

proceeds from the refinancing of indebtedness or additional mortgages that are in excess of qualifying building costs are not considered cash available for distribution.

(iii) *Anti-abuse rule.* The Commissioner will interpret and apply the rules in this paragraph (c)(6) as necessary and appropriate to prevent manipulation of the qualified contract amount. For example, cash distributions include payments to owners or persons whose relation to owners is described in section 267(b) or section 707(b) for any operating expenses in excess of amounts reasonable under the circumstances.

(d) *Administrative discretion and responsibilities of the Agency—(1) In general.* An Agency may exercise administrative discretion in evaluating and acting upon an owner's request to find a buyer to acquire the building. An Agency may establish reasonable requirements for written requests and may determine whether failure to follow one or more applicable requirements automatically prevents a purported written request from beginning the one-year period described in section 42(h)(6)(I). If the one-year-period has already begun, the Agency may determine whether failure to follow one or more requirements suspends the running of that period. Examples of Agency administrative discretion include, but are not limited to, the following:

(i) Concluding that the owner's request lacks essential information and denying the request until such information is provided.

(ii) Refusing to consider an owner's representations without substantiating documentation verified with the Agency's records.

(iii) Determining how many, if any, subsequent requests to find a buyer may be submitted if the owner has previously submitted a request for a qualified contract and then rejected or failed to act upon a qualified contract presented by the Agency.

(iv) Assessing and charging the owner certain administrative fees for the performance of services in obtaining a qualified contract (for example, real estate appraiser costs).

(v) Requiring all appraisers involved in the qualified contract process to be State certified general appraisers that are acceptable to the Agency.

(vi) Specifying other conditions applicable to the qualified contract consistent with section 42 and this section.

(2) *Actual offer.* Upon receipt of a written request from the owner to find a person to acquire the building, the Agency must offer the building for sale

to the general public, based on reasonable efforts, at the determined qualified contract amount in order for the qualified contract to satisfy the requirements of this section unless the Agency has already identified a willing buyer who submitted a qualified contract to purchase the project.

(3) *Debarment of certain appraisers.* Agencies shall not utilize any individual or organization as an appraiser if that individual or organization is currently on any list for active suspension or revocation for performing appraisals in any State or is listed on the Excluded Parties Lists System (EPLS) maintained by the General Services Administration for the United States Government found at [www.epls.gov](http://www.epls.gov).

(e) *Effective date/applicability date.* These regulations are applicable to owner requests to housing credit agencies on or after May 3, 2012 to obtain a qualified contract for the acquisition of a low-income housing credit building.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

■ **Par. 3.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

■ **Par. 4.** In § 602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read, in part, as follows:

**§ 602.101 OMB Control numbers.**

CFR part or section where identified and described	Current OMB control No.
(b) * * *	
1.42–18 .....	1545–2088

**Steven T. Miller,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: April 24, 2012.

**Emily S. McMahon,**  
*Acting Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2012–10638 Filed 5–2–12; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF JUSTICE**

**28 CFR Part 0**

[CIV Docket No. 152; AG Order No. 3330–2012]

**Authorization To Redelegate Settlement Authority for Claims Submitted Under the Federal Tort Claims Act**

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice is amending its internal organizational regulations to clarify the authority of the respective agency heads of the Bureau of Prisons, the Federal Prison Industries, the United States Marshals Service, the Drug Enforcement Administration, the Federal Bureau of Investigation, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives to settle claims under the Federal Tort Claims Act.

**DATES:** This rule is effective June 4, 2012.

**FOR FURTHER INFORMATION CONTACT:** Phyllis J. Pyles, Director, Torts Branch, Civil Division, Department of Justice, 1331 Pennsylvania Avenue NW., Washington, DC 20004; telephone: 202–616–4400.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2671–2680, provides a remedy for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. Prior to filing suit, a claimant must file an administrative tort claim with the appropriate agency. 28 U.S.C. 2675. Pursuant to 28 U.S.C. 2672, the head of each Federal agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, compromise, and settle FTCA claims.

