) State the amount claimed on appeal, or that the appeal is from a finding of untimely receipt, whichever applies;

(4) Identify specific:

(i) Errors or omissions of material and relevant fact;

(ii) Legal considerations that were overlooked or misapplied; and

(iii) Conclusions that were arbitrary, capricious, or an abuse of discretion;

(5) Present evidence of the correct or additional facts alleged;

(6) Explain the reasons the findings or conclusions should be reversed or modified;

(7) Have attached copies of documents referred to in the appeal; and

(8) Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the claimant or other persons in support of the appeal.

(d) *Component's Review.* The Component concerned must review a claimant's appeal,