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However, a copy of an original claim must be submitted as soon as possible.

(b) Where a claim is only for property damage and it is filed under circumstances where there might be injuries, the CJA should inquire if the claimant desires to split the claim as discussed in § 536.60.

(c) Normally, a claim will be presented on a Standard Form (SF) 95 (Claim for Damage, Injury, or Death). When the claim is not presented on an SF 95, the claimant will be requested to complete an SF 95 to ease investigation and processing.

(d) If a claim names two claimants and states only one sum certain, the claimants will be requested to furnish a sum certain for each. A separate sum certain must be obtained prior to payment under the Federal Tort Claims Act (FTCA), Military Claims Act (MCA), National Guard Claims Act (NGCA) or the FCA. The Financial Management Service will only pay an amount above the threshold amount of $2,500 for the FTCA, or $100,000 for the other statutes.

(e) A properly filed claim meeting the definition of ''claim'' in paragraph (a) of this section tolls the two-year statute of limitations (SOL) even though the documents required to substantiate the claim are not present, such as those listed on the back of an SF 95 or in the Attorney General's regulations implementing the FTCA, 28 CFR 14.1—14.11. However, refusal to provide such documents may lead to dismissal of a subsequent suit under the FTCA or denial of a claim under other subparts of this part.

(f) Receipt of a claim by another federal agency does not toll the SOL. Receipt of a U.S. Army claim by DOD, Navy, or Air Force does toll the SOL.

(g) The guidelines set forth in federal FTCA case law will apply to other subparts of this part in determining whether a proper claim was filed.

NOTE TO § 536.26: See the parallel discussion at DA Pam 27–162, paragraph 2–5.

§ 536.27 Identification of a proper claimant.

The following are proper claimants:

(a) *Claims for property loss or damage.* A claim may be presented by the owner of the property or by a duly authorized agent or legal representative in the owner's name. As used in this part, the term ''owner'' includes the following:

(1) *For real property.* The mortgagor, mortgagee, executor, administrator, or personal representative, if he or she may maintain a cause of action in the local courts involving a tort to the specific property, is a proper claimant. When notice of divided interests in real property is received, the claim should if feasible be treated as a single claim and a release from all interests must be obtained. This includes both the owner and tenant where both claim.

(2) *For personal property.* A claim may be presented by a bailee, lessee, mortgagee, conditional vendor, or others holding title for purposes of security only, unless specifically prohibited by the applicable subpart. When notice of divided interests in personal property is received, the claim should if feasible be treated as a single claim; a release from all interests must be obtained. Property loss is defined as loss of actual tangible property, not consequential damage resulting from such loss.

(b) *Claims for personal injury or wrongful death*—(1) *For personal injury.* A claim may be presented by the injured person or by a duly authorized agent or legal representative or, where the claimant is a minor, by a parent or a person in loco parentis. However, determine whether the claimant is a proper claimant under applicable state law or, if considered under the MCA, under § 536.77. If not, the claimant should be so informed in the acknowledgment letter and requested to withdraw the claim. If not withdrawn, deny the claim without delay. An example is a claim filed on behalf of a minor for loss of consortium for injury to a parent where not permitted by state law. Personal injury claims deriving from the principal injury may be presented by other parties. A claim may not be presented by a ''volunteer,'' meaning one who has no legal or contractual obligation, yet voluntarily pays damages on behalf of an injured party and then seeks reimbursement for their economic damages by filing a claim. See paragraph (f) (3) of this section.

(2) *For wrongful death.* A claim may be presented by the executor or administrator of the deceased's estate, or by

any person determined to be legally or beneficially entitled under applicable local law. The amount allowed will be apportioned, to the extent practicable, among the beneficiaries in accordance with the law applicable to the incident. Under the MCA (subpart C of this part), only one wrongful death claim is authorized (see § 536.77(c)(1)(i)). Under subparts D and H of this part, a claim by the insured for property damage may be considered as a claim by the insurer as the real party in interest provided the insured has been reimbursed by the insurer and the insurance information is listed on the SF 95. The insurer should be required to file a separate SF 95 for payment purposes even though the SOL has expired. Where the insurance information is not listed on the SF 95 and the insured is paid by the United States, the payment of the insurer is the responsibility of the insured even though the insurer subsequently files a timely claim. To avoid this situation, always inquire as to the status of any insurance prior to payment of a property damage claim.

(c) *By an agent or legal representative.* A claimant's agent or legal representative who presents a claim will do so in the claimant's name and sign the form in such a way that indicates the agent's or legal representative's title or capacity. When a claim is presented by an agent or legal representative:

(1) It must contain written evidence of the agent's or legal representative's authority to sign, such as a power of attorney, or

(2) It must refer to or cite the statute granting authority.

(d) *Subrogation.* A claim may be presented by the subrogee in his or her own name if authorized by the law of the place where the incident giving rise to the claim occurred, under subpart D or H of this part only. A lienholder is not a proper claimant and should be distinguished from a subrogee to avoid violation of the Antiassignment Act. See paragraph (f) of this section. However, liens arising under Medicare will be processed directly with the Center for Medicare and Medicaid Systems. See DA Pam 27–162, paragraphs 2–57g and h and 2–58.