In the present organizational regulations of the Department of Justice, the Attorney General delegated his authority to settle FTCA claims for amounts of \$50,000 or less to the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of the Immigration and Naturalization Service (INS), the Director of the United States

Marshals Service, and the Administrator of the Drug Enforcement Administration (28 CFR 0.172), and to the Director of the Federal Bureau of Investigation (FBI) (28 CFR 0.89a) and the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) (28 CFR 0.132). The Director of the FBI is further authorized to redelegate this authority to the FBI General Counsel or his designee within the Office of the General Counsel or to the primary legal advisers of the FBI field offices.

This rule amends §§ 0.89a, 0.132, and 0.172 in order to ensure conformity across the different components of the Department of Justice, to update agency references, and to clarify the scope of the delegated FTCA settlement authority. In addition, the FTCA settlement authority of the Director of the FBI, currently contained in § 0.89a, and of the Director of ATF, currently contained in § 0.132, are being transferred by this rule to § 0.172, where the FTCA settlement authority of the other specified Department component heads is located.

Section 0.172 is being amended to remove a reference to the Commissioner of the INS. Pursuant to the Homeland Security Act of 2002, the functions of the former INS were transferred to the Department of Homeland Security. Section 0.172 also is being amended to clarify that the approval of the Assistant Attorney General in charge of the Civil Division will be required if two or more claims arise from the same subject matter and the aggregate amount of the settlement would exceed \$50,000. In addition, § 0.172 is being amended to clarify when proposed settlements, regardless of amount, should be referred to the Assistant Attorney General in charge of the Civil Division. In particular, § 0.172 is being amended to require the referral of settlements to the Assistant Attorney General in charge of the Civil Division or his delegee, if the settlement, as a practical matter, would or may control or adversely influence the disposition of other claims and the total settlement value of all claims would or may exceed \$50,000; or if, in the opinion of the head of the referring component, the settlement presents a question of law or policy or other issue that should receive the personal attention of the Assistant Attorney General or his delegee. Section 0.172 also is being amended to more closely conform to the language contained in 28 U.S.C. 2672 by clarifying that the Attorney General's delegees have the authority to consider or ascertain claims involving their respective agencies, in addition to their authority to adjust,

determine, compromise, and settle such claims.

Finally, § 0.132 is being amended to allow the Director of ATF to delegate this authority under § 0.172 to the agency's Chief Counsel and to allow the Chief Counsel to redelegate this authority to attorneys within the Office of Chief Counsel, but not below the Associate Chief Counsel level, provided that the settlement of any one claim does not exceed \$50,000. Without this provision for delegation and re delegation, the ATF Director must personally approve all submitted FTCA claims, regardless of size or merit. This rule provides flexibility to the Director of ATF and is consistent with the re delegation authority of the FBI Director under current § 0.89a(c) (which is being redesignated by this rule as § 0.89a(b)). With this flexibility, the ATF can more efficiently process FTCA claims.

The Attorney General believes that consolidating under § 0.172 the authority of heads of certain components within the Department of Justice to settle FTCA claims and ensuring uniform language across §§ 0.89a, 0.132, and 0.172 that is consistent with 28 U.S.C. 2672 will facilitate more consistent treatment of these claims.

#### *Administrative Procedure Act (APA)*

Notice and comment rulemaking is not required for this final rule. Under the APA, "rules of agency organization, procedure or practice," 5 U.S.C. 553(b)(A), that do not "affect[] individual rights and obligations," *Morton v. Ruiz*, 415 U.S. 199, 232 (1974), are exempt from the general notice and comment requirements of section 553. See *JEM Broad. Co. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994) (holding that the procedural exception applies to "agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency" (quoting *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980) (internal quotation marks omitted)). The revision to 28 CFR 0.89a, 0.132, and 0.172 is purely a matter of agency organization, procedure, and practice. The final rule will not affect substantive rights or interests of persons presenting their FTCA claims to the relevant agencies of the Department of Justice.

#### *Regulatory Flexibility Act*

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will

not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis is not required for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter.

#### *Executive Orders 12866 and 13563—Regulatory Review*

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, Improving Regulation and Regulatory Review, section 1(b), General Principles of Regulation. This rule is limited to agency organization, management, or personnel matters as described by Executive Order 12866, section 3(d)(3), and therefore is not a "regulation" or "rule" as defined by Executive Order 12866. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this rule and believes that the regulatory approach selected maximizes net benefits.