(e) *Contribution or indemnity.* A claim may be filed for contribution or indemnification by the party who was held liable as a joint tortfeasor where authorized by state law. Such a claim is not perfected until payment has been made by the claimant/joint tortfeasor. A claim filed for contribution prior to payment being made should be considered as an opportunity to share a settlement where the United States is liable.

(f) *Transfer or assignment.* (1) Under the Antiassignment Act (31 U.S.C. 3727) and Defense Finance and Accounting Service—Indianpolis (DFAS–IN) regulation 37–1, a transfer or assignment is null and void except where it occurs by operation of law or after a voucher for the payment has been issued. The following are null and void:

(i) Every purported transfer or assignment of a claim against the United States, or any interest, in whole or in part, on a claim, whether absolute or conditional; and

(ii) Every power of attorney or other purported authority to receive payment for all or part of any such claim.

(2) The Antiassignment Act was enacted to eliminate multiple payment of claims, to cause the United States to deal only with original parties and to prevent persons of influence from purchasing claims against the United States.

(3) In general, this statute prohibits voluntary assignments of claims, with the exception of transfers or assignments made by operation of law. The operation of law exception has been held to apply to claims passing to assignees because of bankruptcy proceedings, assignments for the benefit of creditors, corporate liquidations, consolidations, or reorganizations, and where title passes by operation of law to heirs or legatees. Subrogated claims that arise under a statute are not barred by the Antiassignment Act. For example, subrogated workers' compensation claims are cognizable when presented by the insurer under subpart D or H of this part, but not other subparts.

(4) Subrogated claims that arise pursuant to contractual provisions may be paid to the subrogee, if the legal basis for the subrogated claim is recognized by state statute or case law, only under

subpart D or H of this part. For example, an insurer that issues an insurance policy becomes subrogated to the rights of a claimant who receives payment of a property damage claim. Generally, such subrogated claims are authorized by state law and are therefore not barred by the Antiassignment Act.

(5) Before claims are paid, it is necessary to determine whether there may be a valid subrogated claim under a federal or state statute or a subrogation contract held valid by state law.

(g) *Interdepartmental waiver rule.* Neither the U.S. government nor any of its instrumentalities are proper claimants due to the interdepartmental waiver rule. This rule bars claims by any organization or activity of the Army, whether or not the organization or activity is funded with appropriated or nonappropriated funds. Certain federal agencies are authorized by statute to file claims, for example, Medicare and the Railroad Retirement Commission. See DA Pam 27–162, paragraph 2–17f.

(h) *States are excluded.* If a state, U.S. commonwealth, territory, or the District of Columbia maintains a unit to which ARNG personnel causing the injury or damage are assigned, such governmental entity is not a proper claimant for loss or damage to its property. A unit of local government other than a state, commonwealth, or territory is a proper claimant.

NOTE TO § 536.27: See the parallel discussion at DA Pam 27–162, paragraph 2–6.

§ 536.28 Claims acknowledgment.

Claims personnel will acknowledge all claims immediately upon receipt, in writing, by telephone, or in person. A defective claim will be acknowledged in writing, pointing out its defects. Where the defects render the submission jurisdictionally deficient based on the requirements discussed in DA Pam 27–162, paragraphs 2–5 and 2–6, the claimant or attorney will be informed in writing of the need to present a proper claim no later than two years from the date of accrual. Suit must be filed in maritime claims not later than two years from the date of accrual. See § 536.122. In any claim for personal injury or wrongful death, an authorization signed by the patient, natural or legal guardian or estate representative will be obtained authorizing the use of medical information, including medical records, in order to use sources other than claims personnel to evaluate the claim as required by the Health Care Portability and Accountability Act (HIPAA), 42 U.S.C. 1320d–1320d–8. See the parallel discussion at DA Pam 27–162, paragraph 2–7.

§ 536.29 Revision of filed claims.

(a) *General.* A revision or change of a previously filed claim may constitute an amendment or a new claim. Upon receipt, the CJA must determine whether a new claim has been filed. If so, the claim must be logged with a new number and acknowledged in accordance with § 536.27.

(b) *New claim.* A new claim is filed whenever the writing alleges a new theory of liability, a new tortfeasor, a new party claimant, a different date or location for the claims incident, or other basic element that constitutes an allegation of a different tort not originally alleged. If the allegation is made verbally or by e-mail, the claimant will be informed in writing that a new SF 95 must be filed. A new claim must be filed not later than two years from the accrual date under the FTCA. Filing a new claim creates an additional six month period during which suit may not be filed.

(c) *Amendment.* An increase or decrease in the amount claimed constitutes an amendment, not a new claim. Similarly, the addition of required information not on the original claim constitutes an amendment. Examples are date of birth, marital status, military status, names of witnesses, claimant's address, description, or location of property or insurance information. An amendment may be filed before or after the two year SOL has run unless final action has been taken. A new number will not be assigned to an amended claim; however, a change in the amount will be annotated in the database.

NOTE TO § 536.29: See the parallel discussion at DA Pam 27–162, paragraph 2–8.

§ 536.30 Action upon receipt of claim.

(a) A properly filed claim stops the running of the SOL when it is received by any organization or activity of the