#### *Executive Order 12988*

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

#### *Executive Order 13132*

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, Federalism, the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

*Congressional Review Act*

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a "rule" for purposes of the reporting requirement of 5 U.S.C. 801.

**List of Subjects in 28 CFR Part 0**

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

**Authority and Issuance**

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301, and 28 U.S.C. 509, 510, and for the reasons set forth in the preamble, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

**PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE**

■ 1. The authority citation for 28 CFR Part 0 continues to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

**§ 0.89a [Amended]**

■ 2. Section 0.89a is amended by—

- a. Removing paragraph (a);
- b. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively;
- c. Removing the word "further" from newly redesignated paragraph (a);
- d. Adding a comma after the parenthetical "(31 U.S.C. 3274)" in newly redesignated paragraph (a); and
- e. Removing the words "by paragraphs (a) and (b) of this section" from newly redesignated paragraph (b) and adding in their place the words "by paragraph (a) of this section and by 28 CFR 0.172".

**§ 0.132 [Amended]**

■ 3. Section 0.132 is amended by—

- a. Removing paragraph (a);
- b. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively;
- c. Adding a comma after the word "personnel" in newly redesignated paragraph (a); and
- d. Removing the words "in paragraph (b) of this section" from newly redesignated paragraph (b) and adding in their place the words "by paragraph (a) of this section and by 28 CFR 0.172".

■ 4. Section 0.172 is revised to read as follows:

**§ 0.172 Authority: Federal tort claims.**

(a) *Delegation of authority.* Subject to the limitations set forth in paragraph (b) of this section, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Director of the United States Marshals Service, the Administrator of the Drug Enforcement Administration, the Director of the Federal Bureau of Investigation, and the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives shall have authority under section 2672 of title 28, United States Code, relating to the administrative settlement of Federal tort claims, to consider, ascertain, adjust, determine, compromise, and settle any claim involving their respective components, provided that any award, compromise, or settlement shall not exceed \$50,000.

(b) *Limitations on authority.* Any proposed award, compromise, or settlement under section 2672 of title 28, United States Code, must be referred to the Assistant Attorney General in charge of the Civil Division, or his delegee, when—

(1) Because a significant question of law or policy is presented, or for any other reason, the head of the referring component is of the opinion that the proposed award, compromise, or settlement should receive the personal attention of the Assistant Attorney General or his delegee;

(2) Two or more claims arise from the same subject matter and the total amount of any award, compromise, or settlement of all claims will or may exceed \$50,000; or

(3) The award, compromise, or settlement of a particular claim, as a practical matter, will or may control or adversely influence the disposition of other claims and the total settlement value of all claims will or may exceed \$50,000.

(c) Subject to the provisions of § 0.160, the Assistant Attorney General

in charge of the Civil Division shall have authority to consider, ascertain, adjust, determine, compromise, and settle any other claim involving the Department under section 2672, of title 28, U.S. Code, relating to the administrative settlement of Federal tort claims.

Dated: April 27, 2012.

**Eric H. Holder, Jr.,**

*Attorney General.*

[FR Doc. 2012–10641 Filed 5–2–12; 8:45 am]

**BILLING CODE 4410–12–P**

**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 51****RIN 2900–AO02****Technical Revisions To Update Reference to the Required Assessment Tool for State Nursing Homes Receiving Per Diem Payments From VA**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This rule updates the reference to the required resident assessment tool for State homes that receive per diem from VA for providing nursing home care to veterans. It requires State nursing homes receiving per diem from VA to use the most recent version of the Centers for Medicare and Medicaid Services (CMS) Resident Assessment Instrument/Minimum Data Set (MDS), which is version 3.0. This will ensure that the standard used to assess veterans is the same as the standard applicable to Medicare and Medicaid beneficiaries.

**DATES:** This final rule is effective June 4, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Nancy Quest, Director, Home and Community Based Services, Geriatrics and Extended Care Services (10P4G), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–6064. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** This document adopts as a final rule without change a proposed rule amending the Department of Veterans Affairs (VA) regulations. On November 10, 2011, VA published in the **Federal Register** (76 FR 70076) a proposal to amend VA regulations to update the reference to the required resident assessment tool for State homes providing nursing home care, CMS Resident Assessment